

**TITLE X
PUBLIC HEALTH
CHAPTER 126-U
LIMITING THE USE OF CHILD RESTRAINT PRACTICES
IN SCHOOLS AND TREATMENT FACILITIES**

Section 126-U:1

126-U:1 Definitions. – In this chapter:

[Paragraph I effective until September 30, 2014; see also paragraph I set out below.]

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.

[Paragraph I effective September 30, 2014; see also paragraph I set out above.]

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.

III. “Facility” includes any of the following when used for the placement, custody, or treatment of children:

(a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169-B, RSA 169-C, or RSA 169-D.

(b) Child care agencies regulated by RSA 170-E.

(c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169-B, RSA 169-C, or RSA 169-D or following disposition under those chapters.

(d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135-C:3 and RSA 171-A:4, including but not limited to:

(1) The Anna Philbrook center.

(2) The acute psychiatric services building.

(3) Any designated receiving facility.

(4) A community mental health center as defined in RSA 135-C:7, or any of its subdivisions or contractors.

(5) An area agency as defined in RSA 171-A:2, or any of its subdivisions or

contractors.

(e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171-A or 171-B.

(f) Community living facilities for persons with developmental disabilities or mental illness as authorized by RSA 126-A:19, when used for the placement of children.

[Paragraph IV effective until September 30, 2014; see also paragraph IV set out below.]

IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that unreasonably limits freedom of movement. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication.

(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) Holding a child to calm or comfort the child, holding a child's hand or arm to escort the child safely from one area to another, or intervening in an ongoing assault or fight.

(2) Brief periods of physical restriction by person-to-person contact, without the aid of medication or mechanical restraints, accomplished with minimal force and designed either to prevent a child from completing an act that potentially would result in physical harm to himself or herself or to another person, or to remove a disruptive child who is unwilling to leave an area voluntarily.

(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.

[Paragraph IV effective September 30, 2014; see also paragraph IV set out above.]

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.

[Paragraph V-a effective September 30, 2014.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:1-3, eff. Sept. 30, 2014.

Section 126-U:2

[RSA 126-U:2 effective until September 30, 2014; see also RSA 126-U:2 set out below.]

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 restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:2

[RSA 126-U:2 effective September 30, 2014; see also RSA 126-U:2 set out above.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:4, eff. Sept. 30, 2014.

Section 126-U:3

[RSA 126-U:3 effective until September 30, 2014; see also RSA 126-U:3 set out below.]

126-U:3 Post Admission Planning in Facilities. –

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

- (a) Identify the child's history of physical, sexual, or emotional trauma, if any.
- (b) Identify effective responses to potential behavior or situations which will avoid the use of restraint.
- (c) Identify health conditions which may make the child vulnerable to injury while at the facility.

II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of restraint of the child.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:3

[RSA 126-U:3 effective September 30, 2014; see also RSA 126-U:3 set out above.]

126-U:3 Post Admission Planning in Facilities. –

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

- (a) Identify the child's history of physical, sexual, or emotional trauma, if any.
- (b) Identify effective responses to potential behavior or situations which will avoid the use of seclusion and restraint.
- (c) Identify health conditions which may make the child vulnerable to injury while at the facility.

II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of seclusion or restraint of the child.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:4, eff. Sept. 30, 2014.

Section 126-U:4

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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:5

[RSA 126-U:5 effective until September 30, 2014; see also RSA 126-U:5 set out below.]

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. It 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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:5

[RSA 126-U:5 effective September 30, 2014; see also RSA 126-U:5 set out above.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:5, eff. Sept. 30, 2014.

Section 126-U:5-a

[RSA 126-U:5-a effective September 30, 2014.]

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.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:5-b

[RSA 126-U:5-b effective September 30, 2014.]

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.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:5-c

[RSA 126-U:5-c effective September 30, 2014.]

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.

Source. 2014, 324:6, eff. Sept. 30, 2014.

Section 126-U:6

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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:7

[RSA 126-U:7 effective until September 30, 2014; see also RSA 126-U:7 set out below.]

126-U:7 Notice and Record-Keeping Requirements. –

I. Unless prohibited by court order, the facility or school shall, within 24 hours, make reasonable efforts to verbally notify the child’s parent or guardian and guardian ad litem whenever restraint has been used on the child.

II. A facility employee or school employee who uses 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 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 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 restraint.
- (g) A description of the 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 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 restraint 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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:7

[RSA 126-U:7 effective September 30, 2014; see also RSA 126-U:7 set out above.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:7-a

[RSA 126-U:7-a effective September 30, 2014.]

126-U:7-a Notice and Record-Keeping Requirements for Foster Family Homes. –

Notwithstanding RSA 126-U:7, foster family homes, as defined in RSA 170-E:25, shall keep records and provide notice of incidents involving seclusion or restraint, according to rules adopted pursuant to RSA 541-A by the commissioner of the department of human services. The rules shall provide for timely notice to parents or guardians, which may be provided through the department. In cases involving serious injury or death to a child subject to seclusion or restraint in a foster home, the rules shall provide for timely notification to 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.

Source. 2014, 324:7, eff. Sept. 30, 2014.

Section 126-U:8

[RSA 126-U:8 effective until September 30, 2014; see also RSA 126-U:8 set out below.]

126-U:8 Review of Restraint Records by Department of Education. –

The state board of education shall adopt rules, pursuant to RSA 541-A, establishing a process for periodic, regular review of records of restraint usage kept by schools and providing a process for complaints and investigations of reports of improper use of restraint in schools. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairperson of the children and family law committee of the house of representatives regarding the use of 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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:8

[RSA 126-U:8 effective September 30, 2014; see also RSA 126-U:8 set out above.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:9

[RSA 126-U:9 effective until September 30, 2014; see also RSA 126-U:9 set out below.]

126-U:9 Review of Restraint Records by Department of Health and Human Services.

The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, establishing a process for periodic, regular review of records of restraint usage kept by facilities and providing a process for complaints and investigations of reports of improper use of restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the department of health and human services shall provide an annual report to the chairperson of the children and family law committee of the house of representatives regarding the use of restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:9

[RSA 126-U:9 effective September 30, 2014; see also RSA 126-U:9 set out above.]

126-U:9 Review of Restraint Records by Department of Health and Human Services.

I. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Periodic, regular review by the department of health and human services of records maintained by facilities regarding the use of seclusion and restraint.

(b) A process for the department's receipt of complaints and its conduct of

investigations of reports of improper use of seclusion and restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. 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 facility 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 commissioner of the department of health and human services shall provide an annual report to the committees of the house of representatives and the senate with jurisdiction over health and human services and over children and family law, regarding the use of seclusion and restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:10

[RSA 126-U:10 effective until September 30, 2014; see also RSA 126-U:10 set out below.]

126-U:10 Injury or Death During Incidents of Restraint. –

I. In cases involving serious injury or death to a child subject to restraint 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.

II. In cases involving serious injury or death to a child subject to restraint 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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:10

[RSA 126-U:10 effective September 30, 2014; see also RSA 126-U:10 set out above.]

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.

Source. 2010, 375:2, eff. Sept. 1, 2010. 2014, 324:8, eff. Sept. 30, 2014.

Section 126-U:11

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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:12

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.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:13

126-U:13 Restriction of the Use of Mechanical Restraint in Courtrooms. – At any hearing under RSA 169-B, RSA 169-C, or RSA 169-D, the judge may subject a child to mechanical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the child’s escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child’s attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

Source. 2010, 375:2, eff. Sept. 1, 2010.

Section 126-U:14

[RSA 126-U:14 effective September 30, 2014.]

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.

Source. 2014, 324:9, eff. Sept. 30, 2014.