

USE OF PHYSICAL RESTRAINT/SECLUSION

Introduction

The Merrimack School District authorizes staff members to use physical restraints and seclusion in limited situations. In addition, it is expected that school staff will implement positive and constructive methods to de-escalate potentially dangerous situations, prior to any use of physical restraint or seclusion.

A. Prevention Strategies

To the extent possible, the Merrimack School District will collaborate with the parent/guardian to identify appropriate and effective techniques for supporting positive student behavior. This shall include all strategies identified in any formal plan such as an Individual Education Plan (IEP), 504 Accommodation Plan or other Behavior Intervention Plan. Additionally, the parent/guardian will be asked to share relevant information with school personnel. The parent and/or the district may request and/or conduct assessments for students who may cause potentially dangerous situations.

Ultimately, it is the responsibility of the District to provide for the safety of all students. The general welfare and safety of both the student and others must be considered at all times. In dangerous situations where the student can cause serious, probable and imminent bodily harm to himself/herself or others, restraint or seclusion may be used. The Merrimack School District will provide the parent/guardian with a copy of the Policy and Procedures for the Use of Physical Restraint and Seclusion.

B. Definitions (RSA 126-U:1 amended 09/30/2014)

1. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26. "Child" also includes a person in actual attendance at a school who is less than 22 years of age and who has not received a high school diploma.
2. "Restraint" means bodily physical restriction, mechanical devices, or any device that immobilizes a person or restricts the freedom of movement of the torso, head, arms, or legs. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication. It is limited to actions taken by persons who are school district staff members, contractors, or otherwise under the control or direction of the Merrimack School District.
 - a. "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.
 - b. "Mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.
 - c. "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.

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3. “Restraint” shall not include the following:
 - a. Brief touching or holding to calm, comfort, encourage, or guide a child, so long as limitation of freedom of movement of the child does not occur.
 - b. The temporary holding of the hand, wrist, arm, shoulder, or back for the purposes of encouraging a child to stand, if necessary, and then walk to a safe location, so long as the child is in an upright position and moving toward a safe location.
 - c. Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.
4. “Serious Injury” means any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to any internal organ, second- or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.
5. “Seclusion” means the involuntary placement of a child alone in a place where no other person is present and from which the particular child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier. The term does not include the voluntary separation of a child from a stressful environment for the purpose of allowing the child to regain self-control, when such a separation is to an area which a child is able to leave. Seclusion does not include circumstances in which there is no physical barrier between the child and any other person or the child is physically able to leave the place. A circumstance may be considered seclusion even if a window or other device for visual observation is present, if the other elements of this definition are satisfied.
6. “Intentional Physical Contact” means contact by a school employee with a child, in response to a child’s aggression, misconduct, or disruptive behavior, and includes, but is not limited to blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a child demonstrating disruptive or assaultive behaviors.
 - a. Intentional physical contact does not include escorting a child from an area by way of holding of the hand, wrist, arm, shoulder, or back to induce the child to walk to a safe location, unless the child is actively combative, assaultive, or self-injurious while being escorted.
 - b. Intentional physical contact does not include actions such as separating children from each other, directing a child to stand, or otherwise physically preparing a child to be escorted.

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- c. Intentional physical contact does not include incidental or minor contact, such as for the purpose of gaining a non-compliant child's attention.
- d. Intentional physical contact does not include the use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.
- e. Intentional physical contact does not include the use of force by a person to defend himself or herself or a third person from what the staff member reasonably believes to be the imminent use of unlawful force by a child, when the staff member uses a degree of such force which he or she reasonably believes to be necessary for such purpose and the actor does not immobilize a child or restrict the freedom of movement of the torso, head, arms, or legs of any child.

C. Physical restraint may only be used in emergency situations only when the following conditions exist:

1. Physical restraint shall only be used to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. The determination of whether the use of restraint is justified under this section may be made with consideration of all relevant circumstances, including whether continued acts of violence by a child to inflict damage to property will create a substantial risk of serious bodily harm to the child or others. Physical restraint will be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.
2. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.
3. The use of restraint is limited to physical restraint and mechanical restraint when necessary for the safe transport of pupils as described in Section L of this policy.
4. Restraint shall only be used when all other positive interventions have failed, or the level of immediate risk prohibits exhausting other means.
5. Staff authorized to utilize restraint will be trained in the Nonviolent Crisis Intervention Program (CPI) and/or its equivalent as determined by the Superintendent of Schools or his/her designee. A team approach should be used, when possible, in situations that involve restraint. Untrained staff is prohibited from utilizing restraint and is limited to physically intervening by using the minimal amount of physical contact with the student to protect the student and ensure the safety of others until trained staff is available.

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D. Authorization and Monitoring of Extended Restraint (RSA 126-U:11)

1. A child in restraint shall be continuously and directly observed by school personnel trained in the safe use of restraint.
2. Restraint shall not be imposed for longer than is necessary to protect the child or others from the substantial and imminent risk of serious bodily harm.
3. No period of restraint of a child may exceed 15 minutes without the approval of a supervisory employee designated by the Principal to provide such approval.
 - a. No period of restraint of a child may exceed 30 minutes unless a face-to-face assessment of the mental, emotional, and physical well-being of the child is conducted by a supervisory employee designated by the Principal who is trained to conduct such assessments. The assessment shall also include a determination of whether the restraint is being conducted safely and for a purpose authorized by RSA 126-U. Such assessments will be repeated at least every 30 minutes during the period of restraint. Each such assessment will be documented in writing and such records will be retained by the facility or school as part of the written notification required in RSA 126-U:7, III and *Section J* of this Policy.

E. Prohibition of Dangerous Restraint Techniques (RSA 126-U:4)

Use of the following restraint and behavior control techniques is prohibited:

1. Any physical restraint or containment technique that:
 - a. obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing;
 - b. places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;
 - c. obstructs the circulation of blood;
 - d. involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or
 - e. endangers a child's life or significantly exacerbates a child's medical condition.
2. The intentional infliction of pain, including the use of pain inducement to obtain compliance.
3. The intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child.
4. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

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F. Risks of Restraint

1. All physical restraints involve some risk. This may include injury, including in rare instances, death to the person being restrained and/or to staff. Restraint related position asphyxiation or other physical injuries can occur. For this reason, it is essential that staff is trained in appropriate techniques that minimize the possibilities of risk.
2. There is also the risk of psychological impact in using restraints. An individual's past experience with abuse or the fear involved with being restrained may cause unanticipated responses. Staff should be aware that for some students the use of physical restraint might have the unintended consequence of acting as a positive reinforcer for their behavior.
3. In addition, employees of the Merrimack School District should be conscious of individual perceptions, experiences and cultural orientation and recognize that for some students any touching may be unwelcome and misinterpreted despite good intentions. In these situations, touching the student may evoke an extreme and intense response and make the use of restraint more dangerous for both student and staff. (RSA126-U:10 & RSA126-U:12)

G. Limitation on the Use of Seclusion (RSA 126-U:5-a)

1. Seclusion may not be used as a form of punishment or discipline. It may only be used when a child's behavior poses a substantial and imminent risk of physical harm to a child or to others, and may only continue until that danger has dissipated.
2. Seclusion shall only be used as a last resort by trained personnel after other attempts to control the behavior have been attempted and been unsuccessful, or are reasonably concluded to be unlikely to succeed based on the history of actual attempts to control the behavior of a particular child.
3. Seclusion will not be used in a manner that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

H. Conditions of Seclusion (RSA 126-U: 5-b)

1. Seclusion may only be imposed in rooms which:
 - a. Are of a size which is appropriate for the chronological and developmental age, size, and behavior of the children placed in them.
 - b. Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which they are located.
 - c. Are equipped with heating, cooling, ventilation, and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which they are located.

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- d. Are free of any object that poses a danger to the children being placed in rooms.
 - e. Have doors which are either not equipped with locks, or are equipped with devices that automatically disengage the lock in case of an emergency. For the purpose of this subparagraph, an “emergency” includes, but is not limited to:
 - I. The need to provide direct and immediate medical attention to a child;
 - II. Fire;
 - III. The need to remove the child to a safe location during a building lockdown; or
 - IV. Other critical situations that may require immediate removal of a child from a seclusion to a safe location.
 - f. Are equipped with unbreakable observation windows or equivalent devices to allow safe, direct, and uninterrupted observation of every part of the room.
2. Each use of seclusion will be directly and continuously visually and auditorially monitored by a person trained in the safe use of seclusion.

I. Training

1. The Superintendent, Director of Special Services and Principals in the Merrimack School District will confer on an annual basis to designate specific personnel to be trained in the use of physical restraint procedures and seclusion. Staff will be trained in the Nonviolent Crisis Intervention Program (CPI) and/or its equivalent as determined by the Superintendent of Schools or his/her designee.

J. Reporting Requirements and Parental Notification (RSA 126-U:7)

Appropriate personnel will use the following protocol after each incident:

1. The staff member involved should verbally notify the Principal or his/her designee as soon as possible.
2. Unless prohibited by a court order, the Principal or his/her designee will **verbally notify the parent/guardian and guardian ad litem no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier.** Notification will be made in a manner calculated to give the parent/guardian actual notice of the incident at the earliest practicable time.

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3. The staff member(s) involved with the physical restraint or seclusion will have the opportunity to meet with his/her supervisors after the incident. The purpose of the meeting is to have the staff process the incident, assess precipitating factors that led to the physical restraint or seclusion and look at what could have been done to prevent the restraint or seclusion. The supervisor will provide support to the staff member and determine when the staff member(s) shall return to his/her duties.
4. The Superintendent is authorized to develop a reporting form or other documents necessary to satisfy these reporting requirements. A Merrimack School District employee who uses physical restraint or seclusion, or if the employee is unavailable, an administrator/supervisor of such employee, shall within **5 business** days after the occurrence, submit a written Merrimack School District Restraint or Seclusion report containing the following information to the Principal or his/her designee, and the Superintendent:
 - (a) The date, time, and duration of the use of restraint or seclusion.
 - (b) A description of the actions of the child before, during, and after the occurrence.
 - (c) A description of any other relevant events preceding the use of physical restraint or seclusion, including the justification for initiating the use of physical restraint or seclusion.
 - (d) The names of the persons involved in the occurrence.
 - (e) A description of the actions of the faculty or school employees involved before, during, and after the occurrence.
 - (f) A description of any interventions used prior to the use of the physical restraint or seclusion.
 - (g) A description of the seclusion or physical restraint used, including any technique/hold used and the reason the technique/hold was necessary.
 - (h) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of physical restraint or seclusion.
 - (i) A description of any property damage associated with the occurrence.
 - (j) A description of actions taken to address the emotional needs of the child during and following the physical restraint or seclusion incident.
 - (k) A description of future actions to be taken to address the child's problem behaviors.
 - (l) The name(s) and position of the employee completing the report.
 - (m) The anticipated date of the final report.
5. Unless prohibited by court order, the Superintendent or designee will, **within 2 business** days of receipt of the notification required in the above paragraph, send by first class mail to the child's parent/guardian and the guardian ad litem the information contained in the notification/report. Each notification/report prepared under this section will be retained by the school for review in accordance with rules adopted under RSA 541-A by the State Board of Education and the Department of Health and Human Services. A copy of reports and communications will be placed in the student's file.

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6. School Review Following the Use of Restraint or Seclusion. Upon information that restraint or seclusion has been used for the first time upon a child with a disability as defined in RSA 186-C:2, I or a child who is receiving services under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 701, and its implementing regulations, the school shall review the individual educational program and/or Section 504 plan and make such adjustments as are indicated to eliminate or reduce the future use of restraint or seclusion. A parent or guardian of a child with a disability may request such a review at any time following an instance of restraint or seclusion and such request shall be granted if there have been multiple instances of restraint or seclusion since the last review.
7. Whenever a school employee has intentional physical contact with a child which is in response to a child's aggression, misconduct, or disruptive behavior, a representative of the school will make reasonable efforts to promptly notify the parent/guardian. Such notification will be made no later than the time of the return of the child to the parent or guardian or the end of the business day, whichever is earlier.
 - a. Notification of intentional physical contact is not required:
 - I. When a child is escorted from an area by way of holding of the hand, wrist, arm, shoulder, or back to induce the child to walk to a safe location. However, if the child is actively combative, assaultive, or self-injurious while being escorted, the intentional physical contact notice requirements shall apply.
 - II. When actions are taken such as separating children from each other, including a child to stand, or otherwise physically preparing a child to be escorted.
 - III. When the contact with the child is incidental or minor, such as for the purposes of gaining a misbehaving child's attention. However, blocking a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child will be subject to the intentional physical contact notice requirements.
 - IV. When an incident constitutes restraint or seclusion and is subject to the notification requirements set forth above.
 - b. When notification is required, the school shall, within 5 business days of the occurrence, prepare a written description of the incident. The written description shall include at least the following information:
 - I. The date and time of the incident
 - II. A brief description of the actions of the child before, during and after the occurrence
 - III. The names of the persons involved in the occurrence
 - IV. A brief description of the actions of the facility or school employees involved before, during, and after the occurrence
 - V. A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

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K. Serious Injury or Death during Incidents of Restraint or Seclusion (RSA 126-U:10, II)

1. In cases involving serious injury or death to a child subject to restraint or seclusion in a school, the Superintendent or designee will, in addition to the provisions of RSA 126-U:7 (described in *Section J* of this policy), notify the commissioner of the department of education, the attorney general, and the Disabilities Rights Center, the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice will include the written notification required in RSA 126-U:7,II.

L. Transportation

1. The school district will not use mechanical restraints during the transportation of children unless case specific circumstances dictate that such methods are necessary.
2. Whenever a child is transported to a location outside the school, the Superintendent or designee will ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:
 - a) Prevents physical and psychological trauma;
 - b) Respects the privacy of the child; and
 - c) Represents the least restrictive means necessary for the safety of the child.
3. Whenever a child is transported using mechanical restraints, the Superintendent or designee will document in writing the reasons for the use of the mechanical restraints; such documentation shall be treated as a notification of restraint under Section J of this policy.

M. Annual Review Process

1. The Merrimack School Board will annually review its written policy and procedures regarding the use of restraint and seclusion.
2. The Superintendent of Schools or his/her designee is authorized to establish procedures and create forms for managing the behavior of children. Such procedures and shall be consistent with this policy and all applicable laws. The Superintendent is further authorized to establish any other procedures and forms necessary to implement this policy and/or any other legal requirements.
 - a. The Superintendent of Schools or his/her designee shall ensure that all relevant personnel are aware of the District Use of Physical Restraint/ Seclusion Policy and Procedures.
 - b. Principals will annually identify staff members who serve as school-wide resources to serve on a committee to assist in ensuring proper administration of physical restraint and/or seclusion. The data base is maintained by CPI trainers in each building.

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- c. Committee shall review at a minimum, the following components related to the use of restraint. These include an analysis of the following components:
- I. Incident reports;
 - II. Procedures used during physical restraint, including the proper administration of specific district approved physical restraint techniques;
 - III. Preventative measures or alternatives tried, techniques or accommodations used to avoid or eliminate the need of the future use of physical restraint;
 - IV. Documentation and follow up of interventions made to eliminate the need for future use of physical restraint;
 - V. Injuries incurred during a physical restraint;
 - VI. Notification procedures;
 - VII. Staff training needs;
 - VIII. Specific patterns related to staff or student incidents; and
 - IX. Environmental considerations, including physical space, student seating arrangements, and noise levels.
3. Upon review of the data, the committee shall identify any issues and/or practices that require further attention and provide written recommendations to the Superintendent of Schools.
4. Further, the Committee can recommend review of the training program to ensure the most current knowledge and techniques are reflected in the district's policy of physical restraint and seclusion.

Legal References:

- RSA 126-U
- Title LXII Criminal Code, Chapter 627:6

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