

POLICY SERVICES

ADVISORY

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Policy Advisory Discussion

Policy Advisory 139 – GBK-R – Staff Grievances. In bullet five (5) of the regulation on staff grievances, a general statement to the effect that the resolution of a grievance shall not be made public without agreement between the parties is posited. In discussion of this regulation with a client's attorney, Policy Services was reminded that any action on the part of the Board must be accomplished in a legally called open meeting unless it met the specific exemptions of the Open Meetings Act. Rarely would Board action on a grievance meet the exceptions of the Open Meetings Act and there is no requirement that the district have a policy allowing staff to grieve policy or the application of policy. Policy Services therefore removed that sentence and replaced it with a statement allowing the district to keep records of the actions taken.

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If the district has a negotiated agreement containing a grievance procedure, then this regulation will only apply to those not within the parties subject to the negotiated agreement grievance procedure. The reason for this is that a negotiated agreement is a contract between two parties, whereas a policy or procedure is a unilateral action by one party, usually the employer and is not enforceable on those parties to a conflicting contractual agreement unless the policy is a requirement of law. The Open Meeting Act is not included as relevant information since it is already a part of each district's policy manual and is available on line when using the Policy Services portal and search engine at www.nmsba.org/policy.

It is recommended that this regulation be made a part of each district's policy manual.

Policy Advisory 140 – JLI – Student Safety. The 2017 New Mexico Legislature passed and the Governor signed HB 75 limiting the use of restraint and seclusion in schools and providing for parental notice, among other conditions.

While restraint and seclusion are very different procedures, they are often addressed together for several reasons. One reason is that they have both resulted in injuries or deaths of students and injuries to staff members. Another reason is that restraint has often been used in school settings in order to move a student to a seclusion environment. A third reason is that they both involve restriction of a person's rights regarding seizure of persons and thus require special precautions. Finally, both are viewed as safety procedures for emergencies rather than procedures used routinely to change student behavior or as a disciplinary action.

For these reasons Policy Services chose not to classify the policy limiting the use of restraint and seclusion under other areas such as student conduct or student discipline. Since the common use is for the safety of the student, others or property, Policy Services has chosen to place the policy under the category of Student Safety.

Although it is a common technique, restraint usually consists of physical restraint to prevent harm to self or others followed by a period of seclusion for the individual who was restrained. HB 75 offers schools the option of not using restraint and seclusion or using the techniques and following specific conditions as outlined in the new statute (as yet not cited). Because of the common occurrence of misunderstandings among young people in schools, restraint is no doubt going to be called into use at some time to prevent harmful behavior. Most schools have considered this issue and instituted staff training for use of these techniques. If a district has not done so, the new limitations and conditions will require training in the use of restraint techniques and greater attention to the use of restraint seclusion and record keeping.

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Many associate the use of restraint and seclusion with the special education and 504 accommodations. Though there may be uses made in these programs of the technique, behavioral intervention plans (BIP) are usually based on positive interventions to deescalate conflict. There are no hard and fast rules on what the BIP will contain, nor are there statutory or regulatory implications for the use of restraint that could be applied along with or instead of the new New Mexico law cited in HB 75. What Policy Services suggests is that the schools treat each instance of the use of restraint and/or seclusion in the same manner whether it involves students receiving aids and services through special programs or those who are not.

The new law differentiates between behavioral management techniques that involve separation from a larger group for purposes of calming and the use of seclusion. HB 75 also discusses different forms of restraint. It will be important to bring these discussions into the training and use of restraint and seclusion in the schools in the future.

Please note that this policy and the regulations and exhibits that are included are required if your district wishes to continue the use of restraint and/or seclusion as a practice in case of emergency.

Additionally, the district are required to prepare or add to a school plan to implement the policies and prepare methods of support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

One last action, Policy Services has had in place for some time an exhibit called **Fifteen Principles of Restraint and Seclusion** found at IHBC-E. We are changing that exhibit location and making minor changes to the wording. It will now follow the recommended policy on restraint and seclusion. If you adopt our recommendations you should remove the old exhibit when you receive the hard copy of the revised policy and procedures for JLI.

There are some issues with Policy Advisory 134 that you should be aware of. After sending out Advisory 134 based on SB 134, Policy Services discovered that the Legislative web site listed SB 134 as passed and signed but that this was disputed and the issue is being taken to the courts to decide if the governor vetoed the bill. We suggest that districts hold off on adopting policy 134, which suggests alternative mathematics credits for graduation, until this issue is settled.

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

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Advisory 139

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REGULATION**REGULATION****STAFF GRIEVANCES****Definitions**

A *grievance* is a complaint by a District employee alleging a violation or misinterpretation, as to the employee, of any District policy or regulation that directly and specifically governs the employee's terms and conditions of employment.

A *grievant* shall be any employee of the District filing a grievance.

Terms and conditions of employment means the hours of employment, the compensation therefor, including fringe benefits, and the employer's personnel policies directly affecting the employee. In the case of professional employees, the term does not include educational policies of the District. A *day* is any day during which the District conducts business. The *immediate supervisor* is the lowest-level administrator having line supervisory authority over the grievant.

Informal Level

Before filing a formal written grievance, the grievant must attempt to resolve the matter by one (1) or more informal conferences with the immediate supervisor. The first of these informal conferences must be conducted within ten (10) days after the employee knew, or should have known, of the act or omission giving rise to the grievance. A second or any subsequent conference must occur within five (5) days after the initial informal conference, or any subsequent conference.

Formal Level

Level I. Within fifteen (15) days after the employee knew, or should have known, of the act or omission giving rise to the grievance, the grievant must present the grievance in writing to the immediate supervisor.

The grievance shall be a clear, concise statement of the circumstances giving rise to the grievance, a citation of the specific article, section, and paragraph of the policy or regulation that directly and specifically governs the employee's terms and conditions of employment that are alleged to have been violated, the decision rendered at the informal conference, and the specific remedy sought.

The immediate supervisor shall communicate a decision to the employee in writing within five (5) days after receiving the grievance.

Within the above time limits either party may request a personal conference to attempt to resolve the matter.

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Level II. In the event the grievant is not satisfied with the decision at Level I, the decision may be appealed to the Superintendent within five (5) days after receipt of the decision.

The appeal shall include a copy of the original grievance, the decision rendered, and a clear, concise statement of the reasons for the appeal. The Superintendent shall communicate a decision within five (5) days after receiving the appeal. Either the grievant or the Superintendent may request a personal conference within the above time limits.

Level III. If the grievant is not satisfied with the decision at Level II, the grievant may, within five (5) days, submit an appeal in writing to the Superintendent for consideration by the Board.

General provisions:

- Failure at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed an acceptance of the decision rendered at that step, and there shall be no further right of appeal. Failure to file a grievance within fifteen (15) days after the employee knew, or should have known, of the circumstances upon which the grievance is based shall constitute a waiver of that grievance. The filing or pendency of any grievance under the provisions of this policy shall in no way operate to impede, delay, or interfere with the jurisdiction of the Board or the Superintendent.
- No person(s) shall suffer retaliation, recrimination, discrimination, harassment, or be otherwise adversely affected because of the use of the grievance procedure.
- Whenever possible, a grievance conference or hearing, at any level, shall be scheduled during a mutually convenient time that does not conflict with the regularly scheduled school program.
- A grievant requiring the attendance and testimony of other employees shall have the right to bring such witnesses as are willing to testify on behalf of the employee. When hearings must be scheduled during the work day, any necessary substitutes or released time shall be provided at District expense.
- A separate file shall be maintained by the District for all grievances. A To the extent permitted by law, all documents produced during the processing of a grievance shall be filed therein. All parties shall maintain confidentiality with regard to the proceedings and the resolution of the grievance shall not be made public unless agreed to by the grievant and the Superintendent, or unless the grievant pursues the matter beyond this policy. Nothing herein shall be construed to prevent the District from taking appropriate corrective action, reporting and documenting such action, and maintaining such documentation in any appropriate files maintained by the District.

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- Nothing contained herein shall be construed to limit, in any way, the ability of the District and the grievant to resolve any grievance by informal means, and nothing herein shall be construed as requiring resorting to the formal procedures when grievable problems arise.
- A grievant may terminate the process at any level if he/she indicates, in writing, a desire to do so, accepts the resolution at that level, or fails to pursue the grievance by filing at the next level within the specified time limit.
- All grievances shall be filed and processed on grievance forms provided by the District and made available at each school and building site.
- The time limits at any level may be extended by mutual agreement between the grievant and the appropriate respondent or hearing authority.
- The grievant may be represented by legal counsel or union representative, if applicable, in conferences or hearings, except the informal conference. Any representative who intends to represent a grievant at a conference or hearing shall notify the Superintendent of that intention within a reasonable time before the conference or hearing. Failure to do so may justify postponement of the conference or hearing or suspension of the deadline while the Superintendent arranges for or consults with District legal counsel.
- The grievance proceedings shall focus only on the issues raised by the written grievance as filed and any related issues as the parties in interest may agree to have considered.

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STUDENT SAFETY

Teachers will be responsible for their classes at all times. At no time are students to be left unsupervised. Teachers have the authority to prohibit the use of and/or to confiscate any article that is a hazard to a student, disrupts the educational process or that may damage school property. In the case of an emergency, the teacher will seek help from the principal or trained personnel.

Use of Restraint and Seclusion

Restraint and seclusion techniques as tools to prevent serious physical harm are to be used only if the following circumstances exist:

- the student's behavior presents an imminent danger of serious physical harm to the student or others; and
- less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

These tools are to be employed only by school employees trained in safe and effective restraint and seclusion techniques unless an emergency situation does not allow time to summon those employees.

The Superintendent shall indicate procedures and practices implementing the use of these tools including parental notice, record keeping, and case review; placing procedures for their use in a school safety plan per statute.

Students are not to be sent on errands from the school premises.

In addition, school buildings, playgrounds, and equipment will be regularly inspected for health, fire, and safety hazards.

Adopted: date of manual adoption

LEGAL REF.: Insert new section of 22 per HB 75, 2017 NMSA
22-5-4.3 NMSA (1978)
30-20-13 NMSA (1978)
6.11.2.9 NMAC
6.29.1.92 NMAC

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CROSS REF.: EB - Environmental and Safety Programs
EBC - Emergencies
IHB – Special Instructional Programs
IHBA - Special Instructional Programs and Accommodations for
Disadvantaged Students
IHBC - Programs for at Risk / Disadvantaged Students
JIC - Student Conduct
JIH - Interrogations, Searches, and Arrests
JK - Student Discipline
JKD - Student Suspension/Expulsion

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REGULATION**REGULATION****STUDENT SAFETY****(Limitations on Restraint and Seclusion)**

If a restraint or seclusion technique is used on a student:

- school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use;
- the restraint or seclusion technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others;
- the restraint technique employed shall not impede the student's ability to breathe or speak; and
- the restraint technique shall not be out of proportion to the student's age or physical condition.

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REGULATION**REGULATION****STUDENT SAFETY****(Restraint and Seclusion Notice and Review)*****Parental Notification:***

- A school employee shall provide written or oral notice to a student's parent/guardian on the day applied, unless circumstances do not permit such notice, otherwise the notice shall be within twenty-four (24) hours after the incident.
- A school employee shall provide the student's parent/guardian with written documentation including information about any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use whether by school personnel or law enforcement.

Incident Review

Schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two (2) or more times during any thirty (30)-calendar-day period. The review shall include:

- a review of the incidents in which restraint or seclusion techniques were used and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and
- a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two (2) weeks of each use of restraint or seclusion after the second use within a thirty (30)-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

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EXHIBIT **EXHIBIT**

STUDENT SAFETY

RESTRAINT AND SECLUSION DOCUMENTATION

Name of Child: _____ Student ID: _____
First Middle Last

Birthdate: _____ Grade: _____ Age: _____ Date: _____
Month/Day/Year Month/Day/Year

Parent(s): _____

Phone: (Work) _____ (Home) _____ (Other) _____

Home Address: _____
Street Address/P.O. Box City State Zip

District/Agency: _____

Building: _____ Site Code: _____ Teacher of Record: _____

Select one: Seclusion
 Physical Restraint

Date of Incident: _____ Location: _____

Beginning Time/End Time: _____

Provide the following information: any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use whether by school personnel or law enforcement; and a description of any injuries to the student or school employees.

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Names of persons directly involved (including witnesses) in the seclusion/physical restraint of the student:

Name: _____ Title: _____ Date: _____

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EXHIBIT**EXHIBIT**

**STUDENT SAFETY
~~PROGRAMS FOR AT-RISK /~~
~~DISADVANTAGED STUDENTS~~**

FIFTEEN PRINCIPLES OF RESTRAINT AND SECLUSION

- Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
- Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional)
- Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
- Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
- Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
- Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
- Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
- The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual staff member, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior. ~~if~~ If positive behavioral strategies are not in place, staff should consider developing them.
- Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.

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- Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
- Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
- Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
- Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
- Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
- Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

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RELEVANT SUPPORT MATERIALS

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