



STATE BOARD OF EDUCATION

219 North Main Street, Suite 402

Barre, VT 05641 (p) 802-479-1030 | (f) 802-479-1835

Vermont State Board of Education Manual of Rules and Practices

Series 4500 - Use of Restraint and Seclusion in Schools

4500 USE OF RESTRAINT AND SECLUSION IN SCHOOLS

4500.1 Statement of Purpose.

The purposes of these rules are to:

- a. Create and maintain a positive and safe learning environment in schools;
- b. Promote positive behavioral interventions and supports in schools; and
- c. Ensure that students are not subjected to inappropriate use of restraint or seclusion.

4500.2 Applicability.

These rules are applicable to all learning environments that receive public funding, or over which the Vermont Department of Education has regulatory authority

4500.3 Definitions.

For purposes of these rules, the following definitions apply:

1. Behavioral Intervention Plan means a plan that details strategies to address behaviors that impede learning, or are ongoing, and do not readily respond to general intervention or classroom management techniques, by teaching pro-social skills and other positive replacement behaviors. The plan may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address problem behaviors.
2. Chemical Restraint means a drug, medication or chemical used on a student to control behavior or restrict movement that is not:
 - a. Prescribed by a student's licensed physician for the standard treatment of a student's medical or psychiatric condition; and
 - b. Administered as prescribed by the licensed physician.

3. Functional Behavioral Assessment means the analysis of a student's behavior patterns before, during, and after rule-breaking or other inappropriate behavior for the purpose of guiding the development of a behavioral intervention plan.

4. Mechanical Restraint means the use of any device or object that restricts a student's movement or limits a student's sensory or motor functions unless under the direction of a healthcare professional for medical or therapeutic purposes.

The term does not include devices implemented by trained school personnel, or utilized by a student for the specific and approved therapeutic and safety purposes for which such devices were designed including:

- a. Restraints for medical immobilization,
- b. Adaptive devices or mechanical supports used to achieve proper body position, balance or alignment;
- c. Vehicle safety restraints including a seat belt or harness used for balance or safety on a car or bus; or
- d. Seat belts in wheelchairs or on toilets.

5. Parent means:

- a. A biological or adoptive parent of the child;
- b. A legal guardian of the child;
- c. A person acting in place of a biological or adoptive parent, including a grandparent, stepparent or other relative with whom the child lives, or a person legally responsible for the child's welfare;
- d. A foster parent or developmental home provider who has been appointed the educational surrogate parent by the Educational surrogate Parent Program; or
- e. An educational surrogate parent.

6. Physical Escort means the temporary touching or holding, without the use of force, of the hand, wrist, arm, or back of a student who is exhibiting minimal resistance for the purpose of directing movement from one place to another.

7. Physical Restraint means the use of physical force to prevent an imminent and substantial risk of bodily harm to the student or others. Physical restraint does not include:

- a. Momentary periods of physical restriction by direct person-to-person contact, accomplished with limited force and designed either
 - i. to prevent a student from completing an act that would result in potential physical harm to himself/herself or another person; or
 - ii. to remove a disruptive student who is unwilling to leave the area voluntarily;
 - b. The minimum contact necessary to physically escort a student from one place to another;
 - c. Hand-over-hand assistance with feeding or task completion; or
 - d. Techniques prescribed by a qualified medical professional for reason of safety or for therapeutic or medical treatment.
8. Positive Behavioral Interventions and Supports means an approach to preventing and responding to targeted behavior that:
- a. Is based on evidence-based practices;
 - b. Is proactive and instructional, rather than reactive;
 - c. Can operate on individual, group, classroom, or school wide levels;
 - d. Includes a system of continual data collection; and
 - e. Relies on data-driven decisions.
9. Prone Physical Restraint means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's movement.
10. School means a learning environment receiving public funds or over which the Vermont Department of Education has regulatory authority.
11. School Personnel means individuals working in schools as defined in 4500.3(10) who are employed by the school or who perform services for the school on a contractual basis, and school resource officers, while acting in that capacity.
12. Seclusion means the confinement of a student alone in a room or area from which the student is prevented or reasonably believes he or she will be prevented from leaving. Seclusion does not include time-out where a student is not left alone and is under adult supervision.
13. Substantial Risk means an imminent threat of bodily harm where there is an ability to enact such harm. Substantial risk shall exist only if all other less restrictive alternatives to defuse the situation have been exhausted or failed or the level of risk prohibits exhausting other means.

14. Supine Physical Restraint means holding a student on his or her back using physical force for the purpose of controlling the student's movement.

15. Student means a student enrolled in a school as defined in paragraph 10.

4501 Prohibitions:

4501.1 School personnel and contract service providers are prohibited from imposing on a student any of the following as defined in rule 4500.3:

- a. Mechanical restraint,
- b. Chemical restraint,
- c. Any physical restraint, escort or seclusion that restricts or limits breathing or communication, causes pain or is imposed without maintaining direct visual contact.

4501.2 Physical restraint or seclusion shall not be used:

- a. For convenience of staff;
- b. As a substitute for an educational program;
- c. As a form of discipline or punishment;
- d. As a substitute for inadequate staffing or training;
- e. In response to a student's use of profanity or other verbal or gestural display of disrespect; or
- f. In response to a verbal threat unaccompanied by demonstrated means of or intent to carry out the threat.

4501.3 The restraints and seclusion prohibited by these Rules shall not be considered "reasonable and necessary force" as that term is used in 16 VSA §1161a(c).

4501.4 Schools may have policies and procedures for the use of physical restraint and seclusion in school-wide safety plans, provided such plans are consistent with these Rules.

4502 Permissible Use of Restraint and Seclusion.

4502.1 Permissible Use of Physical Restraint

Physical restraint, not otherwise prohibited by these Rules, may be used only:

- a. When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
- b. Within the limits set forth in 16 VSA § 1161 a;
- c. Less restrictive interventions have failed or would be ineffective in stopping such imminent danger of physical injury or property damage;
- d. In accordance with a school-wide safety plan that is consistent with these rules; and
- e. In a manner that is safe, proportionate to and sensitive to the student's:
 - i. Severity of behavior;
 - ii. Chronological and developmental age;
 - iii. Physical size;
 - iv. Gender;
 - v. Ability to communicate;
 - vi. Cognitive ability; and
 - vii. Known physical, medical, psychiatric condition, and personal history, including any history of physical, emotional or sexual abuse or trauma.

4502.1.1 Prone and supine physical restraints are more restrictive than other forms of physical restraint and may be used only when the student's size and severity of behavior require such a restraint because a less restrictive restraint has failed or would be ineffective to prevent harm to the student or others.

4502.2 Permissible Use of Seclusion

Seclusion, not otherwise prohibited by these rules, may be used only:

- a. When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
- b. When less restrictive interventions have failed or would be ineffective in stopping such imminent risk of physical injury;
- c. As a temporary intervention;
- d. When physical restraint is contraindicated;

e. When there is no known developmental, medical, psychological or other contraindication to its use;

f. When the student is visually monitored at all times by an adult; and

g. In a space large enough to permit safe movement that is adequately lit, heated, ventilated, free of sharp or otherwise dangerous objects; and in compliance with all fire and safety codes.

4502.3 In rare circumstances where the use of physical restraint or seclusion may be necessary due to a student's pattern of dangerous behavior that is not responsive to less restrictive interventions, physical restraint and/or seclusion may be included in an individual safety plan only if all of the following conditions apply:

a. School personnel have reviewed and agreed to the safety plan;

b. The use of physical restraint and seclusion complies with these Rules;

c. The student has a documented history showing a series of behaviors in the preceding six (6) months that have created an imminent and substantial risk of physical injury to the student or others in the school;

d. A comprehensive, data-driven, functional behavioral assessment has been conducted;

e. A behavioral intervention plan, emphasizing positive behavioral interventions and supports, has been implemented;

f. The educational planning team, IEP team or Section 504 team has reviewed the student's program and placement to determine whether it is sufficient to meet the student's unique needs;

g. The criteria for use are clearly identified;

h. Any contraindications for use are identified;

i. Staff implementing the individual safety plan have received training from a state-recommended training program;

j. The parents are fully informed of the inherent risks of using restraint and seclusion;

k. The parents provide informed consent to the use of restraint and/or seclusion, which shall be revocable at any time; and

l. The ongoing need for an individual safety plan is reviewed and revised, as appropriate, and in any event at least annually.

4502.3.1 Any restraint or seclusion imposed as a result of an individual safety plan is subject to all the reporting, documentation and debriefing requirements set forth in 4503, 4504 and 4505 below.

4502.4 Physical restraint or seclusion shall only be imposed:

a. By school personnel or contract service providers who have been trained to provide the selected intervention unless, due to the unforeseeable nature of the danger of the circumstance, trained personnel are not immediately available;

a. When a restrained student is monitored face-to-face by school personnel or contract service providers; or

b. If personnel safety is significantly compromised by face-to-face monitoring, or the student is in seclusion, school personnel or a contract service provider are in direct visual contact with the student.

4502.5 Physical restraint or seclusion shall be terminated as soon as:

a. The student demonstrates that he/she is in unnecessary pain or significant physical distress indicating a possible need for emergency medical assistance or that his/her breathing or communication is compromised; or

b. The student's behavior no longer poses an imminent danger of physical injury to the student or others or danger to property; or

c. Less restrictive interventions would be effective in stopping such imminent danger of physical injury or property damage.

4502.6 Following termination of any physical restraint or seclusion, the student shall be evaluated and monitored for the remainder of the school day on which physical restraint or seclusion is imposed. The evaluation shall include a routine physical/medical assessment conducted by someone not involved in the restraint or seclusion, and documentation of any injury received by the student as a result of the restraint or seclusion.

4503 Reporting the Use of Restraint and Seclusion.

4503.1 To the School Administrator.

Any person who imposes a restraint or seclusion shall report its use to the school administrator as soon as possible, but in no event later than the end of the school day of its use.

4503.2 To Parents.

- a. The school administrator shall make a documented attempt to provide verbal or electronic notice of any incident of restraint or seclusion to the student's parents (as defined in 4500.3(13)) as soon as practical but in no event later than the end of the school day of its use; and
- b. Shall provide written notice to the parents within 24 hours of each use of restraint or seclusion that includes:
 - i. The date and time of its use;
 - ii. A description of the restraint and other intervention used;
 - iii. The date and time when the debriefing session will occur; including notice that the parents have the opportunity to participate in the debriefing; and
 - iv. The name and telephone number of the contact person who can provide further information.

4503.3 To the Superintendent.

The school administrator shall report the use of restraint or seclusion to the superintendent of the Supervisory Union whenever:

- a. There is death, injury or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. An individual employee or contracted service provider has engaged in the use of physical restraint or seclusion three (3) separate times on one (1) or more students; or
- c. Physical restraint has been used for more than fifteen (15) minutes; or
- d. Any student has been restrained or secluded three (3) or more times per school year; or
- e. A student has been restrained or secluded more than once in a school day; or
- f. A student is restrained or secluded who is not on a behavioral intervention plan; or
- g. Restraint or seclusion has been used in violation of these rules, including the use of any prohibited form of restraint.

Reports to the Superintendent shall be made within three school days of the incident that requires reporting and shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

4503.3.1 Learning environments other than public schools shall fulfill this reporting requirement by reporting to the Superintendent of the Supervisory Union that is the LEA or sending district

for the student. If there is no sending district or LEA, this requirement shall be fulfilled by reporting to the Commissioner of the Department of Education in accordance with Rule 4503.4.

4503.4 To the Commissioner of the Department of Education.

The Superintendent of the supervisory union shall report the use of restraint or seclusion to the Commissioner of the Department of Education within three (3) school days of receipt of a report indicating any the following:

- a. There is death, injury requiring outside medical treatment or hospitalization to staff or student as a result of a restraint or seclusion; or
- b. Physical restraint or seclusion has been used for more than thirty (30) minutes or
- c. Physical restraint or seclusion has been used in violation of these rules, including the use of any prohibited restraint or seclusion.

The report shall include all the information set forth in Rule 4504 required of a written record of each use of restraint or seclusion.

4504 Documentation.

Each school shall maintain written records of each use of restraint and seclusion. The records shall be maintained by the school administrator and shall include the following:

- a. The name, age, gender and grade of the student;
- b. The date, time and duration of the restraint or seclusion;
- c. Any injuries, death or hospitalization to student or staff resulting from the use of restraint or seclusion;
- d. The location where the restraint or seclusion occurred;
- e. The precipitating event[s] leading up to the restraint or seclusion;
- f. A list of school personnel who participated in the application, monitoring and supervision of the student while restrained or secluded;
- g. The type of restraint or seclusion used;
- h. The reason for the restraint or seclusion;
- i. A description of all the interventions used prior to the application of the restraint or seclusion;

j. Whether the student has a behavioral intervention plan and/or individualized education plan, Section 504 plan or educational support plan; and

k. The date notification was provided to the student's parents.

4505 Debriefing Following Use of Restraint or Seclusion.

Following each incident of restraint or seclusion, the school administrator shall implement follow-up procedures that include:

a. Within two (2) school days, a proper staff person reviewing the incident with the student in a manner appropriate to the student's age and developmental ability, to discuss the behavior[s] that precipitated the use of restraint or seclusion;

b. Within two (2) school days, reviewing the incident with the staff person(s) who administered the restraint or seclusion to discuss whether proper restraint or seclusion procedures were followed, including the use of proper procedures to prevent the need for restraint or seclusion;

c. An opportunity for parents to participate in the review of an incident of restraint or seclusion within four (4) school days:

i. Parents shall receive prior written (including e-mail) notice of the review meeting; and

ii. The meeting shall be convened at a mutually acceptable time and place; and

d. Determining, in consultation with the parents, any specific follow up actions to be taken.

4506 Annual Notification.

Annually, at or before the beginning of the academic year, each school (defined in 4500.3(10)) shall inform all school personnel, and parents of students enrolled in the school of the policies pertaining to the use of physical restraint and seclusion and the intent to emphasize the use of positive behavioral interventions and supports and its intention to avoid the use of physical restraint or seclusion to address targeted student behavior.

4507 Complaints and Investigations.

4507.1 Filing a Complaint

a. A parent (as defined in 4500.3(13)) or school personnel may file a complaint regarding the use of restraint or seclusion at any time in accordance with school district policy.

b. The complaint shall be in writing and shall be directed to the principal, director or administrator of the school in which the student participates.

c. If the person filing the complaint is unable to submit the complaint in writing, the recipient of the complaint shall complete the form based on a verbal complaint. In this case, the complainant shall be provided with a copy of the complaint.

4507.2 Investigation

All complaints shall be investigated by the school or district and written findings issued within thirty (30) days;

4507.3 Unresolved Complaints

Unresolved complaints shall be directed to the superintendent of the Supervisory Union where the student resides in accordance with the school board's established complaint process. A student on an individualized education plan (IEP) or Section 504 Plan may also use the dispute resolution options available under Rules 2365.1.4 - 2365.1.6, if appropriate.

4508 Monitoring and Corrective Action.

The commissioner of the Department of Education shall review reports received pursuant to Rule 4503.4 and identify those schools in need of additional training and, when those reports reflect an over-use of these interventions, shall direct the school to work with the department to develop a corrective action plan.

4509 State Recommended Training.

The Department of Education shall maintain a directory of recommended physical restraint training programs, which must include at least the following elements:

- a. Appropriate procedures for preventing the need for physical restraint, including the de-escalation of dangerous behavior, relationship-building, and the use of alternatives to physical restraint;
- b. Identification of dangerous behaviors that may indicate the need for physical restraint and methods for evaluating the risk of harm to determine if physical restraint is warranted;
- c. Simulated experience in administering and in receiving a variety of physical restraint techniques, across a range of increasingly restrictive interventions;
- d. Instruction regarding the effects of physical restraint on the person restrained, including monitoring physical signs of distress and how to obtain medical assistance;
- e. Instruction regarding investigation of injuries and complaints.

A school may use a training program that is not on the state recommended list if it submits a plan to the Commissioner of Education demonstrating how that training program meets the purposes of these Rules and contains the elements listed above.

4510 Effective Date.

These Rules shall become effective on August 15, 2011, however schools shall have until September 30, 2011, to have trained staff available.

HISTORY: STATUTORY AUTHORITY: 16 V.S.A. § 164

EFFECTIVE DATE: August 16, 2011 Secretary of State Rule Log #11-023