Adopt Ed 1200, previously effective 1-8-16 (Document #11019) and expired 1-8-26, to read as follows:

CHAPTER Ed 1200 RESTRAINT AND SECLUSION FOR CHILDREN

PART Ed 1201 LIMITING THE USE OF CHILD RESTRAINT AND SECLUSION PRACTICES

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.

PART Ed 1202 RESTRAINT AND SECLUSION

Ed 1202.01 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 1202.03 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.

PART Ed 1203 COMPLAINTS AND INVESTIGATION

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.

APPENDIX

Rule	**Statute Implemented**
Ed 1201.01	RSA 126-U:8, I
Ed 1201.01(a)	RSA 126-U:1, I
Ed 1201.01(c)	RSA 126-U:1, IV
Ed 1201.01(e)	RSA 126-U:1, V
Ed 1201.01(f)	RSA 126-U:1, V-a
Ed 1201.01(g)	RSA 126-U:1, VI
Ed 1202.01	RSA 126-U:2; RSA 126-U:14
Ed 1202.02(a)	RSA 126-U:7, I
Ed 1202.02(b)	RSA 126-U:7, II
Ed 1202.02(c)	RSA 126-U:7, II; RSA 126-U:10, II
Ed 1202.02(d)	RSA 126-U:8, I(b)(5)
Ed 1202.02(e)	RSA 126-U:8, I(a)
Ed 1202.03(a)	RSA 126-U:8, I(a)
Ed 1202.03(b)	RSA 126-U:8, I(b)
Ed 1202.03(c)	RSA 126-U:7, II; RSA 126-U:8, I(a)
Ed 1203.01	RSA 126-U:8, I(b)
Ed 1203.02	RSA 126-U:8, I(b)
Ed 1203.03	RSA 126-U:8, I(b); RSA 161-F:51, II; RSA 169-C:29