



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

DR. VERONICA C. GARCÍA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

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MEMORANDUM

To: Superintendents
Special Education Directors
Charter Schools
RECs

From: Denise Koscielniak (Signature on File)
State Director of Special Education

Through: Dr. Patricia Parkinson (Signature on File)
Assistant Secretary of Instructional Support

**RE: USE OF PHYSICAL RESTRAINT AS A BEHAVIORAL INTERVENTION
FOR STUDENTS WITH DISABILITIES**

The use of physical restraint as a behavioral intervention for students with disabilities in public schools may be justified in certain instances, but this type of intervention can pose a serious risk to the student, as well as to the person(s) applying the restraint. Therefore, the New Mexico Public Education Department (NMPED) provides the following detailed guidance for the appropriate use of physical restraint for students with disabilities in districts and charter schools. We note that neither the Individuals with Disabilities Education Act (IDEA) nor Section 504 of the Rehabilitation Act of 1973 provides specific guidance on this issue, so the NMPED bases this guidance on a review of relevant IDEA requirements for addressing student behavior and recommended practices from experts and professional organizations.

Regulatory Requirements

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. 1414(d)(3)(B)(i) requires the student's

Individualized Education Program (IEP) team to consider positive behavioral interventions, strategies, and supports to address that behavior. In a case where the student's problematic behavior is **severe, persistent, and frequent**, the NMPED has consistently interpreted this requirement to mean that the IEP team develops a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment as part of the IEP for that student. The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors.¹ However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to

- protect the student and others from serious injury; or
- safeguard physical property; and
- should be used only in an emergency.

Types of Physical Restraint

The most common forms of physical restraint are **mechanical** restraints and **manual** restraints.

- **Mechanical** restraint involves the use of any device such as a blanket, tape, straps, blindfolds, or tie downs as a method of restricting a student's movement or activity.
- **Manual** restraint (also known as "therapeutic holding") involves one or more people using their bodies to restrict the student's body movement. The purpose of this type of restraint is to allow the student to reestablish self-control and/or maintain safety for others in the environment.

The NMPED does not condone the use of **mechanical** restraint of students. However, we recognize that there may be certain instances where **manual** restraint of a student may be necessary, so the remainder of this guidance addresses its appropriate use for students with disabilities.

We note that escorting a student (touching and/or holding a student without the use of force) is **not** considered a form of physical restraint. Similarly, the use of "time out" is **not** considered a form of physical restraint and the NMPED issued guidance on the appropriate use of this behavioral intervention in August 2003.² We also emphasize that nothing in this guidance would preclude a teacher or other staff member from using reasonable force to protect themselves, students, or other persons from assault or imminent, serious physical harm.

Authorization for Physical Restraint

- **In all cases**, the use of physical restraint must be approved by the student's IEP team, documented in the student's BIP, have the expressed written agreement of the parent or

¹ See the State's *Technical Assistance Manual: Addressing Student Behavior—A Guide for Educators*. This manual is available on the Special Education/Publications link at the NMPED's website at www.ped.state.nm.us

² See footnote #1 at Appendix B.

legal guardian, and be addressed in the public agency's Prior Written Notice of Actions Proposed (PWN) provided to parents following an IEP meeting. The IEP team approves the type of restraint to be used, who is authorized to apply it, the specific setting or conditions under which the use of restraint shall apply, how it will be monitored by other staff, as well as reporting requirements for when restraint is used.

- **In all cases**, a mental health professional (i.e., social worker, counselor, psychologist) needs to be member of the IEP team if physical restraint is being considered as an intervention. The mental health professional reviews all information about the student and observes the student prior to making recommendations at the IEP meeting about the use of physical restraint in the BIP. A recommendation could include the need for additional evaluative or other information before imposing physical restraint in the student's BIP.
- **In some cases**, the IEP team may also need to seek approval from the student's medical provider if the use of physical restraint might adversely impact or be in conflict with any medical/physical/mental condition that the student may have or be suspected of having.

Recommended Implementing Policy and Procedures

We offer the following guidance to IEP teams and building administrators:

- **The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior.** In other words, positive interventions are the first methods for addressing unacceptable behavior. A variety of such interventions designed to de-escalate a crisis should be listed in the student's BIP, as well a provision to warn the student that restraint will be used if the target behavior does not stop. Verbal threats or refusal to comply with a staff directive or school rule would not warrant physical restraint unless this is agreed upon in the BIP. Physical restraint is the last resort to protect the student and others from harm. However, its immediate use may be justified if there is imminent, serious danger only.
- **The IEP team needs to establish that other less restrictive interventions have not been effective.** The provision for physical restraint that is in the BIP is only appropriate if less restrictive behavioral management techniques have been tried and documented as not working for the behaviors for which physical restraint will apply.
- **The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** Applying the IDEA, the use of physical restraint is restricted the same way the law restricts the use of other teaching or behavioral interventions methods in general. That is, it is a denial of a Free Appropriate Public Education (FAPE) if the use of physical restraint is inconsistent with the student's IEP and BIP.³

³ See *OSEP Memorandum 95-16*, 22 IDLER 531 (OSEP 1995).

- **Physical restraint procedures must be performed by trained personnel only.** (See “Staff Training” below.)
- **Restraint may not used as a form of punishment.** Nor should it be used to force compliance from a student.
- **No form of physical restraint may be used that restricts a student from speaking or breathing.** The restraint must be applied in such a way that it is safe and only reasonable force is used. A responsible third party should monitor the student’s status during the restraint procedure to check respiration and skin color, and to see that limbs are not moved out of the normal range of motion. The restraint should be immediately discontinued if the student exhibits any signs of undue physical distress or injury. In addition, the restraint must not be applied any longer than is necessary to protect the student from causing harm to himself or others.
- **Do not restrain the student in front of other students.** If possible, move to another location or clear the setting of other students.

Staff Training

- **Any staff or staff team designated to apply physical restraint must be professionally trained and/or certified in the particular technique being used.** This must happen *prior to* any such procedures being used on a student. Staff chosen to be trained to apply physical restraint should be individuals who are physically able to do so and can handle a crisis in a calm manner.
- **The professional training needs to emphasize the use of positive interventions, including verbal de-escalation techniques and other strategies to be attempted prior to using physical restraint.** Resources for this kind of training include, but are not limited to, Positive Behavioral Intervention and Supports (www.pbis.org), Crisis Prevention Institute (www.crisisprevention.com), and The Mandt System (www.mandtsystem.com).

Recommended Documentation and Reporting

- **Any incident of physical restraint should be immediately reported to the building administrator and be documented.** Include the following in a written report:
 - Name of the student
 - Date and description of the incident that led to the restraints
 - Names and titles of staff member(s) who applied the restraints and monitored it
 - Other interventions tried
 - Type of restraints used
 - Length of time the restraints was applied
 - Any injuries sustained by the student or staff
 - Information about the student’s behavior after the restraints and any further action taken by school staff including disciplinary action

- **The student's parents should be informed about the use of the restraint.** Provide a verbal report to parents the same day. This should be followed up by a written report 1–2 days later.

Local Policy

Districts and charter schools should develop policies and procedures outlining the use of physical restraint. Districts and charter schools are encouraged to adopt this guidance as a minimum to their local policy on the use of physical restraint. **Local policy for physical restraint for students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan.⁴ Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5).**

Please copy this guidance and distribute it to all relevant staff, administrators, parents, and school board members. If you have additional questions regarding the use of physical restraint with students with disabilities, please contact the Special Education Bureau at (505) 827-1457 and ask to speak to an available consultant.

PP/dk/pb

cc: Veronica C. García, Ed. D., Secretary of Education
Dr. Cross Maple, Deputy Secretary of Learning and Accountability
Mr. Willie Brown, Office of General Counsel

⁴ See the State's *Technical Assistance Manual: The Student Assistance Team and the Three Tier Model of Student Intervention* available at Parents/Students link at www.ped.state.nm.us.