

June 28, 2019

Calvert County Board of Education
1305 Dares Beach Rd, Prince
Frederick, MD 20678

RE: Public Comment Policy 3215: Restraint and Seclusion

Dear members of the Calvert County Board of Education:

The Council of Parent Attorneys and Advocates (COPAA) is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of children with disabilities in America. COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community.

As follow up to our May 17, 2019 letter to Superintendent Curry and the Board, we write in response to the Board's proposed plan to revise the County's approach to student behavior interventions. Our recommendations and comments are intended to support the nearly 1,500 Calvert County students with disabilities who continue to be disproportionately impacted by the use of the harsh aversive practices of seclusion and restraint.

COPAA appreciates the Board's efforts to revise County policies focused on seclusion and restraint. In particular, we support the Board's effort to adopt policies that bring the County into compliance with Maryland state law and promote the need for evidence-based practices in Calvert County schools. Therefore, we offer the following recommendations in support of the Board's ongoing process and in the development of a plan which we hope will continue to keep student safety at its core.

Recommendation 1: Revise the Board Policy Statement and all related provisions to *prohibit* the use of seclusion.

Recommendation 2: Revise the Board Policy Statement and all related provisions to *prohibit* the use of mechanical, chemical or other restraints that restrict breathing.

Rationale for #1/#2: As previously communicated (See: Letter to Curry et al, 5/17/19), there is no data supporting the need for and use of seclusion as a successful intervention with children. Seclusion is an aversive intervention that compromises health and safety. In fact, all data show that use of seclusion and the use of mechanical, chemical or restraints that restrict breathing have no efficacy, are dangerous; causing trauma, injury and death. No child should intentionally be subjected to traumatizing and dangerous practices in Calvert County schools. COPAA strongly

encourages the Board to revise the policy to *prohibit the use of seclusion as well as the use of mechanical, chemical or restraints that restrict breathing.*

Resource: To help guide the revision of language as recommended above, we refer you to the [Keeping All Students Safe Act in the 115th Congress \(S/2636/HR 7124\)](#), a bill negotiated with the support of over 120 national organizations which sets the highest standard for all students and provides for the training of school teams, including school resource officers. The bill includes the prohibitions mentioned above; provides an allowance for Time Out (with a definition); and supports the use of restraint only in the instance of "imminent danger of serious physical injury to the student, school personnel, or others." The bill's language can help guide further development of the Calvert County plan and we encourage you to review and use it. We expect the bill to be re-introduced in the 116th Congress in the coming weeks.

Recommendation 3: Strike any reference(s) that allows the Individualized Education Program (IEP) to mention, require or allow the use of seclusion and/or restraint.

Rationale: Writing restraint and seclusion into the IEP will only encourage schools to use abusive techniques. The Government Accountability Office has issued a report to Congress that specifically addresses thisⁱ. Too often, parents have been misled into consenting to restraint and seclusion in IEPs only to find out their children have been abused, injured, and traumatized by staff who are not trained and over-rely on these abusive practices in a crisis.

On this point and the role of the IEP and the IEP team, COPAA wishes to remind the Board that if the child's behavior impedes the child's learning or that of others the Individuals with Disabilities Education Act (IDEA) requires the IEP team to use positive behavioral supports, supports and other strategies to address that behaviorⁱⁱ -- not the aversive practices of seclusion and restraint. If the child's behavior that impedes learning is not addressed in the IEP, the IEP team must review and revise the IEP to ensure that the child receives appropriate positive behavioral interventions and supports and other strategiesⁱⁱⁱ. To make informed decisions, the team should conduct a Functional Behavior Assessment (FBA) to support the development of the Behavior Intervention Program (BIP). Furthermore, your district must ensure that scientifically based research drives their professional development activities and services [provided to the child]^{iv}.

Recommendation 4: Include a timeline within the plan.

Rationale: COPAA applauds the Purposes as outlined in the proposed plan, however, the current proposal at: Purposes I.C. *does not include any dates or a timeline* to ensure that planning, training and full implementation happen in a reasonable timeframe. Also, adding dates would help the Board plan and budget for the training which is necessary to help school leaders and teachers gain the experience they need to become familiar with research-based interventions to replace the over-use of restraint and seclusion in Calvert County schools.

COPAA urges the Board to add dates for planning, training and full implementation of the plan. Without dates, school leaders, parents and ultimately the students will suffer without this important layer of accountability. The County is aware of the urgent need to update the policies and practices and should take specific steps to make this happen.

Recommendation 5: Add a new provision to the Purposes: “To examine the underlying cause and need for teachers to use seclusion and restraint to manage student behavior.”

Rationale: The overall focus of the proposed plan is very positive however; it clearly lacks one critical question which is: what is the underlying cause for the overuse of seclusion and restraint in Calvert County schools? Asking this question is especially needed given that the Board’s proposed policy statement says: “Our goal is that personnel are equipped to use evidence-based proactive strategies and techniques to address challenging student behaviors.” In order to address and accomplish this, COPAA urges the Board to explore why teachers and school leaders gravitate toward and consistently revert to the use of aversive practices on students. Examining this question can help the Board work with district leaders to develop, budget for and plan a response that is meaningfully designed to address the needs of educators and students. We encourage you to take this critical opportunity to learn more about the teacher preparation programs that feed your teacher and leader pipeline and the experience your district leaders and teachers have with the research-based practices – all with the goal to gain greater understanding of the ongoing professional learning needs of the professionals hired to educate your community’s children.

We appreciate the opportunity to comment and encourage the Board to consider our recommendations. Please let us know if we can provide additional insight as you move forward.

Sincerely,



Denise Marshall
Executive Director

ⁱ *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, Government Accountability Office, (2009) at: <https://www.gao.gov/new.items/d09719t.pdf>

ⁱⁱ 20 U.S.C. § 1414(d)(3)(B)(i), 34 C.F.R. § 300.324(a)(2)(i)

ⁱⁱⁱ 34 C.F.R. § 300.324(a)(2)(i) and 34 C.F.R. § 300.324(a)(3)(i)

^{iv} 34 C.F.R. § 300.226(b)(1)