

**§ 115C-391.1. Permissible use of seclusion and restraint.**

- (a) It is the policy of the State of North Carolina to:
- (1) Promote safety and prevent harm to all students, staff, and visitors in the public schools.
  - (2) Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.
  - (3) Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools.
  - (4) Improve student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner.
  - (5) Promote retention of valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.
- (b) The following definitions apply in this section:
- (1) "Assistive technology device" means any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capacities of a child with a disability.
  - (2) "Aversive procedure" means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:
    - a. Significant physical harm, such as tissue damage, physical illness, or death.
    - b. Serious, foreseeable long-term psychological impairment.
    - c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one's own vomit; or denial of reasonable access to toileting facilities.
  - (3) "Behavioral intervention" means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.
  - (4) "IEP" means a student's Individualized Education Plan.
  - (5) "Isolation" means a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.
  - (6) "Law enforcement officer" means a sworn law enforcement officer with the power to arrest.
  - (7) "Mechanical restraint" means the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.
  - (8) "Physical restraint" means the use of physical force to restrict the free movement of all or a portion of a student's body.
  - (9) "School personnel" means:

- a. Employees of a local board of education.
  - b. Any person working on school grounds or at a school function under a contract or written agreement with the public school system to provide educational or related services to students.
  - c. Any person working on school grounds or at a school function for another agency providing educational or related services to students.
- (10) "Seclusion" means the confinement of a student alone in an enclosed space from which the student is:
- a. Physically prevented from leaving by locking hardware or other means.
  - b. Not capable of leaving due to physical or intellectual incapacity.
- (11) "Time-out" means a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.
- (c) Physical Restraint:
- (1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
    - a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
    - b. As reasonably needed to maintain order or prevent or break up a fight.
    - c. As reasonably needed for self-defense.
    - d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
    - e. As reasonably needed to escort a student safely from one area to another.
    - f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
    - g. As reasonably needed to prevent imminent destruction to school or another person's property.
  - (2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.
  - (3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
  - (4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.
- (d) Mechanical Restraint:
- (1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:
    - a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.
    - b. When using seat belts or other safety restraints to secure students during transportation.

- c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
  - d. As reasonably needed for self-defense.
  - e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.
- (2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.
  - (3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.
- (e) Seclusion:
- (1) Seclusion of students by school personnel may be used in the following circumstances:
    - a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.
    - b. As reasonably needed to maintain order or prevent or break up a fight.
    - c. As reasonably needed for self-defense.
    - d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.
    - e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and
      - 1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.
      - 2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.
      - 3. The space in which the student is confined has been approved for such use by the local education agency.
      - 4. The space is appropriately lighted.
      - 5. The space is appropriately ventilated and heated or cooled.
      - 6. The space is free of objects that unreasonably expose the student or others to harm.
  - (2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.
  - (3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
  - (4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.
- (f) Isolation. – Isolation is permitted as a behavior management technique provided that:
- (1) The space used for isolation is appropriately lighted, ventilated, and heated or cooled.
  - (2) The duration of the isolation is reasonable in light of the purpose of the isolation.

- (3) The student is reasonably monitored while in isolation.
- (4) The isolation space is free of objects that unreasonably expose the student or others to harm.
- (g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use of time-out as defined in this section.
- (h) Aversive Procedures. – The use of aversive procedures as defined in this section is prohibited in public schools.
- (i) Nothing in this section modifies the rights of school personnel to use reasonable force as permitted under G.S. 115C-390.3 or modifies the rules and procedures governing discipline under G.S. 115C-390.1 through G.S. 115C-390.12.
- (j) Notice, Reporting, and Documentation.
  - (1) Notice of procedures. – Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
  - (2) Notice of specified incidents:
    - a. School personnel shall promptly notify the principal or principal's designee of:
      - 1. Any use of aversive procedures.
      - 2. Any prohibited use of mechanical restraint.
      - 3. Any use of physical restraint resulting in observable physical injury to a student.
      - 4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.
    - b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.
  - (3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.
  - (4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:
    - a. The date, time of day, location, duration, and description of the incident and interventions.
    - b. The events or events that led up to the incident.
    - c. The nature and extent of any injury to the student.
    - d. The name of a school employee the parent or guardian can contact regarding the incident.
  - (5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure,

or seclusion, unless the employee knew or should have known that the report was false.

(k) Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense. (2005-205, s. 2; 2006-264, s. 58; 2011-282, s. 3.)