Testimony Provided to the Michigan House Education Committee in Response to Proposed Seclusion and Restraint Legislation

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Bill	Bill Citation		Proposed Change	Rationale for Change
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HB5411 Prohibited Practices	1	8	Strike "(D) SECLUSION, OTHER THAN EMERGENCY SECLUSION"	This action would mirror the guidance from the MDE Standards document (pp. 12, 18). If this bill is combining prohibited practices of seclusion and restraint, the result is a lack of clarity. The MDE document separates seclusion and restraint, and this format provides the necessary clarity.
HB5411 Prohibited Practices	?	?	Include "seclusion of preschool children, including emergency situations" as a prohibited practice.	"seclusion of preschool children" was included as a prohibited practice of seclusion, including emergency situations in the MDE Standards document (p.12). It is not included as a prohibited practice in the proposed legislation...Is this an intentional omission? Or, is the reader to conclude this intent by exclusion of restraint of preschool children from the definition of emergency seclusion in HB5417(F) (p.3; lines 2-6) which states in part, "EMERGENCY SECLUSION DOES NOT INCLUDE...THE CONFINEMENT OF PRESCHOOL CHILDREN OR OF...". It is unclear whether this is a prohibited practice.
HB5411 Prohibited Practices	2	9	Strike (K) "ANY OTHER TYPE OF RESTRAINT"	How is: "(K) ANY OTHER TYPE OF RESTRAINT" defined? Without definition, this statement results in interpretation and implementation challenges.
HB 5413 Documentation & Reporting	2	14	Strike "USE A TRAINED BEHAVIORIST TO" from line 14, or define "Trained Behaviorist" as "an individual whose skills and practice includes development of a functional behavior assessment	There is no requirement in state or federal law that FBAs be conducted by a trained behaviorist. "(i) ...TRAINED BEHAVIORIST". The lack of definition of a "Trained Behaviorist" will result in implementation barriers. Functional Behavior Assessments are not proprietary to a "trained behaviorist". In fact, the US Department of Education has opined that many professionals in the school setting posses the skills to conduct functional behavioral assessment. Second, FBA's are best done by a team, versus one person. Finally, there is no definition in the proposed legislation as to what constitutes a trained behaviorist.
HB5414 "Emergency Intervention Plan"	1	2 - 3	**Strike** "~~AN EMERGENCY INTERVENTION PLAN~~" and replace with "GENERAL PROCEDURES FOR EMERGENCY INTERVENTION PLANNING" and follow guidance detailed in MDE Standards document (Seclusion pp. 11-12, Restraint p. 17).	The MDE 2006 standards document, currently used by Michigan school districts and PSAs includes: 1) Triggers and general procedures for the development of an individual emergency intervention plan for emergency seclusion and emergency restraint (2) The formation of a human rights committee convened to review the emergency intervention plan should concerns arise regarding humaneness or social acceptability of an individualized *plan*. This bill proposes an ISD-wide emergency intervention plan detailing general *procedures*. Lack of consistency in the use of the same terminology is highly likely to cause confusion in the field and compromise quality implementation.
HB5414 "Emergency Intervention Plan"	1 and 2	4 8,17	"DEPARTMENT SHALL DEVELOP THE TEMPLATE FOR THE GENERAL PROCEDURES FOR EMERGENCY INTERVENTION PLANNING..." (p.1 line 4).	The MDE should develop a template for "General Procedures for Emergency Intervention Planning" as part of its state policy establishing a schoolwide positive behavior intervention and support plan per Section 1307A which in turn will be incorporated by the district, ISD, and public school academy as part of their consistent local schoolwide positive behavioral intervention and support plan (per Section 1307A) that requires a consistent local policy.

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HB5414 "Emergency Intervention Plan"	2	12-14	Revise current text to: "IF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY HAS A PUBLIC WEBSITE, THE GENERAL PROCEDURES FOR EMERGENCY INTERVENTION PLANNING SHALL BE POSTED ON THAT WEBSITE"	The requirement to "Post the Emergency Intervention Plan on that website" is concerning. I believe that all "emergency intervention plan" references in the bill are actually intended to be "general procedures" and not an individual "emergency intervention plan". Unfortunately this is confusing given how the term "emergency intervention plan" is used in the MDE 2006 standards. It would not be as confusing if the "General Procedures for Emergency Intervention Planning" were substituted for "emergency intervention plan" throughout the bill.
HB5414 "Emergency Intervention Plan"	2	18-21	Strike "~~AND 3 MEMBERS OF THE INTERMEDIATE SCHOOL DSTRICT PARENT ADVISORY COMMITTEE~~."	Participation as a member of the human rights committee is not an appropriate function of the PAC as described in the Michigan Administrative Rules for Special Education. Additionally, "Key identified personnel", as defined in HB5417 (proposed Section 1307H), have received mandatory training and a level of understanding of emergency seclusion and emergency restraint.
HB5414 "Emergency Intervention Plan"	2	17	Expand page 2, line 17 to include, "THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY..."	Unless those responsible for implementation of this bill (districts, ISDs, PSAs) have a clear understanding of the bill's intent, the reader may erroneously believe the intermediate school district has the sole responsibility to "(ii) ENSURE KEY IDENTIFIED PERSONNEL ARE TRAINED IN THE EMERGENCY INTERVENTION PLAN *(Note: Recommending change to General Procedures for Emergency Intervention Planning),* AND (ii) ENSURE THAT NECESSARY STAFFING IS MAINTAINED AT ALL TIMES." , when in fact, it is the responsibility of the school district, intermediate school district, or public school academy.
HB5415 Data Collection	1	4-6	1. Require the state to "DEVELOP A SYSTEM OF DATA COLLECTION REGARDING THE USE OF SECLUSION AND RESTRAINT".	The development of a data system should be uniform across the state. Proposed legislation was written to "PROVIDE FOR A UNIFORM POLICY REGARDING THE USE OF SECLUSION AND RESTRAINT IN THE PUBLIC SCHOOLS". A uniform policy should include a uniform data collection system. The state currently requires districts to report student-level data to the Michigan Student Data System (MSDS) 3 times per year.
HB5415 Data Collection	1	4-6	2. Revise 1307F(A) to read: "(A) THE DEPARTMENT SHALL IDENTIFY DATA INDICATORS TO BE USED FOR REPORTING PURPOSES IN REGARD TO THE USE OF EMERGENCY SECLUSION AND EMERGENCY RESTRAINT"	Take advantage of this existing system to report state-determined indicators three times per year to support each district's analysis towards "CONTINUOUS IMPROVEMENT OF TRAINING AND TECHNICAL ASSISTANCE TO REDUCE OR ELIMINATE THE USE OF EMERGENCY SECLUSION AND EMERGENCY PHYSICAL RESTRAINT".
HB5415 Data Collection	2	15-17	Strike Section 1307F(C) "~~THE DEPARTMENT SHOULD POST ON ITS WEBSITE AND MAKE AVAILABLE REDACTED, AGGREGATE DATA ON THE REPORTED USE OF SECLUSION AND RESTRAINT, COMPILED BY DISTRICT ON A QUARTERLY BASIS~~".	Many intermediate AND local school districts educate students in regional programs. Generally speaking, these programs are developed for students who present with significant challenges, resulting in a disproportionate picture of district practices. It is unclear how the requirement of the Michigan Department of Education to "...POST ON ITS WEBSITE AND MAKE AVAILABLE REDACTED, AGGREGATE DATA ON THE REPORTED USE OF SECLUSION AND RESTRAINT, COMPILED BY DISTRICT ON A QUARTERLY BASIS" would support systemic change to district or public school academy implementation of schoolwide systems of behavioral support.

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HB5417 Definitions	5 And 6	22-27 1-4	Move the highlighted text from 1307H(R) to be included with "PHYSICAL RESTRAINT" (1307H(L) (L) "PHYSICAL RESTRAINT" MEANS DIRECT PHYSICAL CONTACT THAT PREVENTS OR SIGNIFICANTLY RESTRICTS A PUPIL'S MOVEMENT. PHYSICAL RESTRAINT DOES NOT INCLUDE THE BRIEF HOLDING BY AN ADULT IN ORDER TO CALM OR COMFORT, THE MINIMUM CONTACT NECESSARY TO PHYSICALLY ESCORT A PUPIL FROM 1 AREA TO ANOTHER, THE MINIMUM CONTACT NECESSARY TO ASSIST A PUPIL IN COMPLETING A TASK OR RESPONSE IF THE PUPIL DOES NOT RESIST OR RESISTANCE IS MINIMAL IN INTENSITY OR DURATION, OR THE HOLDING OF A PUPIL FOR A BRIEF TIME IN ORDER TO PREVENT AN IMPULSIVE BEHAVIOR THAT THREATENS THE PUPIL'S IMMEDIATE SAFETY, SUCH AS RUNNING IN FRONT OF A CAR."	The definitions for "mechanical restraint" and "chemical restraint" include both a description of what they include and what they do not include. In contrast, the definition of "physical restraint" is limited to a statement that it means "direct physical contact that prevents or significantly restricts the pupil's movement". Inexplicably the identification of what does not constitute "physical restraint" is placed in the definition of "Restraint". (See 1307H(K))
HB5417 Definitions	2 And 3	20-27 1-12		House Bill 5417 Section 1307H(F) provides the definition for "Emergency Seclusion". Two sentences are of concern. The first states in part: "TO QUALIFY AS EMERGENCY SECLUSION, THERE MUST BE CONTINUOUS OBSERVATION BY AN ADULT OF THE SECLUSION, AND THE ROOM OR AREA USED FOR CONFINEMENT MUST NOT BE LOCKED, MUST NOT PREVENT THE STUDENT FROM EXITING THE AREA IF SCHOOL PERSONNEL BECOME INCAPACITATED OR LEAVE THAT AREA, AND MUST PROVIDE FOR ADEQUATE SPACE, LIGHTING, VENTILATION, VIEWING, AND THE SAFETY OF THE PUPIL." The second sentence, which immediately follows states in part: "EMERGENCY SECLUSION DOES NOT INCLUDE CONFINEMENT THAT OCCURS IN A SENSORY DEPRIVATION ROOM, SECLUSION ROOM, QUIET ROOM, PADDED ISOLATION ROOM OR ANY OTHER ROOM THAT IS OUTSIDE THE USUAL TEACHING ENVIRONMENT..." **The Clarifying Question** What is the intent of the interrelationship between these two sentences? 1. Is it the intent to make clear that confinement in certain rooms or areas, without more (i.e. the safeguards listed in the sentence "To qualify as emergency seclusion..."), is not "emergency seclusion"?; or 2. Is it the intent to identify rooms or areas in which it is forbidden to implement emergency seclusion? If it is the latter, how does the legislature propose that districts effectuate the emergency seclusion that is permitted while protecting the dignity of the student and minimizing reinforcement of attention, which may be the function of the behavior?