



Special education series

Know your Rights:

Restraint and Seclusion in School

Restraining or secluding a child can be very harmful and even fatal. It can traumatize or injure the child as well as the staff who are involved. Most of the children who are restrained or secluded are children with disabilities who have behavioral or emotional issues, children who cannot communicate well, or children who are minorities.



New Hampshire law, NH RSA 126-U, limits and regulates the use of restraint and seclusion in schools and treatment facilities. Here is a brief overview of the law and steps you can take to protect your student.

What does the law say?

NH law limits the use of restraint and seclusion to only those situations when it is necessary to prevent injury to your child or someone else. Restraint can only be used in an emergency, when there is a “substantial and imminent risk of serious bodily harm” to the child or another person. It cannot be used as punishment.

Dangerous restraint techniques can never be used. It is illegal to use any restraint that obstructs breathing or circulation, compresses the chest, lungs, sternum, diaphragm, back or abdomen, or covers the face or body with anything. Intentional infliction of pain; use of unpleasant substances to punish or control; and unnecessary ridicule, humiliation, or emotional trauma are prohibited.

Seclusion cannot be used for punishment or discipline. It may only be used when there is a “substantial and imminent risk of physical harm” to the child or others. Any room used for seclusion must have adequate heating, cooling, lighting, ventilation, and a ceiling as high as other rooms in the building. The child must be observed continually. If the room is locked, there must be a way to escape if there is a fire or other emergency.

Restraint and seclusion must be used only by trained personnel after other interventions to control behavior have failed or been found to be inappropriate.

Schools are required to verbally notify the parents, guardian, and guardian ad litem of any restraint, seclusion, or intentional physical contact in response to a child’s behavior as soon as practical. In any case, the notification must occur before the end of the school day or before the child returns to the parent. The school must write a report

The law: RSA 126-U Limiting the Use of Child Restraint Practices in Schools and Treatment Facilities

<http://www.gencourt.state.nh.us/rsa/html/x/126-u/126-u-mrg.htm>

The rules: ED 1200 Restraint and Seclusion for Children

http://www.gencourt.state.nh.us/rules/state_agencies/ed1200.html



describing the incident within five business days, and send it to the parent within an additional two business days, unless there is a court order against notification.

The first time a child with an IEP or 504 plan is restrained or secluded, the school must review the child's education plan and adjust it to eliminate or reduce the future use of restraint or seclusion. If the child is subject to multiple instances of restraint or seclusion since the last review, at the parent's request, the school must conduct another review of the child's education program and use of restraint or seclusion. Parents should be involved in these review meetings.

Disability Rights Center - NH
64 North Main Street
Suite 2, 3rd Floor
Concord, NH 03301
(603) 228-0432 or
(800) 834-1721 (voice or TTY)
Fax: (603) 225-2077
advocacy@drcnh.org
www.drcnh.org

This brochure is not meant to be legal advice. For specific legal advice, talk to a lawyer.

There are better ways

Restraint and seclusion are rarely necessary to control a child's behavior, and rarely prevent future challenging behaviors. Instead, schools should prevent incidents by addressing the causes of behavioral problems and using strategies to de-escalate these situations. There are many alternatives to restraint and seclusion, such as Positive Behavioral Interventions and Supports (PBIS), to teach and support appropriate behavior and create positive school climates. Find out more about PBIS at the PBIS Technical Assistance Center: <https://www.pbis.org/>.

What can I do if my child's rights are violated?

You can file a complaint with the commissioner for the NH Department of Education about any violation of the law in RSA 126-U. You can file your complaint verbally or in writing, though it is best to file a written complaint and keep a copy of it. You may request that your identity be kept confidential. Any complaint must be filed within 12 months of the incident. If someone else files a complaint with the Department about the use of restraint or seclusion on your child, the Department is required to notify you about the complaint.

The commissioner assigns an investigator to the complaint, and the investigator has 30 days to file a report with the commissioner. The commissioner must issue a written decision based on the report, including any corrective measures that the school must take. That written decision must be sent to the school and to the parent and/or guardian.

Other actions you could consider taking include:

- Call DRC for more information and to speak with a lawyer about your child's rights.
- Request an IEP team meeting to discuss your child's challenging behaviors, and to develop a plan to address the behaviors without resorting to restraint or seclusion. Ask the school to conduct a Functional Behavioral Assessment and develop a behavior plan to address behavior challenges. Make sure the school personnel are fully aware of the behavior plan.
- File a licensing complaint against the teacher with the NH Department of Education. The person to contact for teacher misconduct is Scott Mantee at (603) 271-3844.
- If your child has been assaulted or harmed, you may want to file a complaint with the police department or talk with a lawyer.