

OFFICE OF STATE SUPERINTENDENT
Summary of State Board of Education Agenda Items
March 17, 2016

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03. Action: Approval to begin the Administrative Procedures Act process: To establish State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion [Goal 4 – MBE Strategic Plan]

Mississippi Department of Education (MDE) staff from offices across the Department met and discussed establishing the restraint and seclusion policy. The group reviewed the policies from other state departments of education and the United States Department of Education recommendations for restraint and seclusion for State Board Policy Part, 3, Chapter 38, Rule 38.13 – Restraint and Seclusion. MDE staff met with the Mississippi ACLU, Special Education Advisory Council, Parents for Public Education, Mississippi School Boards Association, and MDE Special Education staff to develop the Restraint and Seclusion Policy for the State Board of Education to consider approval. Two public hearings were held for public comments and after the hearings, MDE staff and outside organizations met to finalize the policy. Since extensive changes were made to the Restraint and Seclusion proposed policy, the Mississippi Department of Education is requesting that the Administrative Procedures Act process be restarted.

This item references Goal 4 of the *Mississippi Board of Education 2016-2020 Strategic Plan*.

Recommendation: Approval

Back-up material attached

Rule 38.13 Restraint and Seclusion

1. Introduction

The Mississippi Department of Education and the State Board of Education supports a positive approach to behavior that uses proactive strategies to create a safe school climate that promotes dignity, creates authentic student engagement, and improves student achievement for all students. When teachers and administrators implement evidence-based positive behavior supports with fidelity, a safe and orderly school environment is created that is conducive to learning and students are able to achieve without the constant interruptions that occur when teachers are required to address discipline in the classroom.

The most effective response to school violence, as indicated by research, is to establish a school culture that emphasizes prevention, early identification, teaching, reinforcement of appropriate behavior and continuous data based problem solving. One primary method is to structure the environment using a non-aversive effective behavioral system, such as Positive Behavior Interventions and Supports (PBIS). Effective positive behavioral systems are comprehensive, in that they are comprised of a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavioral outcomes for all students. The PBIS prevention-oriented framework or approach applies to all students, all staff, and all settings. When integrated with effective academic instruction, such systems can help provide the supports children need to become actively engaged in their own learning and academic success. Schools successfully implementing comprehensive behavioral systems create school-wide environments that reinforce appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion. In schools implementing comprehensive behavioral systems, trained school staff use preventive assessments to identify where, under what conditions, with whom, and why specific inappropriate behavior may occur, as well as implement de-escalation techniques to defuse potentially violent dangerous behavior. Preventive assessments should include (1) a review of existing records; (2) interviews with parents, family members, and students; and (3) examination of previous and existing behavioral intervention plans. Using these data from such assessments helps schools identify the conditions when inappropriate behavior is likely to occur and the factors that lead to the occurrence of these behaviors; and develop and implement preventive behavioral interventions that teach appropriate behavior and modify the environmental factors that escalate the inappropriate behavior. The use of comprehensive behavioral systems significantly decreases the likelihood that restraint or seclusion would be used, supports the attainment of more appropriate behavior, and, when implemented as described, can help to improve academic achievement and behavior. In order to reduce the use of aversive techniques in response to student behavior, restraint and seclusion, school wide behavior systems should include a comprehensive behavior management system that includes: (a) socially valued and measurable outcomes, (b) empirically validated and practical practices (c) systems that efficiently and effectively support the implementation of these practices, and (d) continuous collection and use of data for decision making.

However, at times, some students exhibit behaviors which place themselves and others in imminent danger. Schools must implement proactive strategies and interventions to reduce the likelihood of these situations, and they must have clearly identified responses to address such

situations when they occur. Additionally, schools ~~should~~ shall have policies in place that address the responses needed to ensure the safety of all students and staff.

2. Restraint and Seclusion Policy

A Restraint and Seclusion Policy is defined through written local school board-approved policies and procedures that define appropriate means of restraint and seclusion to provide for a safe and orderly education. These policies and procedures ~~should~~ shall apply to all students in the local school district and must not focus on one or more subgroups of students.

In accordance with Miss. Code Ann. §§ 37-9-69 and 37-11-57, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior or is ~~are~~ deemed to be a danger to themselves or others. State Board policy positively prohibits the use of excessive force, or cruel and unusual punishment regarding student management. ~~Under no circumstances shall~~ Restraint and/or seclusion shall not be utilized as a punitive measure.

This policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5th and 14th amendments to the Constitution of the United States nor negate the obligation of the district to provide a safe work environment.

3. Definitions

- a. Aversive behavioral interventions means is defined as a physical or sensory intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others and may include hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities.
- b. Aversive procedure means is defined as the use of a substance or stimulus, intended to modify behavior, which the person administering it knows or should know is likely to cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include but are not limited to: infliction of bodily pain, (e.g., hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.
- c. Aversive technique means is defined as physical, emotional or mental distress as a method of redirecting or controlling behavior.
- d. Behavioral intervention means is defined as the implementation of strategies to address behavior that is dangerous or inappropriate, or otherwise impedes the learning of the students.
- e. Behavior Intervention Plan (BIP) is defined as a plan of action for managing a student's behavior. The BIP includes a set of strategies and supports intended to increase the occurrence of behaviors that school personnel encourage and to decrease behaviors that school personnel want to lessen or eliminate. The BIP must include:
 - i. Observable and measurable description of the problem behavior;

- ii. Identified purpose of the problem behavior as a result of the FBA;
 - iii. General strategy or combination of strategies for changing the problem behavior;
 - iv. Written description of when, where, and how often the strategy will be implemented;
and
 - v. Consistent system of monitoring and evaluating the effectiveness of the plan.
- f. Chemical restraint is defined as “the administration of medication for the purpose of restraint.” Chemical restraint does not apply to medication prescribed by and administered in accordance with the directions of a licensed physician. The use of chemical restraint is prohibited in Mississippi Public Schools.
- g. Dangerous behavior means is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out of seat behaviors.
- h. De-escalation techniques are defined as strategically employed verbal or non-verbal interventions used to reduce the intensity of threatening behavior before a crisis situation occurs.
- i. Emergency situation means is defined as spontaneous unpredictable events posing an imminent threat of serious bodily injury.
- j. Functional Behavioral Assessment (FBA) is defined as a school-based, collaborative process that includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child’s environment.
- i. The term includes direct assessments, indirect assessments and data analysis designed to assist the team to identify and define the problem behavior in concrete terms.
 - ii. Contextual factors (including affective and cognitive factors) are identified that contribute to the behavior, and a hypothesis is formulated regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior.
 - iii. Formal documentation of the assessment by appropriately qualified individuals become part of the child’s educational record.
 - iv. The FBA must include all of the following:
 - a. Clear description of the problematic behavior;
 - b. Identification of the antecedent events, times, and situations that predict when the problem behavior will and will not occur;
 - c. Identification of the consequences of the problem behavior;
 - d. Development of hypotheses and summary statements that describes the problem behavior and its functions; and
 - e. Collection of data from a variety of sources: interviews, direct observation data, etc.
- k. Imminent danger is defined as a danger which is impending, close at hand, threatening, or about to happen.

l. Individualized Education Plan (IEP) means is defined as a written statement for a child with a disability that is developed, reviewed, and revised in accordance with ~~State Board Policy 7219~~ §§ 300.320-300.324.

m. Mechanical restraint is defined as “any device that attaches to a student’s body that restricts movement and cannot be removed by the student.” Examples include: straps, tie downs, boards, and harnesses. Handcuffs are also considered mechanical restraints, but may only be used by certified school resource officers, as defined in Miss. Code Ann. §§ 37-7-321 and 37-7-323. The use of mechanical restraints is prohibited in Mississippi Public Schools, except as provided in §§ 37-7-321 and 37-7-323.

Devices not considered mechanical restraints include: adaptive equipment, protective devices, or assistive technology devices documented in a student’s individualized education plan (IEP), Section 504 plan, behavior intervention plan, or otherwise prescribed for the student by a medical or related service provider, seatbelts, and other safety equipment when used to secure students during transportation.

n. Physical escort is defined as the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out (with minimal resistance) and able to respond to such physical prompt, to move to a safe location.

o. Physical prompt is defined as a teaching technique that involves physical contact with the student and that enable the student to learn or model the physical movement necessary for the development of the desired competency.

p. Physical Restraint is defined as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body.” Physical restraint does not include briefly holding a student’s hand or arm to calm them or escort them to another area. A physical restraint shall be removed as soon as the student is calm. The term physical restraint does not include:

i. Physical restraint that restricts the flow of air to the student’s lungs.

ii. Prone restraint in which a student is placed face down on the floor or other surface, and physical pressure is applied to the student’s body to keep the student in the prone position.

q. Positive Behavior Interventions and Supports (PBIS) is defined as a proactive approach to establishing the behavioral supports and social culture needed for all students in a school to achieve social, emotional and academic success. Attention is focused on creating and sustaining primary (school-wide), secondary (classroom), and tertiary (individual) systems of support that improve lifestyle results (personal, health, social, family, work, recreation) for all youth by making targeted misbehavior less effective, efficient, and relevant, and desired behavior more functional.

- r. Positive Behavior Support Plan is defined as the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in behavior through skill acquisition and the reduction of problematic behavior.
- s. Seclusion is defined as “the confinement of a student in an enclosure from which the student’s egress is restricted.” Seclusion does not include ~~situations in which a staff member trained in the use of de-escalation techniques is physically present in the same unlocked room as the student,~~ in-school suspension, detention, or alternative school.
- t. Section 504 Plan is defined as an individualized plan of accommodations and modifications to provide a free appropriate public education to a student who has a disability that substantially limits a major life activity. A 504 plan spells out the modifications and accommodations that will be needed for a student to have the opportunity to perform at the same level as their peers.
- u. Written report is defined as a printed paper filings and electronic filings that can be printed.

4. General Procedures

Restraint

- a. Physical restraint is considered to be an emergency response after all other verbal de-escalation measures have failed in effectiveness based on the following criteria:
 - i. The student or other person is engaged in actions that would constitute a danger to themselves or others;
 - ii. The student or other person is engaged in actions that would constitute potential or actual destruction of property;
 - iii. To remove a non-compliant student or person from the scene of an incident;
 - iv. The restraint should be removed as soon as the student is no longer a danger to themselves or others.
- b. When using physical restraint for students who are a danger to themselves or others, staff should take precautions necessary to ensure the safety of the student and the staff members engaged in restraining the student. Physical restraints that restrict the flow of air are prohibited in all situations. When deemed it is necessary to restrain a student who is a danger to themselves or others, the following procedures ~~should~~ shall be used:
 - i. Restraint ~~should~~ shall be conducted by staff who are trained in the restraint procedures adopted by the school district;
 - ii. Staff shall carefully observe the student throughout the restraint to observe the student’s physical and emotional status;
 - iii. Restraint ~~should~~ shall be immediately terminated if the student appears to be, or claims to be, in severe stress;
 - iv. The restraint ~~should~~ shall be removed as soon as the student is no longer a danger to himself/herself or others;

- v. Within two school days after the restraint incident occurs, the staff shall conduct a debriefing of the circumstances leading to the restraint and discuss any alternative behaviors that could have been utilized;
 - ~~vi. As soon as possible after the restraint is removed, the staff should discuss the incident leading up to the restraint and discuss alternative behaviors that could have been utilized;~~
 - vi. When the student is able, he/she should be returned to the instructional activity, or to a less restrictive environment;
 - vii. Parents must be notified ~~within one~~ on the same school day of the incident. At the time the parent is notified, the school shall schedule a debriefing with the parent to discuss the incident.
 - viii. The school shall report the restraint and/or seclusion incident to the local school district and the Mississippi Department of Education.
- c. School districts that permit restraint and seclusion must ensure that staff members are trained in the use of restraint. This training ~~should~~ shall be provided as a part of a program which addresses a full continuum of positive behavioral intervention strategies, crisis intervention, and de-escalation techniques.

Absent a ~~clear and present~~ an imminent danger to health or safety, physical restraint ~~may~~ shall only be practiced by staff trained in the physical restraint approach adopted by the local school district. The Mississippi Department of Education does not endorse a particular training program. The local school district shall select programs which are approved by the MDE and those that are founded on evidence-based techniques that which focus on:

- i. Certification for school personnel and recertification as required by the training program;
- ii. Preventing the need for restraint;
- iii. Training in first aid;
- iv. Identification of antecedent behaviors;
- v. Use of positive behavior supports, de-escalation, and conflict management;
- vi. Keeping staff and students safe during required restraints.

Local school district administrators ~~should~~ shall monitor the use of physical restraint to ensure fidelity of implementation. Additional and follow-up training should be provided on an ongoing basis and any situations in which procedures are not followed ~~should~~ shall be immediately addressed.

- d. The use of mechanical restraints is prohibited in Mississippi Public Schools, except by law enforcement. For a complete definition refer to ~~number 3~~ letter “m” under Definitions.
- e. The use of chemical restraints is prohibited in Mississippi Public Schools. For a complete definition refer to ~~number 4~~ letter “f” under Definitions.

Behavioral Interventions

- a. Behavioral intervention must be consistent with the child's right to be treated as an individual. Schools should implement an evidence-based system of positive behavioral intervention strategies and support. Elements of the system of support should include universal screening to identify potential students, teaching school-wide expected behaviors and social skills, and a system to monitor the effectiveness of the interventions and supports.
- b. Behavioral strategies, in conjunction with the school-wide system of positive behavioral interventions should be used to help identify the causes of dangerous behavior and ~~could~~ reduce the need for restraint or seclusion. Information on a student through interviews, observation, and records help identify the causes of the dangerous behavior and should guide the development of a behavioral plan for the student. A complete plan should include:
 - i. Addressing the characteristics of the setting and the event;
 - ii. If possible, removing the antecedents that triggered the event;
 - iii. Adding antecedents that promote appropriate behavior;
 - iv. Teaching appropriate behaviors to replace the dangerous behaviors.

Seclusion

- a. The use of seclusion occurs in a specially designated room or space that is physically isolated from common areas and from which the student is physically prevented from leaving. The room or space used for seclusion may not be locked and staff shall be present to monitor the student. Seclusion shall cease once the student regains control of his or her behavior.

Only school personnel trained on the use of restraint and seclusion should be used to observe and monitor these students. Staff engaged in monitoring students should have knowledge of effective restraint and seclusion procedures, emergency procedures, and knowledge as to how to effectively debrief students after the use of restraint or seclusion.

- b. The room or space used for seclusion ~~must should~~ shall not contain any objects or fixtures with which a student could reasonably be harmed. Additionally, the room ~~must~~ shall provide adequate lighting and ventilation.
- ~~j. The room used for seclusion may not be locked and staff must be present to monitor the student's safety and to know when the student has regained control of their behavior.~~
- c. School personnel may use seclusion to address a student's behavior:
 - i. ~~If the student's behavior unreasonably interferes with the student's learning or the learning of others;~~
 - ii. ~~If the student's behavior constitutes an emergency and seclusion is necessary to protect a student or other person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;~~

intervention team within 10 days of the incident. The team shall determine if the student shows a pattern of behavior that would indicate the need for an intervention plan.

- m. ~~If restraint or seclusion is used for a student with a disability, and the student's IEP, Section 504 Plan, or behavior intervention plan does not include the use of restraint or seclusion, the IEP or 504 team shall meet, within 10 school days of the incident to consider:~~
 - i. ~~The need for a functional behavioral assessment;~~
 - ii. ~~Developing appropriate behavioral interventions;~~
 - iii. ~~Implementing a behavioral intervention plan.~~

5. Administrative Procedures

- a. Local school districts that utilize physical restraint and seclusion for all students must develop written policies and procedures that govern ~~its use~~ the use of restraint and/or seclusion. The written policies and procedures must be designed to ensure the safety of all students, school personnel, and visitors and include the following provisions:
 - i. Staff and faculty training on the use of physical restraint;
 - ii. Parental notification when physical restraint is used to restrain their student not to exceed one school day from the use of the restraint;
 - iii. Documentation of the use of physical restraint or seclusion by staff or faculty participating in or supervising the restraint or seclusion event;
 - iv. Procedures for the periodic review of the use of restraint and seclusion policies;
 - v. Procedures by which a parent may submit a complaint regarding the physical restraint or seclusion of their child;
 - vi. Procedures for reporting the use of restraint or seclusion to the local board of education and to the Mississippi Department of Education.
- b. The policies and procedures ~~should~~ shall be reviewed with all staff on an annual basis.
- c. Teachers and other district personnel should be trained on how to collect and analyze student data to determine the effectiveness of these procedures in increasing appropriate behavior.
- d. All parents ~~should~~ shall receive, at least annually, written information about the policies and procedures for restraint and seclusion issued by the local school district or school. The written policies are to be included in each local education agencies code of conduct, student handbook, or other appropriate school publication.
- e. A review of the use of a restraint and seclusion process ~~must~~ shall be conducted by the school to determine if a revision of behavioral strategies are in place to address dangerous behavior or if positive behavioral strategies ~~were~~ are not in place ~~when:~~ at the time of the restraint or seclusion.
 - i. ~~There is repeated use for an individual student;~~
 - ii. ~~Multiple uses within the same classroom;~~
 - iii. ~~Used multiple times by the same individual~~

- f. School districts ~~should~~ shall not only establish and disseminate policies and procedures on the use of seclusion and restraint, but also ~~should~~ shall periodically review and update them as appropriate. The school district or school ~~should~~ shall maintain records of its review of seclusion and restraint data and any resulting decisions or actions regarding the use of seclusion and restraint.
- g. In any situation in which a student is a danger to themselves or others, and it becomes necessary to contact law enforcement or emergency medical personnel, nothing in this policy guidance ~~should~~ shall be construed to interfere with the duties of law enforcement or emergency medical personnel.
- h. The school district shall report the restraint and/or seclusion incident to the local school district and the Mississippi Department of Education.

6. Parental Notification

- a. All parents shall receive, at least annually, written information about the policies for restraint and seclusion issued by the local school district or school.
- b. All parents shall be notified when physical restraint is used to restrain their student ~~not to exceed one school day from the use of the restraint~~ before the close of school on the day the restraint was used.

Source: Miss. Code Ann. § 37-1-3, 37-9-69, 37-11-57, 37-7-321, 37-7-323 (Adopt 3/2016)