



# **New Hampshire Compilation of School Discipline Laws and Regulations**

Prepared: January 26, 2018

## ***Introduction***

This compilation presents school discipline-related laws and regulations for U.S. states, U.S. territories, and the District of Columbia, and, where available, links to education agency websites or resources related to school discipline and student conduct. The discipline laws and regulations presented in this compilation have been categorized by type of specific discipline issue covered, according to an organizational framework developed by the National Center for Safe and Supportive Learning Environments (NCSSE). For example, one major category encompasses all laws or regulations governing states or territories that mandate specific disciplinary sanctions (such as suspension) for specific offenses (such as drug possession on school grounds). The school discipline laws and regulations were compiled through exhaustive searches of legislative websites that identified all laws and regulations relevant to each specific category. Compiled materials were subsequently reviewed by state education agency (SEA) representatives in the 50 states, Washington D.C., and the U.S. territories.

Discipline categories were not mutually exclusive. Laws and regulations often appeared across multiple categories. For jurisdictions with more extensive laws covering a breadth of topical areas, relevant sections were excerpted from the larger legislative text for inclusion in the appropriate discipline category. Laws, ordered by chapter and section number, appear first within each category followed by regulations. All laws and regulations listed within categories in the compilation also appear in the sources cited section of the document, which lists laws by chapter and section number and title, and where available, includes active hyperlinks to source websites supported or maintained by state legislatures. Additional links to government websites or resources are provided at the end of this document.

## ***Notes & Disclaimers***

To the best of the preparer's knowledge, this Compilation of School Discipline Laws and Regulations is complete and current as of January 2018. Readers should also note that the information in this document was compiled from individual sources that are created by each jurisdiction and which are maintained and updated with varying frequencies. Readers should consult the source information provided directly in order to check for updates to laws and regulations reported in this document or to conduct further research.

For further information, including definitions of the different policy categories, please refer to the [Discipline Laws and Regulations Compendium](#) posted on the Center's website.

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## New Hampshire Regulations

### Education

#### Chapter Ed 300. Administration of Minimum Standards in Public Schools

##### **Part Ed 317. Standards and Procedures for Suspension and Expulsion of Pupils Including Procedures Assuring Due Process**

- Ed 317.03. Standard for expulsion by local school board
- Ed 317.04. Disciplinary procedures
- Ed 317.05. Reporting procedures
- Ed 317.06. Child with a disability

#### Chapter Ed 1200. Restraint and Seclusion for Children

##### **Part Ed 1201. Limiting the Use of Child Restraint Practices**

- Ed 1201.01. Definitions

##### **Part Ed 1202. Restraint and Seclusion**

- Ed 1202.01. Written policies required
- Ed 1202.02. Duty to report
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##### **Part Ed 1203. Complaints and Investigation**

- Ed 1203.01. Filing a complaint
- Ed 1203.02. Review of complaint filed
- Ed 1203.03. Investigative process

## **General Provisions**

### **Authority to develop and establish rules of conduct**

#### **LAWS**

##### **193-D:2. State board rulemaking authority; Public school district policies.**

I. The state board of education shall adopt rules relative to safe school zones, under RSA 541-A, for public school pupils and public school employees regarding:

- (a) Disciplinary proceedings, including procedures assuring due process.
- (b) (1) Standards and procedures for suspension and expulsion of pupils, including procedures assuring due process.
- (2) Standards and procedures which shall require expulsion of a pupil for knowingly possessing a firearm in a safe school zone without written authorization from the superintendent or designee.
- (c) Procedures pertaining to discipline of pupils with special needs, including procedures assuring due process.
- (d) Procedures for reporting acts of theft, destruction, or violence under RSA 193-D:4.

II. Nothing in this chapter shall prohibit local school boards from adopting and implementing policies relative to pupil conduct and disciplinary procedures.

##### **193-D:4. Written report required.**

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of RSA 193-D:4, I(a)-(c).

##### **193-F:4. Pupil safety and violence prevention.**

I. The school board of each school district and the board of trustees of a chartered public school shall, no later than 6 months after the effective date of this section, adopt a written policy prohibiting bullying and cyberbullying. Such policy shall include the definitions set forth in RSA 193-F:3. The policy shall contain, at a minimum, the following components:

- (a) A statement prohibiting bullying or cyberbullying of a pupil.
- (b) A statement prohibiting retaliation or false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying and, at the time a report is made, a process for developing, as needed, a plan to protect pupils from retaliation.
- (c) A requirement that all pupils are protected regardless of their status under the law.



(d) A statement that there shall be disciplinary consequences or interventions, or both, for a pupil who commits an act of bullying or cyberbullying, or falsely accuses another of the same as a means of retaliation or reprisal.

(e) A statement indicating how the policy shall be made known to school employees, regular school volunteers, pupils, parents, legal guardians, or employees of a company under contract to a school, school district, or chartered public school. Recommended methods of communication include, but are not limited to, handbooks, websites, newsletters, and workshops.

(f) A procedure for reporting bullying or cyberbullying that identifies all persons to whom a pupil or another person may report bullying or cyberbullying.

(g) A procedure outlining the internal reporting requirements within the school or school district or chartered public school.

(h) A procedure for notification, within 48 hours of the incident report, to the parent or parents or guardian of a victim of bullying or cyberbullying and the parent or parents or guardian of the perpetrator of the bullying or cyberbullying. The content of the notification shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(i) A provision that the superintendent or designee may, within the 48-hour period, grant the school principal or designee a waiver from the notification requirement if the superintendent or designee deems such waiver to be in the best interest of the victim or perpetrator. Any such waiver granted shall be in writing. Granting of a waiver shall not negate the school's responsibility to adhere to the remainder of its approved written policy.

(j) A written procedure for investigation of reports, to be initiated within 5 school days of the reported incident, identifying either the principal or the principal's designee as the person responsible for the investigation and the manner and time period in which the results of the investigation shall be documented. The superintendent or designee may grant in writing an extension of the time period for the investigation and documentation of reports for up to an additional 7 school days, if necessary. The superintendent or superintendent's designee shall notify in writing all parties involved of the granting of an extension.

(k) A requirement that the principal or designee develop a response to remediate any substantiated incident of bullying or cyberbullying, including imposing discipline if appropriate, to reduce the risk of future incidents and, where deemed appropriate, to offer assistance to the victim or perpetrator. When indicated, the principal or designee shall recommend a strategy for protecting all pupils from retaliation of any kind.

(l) A requirement that the principal or designee report all substantiated incidents of bullying or cyberbullying to the superintendent or designee.

(m) A written procedure for communication with the parent or parents or guardian of victims and perpetrators regarding the school's remedies and assistance, within the boundaries of applicable state and federal law. This communication shall occur within 10 school days of completion of the investigation.

(n) Identification, by job title, of school officials responsible for ensuring that the policy is implemented.

III. The department of education may develop a model policy in accordance with the requirements set forth in this chapter which may be used by schools, school districts, and chartered public schools as a basis for adopting a local policy.

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy

should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

## **REGULATIONS**

No relevant regulations found.

## **Scope**

### **LAWS**

#### **193-F:4. Pupil safety and violence prevention.**

- I. Bullying or cyberbullying shall occur when an action or communication as defined in RSA 193-F:3:
- (a) Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or
  - (b) Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

### **LAWS**

No relevant laws found.

## **Communication of policy**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **Ed 317.03. Standard for expulsion by local school board.**

- (b) School boards shall make certain that the pupil has received notice of the requirements of RSA 193-D and RSA 193:13 through announced, posted, or printed school rules.

#### **Ed 317.04. Disciplinary procedures.**

- (d) Prior to the imposition of any suspension or expulsion-each school board shall adopt a policy under RSA 189:15 which prescribes the manner in which the student body shall be informed concerning the content of RSA 193:13 through announced, posted, or printed school rules.

#### **Ed 12012.021. Written policies required.**

- (f) The policies shall be provided annually to the parent, guardian, or legal representative of each child enrolled in or receiving services from the school or provider pursuant to RSA 126-U:2.

## ***In-School Discipline***

### **Use of multi-tiered discipline approaches**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Teacher authority to remove students from classrooms**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Alternatives to suspension**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Use of corporal punishment**

#### **LAWS**

##### **627:6. Physical force by persons with special responsibilities.**

II.

(a) A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.

(b) In a child care program licensed or exempt from licensure under RSA 170-E, necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm.

#### **REGULATIONS**

No relevant regulations found.

## **Use of student and locker searches**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Other in-school disciplinary approaches**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## ***Out-of-School and Exclusionary Discipline: Suspensions, Expulsion, Restraint and Seclusion, and Alternative Placements***

### **Grounds for possible suspension or expulsion**

#### **LAWS**

##### **193:13. Suspension and expulsion of pupils.**

I. (a) The superintendent or chief administering officer, or a representative designated in writing by the superintendent, is authorized to suspend pupils from school for a period not to exceed 10 school days for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school and shall make educational assignments available to the suspended pupil during the period of suspension.

II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in RSA 193-D:1, or for possession of a pellet or BB gun, rifle, or paint ball gun, and the pupil shall not attend school until restored by the local board. [...]

#### **REGULATIONS**

No relevant regulations found.

### **Grounds for mandatory suspension or expulsion**

#### **LAWS**

##### **193:13. Suspension and expulsion of pupils.**

III. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in RSA 193-D:1 without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months.

#### **REGULATIONS**

##### **Ed 317.03. Standard for expulsion by local School board.**

(d) If a pupil brings or possesses a firearm in a safe school zone without written authorization from the superintendent, the following shall apply:

- (1) The superintendent shall suspend the pupil for a period not to exceed 10 days, pending a hearing by the local board; and
- (2) The school board shall hold a hearing within 10 days to determine whether the student was in violation of RSA 193:13, III and therefore is subject to expulsion.

## **Limitations, conditions or exclusions for use of suspension and expulsion**

### **LAWS**

#### **189:9-a. Pupils prohibited for disciplinary reasons.**

Notwithstanding the provisions of RSA 189:6-8, the superintendent, or a representative as designated in writing, is authorized to suspend the right of pupils from riding in a school bus when said pupils fail to conform to the reasonable rules and regulations as may be promulgated by the school board. Any suspension to continue beyond 20 school days must be approved by the school board. Said suspension shall not begin until the next school day following the day notification of suspension is sent to the pupil's parent or legal guardian.

- I. If a pupil has been denied the right to ride a school bus for disciplinary reasons, the parent or guardian of that pupil has a right of appeal within 10 days of suspension to the authority that suspended this pupil's right.
- II. Until the appeal is heard, or if the suspension of pupil's right to ride the school bus is upheld, it shall be the parents' or guardians' responsibility to provide transportation to and from school for that pupil for the period of the suspension.

#### **193:13. Suspension and expulsion of pupils.**

IV. The local school board shall adopt a policy which allows the superintendent or chief administering officer to modify the expulsion requirements set forth in paragraphs II and III on a case by case basis.

### **REGULATIONS**

#### **Ed 317.06. Child with a disability.**

Any suspension or expulsion of a child with a disability as defined in Ed 1102.01(t) shall be in accordance with Ed 1124.01.

## **Administrative procedures related to suspension and expulsion**

### **LAWS**

#### **193:13. Suspension and expulsion of pupils.**

I. (b) The school board or a representative designated in writing of the school board is authorized, following a hearing, to continue the suspension of a pupil for a period in excess of 10 school days. The school board's designee may be the superintendent or any other individual, but may not be the individual who suspended the pupil for the first 10 days under subparagraph (a). Any suspension shall be valid throughout the school districts of the state, subject to modification by the superintendent of the school district in which the pupil seeks to enroll.

(c) Any suspension in excess of 10 school days imposed under subparagraph (b) by any person other than the school board is appealable to the school board, provided that the superintendent received such appeal in writing within 10 days after the issuance of the decision being appealed. The school board shall hold a hearing on the appeal, but shall have discretion to hear evidence or to rely upon the record of a hearing conducted under subparagraph (b). The suspension under subparagraph (b) shall be enforced while that appeal is pending, unless the school board stays the suspension while the appeal is pending.

## REGULATIONS

### **Ed 317.03. Standard for expulsion by local school board.**

(a) A school board which expels a pupil under RSA 193:13, II or III, shall state in writing its reasons including the act leading to expulsion, and shall provide a procedure for review as allowed under RSA 193:13, II.

-(b) School boards shall make certain that the pupil has received notice of the requirements of RSA 193-D and RSA 193:13 through announced, posted, or printed school rules.

### **Ed 317.04. Disciplinary procedures.**

(a) There shall be the following levels of discipline available to school officials enforcing RSA 193:13 relative to the suspension and expulsion of pupils:

- (1) A short-term suspension pursuant to RSA 193:13,I(a) is for a period not to exceed 10 school days;
- (2) A long-term suspension pursuant to RSA 193:13,I(b)-(c) is for more than 10 days;
- (3) An expulsion by the local school board is for a period determined in writing by the board under RSA 193:13, II; and
- (4) An expulsion by the local school board is for a period of not less than 12 months under RSA 193:13, III.

(b) The superintendent or the superintendent's designee shall be authorized to impose a short term suspension.

(c) The school board or its designee shall be authorized to impose a long term suspension, after the imposition of a short-term suspension provided that the designee shall not be the same person who suspended the pupil in (a)(1).

(d) Prior to the imposition of any suspension or expulsion, each school board shall adopt a policy under RSA 189:15 which prescribes the manner in which the student body shall be informed concerning the content of RSA 193:13 through announced, posted, or printed school rules.

(e) If the school and school board have met the requirements of paragraph (d) a pupil appealing a local decision to the state board shall not be allowed to claim lack of knowledge of the state law requiring expulsion for bringing or possessing a firearm or other dangerous weapon as defined in these rules.

(f) Due process in disciplinary proceedings shall include, at a minimum, the following:

(1) In a short-term suspension:

- a. The superintendent or designee shall inform the pupil at the outset of the meeting of the meeting's purpose including the possibility of a short-term suspension;
- b. Oral or written notice of the charges and an explanation of the evidence against the pupil, which may be provided at or before this meeting;
- c. An opportunity for the pupil to present his/her side of the story;
- d. A written statement to the pupil and at least one of the pupil's parents or guardian explaining any disciplinary action taken against the student;

(2) In a long-term suspension of a pupil:

- a. Written communication to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, prior to the hearing, of the charges and an explanation of the evidence against the pupil;
- b. A hearing in accordance with (f )(3)g.;

- c. A written decision which includes the legal and factual basis for the conclusion that the pupil should be suspended;
- d. If the hearing was conducted by the school board's designee, the decision may be appealed to the local school board under RSA 193:13, I; and
- e. If the hearing was conducted by the school board, the decision may be appealed to the state board;

(3) In an expulsion by the local school board, due process shall include the following minimal requirements:

- a. A formal hearing shall be held before any expulsion;
- b. Such hearing may be held either before or after the short-term suspension has expired and pending the expulsion hearing;
- c. If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired and pending the expulsion hearing, unless the student is still serving a long-term suspension;
- d. The school board shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the date, time and place for a hearing before the local board;
- e. The written notice required by d. above shall include:
  - 1. A written statement of the charges and the nature of the evidence against the pupil; and
  - 2. A superintendent's written recommendation for school board action and a description of the process used by the superintendent to reach his/her recommendation;
- f. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardian at least 5 days prior to the hearing;
- g. The following hearing procedures shall apply:
  - 1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges made by the superintendent;
  - 2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;
  - 3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;
  - 4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and
  - 5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses;
- h. The decision of the school board shall be based on a dispassionate and fair consideration of substantial evidence that the accused pupil committed the act for which expulsion is imposed and that such acts are, in fact, a proper reason for expulsion;
- i. The decision shall state whether the student is expelled and the length of the expulsion;
- j. If the decision is to expel the pupil the decision shall include the legal and factual basis for the decision including the specific statutory reference prohibiting that act as listed in RSA 193:13, II;
- k. If the student is expelled, the decision shall state that the expulsion runs until the local school board later reviews it and restores the student's permission to attend school;



- I. The decision shall also state any action the student may take to be restored by the board; and
- m. The decision shall include a statement that the pupil has the right to appeal the decision to the state board of education.

(g) Notwithstanding any other deadline in Ed 200 all appeals to the state board from school board decisions under (f),(2) and (f)(3) shall be filed within 20 calendar days of receipt of the written decision of the local school board and shall be in accordance with RSA 541-A and Ed 200.

## **In-school suspension**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Return to school following removal**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Use of restraint and seclusion**

### **LAWS**

#### **126-U:1. Definitions.**

In this chapter:

I. "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.

II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.

IV. "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 or facility staff members, contractors, or otherwise under the control or direction of a school or facility.

(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.

(d) Restraint shall not include:

(1) 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.

(2) The temporary holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing 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.

(3) 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) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor 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.

V. "School" means:

(a) A school operated by a school district.

(b) A chartered public school governed by RSA 194-B.

(c) A public academy as defined in RSA 194:23, II.

(d) A nonpublic school subject to the approval authority of the state board of education under RSA 186:11, XXIX.

(e) A private or public provider of any component of a child's individualized education program under RSA 186-C.

V-a. "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 shall 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 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.

VI. "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.

**126-U:2. Written policies required.**

Each facility and school shall have a written policy and procedures for managing the behavior of children. Such policy shall describe how and under what circumstances seclusion or restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

**126-U:4. Prohibition of dangerous restraint techniques.**

No school or facility shall use or threaten to use any of the following restraint and behavior control techniques:

- I. 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.
- II. The intentional infliction of pain, including the use of pain inducement to obtain compliance.
- III. 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.
- IV. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

**126-U:5. Limitation of the use of restraint to emergencies only.**

- I. Restraint shall only be used in a school or facility 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. Restraint shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.
- II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

**126-U:5-a. Limitation on the use of seclusion.**

- I. 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 the child or to others, and may only continue until that danger has dissipated.
- II. Seclusion shall only be used by trained personnel after other approaches to the control of 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.
- III. Seclusion shall not be used in a manner that that unnecessarily subjects the child to the risk of ridicule, humiliation, or emotional or physical harm.

**126-U:5-b. Conditions of seclusion.**

- I. When permitted by this chapter, 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.
- (d) Are free of any object that poses a danger to the children being placed in the 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 purposes of this subparagraph, an "emergency" includes, but is not limited to:
  - (1) The need to provide direct and immediate medical attention to a child;
  - (2) Fire;
  - (3) The need to remove a child to a safe location during a building lockdown; or
  - (4) Other critical situations that may require immediate removal of a child from seclusion to a safe location.
- (f) Are equipped with unbreakable observation windows or equivalent devices to allow the safe, direct, and uninterrupted observation of every part of the room.

II. Each use of seclusion shall be directly and continuously visually and auditorially monitored by a person trained in the safe use of seclusion.

**126-U:5-c. Room confinement at the youth development center.**

Notwithstanding any other provision of this chapter, the youth development center may confine children in their rooms when such confinement is part of a routine practice applicable to substantial portions of the population at the center and not imposed as a consequence in response to the behavior of one or more children. Such confinement is not subject to the notice and reporting requirements of RSA 126-U:7.

**126-U:6. Schools limited to physical restraint.**

Use of restraint in schools shall be limited to physical restraint as permitted by this chapter. Schools shall not use medication restraint and shall not use mechanical restraint except as otherwise permitted in the transportation of children pursuant to RSA 126-U:12.

**126-U:7. Notice and record-keeping requirements.**

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event 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 shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

II. A facility employee or school employee who uses seclusion or restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence, submit a written notification containing the following information to the director or his or her designee:

- (a) The date, time, and duration of the use of seclusion or restraint.
- (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 seclusion or restraint, including the justification for initiating the use of restraint.
- (d) The names of the persons involved in the occurrence.
- (e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.

- (f) A description of any interventions used prior to the use of the seclusion or restraint.
- (g) A description of the seclusion or restraint used, including any hold used and the reason the 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 seclusion or restraint.
- (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 incident.
- (k) A description of future actions to be taken to control the child's problem behaviors.
- (l) The name and position of the employee completing the notification.
- (m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility 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.

IV. Whenever a facility or 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 or facility shall make reasonable efforts to promptly notify the child's parent or guardian. Such notification shall 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. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

V. In any case requiring notification under paragraph IV, the school or facility shall, within 5 business days of the occurrence, prepare a written description of the incident. Such description shall include at least the following information:

- (a) The date and time of the incident.
- (b) A brief description of the actions of the child before, during, and after the occurrence.
- (c) The names of the persons involved in the occurrence.
- (d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

VI. The notification and record-keeping requirements of paragraphs IV and V shall not apply in the following circumstances:

- (a) 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 requirements of paragraphs IV and V shall apply.
- (b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.
- (c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the requirements.

(d) When an incident is subject to the requirements of paragraphs I-III.

**126-U:8. Review of restraint records by Department of Education.**

I. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Periodic, regular review by the department of education of records maintained by schools relative to the use of seclusion and restraint.
- (b) A process for the department of education's receipt of complaints and its conduct of investigations of improper use of seclusion and restraint in schools. The process shall provide for:
  - (1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.
  - (2) Investigation by persons not affiliated with the school district which is the subject of the complaint.
  - (3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.
  - (4) Protection of children before and after completion of the investigation.
  - (5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairpersons of the education committees of the senate and house of representatives regarding the use of seclusion and restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

**126-U:10. Injury or death during incidents of restraint or seclusion.**

I. In cases involving serious injury or death to a child subject to restraint or seclusion in a facility, the facility shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126-U:7, II. The department of health and human services shall annually notify facilities of their responsibilities under this section and provide contact information for the persons to be notified.

II. In cases involving serious injury or death to a child subject to restraint or seclusion in a school, the school shall, in addition to the provisions of RSA 126-U:7, notify the commissioner of the department of education, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the written notification required in RSA 126-U:7, II. The department of education shall annually notify schools of their responsibilities under this section and provide contact information for the persons to be notified.

**126-U:11. Authorization and monitoring of extended restraint.**

In a school or facility:

I. 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.

II. Children in restraint shall be the subject of continuous direct observation by personnel trained in the safe use of restraint.

III. No period of restraint of a child may exceed 15 minutes without the approval of the director or a supervisory employee designated by the director to provide such approval.

IV. 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 the facility or school director or by

a supervisory employee designated by the director 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 this chapter. Such assessments shall be repeated at least every 30 minutes during the period of restraint. Each such assessment shall be documented in writing and such records shall be retained by the facility or school as part of the written notification required in RSA 126-U:7, II.

**126-U:12. Restriction of the use of mechanical restraint during the transport of children.**

I. A school or facility shall not use mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary.

II. Whenever a child is transported to a location outside a school or facility, the director shall 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.

III. Whenever a child is transported using mechanical restraints, the director shall document in writing the reasons for the use of mechanical restraints. Such documentation shall be treated as a notification of restraint under RSA 126-U:7.

**126-U:14. 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.

**627:6. Physical force by persons with special responsibilities.**

I. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.

II.

(a) A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.

(b) In a child care program licensed or exempt from licensure under RSA 170-E, necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm.

IV. The justification extended in paragraphs I, II, and III does not apply to the malicious or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain.

**REGULATIONS**

**Ed 1201.01. Definitions.**

(a) "Child" means child as defined in RSA 126-U: 1, I.

- (b) "Improper restraint" and "improper seclusion" means any restraint or seclusion not allowed under RSA 126-U.
- (c) "Restraint" means restraint as defined in RSA 126-U:1, IV.
- (d) "Review of record" means a review of the record at the school, made pursuant to RSA 126-U:7.
- (e) "School" means school as defined by RSA 126-U:1, V.
- (f) "Seclusion" means seclusion as defined in RSA 126-U:1,V-a.
- (g) "Serious injury" means serious injury as defined in RSA 126-U:1,VI.

**Ed 12012.021. Written policies required.**

- (a) Each school shall have written policies for managing the behavior of children pursuant to RSA 126-U: 2 consistent with Ed 306.04(a)(18).
- (b) In addition to the requirements in (a) above, each nonpublic school shall have written policies for managing the behavior of children pursuant to RSA 126-U: 2 consistent with Ed 403.
- (c) In addition to the requirements of (a) above, a private provider of a special education program shall have written policies for managing the behavior of children pursuant to RSA 126-U:2 consistent with Ed 1114.
- (d) The written policies shall include a statement that, pursuant to RSA 126-U:14, the school shall review the individualized education program (IEP) or section 504 plan of a child with a disability following the first use of restraint or seclusion on the child, or upon request of the child's parent or guardian, and make adjustments to the IEP or 504 plan as indicated to reduce the future use of restraint or seclusion.
- (e) The written policies shall include a statement that a school employee has a duty to report a violation of RSA 126-U when that person has reason to believe that the action of another constituted a violation of RSA 126-U and misconduct or suspected misconduct, pursuant to Ed 510.
- (f) The policies shall be provided annually to the parent, guardian, or legal representative of each child enrolled in or receiving services from the school or provider pursuant to RSA 126-U:2.

**Ed 1202.02. Duty to report.**

- (a) Unless prohibited by court order, the superintendent, acting superintendent, superintendent's designee, acting superintendent's designee, or school administrator shall, as soon as possible, verbally notify the parent or guardian whenever seclusion or restraint has been used on a child.
- (b) Within 5 business days of the use of seclusion or restraint, the school employee that used seclusion or restraint shall submit a written notification to the school principal containing the following, pursuant to RSA 126:7, II:
  - (1) The date, time, and duration of the use of seclusion or restraint;
  - (2) A description of the actions of the child before, during, and after the occurrence;
  - (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
  - (4) The names of the persons involved in the occurrence;
  - (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
  - (6) A description of any interventions used prior to the use of the seclusion or restraint;
  - (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;



- (8) 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 seclusion or restraint;
- (9) A description of any property damage associated with the occurrence;
- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;
- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.

(c) The superintendent, acting superintendent, superintendent's designee, acting superintendent's designee, or school administrator shall, as soon as possible, make an oral report of all incidents of restraint and seclusion within the school involving serious injury or death to a child subject to restraint or seclusion to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities, pursuant to RSA 126-U:10, II. Within 5 business days, a written report shall be provided to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities pursuant to RSA 126-U:7.

(d) No school nor any employee, contractor, consultant nor volunteer thereof, shall subject any individual to harassment or retaliation for filing, in good faith, a report under RSA 126-U or these rules.

(e) Schools shall document complaints that they determine do not meet the criteria for a violation of RSA 126-U. This documentation shall include the evidence relied upon. Such documentation shall be maintained and provided to the department of education when it does its review pursuant to RSA 126-U:8.

#### **Ed 1202.02. Review of records.**

(a) The department of education shall review records maintained by schools relative to the use of seclusion and restraint pursuant to RSA 126-U:8 no less than once every 3 years.

(b) When the commissioner decides that a complaint is founded or the commissioner decides that the complaint is unfounded and there are 3 or more previous unfounded complaints, the department of education shall review the records of that school upon the completion of the investigation and annually for a period of 2 years following the most recent complaint.

(c) Pursuant to RSA 126-U:7, II, schools shall maintain the following records:

- (1) The date, time, and duration of the use of seclusion or restraint;
- (2) A description of the actions of the child before, during, and after the occurrence;
- (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
- (4) The names of the persons involved in the occurrence;
- (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
- (6) A description of any interventions used prior to the use of the seclusion or restraint;
- (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;
- (8) 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 seclusion or restraint;
- (9) A description of any property damage associated with the occurrence;

- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;
- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.

**Ed 1203.01. Filing a complaint.**

- (a) Any individual may file a complaint with the commissioner alleging a violation of RSA 126-U.
- (b) When filing a complaint the complainant shall provide the following information to the Commissioner:
  - (1) The date or approximate date of the alleged incident;
  - (2) The location of the alleged incident;
  - (3) The name of the child or children subject to the alleged restraint or seclusion, if known;
  - (4) The name of the school personnel alleged to have restrained or secluded the child, if known;
  - (5) A description of the alleged restraint or seclusion;
  - (6) The date of complaint; and
  - (7) The name of complainant if the complainant is willing to disclose name.
- (c) Complaints may be submitted orally or in written form.
- (d) A complainant may request to keep his or her identity confidential throughout the complaint process. However, if the confidentiality of the complainant interferes with the investigation or the resolution of the complaint, the investigator shall notify the complainant that his or her request for confidentiality interferes with the investigation or resolution of the complaint and will not be maintained. The investigation shall then proceed.

**Ed 1203.02. Review of complaint filed.**

- (a) The commissioner or the commissioner's designee shall provide the information obtained in Ed 1203.01 to the investigator designated by the department of education. The investigator shall not be affiliated with the school or any person involved with the complaint.
- (b) If the complaint is filed by an individual other than a parent or guardian, the investigator shall notify the parent or guardian that a complaint has been filed on behalf of his or her child.
- (c) The commissioner or the commissioner's designee shall review the complaint and shall dismiss the complaint if:
  - (1) The alleged facts, if true, would not constitute a violation of RSA 126:U; or
  - (2) The alleged improper restraint or seclusion did not occur within 12 months of the date of filing of the complaint. However, such a complaint shall not be dismissed if the complainant could not have reasonably discovered the violation within 12 months of the filing of the complaint.
- (d) The department shall conduct investigations to determine if there were or were not violations of RSA 126-U.
- (e) The commissioner or the commissioner's designee will notify the complainant that the complaint has been dismissed and the basis for the dismissal.

**Ed 1203.03. Investigative process.**

- (a) If a complaint is not dismissed, the investigator shall:
  - (1) For cases involving serious injury, determine whether the allegations must be referred to law enforcement for investigation as mandated by RSA 161-F:51, II or 169-C:29;

- (2) Pursuant to (1) above, make reports at any point during the investigation when he or she obtains information that he or she is required to report under RSA 161-F:51 or 169-C:29;
  - (3) Contact such persons and examine such records and other documents as are reasonably necessary to determine whether or not the allegations are true and whether any violation of 126-U occurred;
  - (4) Review findings of facts from other investigative agencies; and
  - (5) Review any and all protective measures for the child that the school has put in place before or after the complaint, and if no protective measures have been put in place, the investigator shall instruct the school to develop a procedure to protect the child.
- (b) Investigations shall not constitute a disciplinary hearing and shall not constitute an allegation of misconduct against an employee by the department of education;
- (c) Once the investigator completes the investigation, the following procedures shall apply:
- (1) The investigator shall file a written report with the commissioner or the commissioner's designee including findings of fact specifying any of the following specific grounds listed in RSA 126-U upon which the findings are based:
    - a. Failure to implement written policy and procedures as required in RSA 126-U;
    - b. Failure to properly notify a parent, guardian, or guardian ad litem in a timely manner, in violation of RSA 126-U:7, IV;
    - c. Retaliation against any individual involved in a complaint or proceeding under this chapter, pursuant to RSA 126-U:8;
    - d. Repeated improper use of restraint, pursuant to RSA 126-U:8;
    - e. Improper use of seclusion as punishment, pursuant to RSA 126-U:5-a, I;
    - f. Restraint by personnel not trained to restrain a child, pursuant to RSA 126-U:5;
    - g. Use of any restraint technique prohibited by RSA 126-U:4;
    - h. Improper use of restraint when other interventions were appropriate, pursuant to RSA 126-U:5;
    - i. Improper use of seclusion or restraint that unnecessarily subjects a child to a risk of ridicule, humiliation, or emotional or physical harm pursuant to RSA 126-U:4, IV and RSA 126-U:5-a;
    - j. Improper seclusion under conditions that do not meet RSA 126-U:5-b;
    - k. Failure to comply with the requirements for authorization and monitoring of extended restraint, pursuant to RSA 126-U:11;
    - l. Failure to comply with the restriction on the use of mechanical restraint during the transport of children, pursuant to RSA 126-U:12; and
    - m. Any other conduct in which a school or school personnel violate RSA 126-U, or this chapter;
    - n. Written statements by any employees who are the subject of the complaint, if the employees choose to provide such statements; and
    - o. A recommendation for further action, if necessary.
- (d) The investigator shall file a report with the commissioner within 30 days of the filing of the complaint. The investigator may request a time extension from the commissioner for good cause shown, including, the coordination of investigations with other agencies or unavailability of a witness. If good cause is shown, the commissioner shall permit a time extension.
- (e) The commissioner shall review the investigator's report and recommendation based on a review of the case in relation to the grounds listed in RSA 126-U to:
- (1) Provide a written decision and recommendations which shall include, if necessary, based on the conclusions of the investigator's report:

- a. Appropriate remedial measures to address physical and other injuries;
  - b. Appropriate remedial measures to address protection against retaliation; and
  - c. Appropriate remedial measures to reduce the incidence of violations of RSA 126-U.
- (2) Identify remedial measures necessary to remedy the problem. Such remedial measure may include but are not limited to:
- a. Training of an individual or a group of school employees;
  - b. Revision of policies and procedures;
  - c. Revision of notice and record keeping practices;
  - d. Compliance with conditions of seclusion per 126-U:5-b; and
  - e. Any other action designed to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of RSA 126-U; and
- (3) The commissioner's decision and recommendations shall be provided to the superintendent, the school administrator, and any employee found to have performed or accused of performing a restraint or using seclusion. The commissioner's decision shall be provided to the child's parent or guardian. Copies of the decision which are provided to the parents, guardians or employees under this subsection shall be redacted as necessary, to comply with federal and state law.
- (f) If the commissioner determines that disciplinary proceedings concerning credentialing are warranted, the commissioner shall notify the director of the division of program support.
- (g) Disclosure of investigatory reports shall be made in compliance with state and federal law.
- (h) In addition to any disclosure required by (e), above, the investigator's report and commissioner's decision shall be disclosed as follows:
- (1) The investigator's report and commissioner's decision shall be made available, upon request, to the parties in any adjudicatory proceeding arising out of the same facts as the complaint alleging violations of RSA 126-U;
  - (2) If disciplinary proceedings are to be conducted as a result of the investigation, the commissioner or the commissioner's designee shall provide information gathered during an investigation to:
    - a. A law enforcement agency when the agency is conducting a criminal investigation related to the subject matter of the investigation;
    - b. A certifying agency of another jurisdiction for:
      - 1. Purposes of certification of the credential holder in another jurisdiction; or
      - 2. An investigation in another jurisdiction, when:
        - (i) The person was the subject of a formal investigation under Ed 1200; or
        - (ii) Disciplinary action was taken against the person by the state board of education under Ed 510;
      - c. Board investigators or prosecutors; and
      - d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; and
  - (4) Whether or not further disciplinary proceedings are to be conducted as a result of the investigation, the board shall provide information gathered in disciplinary investigations to persons to whom the person facing disciplinary proceedings has given a release.
  - (i) Prior to commencement of an adjudicatory proceeding, the person being investigated shall be notified promptly of the nature of any allegations that result in an adjudicatory proceeding under these rules unless notification is prohibited by law or will interfere with a criminal investigation.

(j) If further disciplinary proceedings are to be conducted as a result of an investigation, the person shall be given the opportunity to respond, in writing, to the investigator prior to the initiation of disciplinary proceedings.

## **Alternative placements**

### **LAWS**

#### **193:13. Suspension and expulsion of pupils.**

V. Any pupil expelled by a local school board under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in another school district in New Hampshire for the period of such expulsion. Nothing in this section shall be construed to prevent the local school district that expelled the student from providing educational services to such students in an alternative setting.

### **REGULATIONS**

No relevant regulations found.

## ***Disciplinary Approaches Addressing Specific Infractions and Conditions***

### **Firearms (as required by the Gun-Free Schools Act)**

#### **LAWS**

##### **193:13. Suspension and expulsion of pupils.**

III. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in RSA 193-D:1 without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months.

IV. The local school board shall adopt a policy which allows the superintendent or chief administering officer to modify the expulsion requirements set forth in paragraphs II and III on a case by case basis.

V. Any pupil expelled by a local school board under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in another school district in New Hampshire for the period of such expulsion. Nothing in this section shall be construed to prevent the local school district that expelled the student from providing educational services to such students in an alternative setting.

VI. A pupil expelled from school in another state under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in a school district in New Hampshire for the period of such expulsion.

#### **REGULATIONS**

##### **Ed 317.03. Standard for expulsion by local school board.**

(c) If a student is subject to expulsion and a firearm is involved, the superintendent shall contact local law enforcement officials whenever there is any doubt concerning:

- (1) Whether a firearm is legally licensed under RSA 159; or
- (2) Whether the firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.

(d) If a pupil brings or possesses a firearm in a safe school zone without written authorization from the superintendent, the following shall apply:

- (1) The superintendent shall suspend the pupil for a period not to exceed 10 days, pending a hearing by the local board; and
- (2) The school board shall hold a hearing within 10 days to determine whether the student was in violation of RSA 193:13, III and therefore is subject to expulsion.

### **Other weapons**

#### **LAWS**

##### **193:13. Suspension and expulsion of pupils.**

II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in RSA 193-D:1, or for possession of a pellet or BB gun, rifle, or paint ball gun, and the pupil shall not attend school until restored by the local board. Any expulsion shall be subject to review if requested prior to the start of each school year and further, any parent or guardian has the right to appeal any such

expulsion by the local board to the state board of education. Any expulsion shall be valid throughout the school districts of the state.

## **REGULATIONS**

No relevant regulations found.

## **Students with chronic disciplinary issues**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## **Attendance and truancy**

### **LAWS**

#### **186:11. Duties of State Board of Education.**

The state board of education shall, in addition to the duties assigned by RSA 21-N:11:

XV. Truant Officers. Report frequently to the chairman of the several school boards the relative efficiency of the several truant officers in the state.

XVIII. School Attendance. Enforce the laws relative to school attendance and the employment of minors; and for this purpose the board and its deputies are vested with the power given by law to truant officers.

XXXVII. School Resource Officers. Require each school district in the state to which a school resource officer is assigned to develop and implement a policy which shall include, at a minimum, a requirement for a signed memorandum of understanding between the school district and the law enforcement agency from which the school resource officer is deployed.

#### **189:34. Truant officer appointment.**

I. School boards shall appoint truant officers for their districts.

II. School board policies on truancy shall include but not be limited to:

(a) A definition of "excused absence" and a process for considering exceptions to absences not otherwise excused.

(b) A process for intervention designed to address individual cases of truancy as quickly as possible and to reduce the number of habitual truants in the school district. The process shall consider whether school record keeping practices and notification provided to parents or guardians of the child's absences have an effect on the child's attendance. The board shall provide for the participation of parents in the development of the policy. The policy shall include early parental involvement in the intervention process. The policy shall also designate an employee in each school as the person responsible for truancy issues.

#### **189:36. Truant officer duties.**

I. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h); and the laws relating to the attendance at school of

children between the ages of 6 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor. No home school pupil nor any person between the ages of 6 and 18 who meets any of the requirements of RSA 193:1, I(c)-(h) shall be deemed a truant.

II. A truant officer or school official shall not file a petition alleging that the child is in need of services pursuant to RSA 169-D:2, II until all steps in the school district's intervention process under RSA 189:34, II have been followed.

#### **193:15. Penalty for unauthorized attendance, etc.**

Any pupil who, after notice, attends or visits a school which the pupil has no right to attend, or interrupts or disturbs such school, shall for the first offense be guilty of a violation, and shall for any subsequent offense be guilty of a misdemeanor.

#### **193:16. Bylaws as to nonattendance.**

Districts may make bylaws, not repugnant to law, concerning habitual truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h), and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

### **REGULATIONS**

No relevant regulations found.

## **Substance use**

### **LAWS**

#### **193-B:1. Definitions.**

I. "Controlled drug or its analog" means those drugs or substances included within the definitions provided in RSA 318-B:1, VI and VI-a.

II. "Drug-free school zone" means an area inclusive of any property used for school purposes by any school, whether or not owned by such school, within 1,000 feet of any such property, and within or immediately adjacent to school buses.

III. "School" means any public or private elementary, secondary, or secondary vocational-technical school or Head Start facility in New Hampshire.

IV. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

#### **193-B:2. Drug-Free school zones.**

Except as otherwise provided by law, it shall be unlawful for any person to manufacture, sell, prescribe, administer, dispense, or possess with intent to sell, dispense, or compound any controlled drug or its analog, within a drug-free school zone at any time of the year.

#### **193-B:3. Maps of drug-free zones; Exemption.**

I. Each school administrative unit within the state shall, in consultation with the local police authority having jurisdiction over drug enforcement where each drug-free zone is located, publish a map clearly indicating the boundaries of each permanent drug-free school zone in accordance with the provisions of



RSA 193-B:1, II. Such map shall be posted in a prominent place in the district or municipal court of jurisdiction, the local police department, and in all schools existing in the drug-free school zone.

II. The mapping requirements under paragraph I shall not apply to Head Start facilities.

**193-B:4. Rulemaking; Notice; Posting.**

The state board of education, in consultation with the New Hampshire Police Chiefs' Association, shall adopt rules pursuant to RSA 541-A relative to

I. Developing a procedure by which to mark drug-free zones, including the use of signs or other markings as appropriate. Such signs or other markings shall:

(a) Be posted in a prominent place:

(1) On or near each school;

(2) In each school bus; and

(3) On or near non-school-owned property serving as a temporary drug-free zone by virtue of its use for the school's instructional program, for the duration of such use;

(b) Indicate that the posted area is a drug-free zone which extends to 1,000 feet surrounding such property; and

(c) Warn that violation of this chapter shall subject the offender to severe penalties under the law.

II. Assisting each school administrative unit in providing for the posting required in this section.

**193-B:5. Toll-Free hotline; Rulemaking; Local hotlines; Notice.**

I. There is hereby established a toll-free statewide hotline for the purpose of reporting anonymous information on drug activity to local law enforcement agencies. The department of safety shall coordinate and adopt rules pursuant to RSA 541-A for the establishment and operation of the hotline.

II. The toll-free statewide telephone number established under paragraph I shall be displayed in the drug-free zone signs developed and posted pursuant to RSA 193-B:4, I. If a local police hotline telephone exists in a community, such telephone number shall be posted on relevant signs in lieu of the toll-free statewide telephone number.

**193-B:6. Penalties.**

I. It shall be a violation for any person to cover, remove, deface, alter or destroy any sign or other marking identifying a drug-free zone as provided in RSA 193-B:4, I.

II. Lack of knowledge that the prohibited act as defined in RSA 193-B:2 occurred on or within 1,000 feet of school property shall not be a defense.

III. A violation of RSA 193-B:2 shall not include an act which occurs entirely within a private residence wherein no person 17 years of age or under is present.

**193-B:7. Penalty assessment.**

In addition to the penalties imposed under RSA 193-B:6, I and RSA 318-B:26, V, every court shall levy a penalty assessment of \$100 for an offense in violation of RSA 193-B:2. The clerk of each court shall collect all penalty assessments and, notwithstanding RSA 6:11, shall transmit the amount collected to the general fund.

**REGULATIONS**

No relevant regulations found.

# Bullying, harassment, or hazing

## LAWS

### 193-F:1. Title.

**This chapter shall be known, and may be cited as the "Pupil Safety and Violence Prevention Act of 2000."****193-F:2. Purpose and intent.**

I. All pupils have the right to attend public schools, including chartered public schools, that are safe, secure, and peaceful environments. One of the legislature's highest priorities is to protect our children from physical, emotional, and psychological violence by addressing the harm caused by bullying and cyberbullying in our public schools.

II. Bullying in schools has historically included actions shown to be motivated by a pupil's actual or perceived race, color, religion, national origin, ancestry or ethnicity, sexual orientation, socioeconomic status, age, physical, mental, emotional, or learning disability, gender, gender identity and expression, obesity, or other distinguishing personal characteristics, or based on association with any person identified in any of the above categories.

III. It is the intent of the legislature to protect our children from physical, emotional, and psychological violence by addressing bullying and cyberbullying of any kind in our public schools, for all of the historical reasons set forth in this section, and to prevent the creation of a hostile educational environment.

IV. The sole purpose of this chapter is to protect all children from bullying and cyberbullying, and no other legislative purpose is intended, nor should any other intent be construed from the enactment of this chapter.

### 193-F:3. Definitions.

In this chapter:

I. (a) "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:

- (1) Physically harms a pupil or damages the pupil's property;
- (2) Causes emotional distress to a pupil;
- (3) Interferes with a pupil's educational opportunities;
- (4) Creates a hostile educational environment; or
- (5) Substantially disrupts the orderly operation of the school.

(b) "Bullying" shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.

II. "Cyberbullying" means conduct defined in paragraph I of this section undertaken through the use of electronic devices.

II. "Electronic devices" include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

IV. "Perpetrator" means a pupil who engages in bullying or cyberbullying.

V. "School property" means all real property and all physical plant and equipment used for school purposes, including public or private school buses or vans.

VI. "Victim" means a pupil against whom bullying or cyberbullying has been perpetrated.

**193-F:4. Pupil safety and violence prevention.**

I. Bullying or cyberbullying shall occur when an action or communication as defined in RSA 193-F:3:

- (a) Occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or
- (b) Occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a pupil's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event.

II. The school board of each school district and the board of trustees of a chartered public school shall, no later than 6 months after the effective date of this section, adopt a written policy prohibiting bullying and cyberbullying. Such policy shall include the definitions set forth in RSA 193-F:3. The policy shall contain, at a minimum, the following components:

- (a) A statement prohibiting bullying or cyberbullying of a pupil.
- (b) A statement prohibiting retaliation or false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying and, at the time a report is made, a process for developing, as needed, a plan to protect pupils from retaliation.
- (c) A requirement that all pupils are protected regardless of their status under the law.
- (d) A statement that there shall be disciplinary consequences or interventions, or both, for a pupil who commits an act of bullying or cyberbullying, or falsely accuses another of the same as a means of retaliation or reprisal.
- (e) A statement indicating how the policy shall be made known to school employees, regular school volunteers, pupils, parents, legal guardians, or employees of a company under contract to a school, school district, or chartered public school. Recommended methods of communication include, but are not limited to, handbooks, websites, newsletters, and workshops.
- (f) A procedure for reporting bullying or cyberbullying that identifies all persons to whom a pupil or another person may report bullying or cyberbullying.
- (g) A procedure outlining the internal reporting requirements within the school or school district or chartered public school.
- (h) A procedure for notification, within 48 hours of the incident report, to the parent or parents or guardian of a victim of bullying or cyberbullying and the parent or parents or guardian of the perpetrator of the bullying or cyberbullying. The content of the notification shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.
- (i) A provision that the superintendent or designee may, within the 48-hour period, grant the school principal or designee a waiver from the notification requirement if the superintendent or designee deems such waiver to be in the best interest of the victim or perpetrator. Any such waiver granted shall be in writing. Granting of a waiver shall not negate the school's responsibility to adhere to the remainder of its approved written policy.
- (j) A written procedure for investigation of reports, to be initiated within 5 school days of the reported incident, identifying either the principal or the principal's designee as the person responsible for the investigation and the manner and time period in which the results of the investigation shall be documented. The superintendent or designee may grant in writing an extension of the time period for the investigation and documentation of reports for up to an additional 7 school days, if necessary. The superintendent or superintendent's designee shall notify in writing all parties involved of the granting of an extension.
- (k) A requirement that the principal or designee develop a response to remediate any substantiated incident of bullying or cyberbullying, including imposing discipline if appropriate, to reduce the risk of

future incidents and, where deemed appropriate, to offer assistance to the victim or perpetrator. When indicated, the principal or designee shall recommend a strategy for protecting all pupils from retaliation of any kind.

(l) A requirement that the principal or designee report all substantiated incidents of bullying or cyberbullying to the superintendent or designee.

(m) A written procedure for communication with the parent or parents or guardian of victims and perpetrators regarding the school's remedies and assistance, within the boundaries of applicable state and federal law. This communication shall occur within 10 school days of completion of the investigation.

(n) Identification, by job title, of school officials responsible for ensuring that the policy is implemented.

III. The department of education may develop a model policy in accordance with the requirements set forth in this chapter which may be used by schools, school districts, and chartered public schools as a basis for adopting a local policy.

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

#### **193-F:5. Training and assessment.**

I. Each school district and chartered public school shall provide:

(a) Training on policies adopted pursuant to this chapter, within 9 months of the effective date of this section and annually thereafter, for school employees, regular school volunteers, or employees of a company under contract to a school, school district, or chartered public school who have significant contact with pupils for the purpose of preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying; and

(b) Educational programs for pupils and parents in preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying. Any such program for pupils shall be written and presented in age appropriate language.

II. The department of education shall provide evidence-based educational programs to support training as required under paragraph I.

III. Nothing in this chapter shall require the inclusion of any specific curriculum, textbook, or other material designed to prevent bullying or cyberbullying in any program or activity conducted by an educational institution. The omission of such subject matter from any curriculum, textbook, or other material in any program or activity conducted by an educational institution shall not constitute a violation of this chapter.

#### **193-F:6. Reporting.**

I. Each school district and chartered public school shall annually report substantiated incidents of bullying or cyberbullying to the department of education. Pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, such reports shall not contain any personally identifiable information pertaining to any pupil. The department shall develop a form to facilitate the reporting by school districts and chartered public schools. The department shall maintain records of such reports.

II. The department of education shall prepare an annual report of substantiated incidents of bullying or cyberbullying in the schools. The report shall include the number and types of such incidents in the schools and shall be submitted to the president of the senate, the speaker of the house of

representatives, and the chairpersons of the house and senate education committees. The department of education shall assist school districts with recommendations for appropriate actions to address identified problems with pupil safety and violence prevention.

**193-F:7. Immunity.**

A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

**193-F:8. School district discrimination or harassment policies.**

A school district or chartered public school may establish separate discrimination or harassment policies that include categories of pupils, and nothing in this chapter shall prevent a school district or chartered public school from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state, or federal law.

**193-F:9 Private right of action not permitted.**

Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law, including criminal law, nor shall this chapter create a private right of action for enforcement of this chapter against any school district or chartered public school, or the state.

**193-F:10 Public academies.**

The provisions of this chapter shall apply to public academies as defined in RSA 194:23.

**631:7. Student hazing.**

II. (a) A natural person is guilty of a class B misdemeanor if such person:

- (1) Knowingly participates as actor in any student hazing; or
- (2) Being a student, knowingly submits to hazing and fails to report such hazing to law enforcement or educational institution authorities; or
- (3) Is present at or otherwise has direct knowledge of any student hazing and fails to report such hazing to law enforcement or educational institution authorities.

(b) An educational institution or an organization operating at or in conjunction with an educational institution is guilty of a misdemeanor if it:

- (1) Knowingly permits or condones student hazing; or
- (2) Knowingly or negligently fails to take reasonable measures within the scope of its authority to prevent student hazing; or
- (3) Fails to report to law enforcement authorities any hazing reported to it by others or of which it otherwise has knowledge. [...]

For definitions related to hazing see, RSA 631:7 (2013), (I).

**REGULATIONS**

No relevant regulations found.

## Other special infractions or conditions

### LAWS

#### **193-D:3. Criminal penalties.**

Any person convicted of an act of theft, destruction, or violence as defined in RSA 193-D:1 committed in a safe school zone at any time of year may be subject to an extended term of imprisonment as provided in RSA 651:6.

#### **193-D:1. Definitions**

I. "Act of theft, destruction, or violence" means an act set forth in the following statutes regardless of the age of the perpetrator:

- (a) Homicide under RSA 630.
- (b)(1) Any first or second degree assault under RSA 631.
- (2) Any simple assault under RSA 631:2-a.
- (c) Any felonious or aggravated felonious sexual assault under RSA 632-A.
- (d) Criminal mischief under RSA 634:2.
- (e) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.
- (f) Arson under RSA 634:1.
- (g) Burglary under RSA 635.
- (h) Robbery under RSA 636.
- (i) Theft under RSA 637.
- (j) Illegal sale or possession of a controlled drug under RSA 318-B.
- (k) Criminal threatening under RSA 631:4.

### REGULATIONS

No relevant regulations found.

## ***Prevention and Behavioral Interventions (Non-Punitive)***

### **Prevention**

#### **LAWS**

##### **186:11. Duties of State Board of Education.**

The state board of education shall, in addition to the duties assigned by RSA 21-N:11:

IX. Instruction as to Child Abuse Prevention, Youth Suicide Prevention, Intoxicants, Drugs, HIV/AIDS, and Sexually Transmitted Diseases.

- (a) Direct the department to develop academic standards to serve as a guide and reference in health, physiology, and hygiene as they relate to the effects of alcohol and other drugs, child abuse, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system, and which are designed to help students lead longer, healthier lives.
- (b) Provide information about HIV/AIDS to all public and private schools to facilitate the delivery of appropriate courses and programs.
- (c) Review HIV/AIDS curriculum materials to assure relevancy in assisting students to become health-literate citizens and lead longer, healthier lives.
- (d) Provide information about youth suicide prevention to all public and private schools to facilitate the delivery of appropriate courses and programs.
- (e) Submit a report no later than December 1, 2010, and biennially thereafter, prepared in conjunction with the commissioner of the department of education, to the chairpersons of the house and senate education committees, the house health, human services and elderly affairs committee, and the senate health and human services committee, detailing the state's efforts in fulfilling the policies relating to health education in kindergarten through grade 12 as set forth in subparagraphs (a)-(d).

##### **189:11-d. Drug and alcohol education.**

- I. Each public school in the state, as part of the school board-approved kindergarten through grade 12 health education program, shall provide age and developmentally appropriate drug and alcohol education to pupils based upon the needs of the pupils and the community. The school board may authorize the use of an evidence-based prevention program.
- II. School boards shall develop policies authorizing school district personnel to provide pupils, parents, and legal guardians with information and resources relative to existing drug and alcohol counseling and treatment for pupils. Nothing in this section shall require a school district to add additional programs or services, but only to provide information about available programs and services.

#### **REGULATIONS**

No relevant regulations found.

### **Behavioral interventions and student support services**

#### **LAWS**

##### **189:11-d. Drug and alcohol education.**

- I. Each public school in the state, as part of the school board-approved kindergarten through grade 12 health education program, shall provide age and developmentally appropriate drug and alcohol education

to pupils based upon the needs of the pupils and the community. The school board may authorize the use of an evidence-based prevention program.

II. School boards shall develop policies authorizing school district personnel to provide pupils, parents, and legal guardians with information and resources relative to existing drug and alcohol counseling and treatment for pupils. Nothing in this section shall require a school district to add additional programs or services, but only to provide information about available programs and services.

## **REGULATIONS**

No relevant regulations found.

## **Professional development**

### **LAWS**

#### **193-F:5. Training and assessment.**

I. Each school district and chartered public school shall provide:

(a) Training on policies adopted pursuant to this chapter, within 9 months of the effective date of this section and annually thereafter, for school employees, regular school volunteers, or employees of a company under contract to a school, school district, or chartered public school who have significant contact with pupils for the purpose of preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying; and

(b) Educational programs for pupils and parents in preventing, identifying, responding to, and reporting incidents of bullying or cyberbullying. Any such program for pupils shall be written and presented in age appropriate language.

II. The department of education shall provide evidence-based educational programs to support training as required under paragraph I.

III. Nothing in this chapter shall require the inclusion of any specific curriculum, textbook, or other material designed to prevent bullying or cyberbullying in any program or activity conducted by an educational institution. The omission of such subject matter from any curriculum, textbook, or other material in any program or activity conducted by an educational institution shall not constitute a violation of this chapter.

## **REGULATIONS**

No relevant regulations found.



## ***Monitoring and Accountability***

### **Formal incident reporting of conduct violations**

#### **LAWS**

##### **126-U:7. Notice and record-keeping requirements.**

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event 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 shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

II. A facility employee or school employee who uses seclusion or restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence, submit a written notification containing the following information to the director or his or her designee:

- (a) The date, time, and duration of the use of seclusion or restraint.
- (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 seclusion or restraint, including the justification for initiating the use of restraint.
- (d) The names of the persons involved in the occurrence.
- (e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (f) A description of any interventions used prior to the use of the seclusion or restraint.
- (g) A description of the seclusion or restraint used, including any hold used and the reason the 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 seclusion or restraint.
- (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 incident.
- (k) A description of future actions to be taken to control the child's problem behaviors.
- (l) The name and position of the employee completing the notification.
- (m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility 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.

IV. Whenever a facility or 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 or facility shall make reasonable efforts to promptly notify the child's parent or guardian. Such notification

shall 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. Notification shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

V. In any case requiring notification under paragraph IV, the school or facility shall, within 5 business days of the occurrence, prepare a written description of the incident. Such description shall include at least the following information:

- (a) The date and time of the incident.
- (b) A brief description of the actions of the child before, during, and after the occurrence.
- (c) The names of the persons involved in the occurrence.
- (d) A brief description of the actions of the facility or school employees involved before, during, and after the occurrence.
- (e) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the incident.

VI. The notification and record-keeping requirements of paragraphs IV and V shall not apply in the following circumstances:

- (a) 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 requirements of paragraphs IV and V shall apply.
- (b) When actions are taken such as separating children from each other, inducing a child to stand, or otherwise physically preparing a child to be escorted.
- (c) When the contact with the child is incidental or minor, such as for the purpose of gaining a misbehaving child's attention. However, blocking of a blow, forcible release from a grasp, or other significant and intentional physical contact with a disruptive or assaultive child shall be subject to the requirements.
- (d) When an incident is subject to the requirements of paragraphs I-III.

**193-D:4. Written report required.**

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

(c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of RSA 193-D:4, I(a)-(c).

II. The report required under paragraph I shall include:

- (a) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.
- (b) The name and home address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.

(c) Identification of the act of theft, destruction, or violence as defined in RSA 193-D:1 that was allegedly committed.

**193-F:6. Reporting.**

I. Each school district and chartered public school shall annually report substantiated incidents of bullying or cyberbullying to the department of education. Pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, such reports shall not contain any personally identifiable information pertaining to any pupil. The department shall develop a form to facilitate the reporting by school districts and chartered public schools. The department shall maintain records of such reports.

II. The department of education shall prepare an annual report of substantiated incidents of bullying or cyberbullying in the schools. The report shall include the number and types of such incidents in the schools and shall be submitted to the president of the senate, the speaker of the house of representatives, and the chairpersons of the house and senate education committees. The department of education shall assist school districts with recommendations for appropriate actions to address identified problems with pupil safety and violence prevention.

**REGULATIONS**

**Ed 317.03. Standard for expulsion by local school board.**

(c) If a student is subject to expulsion and a firearm is involved, the superintendent shall contact local law enforcement officials whenever there is any doubt concerning:

- (1) Whether a firearm is legally licensed under RSA 159; or
- (2) Whether the firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.

**Ed 1202.02. Duty to report.**

(b) Within 5 business days of the use of seclusion or restraint, the school employee that used seclusion or restraint shall submit a written notification to the school principal containing the following, pursuant to RSA 126:7, II:

- (1) The date, time, and duration of the use of seclusion or restraint;
- (2) A description of the actions of the child before, during, and after the occurrence;
- (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
- (4) The names of the persons involved in the occurrence;
- (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
- (6) A description of any interventions used prior to the use of the seclusion or restraint;
- (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;
- (8) 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 seclusion or restraint;
- (9) A description of any property damage associated with the occurrence;
- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;

- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.

## Parental notification

### LAWS

#### **126-U:7. Notice and record-keeping requirements.**

I. Unless prohibited by court order, the facility or school shall, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever seclusion or restraint has been used on the child. Such notification shall be made as soon as practicable and in no event 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 shall be made in a manner calculated to give the parent or guardian actual notice of the incident at the earliest practicable time.

#### **193-D:4. Written report required.**

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

(b) The provisions of subparagraph (a) shall not apply to any simple assault involving pupils in kindergarten through grade 12 if the local school board has adopted a discipline policy which sets forth circumstances under which parents shall be notified of simple assaults.

### REGULATIONS

#### **Ed 317.04. Disciplinary procedures.**

(f) Due process in disciplinary proceedings shall include, at a minimum, the following:

(1) In a short-term suspension:[...]

[...]d. A written statement to the pupil and at least one of the pupil's parents or guardian explaining any disciplinary action taken against the student;

(2) In a long-term suspension of a pupil:[...]

a. Written communication to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the charges and an explanation of the evidence against the pupil;[...]

(3) In an expulsion by the local school board, due process shall include the following minimal requirements:[...]

[...]d. The school board shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the date, time and place for a hearing before the local board;

e. The written notice required by d. above shall include:

- 1. A written statement of the charges and the nature of the evidence against the pupil; and

2. A superintendent's written recommendation for school board action and a description of the process used by the superintendent to reach his/her recommendation;
- f. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardian at least 5 days prior to the hearing;
- g. The following hearing procedures shall apply:
  1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges made by the superintendent;
  2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;
  3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;
  4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and
  5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses;[...]

**Ed 1202.02. Duty to report.**

(a) Unless prohibited by court order, the superintendent, acting superintendent, superintendent's designee, acting superintendent's designee, or school administrator shall, as soon as possible, verbally notify the parent or guardian whenever seclusion or restraint has been used on a child.

## **Reporting and referrals between schools and law enforcement**

### **LAWS**

**169-B:2. Definitions.**

In this chapter:

- I. "Adult lock-up or jail" means a locked facility, used primarily to house adults charged with or convicted of violating criminal law. This includes police lock-ups, county correctional facilities, and any facility used by county sheriffs, state police, or local police to securely detain adult offenders and accused offenders.
- II. "Alternative to secure detention" means any local program, approved by the court, police, probation, or the department of health and human services, which offers a less restrictive alternative to secure detention for minors. Such programs include, but are not limited to, youth attender, crisis home placement, group homes which have entered into agreements with the department of health and human services to provide such care, truant and runaway programs, and alcohol and drug detoxification programs.
- III. "Court" means the district court, unless otherwise indicated.
  - III-a. "Custody" means a legal status created by court order wherein the department of health and human services has placement and care responsibility for the minor.
- IV. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, or which is a violation of RSA 318-B:2-c, II or III, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

IV-a. "Diversion" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the juvenile in the formal legal system. Diversion of a juvenile may take place either at prefiling as an alternative to the filing of a petition, or at arraignment.

IV-b. "Court approved diversion program" means a program that has been approved by the administrative judge of the judicial branch family division and has been approved to accept court referrals. An approved diversion program is a community based alternative to the formal court process that integrates restorative justice practices, promotes positive youth development, and reduces juvenile crime and recidivism.

IV-c. "Intervention" means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of intervention is to prevent further involvement of the juvenile in the formal legal system. Intervention for a juvenile may take place either at the adjudicatory or dispositional level.

V. "Detention" means the care of a minor in physically restricted facilities and shall not include placement at residential treatment or evaluation facilities, staff-secure shelter facilities, or foster care homes.

V-a. "Home detention" means court-ordered confinement of a minor with the parents or other specified home for 24 hours a day unless otherwise prescribed by written court order, under which the minor is permitted out of the residence only at such hours and in the company of persons specified in the court order establishing the home detention.

VI. "Minor" means a person under the age of 18.

VII. "Non-secure detention" means the care of a minor in a facility where physical restriction of movement or activity is provided solely through facility staff.

VIII. "Conditional release" means a legal status created by court order following an adjudication that a minor is delinquent and shall be permitted to remain in the community, including the minor's home, subject to:

- (a) The conditions and limitations of the minor's conduct prescribed by the court;
- (b) Such counselling and treatment as deemed necessary, pursuant to methods and conditions prescribed by the court, for the minor and family;
- (c) The supervision of a juvenile probation and parole officer, as authorized by RSA 170-G:16; and
- (d) Return to the court for violation of conditions of the release and change of disposition at any time during the term of conditional release.

IX. "Restitution" means moneys, compensation, work, or service which is reimbursed by the offender to the victim who suffered personal injury or economic loss.

X. "Concurrent plan" means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

XI. "Out-of-home placement" means when a minor, as the result of a delinquent petition, is removed from a biological parent, adoptive parent, or legal guardian of the minor and placed in substitute care with someone other than a biological parent, adoptive parent, or legal guardian. Such substitute care may

include placement with a custodian, guardian, relative, friend, group home, crisis home, shelter care, or a foster home.

XII. "Permanency hearing" means a court hearing for a minor in an out-of-home placement to review, modify, and/or implement the permanency plan or adopt the concurrent plan.

XIII. "Permanency plan" means a plan for a minor in an out-of-home placement that is adopted by the court and that provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

XIV. "Serious threats to school safety" means acts involving weapons; acts involving the possession, sale, or distribution of controlled substances; acts that cause serious bodily injury to other students or school employees; threats to cause bodily injury to students or school employees, where there is a reasonable probability that such threats will be carried out; acts that constitute felonious sexual assault or aggravated felonious sexual assault under RSA 632-A; arson under RSA 634:1; robbery under RSA 636:1; and criminal mischief under RSA 634:2, II and RSA 634:2, II-a.

XV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

#### **169-B:6. Petition.**

I. Any person may file a petition, alleging the delinquency of a minor, with a judge or clerk of the court in the judicial district in which the minor is found or resides or where the offense is alleged to have occurred. The petition shall be in writing and verified under oath. The following notice shall be printed on the front of the petition in bold in no smaller than 14 point font size: "See back for important information and financial obligations." The back of the petition shall include a notice of liability for parents and other individuals chargeable by law for the child's support and necessities.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner, and place of the conduct alleged and shall state the statutory provision alleged to have been violated, and shall be entitled, "In the interest of \_\_\_\_\_, a minor."

III. Absent serious threats to school safety, when a delinquency petition is filed by a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or when a petition is filed by a local police department as a result of a report made by a school official or school resource officer, based upon acts committed on school grounds during the school day, information shall be included in the petition which shows that the legally liable school district has sought to resolve the expressed problem through available educational approaches, including the school discipline process, if appropriate, that the school has sought to engage the parents or guardian in solving the problem but they have been unwilling or unable to do so, that the minor has not responded to such approaches and continues to engage in delinquent behavior, and that court intervention is needed.

IV. When a school official, including a school resource officer assigned to a school district pursuant to a contract agreement with the local police department, or a local police department as a result of a report made by a school official or school resource officer, files a petition involving a minor with a disability pursuant to RSA 186-C, upon submission of a juvenile petition, but prior to the child's initial appearance, the legally liable school district shall provide assurance that prior to its filing:

(a) It was determined whether or not the child is a child with a disability according to RSA 186-C:2, I.

(b) If the school district has determined that the child is a child with a disability, a manifestation review pursuant to 20 U.S.C. section 1415(k)(1)(E) occurred.

(c) If the child's conduct was determined to be a manifestation of the child's disability, the school district followed the process set forth in 20 U.S.C. section 1415(k)(1)(F).

(d) It has reviewed for appropriateness the minor's current individualized education program (IEP), behavior intervention plan, and placement, and has made modifications where appropriate.

**193-D:4. Written report required.**

I. (a) Any public or private school employee who has witnessed or who has information from the victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing. If the alleged victim is a student, the principal shall also immediately notify the person responsible for the victim's welfare, as defined in RSA 169-C:3, XXII, that a report was made to the local law enforcement authority.

**193-D:7. Confidentiality.**

Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169-D or a child in need of protection under RSA 169-C.

**193-D:8. Transfer records; Notice.**

All elementary and secondary educational institutions, including academies, private schools, and public schools, shall upon request of the parent, pupil, or former pupil, furnish a complete school record for the pupil transferring into a new school system. Such record shall include, but not be limited to, records relating to any incidents involving suspension or expulsion, or delinquent or criminal acts, or any incident reports in which the pupil was charged with any act of theft, destruction, or violence in a safe school zone.

**REGULATIONS**

**Ed 317.03. Standard for expulsion by local school board.**

(c) If a student is subject to expulsion and a firearm is involved, the superintendent shall contact local law enforcement officials whenever there is any doubt concerning:

- (1) Whether a firearm is legally licensed under RSA 159; or
- (2) Whether the firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.

**Ed 317.05. Reporting procedures.**

(a) In accordance with RSA 193-D:4, each written report by a supervisor to the principal relating to an act of theft, destruction, or violence in a safe school zone shall be on standardized form #Ed 317.

(b) The report by a supervisor to a principal on Form #Ed 317 shall contain all the statutory information required by RSA 193-D:4.

(c) Form #Ed 317 shall be completed and filed with the local law enforcement authority within 48 hours of such incident.



(e) A school district reporting a crime committed by a child with a disability shall ensure that copies of the relevant portions of the special education and disciplinary records of the child are made available in a manner that protects the privacy of student records for consideration by the appropriate authorities to whom it reports the crime.

(f) A school district shall complete and file Form Ed 317-Fed, Report on Students Disciplined Under the Gun Free School Act of 1994, with the commissioner on or before June 30 of each year.

## **Disclosure of school records**

### **LAWS**

#### **189:49-a. Fingerprinting program.**

IV. A principal or chief administrative officer of a public school, or any employee of a public school who is authorized to handle school records, shall provide access to the relevant records of a student to a law enforcement officer who indicates that an investigation is being conducted by such officer and that the student is or may be a missing child. Copies of information in the relevant records of a student shall be provided, upon request, to the law enforcement officer, if prior approval is given by the student's parent, guardian, or legal custodian. Information obtained by the officer shall be used solely in the investigation of the case. The information may be used by law enforcement agency personnel in any manner that is appropriate to solving the case, including, but not limited to, providing the information to other law enforcement officers and agencies and to the office of the attorney general, division of public protection, bureau of criminal justice, for purposes of computer integration pursuant to RSA 7:10-a.

#### **189:65. Definitions.**

In this subdivision:

I. "Biometric" means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

II. "Board" means the state board of education.

III. "Department" means the department of education.

IV. "District", "school", or "school district" means a school district, including the school administrative unit to which it may belong, and the high school educational program at the state prison or county jail in which an inmate under the age of 21 is participating.

V. "Disclosure" means permitting access to, revealing, releasing, transferring, or otherwise communicating, personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic.

VI. "Statewide longitudinal data system" (SLDS) means the department's statewide longitudinal data system containing student information collected pursuant to RSA 193-E:5 and the state longitudinal database created to house data pursuant to RSA 193-E:5.

VII. "Student personally-identifiable data" means:

(a) The student's name.

(b) The name of the student's parents or other family members.

(c) The address of the student or student's family.

(d) Indirect identifiers, including the student's date of birth, place of birth, social security number, email, social media address, or other electronic address, telephone number, credit card account number, insurance account number, and financial services account number.

(e) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

VII-a. "Teacher personally-identifiable data" or "teacher data," which shall apply to teachers, paraprofessionals, principals, school employees, contractors, and other administrators, means:

(a) Social security number.

(b) Date of birth.

(c) Personal street address.

(d) Personal email address.

(e) Personal telephone number.

(f) Performance evaluations.

(g) Other information that, alone or in combination, is linked or linkable to a specific teacher, paraprofessional, principal, or administrator that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify any with reasonable certainty.

(h) Information requested by a person who the department reasonably believes or knows the identity of the teacher, paraprofessional, principal, or administrator to whom the education record relates.

VIII. "Testing entity" means a third party, within or outside of New Hampshire, contracted to administer the state assessment as defined in RSA 193-C:6.

IX. "Workforce information" means information related to unemployment insurance, wage records, unemployment benefit claims, or employment and earnings data from workforce data sources, such as state wage records, wage record interchange system (WRIS) data or the federal employment data exchange system (FEDES).

**189:66. Data inventory and policies publication.**

I. The department shall create, maintain, and make publicly available an annually-updated index of data elements containing definitions of individual student personally-identifiable data fields or fields identified in RSA 189:68 currently in the SLDS or any other database maintained by the department, or added or proposed to be added thereto, including:

(a) Any individual student personally-identifiable data required to be reported by state or federal law.

(b) Any individual student personally-identifiable data which has been proposed for inclusion in the SLDS with a statement explaining the purpose or reason for the proposed collection.

(c) Any individual student personally-identifiable data that the department collects or maintains.

(d) Any data identified in RSA 189:68.

II. The department shall develop a detailed data security plan to present to the state board, the legislative oversight committee established in RSA 193-C:7, and the commissioner of the department of information technology. The plan shall include:

(a) Privacy compliance standards.

(b) Privacy and security audits.

(c) Breach planning, notification, and procedures.

(d) Data retention and disposition policies.

III. The security plan shall:

(a) Require notification as soon as practicable to:

(1) Any teacher or student whose personally identifiable information could reasonably be assumed to have been part of any data security breach, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the integrity of the data system; and

(2) The governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, legislative oversight committee established in RSA 193-C:7, and commissioner of the department of information technology.

(b) Require the department to issue an annual data security breach report to the governor, state board, senate president, speaker of the house of representatives, chairperson of the senate committee with primary jurisdiction over education, chairperson of the house committee with primary jurisdiction over education, legislative oversight committee established in RSA 193-C:7, and commissioner of the department of information technology. The breach report shall also be posted to the department's public Internet website and shall not include any information that itself would pose a security threat to a database or data system. The report shall include:

(1) The name of the organization reporting the breach.

(2) Any types of personal information that were or are reasonably believed to have been the subject of a breach.

(3) The date, estimated date, or date range of the breach.

(4) A general description of the breach incident.

(5) The estimated number of students and teachers affected by the breach, if any.

(6) Information about what the reporting organization has done to protect individuals whose information has been breached.

IV. The department shall make publicly available students' and parents' rights under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, et seq., and applicable state law including:

(a) The right to inspect and review the student's education records within 14 days after the day the school receives a request for access.

(b) The right to request amendment of a student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

(c) The right to provide written consent before the school discloses student personally identifiable data from the student's education records, provided in applicable state and federal law.

(d) The right to file a complaint with the Family Policy Compliance Office in the United States Department of Education concerning alleged failures to comply with the requirements of FERPA.

#### **189:67. Limits on disclosure of information**

I. A school shall, on request, disclose student personally-identifiable data about a student to the parent, foster parent, or legal guardian of the student under the age of 18 or to the eligible student.

II. A school or the department may disclose to a testing entity the student's name or unique pupil identifier, but not both, and birth date for the sole purpose of identifying the test taker. Except when collected in conjunction with the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193-C:6, the data shall be destroyed by the testing entity as soon as the testing entity has completed the verification of test takers, shall not be disclosed by the testing entity to any other person, organization, entity or government or any component thereof, other than the district,

school or school district, and shall not be used by the testing entity for any other purpose whatsoever, including but not limited to test-data analysis.

II-a. Students taking the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193-C:6, may opt to have all personal information destroyed by the testing entity, following the completion and verification of the test.

III. Except when collected in conjunction with the SAT or ACT, when such tests are used for the purpose of the state assessment as defined in RSA 193-C:6, neither a school nor the department shall disclose or permit the disclosure of student or teacher personally-identifiable data, the unique pupil identifier, or any other data listed in RSA 189:68, I to any testing entity performing test-data analysis. The testing entity may perform the test analysis but shall not connect such data to other student data.

IV. Except as provided in RSA 193-E:5, or pursuant to a court order signed by a judge, the department shall not disclose student personally-identifiable data in the SLDS or teacher personally-identifiable data in other department data systems to any individual, person, organization, entity, government or component thereof, but may disclose such data to the school district in which the student resides or the teacher is employed.

V. Student personally-identifiable data shall be considered confidential and privileged and shall not be disclosed, directly or indirectly, as a result of administrative or judicial proceedings.

VI. The department shall report quarterly on its website the number of times it disclosed student personally-identifiable data to any person, organization entity or government or a component thereof, other than the student, his or her parents, foster parents or legal guardian and the school district, early childhood program or post-secondary institution in which the student was enrolled at the time of disclosure; the name of the recipient or entity of the disclosure; and the legal basis for the disclosure.

**189:68. Student privacy.**

I. The department shall not collect or maintain the following data in the SLDS:

- (a) Name of the student's parents or other family members.
- (b) Address of the student or student's family.
- (c) Student email or other electronic address.
- (d) Student or family telephone number.
- (e) Student or parent credit card account number, insurance account number, or financial services account number.
- (f) Juvenile delinquency records.
- (g) Criminal records.
- (h) Medical and dental insurance information.
- (i) Student birth information, other than birth date and town of birth.
- (j) Student social security number.
- (k) Student biometric information.
- (l) Student postsecondary workforce information including the employer's name, and the name of a college attended outside of New Hampshire.
- (m) Height and weight.
- (n) Body mass index (BMI).
- (o) Political affiliations or beliefs of student or parents.
- (p) Family income, excluding free and reduced lunch program eligibility as determined by Food Nutrition Services of the United States Department of Agriculture.

- (q) Mother's maiden name.
- (r) Parent's social security number.
- (s) Mental and psychological problems of the student or the student's family.
- (t) Sex behavior or attitudes.
- (u) Indication of a student pregnancy.
- (v) Religious or ethical practices, affiliations, or beliefs of the student or the student's parents.

II. No school shall require a student to use an identification device that uses radio frequency identification, or similar technology, to identify the student, transmit information regarding the student, or monitor or track the student without approval of the school board, after a public hearing, and without the written consent of a parent or legal guardian of an affected student which may be withheld without consequence.

III. No school shall install remote surveillance software on a school supplied computing device provided to a student without the approval of the school board, after a public hearing and without the written consent of a parent, foster parent, or legal guardian of the affected student which may be withheld without consequence. In this paragraph, "surveillance" means observing, capturing images, listening, or recording and shall not include locating equipment when there is reason to believe the equipment is about to be or has been stolen or damaged.

IV. No school shall record in any way a school classroom for the purpose of teacher evaluations without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.

V.

(a) Nothing in this section shall preclude the use of audio or video recordings for use with or by a child with a disability, or by such child's teacher or service provider when the child's individualized education program or accommodation plan includes audio or video recording as part of the child's special education, related services, assistive technology service, or methodology, so long as such audio or video recordings are made, used, and maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

(b) Nothing in this section shall preclude the use of audio or video recordings for student instructional purposes.

(c) Nothing in this section shall preclude the use of audio or video recordings for use in the instruction of teacher interns or student teachers after written notification to the parent or legal guardian of each affected student as to the purpose of, and privacy policy for, the recordings.

**189:68-a Student online personal information.**

I. The department shall not collect or maintain the following data in the SLDS:

I. For the purposes of this section:

(a) "Operator" means the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

(b) "Covered information" means personally identifiable information or materials, in any media or format that meets any of the following:

(1) Is created or provided by a student, or the student's parent or legal guardian, to an operator in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K-12 school purposes.

(2) Is created or provided by an employee or agent of the K-12 school, school district, local education agency, or county office of education, to an operator.

(3) Is gathered by an operator through the operation of a site, service, or application described in subparagraph (a) and is descriptive of a student or otherwise identifies a student, including, but not limited to, information in the student's educational record or email, first and last name, home address, date of birth, telephone number, unique pupil identifier, social security number, financial or insurance account numbers, email address, other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, other student identifiers, search activity, photos, voice recordings, or geo-location information.

(c) "K-12 school purposes" means purposes that customarily take place at the direction of the K-12 school, teacher, or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school.

(d) "Online service" includes cloud computing services, which shall comply with this section if they otherwise meet the definition of an operator.

## II.

(a) No operator shall knowingly engage in any of the following activities with respect to their site, service, or application:

(1) Targeted advertising on the operator's site, service, or application, or targeted advertising on any other site, service, or application when the targeting of the advertising is based upon any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application.

(2) Use of information, including persistent unique identifiers, created or gathered by the operator's site, service, or application, to amass a profile about a K-12 student.

(3) Sale, lease, rent, trade, or otherwise make available a student's information, including covered information. This prohibition does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to previously acquired student information.

(4) Disclosing protected information unless the disclosure is made to respond to or participate in judicial process.

(b) An operator shall:

(1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and protect that information from unauthorized access, destruction, use, modification, or disclosure.

(2) Delete a student's covered information if the school or district requests deletion of data under the control of the school or district.

(c) Nothing in this section shall prohibit an operator from using de-identified student covered information as follows:

(1) Within the operator's site, service, or application or other sites, services, or applications owned by the operator to improve educational products.

(2) To demonstrate the effectiveness of the operator's products or services, including in its marketing.

(d) Nothing in this section shall prohibit an operator from sharing aggregated de-identified student covered information for the development and improvement of educational sites, services, or applications.

III. This section shall not apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

IV. This section shall not limit Internet service providers from providing Internet connectivity to schools or students and their families.

V. This section shall not be construed to prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents so long as the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

VI. This section shall not be construed to impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software.

VII. This section shall not be construed to impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. section 230, to review or enforce compliance with this section by third-party content providers.

VIII. This section shall not impede the ability of students to download, export, or otherwise save or maintain their own student created data or documents.

IX. The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

- (a) Name of the student's parents or other family members.
- (b) Address of the student or student's family.
- (c) Student email or other electronic address.
- (d) Student or family telephone number.
- (e) Student or parent credit card account number, insurance account number, or financial services account number.
- (f) Juvenile delinquency records.
- (g) Criminal records.
- (h) Medical and dental insurance information.
- (i) Student birth information, other than birth date and town of birth.
- (j) Student social security number.
- (k) Student biometric information.
- (l) Student postsecondary workforce information including the employer's name, and the name of a college attended outside of New Hampshire.
- (m) Height and weight.
- (n) Body mass index (BMI).
- (o) Political affiliations or beliefs of student or parents.
- (p) Family income, excluding free and reduced lunch program eligibility as determined by Food Nutrition Services of the United States Department of Agriculture.
- (q) Mother's maiden name.
- (r) Parent's social security number.
- (s) Mental and psychological problems of the student or the student's family.

(t) Sex behavior or attitudes.

(u) Indication of a student pregnancy.

(v) Religious or ethical practices, affiliations, or beliefs of the student or the student's parents.

II. No school shall require a student to use an identification device that uses radio frequency identification, or similar technology, to identify the student, transmit information regarding the student, or monitor or track the student without approval of the school board, after a public hearing, and without the written consent of a parent or legal guardian of an affected student which may be withheld without consequence.

III. No school shall install remote surveillance software on a school supplied computing device provided to a student without the approval of the school board, after a public hearing and without the written consent of a parent, foster parent, or legal guardian of the affected student which may be withheld without consequence. In this paragraph, "surveillance" means observing, capturing images, listening, or recording and shall not include locating equipment when there is reason to believe the equipment is about to be or has been stolen or damaged.

IV. No school shall record in any way a school classroom for the purpose of teacher evaluations without school board approval after a public hearing, and without written consent of the teacher and the parent or legal guardian of each affected student.

V.

(a) Nothing in this section shall preclude the use of audio or video recordings for use with or by a child with a disability, or by such child's teacher or service provider when the child's individualized education program or accommodation plan includes audio or video recording as part of the child's special education, related services, assistive technology service, or methodology, so long as such audio or video recordings are made, used, and maintained in accordance with the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g, and applicable state law.

(b) Nothing in this section shall preclude the use of audio or video recordings for student instructional purposes.

(c) Nothing in this section shall preclude the use of audio or video recordings for use in the instruction of teacher interns or student teachers after written notification to the parent or legal guardian of each affected student as to the purpose of, and privacy policy for, the recordings.

**189:70 Educational institution policies on social media.**

I. An educational institution shall not:

(a) Require or request a student or prospective student to disclose or to provide access to a personal social media account through the student's or prospective student's user name, password, or other means of authentication that provides access.

(b) Require or request a student or prospective student to access a personal social media account in the presence of any employee of the educational institution in a manner that enables the employee to observe the contents of the personal social media account.

(c) Compel a student or prospective student to add anyone to his or her list of contacts associated with a personal social media account or require, request, suggest, or cause a student or prospective student to change the privacy settings associated with a personal social media account.

(d) Take or threaten to take any action against a student or prospective student to discipline or prohibit such student or prospective student from participation in curricular or co-curricular activities for refusal to disclose information or to take actions specified in subparagraphs (a)-(c).

(e) Fail or refuse to admit a prospective student as a result of the refusal by the prospective student to disclose information or to take actions specified in subparagraphs (a)-(c).



II. Nothing in this subdivision shall prohibit an educational institution from adopting a policy which permits:

(a) Conducting an investigation, without requiring or requesting access to a personal social media account through username, password, or other means of authentication, for the purpose of ensuring compliance with applicable law or educational institution's policies against student misconduct based on the receipt of specific information about activity associated with a student's social media account. In the case of a minor, the educational institution may request the student's parent or guardian to provide specific data from the student's social media account.

(b) Revoking a student's access, in whole or in part, to equipment or computer networks owned or operated by the educational institution.

(c) Monitoring the usage of the educational institution's computer network.

(d) Requesting a student voluntarily share a printed copy of a specific communication from the student's social media account that is relevant to an ongoing investigation.

III. This subdivision shall not apply to personal social media accounts that are created or provided by the educational institution if the student has been provided advance notice that the account may be monitored at any time by employees of the educational institution.

IV. In this section:

(a) "Educational institution" means a public or private school, college, university, or other institution that offers students, participants, or trainees an organized course of study or training that is academic, technical, vocational, trade-oriented, or designed to prepare a person for employment. "Educational institution" shall not include a military school.

(b) "Social media account" means an account, service, or profile on a social networking website that is used by a current or prospective student primarily for personal communications. This definition shall not apply to an account opened or provided by an educational institution and intended to be used solely on behalf of the educational institution.

#### **193-D:7. Confidentiality.**

Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169-D or a child in need of protection under RSA 169-C.

#### **REGULATIONS**

No relevant regulations found.

## **Data collection, review, and reporting of disciplinary policies and actions**

#### **LAWS**

#### **126-U:8. Review of restraint records by Department of Education.**

I. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Periodic, regular review by the department of education of records maintained by schools relative to the use of seclusion and restraint.

(b) A process for the department of education's receipt of complaints and its conduct of investigations of improper use of seclusion and restraint in schools. The process shall provide for:

- (1) Investigation of complaints regarding any violation of this chapter, regardless of whether injury results.
- (2) Investigation by persons not affiliated with the school district which is the subject of the complaint.
- (3) Resolution of complaints and completion of investigations within 30 days, with provision for limited extensions for good cause.
- (4) Protection of children before and after completion of the investigation.
- (5) Appropriate remedial measures to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of this chapter.

II. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairpersons of the education committees of the senate and house of representatives regarding the use of seclusion and restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

#### **126-U:14. Written 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.

### **REGULATIONS**

#### **Ed 1202.02. Duty to report.**

- (a) Unless prohibited by court order, the superintendent, acting superintendent, superintendent's designee, acting superintendent's designee, or school administrator shall, as soon as possible, verbally notify the parent or guardian whenever seclusion or restraint has been used on a child.
- (b) Within 5 business days of the use of seclusion or restraint, the school employee that used seclusion or restraint shall submit a written notification to the school principal containing the following, pursuant to RSA 126:7, II:
  - (1) The date, time, and duration of the use of seclusion or restraint;
  - (2) A description of the actions of the child before, during, and after the occurrence;
  - (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
  - (4) The names of the persons involved in the occurrence;
  - (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
  - (6) A description of any interventions used prior to the use of the seclusion or restraint;
  - (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;

- (8) 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 seclusion or restraint;
  - (9) A description of any property damage associated with the occurrence;
  - (10) A description of actions taken to address the emotional needs of the child during and following the incident;
  - (11) A description of future actions to be taken to control the child's problem behaviors;
  - (12) The name and position of the employee completing the notification; and
  - (13) The anticipated date of the final report.
- (c) The superintendent, acting superintendent, superintendent's designee, acting superintendent's designee, or school administrator shall, as soon as possible, make an oral report of all incidents of restraint and seclusion within the school involving serious injury or death to a child subject to restraint or seclusion to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities, pursuant to RSA 126-U:10, II. Within 5 business days, a written report shall be provided to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities pursuant to RSA 126-U:7.
- (d) No school nor any employee, contractor, consultant nor volunteer thereof, shall subject any individual to harassment or retaliation for filing, in good faith, a report under RSA 126-U or these rules.
- (e) Schools shall document complaints that they determine do not meet the criteria for a violation of RSA 126-U. This documentation shall include the evidence relied upon. Such documentation shall be maintained and provided to the department of education when it does its review pursuant to RSA 126-U:8.

**Ed 1202.02. Review of records.**

- (a) The department of education shall review records maintained by schools relative to the use of seclusion and restraint pursuant to RSA 126-U:8 no less than once every 3 years.
- (b) When the commissioner decides that a complaint is founded or the commissioner decides that the complaint is unfounded and there are 3 or more previous unfounded complaints, the department of education shall review the records of that school upon the completion of the investigation and annually for a period of 2 years following the most recent complaint.
- (c) Pursuant to RSA 126-U:7, II, schools shall maintain the following records:
  - (1) The date, time, and duration of the use of seclusion or restraint;
  - (2) A description of the actions of the child before, during, and after the occurrence;
  - (3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;
  - (4) The names of the persons involved in the occurrence;
  - (5) A description of the actions of the facility or school employees involved before, during, and after the occurrence;
  - (6) A description of any interventions used prior to the use of the seclusion or restraint;
  - (7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;
  - (8) 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 seclusion or restraint;
  - (9) A description of any property damage associated with the occurrence;

- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;
- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.

**Ed 1203.01. Filing a complaint.**

- (a) Any individual may file a complaint with the commissioner alleging a violation of RSA 126-U.
- (b) When filing a complaint the complainant shall provide the following information to the Commissioner:
  - (1) The date or approximate date of the alleged incident;
  - (2) The location of the alleged incident;
  - (3) The name of the child or children subject to the alleged restraint or seclusion, if known;
  - (4) The name of the school personnel alleged to have restrained or secluded the child, if known;
  - (5) A description of the alleged restraint or seclusion;
  - (6) The date of complaint; and
  - (7) The name of complainant if the complainant is willing to disclose name.
- (c) Complaints may be submitted orally or in written form.
- (d) A complainant may request to keep his or her identity confidential throughout the complaint process. However, if the confidentiality of the complainant interferes with the investigation or the resolution of the complaint, the investigator shall notify the complainant that his or her request for confidentiality interferes with the investigation or resolution of the complaint and will not be maintained. The investigation shall then proceed.

**Ed 1203.02. Review of complaint filed.**

- (a) The commissioner or the commissioner's designee shall provide the information obtained in Ed 1203.01 to the investigator designated by the department of education. The investigator shall not be affiliated with the school or any person involved with the complaint.
- (b) If the complaint is filed by an individual other than a parent or guardian, the investigator shall notify the parent or guardian that a complaint has been filed on behalf of his or her child.
- (c) The commissioner or the commissioner's designee shall review the complaint and shall dismiss the complaint if:
  - (1) The alleged facts, if true, would not constitute a violation of RSA 126:U; or
  - (2) The alleged improper restraint or seclusion did not occur within 12 months of the date of filing of the complaint. However, such a complaint shall not be dismissed if the complainant could not have reasonably discovered the violation within 12 months of the filing of the complaint.
- (d) The department shall conduct investigations to determine if there were or were not violations of RSA 126-U.
- (e) The commissioner or the commissioner's designee will notify the complainant that the complaint has been dismissed and the basis for the dismissal.

**Ed 1203.03. Investigative process.**

- (a) If a complaint is not dismissed, the investigator shall:
  - (1) For cases involving serious injury, determine whether the allegations must be referred to law enforcement for investigation as mandated by RSA 161-F:51, II or 169-C:29;

- (2) Pursuant to (1) above, make reports at any point during the investigation when he or she obtains information that he or she is required to report under RSA 161-F:51 or 169-C:29;
- (3) Contact such persons and examine such records and other documents as are reasonably necessary to determine whether or not the allegations are true and whether any violation of 126-U occurred;
- (4) Review findings of facts from other investigative agencies; and
- (5) Review any and all protective measures for the child that the school has put in place before or after the complaint, and if no protective measures have been put in place, the investigator shall instruct the school to develop a procedure to protect the child.
- (b) Investigations shall not constitute a disciplinary hearing and shall not constitute an allegation of misconduct against an employee by the department of education;
- (c) Once the investigator completes the investigation, the following procedures shall apply:
- (1) The investigator shall file a written report with the commissioner or the commissioner's designee including findings of fact specifying any of the following specific grounds listed in RSA 126-U upon which the findings are based:
- a. Failure to implement written policy and procedures as required in RSA 126-U;
  - b. Failure to properly notify a parent, guardian, or guardian ad litem in a timely manner, in violation of RSA 126-U:7, IV;
  - c. Retaliation against any individual involved in a complaint or proceeding under this chapter, pursuant to RSA 126-U:8;
  - d. Repeated improper use of restraint, pursuant to RSA 126-U:8;
  - e. Improper use of seclusion as punishment, pursuant to RSA 126-U:5-a, I;
  - f. Restraint by personnel not trained to restrain a child, pursuant to RSA 126-U:5;
  - g. Use of any restraint technique prohibited by RSA 126-U:4;
  - h. Improper use of restraint when other interventions were appropriate, pursuant to RSA 126-U:5;
  - i. Improper use of seclusion or restraint that unnecessarily subjects a child to a risk of ridicule, humiliation, or emotional or physical harm pursuant to RSA 126-U:4, IV and RSA 126-U:5-a;
  - j. Improper seclusion under conditions that do not meet RSA 126-U:5-b;
  - k. Failure to comply with the requirements for authorization and monitoring of extended restraint, pursuant to RSA 126-U:11;
  - l. Failure to comply with the restriction on the use of mechanical restraint during the transport of children, pursuant to RSA 126-U:12; and
  - m. Any other conduct in which a school or school personnel violate RSA 126-U, or this chapter;
  - n. Written statements by any employees who are the subject of the complaint, if the employees choose to provide such statements; and
  - o. A recommendation for further action, if necessary.
- (d) The investigator shall file a report with the commissioner within 30 days of the filing of the complaint. The investigator may request a time extension from the commissioner for good cause shown, including, the coordination of investigations with other agencies or unavailability of a witness. If good cause is shown, the commissioner shall permit a time extension.
- (e) The commissioner shall review the investigator's report and recommendation based on a review of the case in relation to the grounds listed in RSA 126-U to:
- (1) Provide a written decision and recommendations which shall include, if necessary, based on the conclusions of the investigator's report:

- a. Appropriate remedial measures to address physical and other injuries;
  - b. Appropriate remedial measures to address protection against retaliation; and
  - c. Appropriate remedial measures to reduce the incidence of violations of RSA 126-U.
- (2) Identify remedial measures necessary to remedy the problem. Such remedial measure may include but are not limited to:
- a. Training of an individual or a group of school employees;
  - b. Revision of policies and procedures;
  - c. Revision of notice and record keeping practices;
  - d. Compliance with conditions of seclusion per 126-U:5-b; and
  - e. Any other action designed to address physical and other injuries, protect against retaliation, and reduce the incidence of violations of RSA 126-U; and
- (3) The commissioner's decision and recommendations shall be provided to the superintendent, the school administrator, and any employee found to have performed or accused of performing a restraint or using seclusion. The commissioner's decision shall be provided to the child's parent or guardian. Copies of the decision which are provided to the parents, guardians or employees under this subsection shall be redacted as necessary, to comply with federal and state law.
- (f) If the commissioner determines that disciplinary proceedings concerning credentialing are warranted, the commissioner shall notify the director of the division of program support.
- (g) Disclosure of investigatory reports shall be made in compliance with state and federal law.
- (h) In addition to any disclosure required by (e), above, the investigator's report and commissioner's decision shall be disclosed as follows:
- (1) The investigator's report and commissioner's decision shall be made available, upon request, to the parties in any adjudicatory proceeding arising out of the same facts as the complaint alleging violations of RSA 126-U;
  - (2) If disciplinary proceedings are to be conducted as a result of the investigation, the commissioner or the commissioner's designee shall provide information gathered during an investigation to:
    - a. A law enforcement agency when the agency is conducting a criminal investigation related to the subject matter of the investigation;
    - b. A certifying agency of another jurisdiction for:
      - 1. Purposes of certification of the credential holder in another jurisdiction; or
      - 2. An investigation in another jurisdiction, when:
        - (i) The person was the subject of a formal investigation under Ed 1200; or
        - (ii) Disciplinary action was taken against the person by the state board of education under Ed 510;
      - c. Board investigators or prosecutors; and
      - d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; and
  - (4) Whether or not further disciplinary proceedings are to be conducted as a result of the investigation, the board shall provide information gathered in disciplinary investigations to persons to whom the person facing disciplinary proceedings has given a release.
- (i) Prior to commencement of an adjudicatory proceeding, the person being investigated shall be notified promptly of the nature of any allegations that result in an adjudicatory proceeding under these rules unless notification is prohibited by law or will interfere with a criminal investigation.

(j) If further disciplinary proceedings are to be conducted as a result of an investigation, the person shall be given the opportunity to respond, in writing, to the investigator prior to the initiation of disciplinary proceedings.

## ***School Resource and Safety Officers (SROs/SSOs) and Truant/Attendance Officers***

### **Authority and power to implement school arrest**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Certification or training**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **MOUs, authorization, and/or funding**

#### **LAWS**

##### **186:11. Duties of State Board of Education.**

The state board of education shall, in addition to the duties assigned by RSA 21-N:11:

XV. Truant Officers. Report frequently to the chairman of the several school boards the relative efficiency of the several truant officers in the state.

XVIII. School Attendance. Enforce the laws relative to school attendance and the employment of minors; and for this purpose the board and its deputies are vested with the power given by law to truant officers.

XXXVII. School Resource Officers. Require each school district in the state to which a school resource officer is assigned to develop and implement a policy which shall include, at a minimum, a requirement for a signed memorandum of understanding between the school district and the law enforcement agency from which the school resource officer is deployed.

##### **189:34. Truant officer appointment.**

I. School boards shall appoint truant officers for their districts.

II. School board policies on truancy shall include but not be limited to:

(a) A definition of "excused absence" and a process for considering exceptions to absences not otherwise excused.

(b) A process for intervention designed to address individual cases of truancy as quickly as possible and to reduce the number of habitual truants in the school district. The process shall consider whether school record keeping practices and notification provided to parents or guardians of the child's absences have an effect on the child's attendance. The board shall provide for the participation of parents in the development of the policy. The policy shall include early parental involvement in the



intervention process. The policy shall also designate an employee in each school as the person responsible for truancy issues.

**189:35. Term; Removal.**

Truant officers shall hold office for one year and until their successors are appointed, but they may be removed by the school board at any time for cause.

**189:36. Truant officer duties.**

I. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 6 and 18 years not attending school or who are not participating in an alternative learning plan under RSA 193:1, I(h); and the laws relating to the attendance at school of children between the ages of 6 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor. No home school pupil nor any person between the ages of 6 and 18 who meets any of the requirements of RSA 193:1, I(c)-(h) shall be deemed a truant.

II. A truant officer or school official shall not file a petition alleging that the child is in need of services pursuant to RSA 169-D:2, II until all steps in the school district's intervention process under RSA 189:34, II have been followed.

**189:37. Additional officers.**

The state board may require school boards to appoint additional truant officers if in its judgment such additional officers are necessary; and may require the school board of any school district to remove any truant officer found by it to be incompetent, and to appoint a competent successor; and upon the failure or neglect of the school board to do so, it may appoint such truant officer and fix compensation, which shall be paid by the district.

**193-D:4. Written report required.**

I. (c) Each school district, in conjunction with the local law enforcement authority, shall establish a memorandum of understanding for administering the provisions of RSA 193-D:4, I (a)-(c).

**REGULATIONS**

No relevant regulations found.

## ***State Education Agency Support***

### **State model policies and implementation support**

#### **LAWS**

##### **186:11. Duties of State Board of Education.**

The state board of education shall, in addition to the duties assigned by RSA 21-N:11:

IX. Instruction as to Child Abuse Prevention, Youth Suicide Prevention, Intoxicants, Drugs, HIV/AIDS, and Sexually Transmitted Diseases.

(a) Direct the department to develop academic standards to serve as a guide and reference in health, physiology, and hygiene as they relate to the effects of alcohol and other drugs, child abuse, human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS), and sexually transmitted diseases on the human system, and which are designed to help students lead longer, healthier lives.

(b) Provide information about HIV/AIDS to all public and private schools to facilitate the delivery of appropriate courses and programs.

(c) Review HIV/AIDS curriculum materials to assure relevancy in assisting students to become health-literate citizens and lead longer, healthier lives.

(d) Provide information about youth suicide prevention to all public and private schools to facilitate the delivery of appropriate courses and programs.

(e) Submit a report no later than December 1, 2010, and biennially thereafter, prepared in conjunction with the commissioner of the department of education, to the chairpersons of the house and senate education committees, the house health, human services and elderly affairs committee, and the senate health and human services committee, detailing the state's efforts in fulfilling the policies relating to health education in kindergarten through grade 12 as set forth in subparagraphs (a)-(d).

XXXVI. Pupil Safety and Violence Prevention. Develop and distribute to school districts a technical assistance advisory for the purpose of providing guidance to school districts on the implementation of pupil safety and violence prevention policies as required under RSA 193-F.

##### **193-F:4. Pupil safety and violence prevention.**

II. The school board of each school district and the board of trustees of a chartered public school shall, no later than 6 months after the effective date of this section, adopt a written policy prohibiting bullying and cyberbullying. Such policy shall include the definitions set forth in RSA 193-F:3. The policy shall contain, at a minimum, the following components:

(a) A statement prohibiting bullying or cyberbullying of a pupil.

(b) A statement prohibiting retaliation or false accusations against a victim, witness, or anyone else who in good faith provides information about an act of bullying or cyberbullying and, at the time a report is made, a process for developing, as needed, a plan to protect pupils from retaliation.

(c) A requirement that all pupils are protected regardless of their status under the law.

(d) A statement that there shall be disciplinary consequences or interventions, or both, for a pupil who commits an act of bullying or cyberbullying, or falsely accuses another of the same as a means of retaliation or reprisal.

(e) A statement indicating how the policy shall be made known to school employees, regular school volunteers, pupils, parents, legal guardians, or employees of a company under contract to a school,

school district, or chartered public school. Recommended methods of communication include, but are not limited to, handbooks, websites, newsletters, and workshops.

(f) A procedure for reporting bullying or cyberbullying that identifies all persons to whom a pupil or another person may report bullying or cyberbullying.

(g) A procedure outlining the internal reporting requirements within the school or school district or chartered public school.

(h) A procedure for notification, within 48 hours of the incident report, to the parent or parents or guardian of a victim of bullying or cyberbullying and the parent or parents or guardian of the perpetrator of the bullying or cyberbullying. The content of the notification shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(i) A provision that the superintendent or designee may, within the 48-hour period, grant the school principal or designee a waiver from the notification requirement if the superintendent or designee deems such waiver to be in the best interest of the victim or perpetrator. Any such waiver granted shall be in writing. Granting of a waiver shall not negate the school's responsibility to adhere to the remainder of its approved written policy.

(j) A written procedure for investigation of reports, to be initiated within 5 school days of the reported incident, identifying either the principal or the principal's designee as the person responsible for the investigation and the manner and time period in which the results of the investigation shall be documented. The superintendent or designee may grant in writing an extension of the time period for the investigation and documentation of reports for up to an additional 7 school days, if necessary. The superintendent or superintendent's designee shall notify in writing all parties involved of the granting of an extension.

(k) A requirement that the principal or designee develop a response to remediate any substantiated incident of bullying or cyberbullying, including imposing discipline if appropriate, to reduce the risk of future incidents and, where deemed appropriate, to offer assistance to the victim or perpetrator. When indicated, the principal or designee shall recommend a strategy for protecting all pupils from retaliation of any kind.

(l) A requirement that the principal or designee report all substantiated incidents of bullying or cyberbullying to the superintendent or designee.

(m) A written procedure for communication with the parent or parents or guardian of victims and perpetrators regarding the school's remedies and assistance, within the boundaries of applicable state and federal law. This communication shall occur within 10 school days of completion of the investigation.

(n) Identification, by job title, of school officials responsible for ensuring that the policy is implemented.

III. The department of education may develop a model policy in accordance with the requirements set forth in this chapter which may be used by schools, school districts, and chartered public schools as a basis for adopting a local policy.

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

## **REGULATIONS**

No relevant regulations found.

## **Funding appropriations**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

## ***Other or Uncategorized***

### **Professional immunity or liability**

#### **LAWS**

##### **193-D:9. Liability for reporting.**

Any public or private school employee or employee of a company under contract to a school or school district who in good faith has made a report under RSA 193-D shall not be subject to liability for making the report.

##### **193-F:7. Immunity.**

A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

#### **REGULATIONS**

No relevant regulations found.

### **Community input or involvement**

#### **LAWS**

##### **193-F:4. Pupil safety and violence prevention.**

IV. A school board or board of trustees of a chartered public school shall, to the greatest extent practicable, involve pupils, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of developing the policy. The policy shall be adopted by all public schools within the school district and, to the extent possible, the policy should be integrated with the school's curriculum, discipline policies, behavior programs, and other violence prevention efforts.

#### **REGULATIONS**

No relevant regulations found.

## **Other or Uncategorized**

#### **LAWS**

##### **189:70 Educational institution policies on social media.**

I. An educational institution shall not:

- (a) Require or request a student or prospective student to disclose or to provide access to a personal social media account through the student's or prospective student's user name, password, or other means of authentication that provides access.

(b) Require or request a student or prospective student to access a personal social media account in the presence of any employee of the educational institution in a manner that enables the employee to observe the contents of the personal social media account.

(c) Compel a student or prospective student to add anyone to his or her list of contacts associated with a personal social media account or require, request, suggest, or cause a student or prospective student to change the privacy settings associated with a personal social media account.

(d) Take or threaten to take any action against a student or prospective student to discipline or prohibit such student or prospective student from participation in curricular or co-curricular activities for refusal to disclose information or to take actions specified in subparagraphs (a)-(c).

(e) Fail or refuse to admit a prospective student as a result of the refusal by the prospective student to disclose information or to take actions specified in subparagraphs (a)-(c).

II. Nothing in this subdivision shall prohibit an educational institution from adopting a policy which permits:

(a) Conducting an investigation, without requiring or requesting access to a personal social media account through username, password, or other means of authentication, for the purpose of ensuring compliance with applicable law or educational institution's policies against student misconduct based on the receipt of specific information about activity associated with a student's social media account. In the case of a minor, the educational institution may request the student's parent or guardian to provide specific data from the student's social media account.

(b) Revoking a student's access, in whole or in part, to equipment or computer networks owned or operated by the educational institution.

(c) Monitoring the usage of the educational institution's computer network.

(d) Requesting a student voluntarily share a printed copy of a specific communication from the student's social media account that is relevant to an ongoing investigation.

III. This subdivision shall not apply to personal social media accounts that are created or provided by the educational institution if the student has been provided advance notice that the account may be monitored at any time by employees of the educational institution.

IV. In this section:

(a) "Educational institution" means a public or private school, college, university, or other institution that offers students, participants, or trainees an organized course of study or training that is academic, technical, vocational, trade-oriented, or designed to prepare a person for employment. "Educational institution" shall not include a military school.

(b) "Social media account" means an account, service, or profile on a social networking website that is used by a current or prospective student primarily for personal communications. This definition shall not apply to an account opened or provided by an educational institution and intended to be used solely on behalf of the educational institution.

## **REGULATIONS**

No relevant regulations found.

## State-Sponsored, Publicly Available Websites or Other Resources on School Discipline

Safe, supportive learning environments use disciplinary policies and practices that help students stay out of the justice system, while ensuring academic engagement and success for all students. The following resources provided by New Hampshire provide additional context to state policy and regulations and, in some cases, may support the readers' efforts to provide a positive disciplinary school climate.

Title	Description	Website address (if applicable)
<i>Website</i>		
New Hampshire Department of Education, Bullying and Cyber Bullying Resources	Bullying resources.	<a href="http://www.education.nh.gov/instruction/integrated/title_iv_cyber_bullying.htm">http://www.education.nh.gov/instruction/integrated/title_iv_cyber_bullying.htm</a>
New Hampshire Department of Education, Violence Prevention/Safety	Violence prevention/safety resources.	<a href="http://www.education.nh.gov/instruction/integrated/violence_prevention_safety.htm">http://www.education.nh.gov/instruction/integrated/violence_prevention_safety.htm</a>
New Hampshire Department of Education, Safe Schools Laws	Links to laws related to safe schools.	<a href="http://www.education.nh.gov/instruction/integrated/safe_schools_laws.htm">http://www.education.nh.gov/instruction/integrated/safe_schools_laws.htm</a>
New Hampshire Office of Student Wellness Toolkit	Resources on several areas of student wellness.	<a href="http://www.nhstudentwellness.org">http://www.nhstudentwellness.org</a>
New Hampshire Department of Education, New Hampshire Department of Education Sexual Harassment Policy	This policy defines sexual harassment and provides a policy purpose, rights and responsibilities, investigation, retaliation complaints, and training.	<a href="https://www.education.nh.gov/titleix/policy.htm">https://www.education.nh.gov/titleix/policy.htm</a>
<i>Documents</i>		
New Hampshire Department of Education, Pupil Safety & Violence Prevention Act Technical Advisory	Provides background and policies regarding the Pupil Safety & Violence Prevention Act.	<a href="http://www.education.nh.gov/standards/documents/bullying-cyberbullying.pdf">http://www.education.nh.gov/standards/documents/bullying-cyberbullying.pdf</a>
New Hampshire Department of Education, Truancy Technical Advisory	Guidance document intended to clarify changes in the truancy law.	<a href="http://www.education.nh.gov/standards/documents/truancy.pdf">http://www.education.nh.gov/standards/documents/truancy.pdf</a>
<i>Other Resources</i>		
New Hampshire Department of Education, School and District Profiles	Provides data on the student enrollment, student achievement, and limited data on school safety measures.	<a href="http://my.doe.nh.gov/profiles/">http://my.doe.nh.gov/profiles/</a>