

<p><b>Subject:</b> <b>Clarification on SB 179 &amp; HB 491—Restraint and Seclusion</b></p> <p><b>Issued: October 18, 2023</b></p>	<p><b>Legal Reference – SB 179 &amp; HB 491 (2022-2023 Legislative Session)</b></p> <ul style="list-style-type: none"> <li>• <b>RSA 126-U</b></li> </ul>
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*This Technical Advisory continues the New Hampshire Department of Education’s communication regarding legislation which was passed during the 2022-2023 legislative session. SB 179, which pertains to seclusion and HB 491, which pertains to restraint, amended various sections of RSA 126-U. A Technical Advisory relative to these bills was issued on September 5, 2023. This supplemental Technical Advisory provides additional guidance in response to questions which have been raised by the field. As such, this Technical Advisory should be read in conjunction with the Technical Advisory that was issued on September 5, 2023.*

*This supplemental Technical Advisory is limited to the following issues:*

- *The applicability of the definition of “seclusion;” and*
- *Clarification of the reporting requirements.*

***Applicability of the Definition of Seclusion:***

As stated in the initial Technical Advisory, SB 179 modified the definition of the term “seclusion” so that it now reads as follows:

the involuntary confinement of a child alone in any room or area from which the child is unable to exit, either due to physical manipulation by a person, a lock, or other mechanical device or barrier, **or from which the child reasonably believes they are not free to leave;** or, the involuntary confinement of a child to a room or area, separate from their peers, with one or more adults who are using their physical presence to prevent egress.

This new phrase, “or from which the child reasonably believes they are not free to leave,” must be read in context of the entire definition and the purpose of the statute. The crux of the analysis is **not** whether the child is alone in a classroom or office.

As envisioned by the statute, “seclusion” is a tool used to control a child’s escalating behavior. Therefore, for a situation or action to constitute “seclusion,” it must have been caused by a child’s behavior that is posing “a substantial and imminent risk of physical harm to the child or to others” that results in the removal of the child from scheduled programming for purposes of controlling or de-escalating the child’s behavior.

As such, **not** all instances in which a child is placed alone in a room or office from which he or she does not believe they are free to leave will automatically constitute “seclusion.” Rather, the child must be in the location for purposes of controlling or de-escalating his or her behavior. For

instance, if a principal is conducting an investigation and places three students in three separate rooms for purposes of questioning them separately, that action alone—if not done to de-escalate or control escalating behavior—would not automatically constitute “seclusion.”

Similarly, if a child is in the principal’s office and the principal leaves the office momentarily, thereby leaving the child in the office alone, if the child is not in the office for purposes of de-escalating or controlling escalating behavior, then the action would not fall within the term of “seclusion” as envisioned by the statute. Although, once again, it is likely not a best practice for a principal to leave a child alone in his or her office and there are steps that can be taken to easily address that situation.

***Reporting Requirements:***

SB 179 requires that the instance of restraint and seclusion be documented on a form that is developed by the Department of Education and the Department of Health and Human Services. As of the date of the issuance of this supplemental Technical Advisory, the form is being finalized and will be issued to the field as soon as possible. However, the law does *not* require that the individual forms be sent to the Department of Education. Rather, in maintaining past practices, the cumulative number of restraints and seclusions are reported in the annual Safety Survey.

**For questions related to this Technical Advisory, please contact:**

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