

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Part XLIII. Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act**

(LAC 28: XLIII.540 and 543)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act* §540. Definitions, and §543, Restriction on the Use of Seclusion or Physical Restraint. Act 522 of the 2016 Regular Legislative Session requires that local education agency (LEA) guidelines and procedures regarding seclusion and restraints be provided to the Louisiana Department of Education (LDOE) and posted on each school and LEA website. LEAs must also use the Special Education Reporting (SER) System for reporting incidents and all instances must be reported at least monthly. The proposed revisions align current policy with Act 522 of the 2016 Regular Legislative Session.

**Title 28
EDUCATION**

**Part XLIII. Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act**

Chapter 5. Procedural Safeguards

Subchapter C. Seclusion and Physical Restraint

§540. Definitions

A. – A.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1006 (April 2012), LR 42:

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. – H. ...

I. If a student is involved in five incidents in a single school year involving the use of physical restraint or seclusion, the student's Individualized Education Plan team shall review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports. Thereafter, if the student's challenging behavior continues or escalates requiring repeated use of seclusion or physical restraint practices, the special education director or his designee shall review the student's plans at least once every three weeks.

J. The governing authority of each public elementary and secondary school shall adopt written guidelines and procedures regarding:

1. reporting requirements and follow-up procedures;
2. notification requirements for school officials and a student's parent or other legal guardian; and
3. an explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.

K. The guidelines and procedures shall be provided to the LDE, all school employees and every parent of a child with a disability. The guidelines and procedures shall also be posted at each school and on each school system's website.

L. The governing authority of each public elementary and secondary school shall report all instances where seclusion or physical restraint is used to address student behavior to the state Department of Education through the Special Education Reporting (SER) System. At a minimum, all instances must be reported on a monthly basis.

M. The state Department of Education, using the data elements collected in SER, shall maintain a database of all reported incidents of seclusion and physical restraint of students with disabilities and shall disaggregate the data for analysis by school, student age, race, ethnicity, and gender, student disability, where applicable, and any involved school employees.

N. Based upon the data collected, the LDE shall annually compile a comprehensive report regarding the use of seclusion and physical restraint of students with exceptionalities, which shall at a minimum include the following:

1. The number of incidents of physical restraint disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.
2. The number of incidents of seclusion disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.
3. A list of the school systems and charter schools that have complied with the reporting requirements pursuant to paragraph 2 of this subsection.

O. The state Department of Education shall post the annual report pursuant to O. of this section on its website and submit a written copy to the Senate and House committees on education and the Advisory Council on Student Behavior and Discipline established pursuant to R.S. 17:253.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1007 (April 2012), repromulgated LR 38:1225 (May 2012), amended LR 38:1404 (June 2012), LR 39:3261 (December 2013), LR 42:.

**STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION
FAMILY IMPACT STATEMENT
(LA R.S. 49:953 and 972)**

Person Preparing Statement: Ryan Gremillion
Phone: 225-342-6100
Division: Policy Office
Rule Title: Part XLIII. Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

PLEASE RESPOND TO THE FOLLOWING:

1. WILL THE PROPOSED RULE AFFECT THE STABILITY OF THE FAMILY?
 No
 Yes
 Lacks sufficient information to determine
2. WILL THE PROPOSED RULE AFFECT THE AUTHORITY AND RIGHTS OF PARENTS REGARDING THE EDUCATION AND SUPERVISION OF THEIR CHILDREN?
 No
 Yes
 Lacks sufficient information to determine.
3. WILL THE PROPOSED RULE AFFECT THE FUNCTIONING OF THE FAMILY?
 No
 Yes
 Lacks sufficient information to determine
4. WILL THE PROPOSED RULE AFFECT FAMILY EARNINGS AND FAMILY BUDGET?
 No
 Yes
 Lacks sufficient information to determine
5. WILL THE PROPOSED RULE AFFECT THE BEHAVIOR AND PERSONAL RESPONSIBILITY OF CHILDREN?
 No
 Yes
 Lacks sufficient information to determine
6. IS THE FAMILY OR A LOCAL GOVERNMENT ABLE TO PERFORM THE FUNCTION AS CONTAINED IN THE PROPOSED RULE?
 No
 Yes
 Lacks sufficient information to determine

Signature of Contact Person: *Ryan Gremillion*
Date Submitted: 8/23/16

STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION
POVERTY IMPACT STATEMENT
(LA R.S. 49:973)

Person Preparing Statement: Ryan Gremillion

Phone: 225-342-6100

Division: Policy Office

Rule Title: Part XLIII, Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

PLEASE RESPOND TO THE FOLLOWING:

1. WILL THE PROPOSED RULE AFFECT THE HOUSEHOLD INCOME, ASSETS, AND FINANCIAL SECURITY?

- No
 Yes
 Lacks sufficient information to determine

2. WILL THE PROPOSED RULE AFFECT EARLY CHILDHOOD DEVELOPMENT AND PRESCHOOL THROUGH POSTSECONDARY EDUCATION DEVELOPMENT?

- No
 Yes
 Lacks sufficient information to determine

3. WILL THE PROPOSED RULE AFFECT EMPLOYMENT AND WORKFORCE DEVELOPMENT?

- No
 Yes
 Lacks sufficient information to determine

4. WILL THE PROPOSED RULE AFFECT TAXES AND TAX CREDITS?

- No
 Yes
 Lacks sufficient information to determine

5. WILL THE PROPOSED RULE AFFECT CHILD AND DEPENDENT CARE, HOUSING, HEALTH CARE, NUTRITION, TRANSPORTATION, AND UTILITIES ASSISTANCE?

- No
 Yes
 Lacks sufficient information to determine

Signature of Contact Person: Ryan Gremillion

Date Submitted: 8/23/16

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

*rec'd from LDE 9/2/16
to LFO 9/2/16
back from LFO 9/8/16*

Person Preparing Statement: Ryan Gremillion Dept.: LA Department of Education
Board of Elementary & Secondary Education

Phone: (225) 342-6100 Office: Policy

Return Address: P. O. Box 94064 Rule Title: Part XLIII, Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Baton Rouge, LA

Date Rule Takes Effect: Upon final adoption by BESE

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy revision will have no effect on costs or savings to state or local governmental units. The proposed revisions align current policy with Act 522 of the 2016 Regular Legislative Session which requires that local education agency (LEA) guidelines and procedures regarding seclusion and restraints be provided to the Louisiana Department of Education (LDOE) and posted on each school and LEA website. LEAs must also use the Special Education Reporting (SER) System for reporting incidents and all instances must be reported at least monthly.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Signature of Agency Head or Designee

Evan Brasseur, Staff Director
Legislative Fiscal Officer or Designee

Beth Scioneaux, Deputy Superintendent for Management and Finance
Typed Name and Title of Agency Head or Designee

9/2/16
Date of Signature

9/6/16
Date of Signature

LFO 10/04

RECEIVED
SEP 02 2016
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Act 522 of the 2016 Regular Legislative Session requires that local education agency (LEA) guidelines and procedures regarding seclusion and restraints be provided to the Louisiana Department of Education (LDOE) and posted on each school and LEA website. LEAs must also use the Special Education Reporting (SER) System for reporting incidents and all instances must be reported at least monthly. The proposed revisions align current policy with Act 522 of the 2016 Regular Legislative Session.

- B. Summarize the circumstances that require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The policy revisions are necessary to align with Act 522 of the 2016 Regular Legislative Session.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

1. Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No.

2. If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY16-17	FY17-18	FY18-19
PERSONAL SERVICES			
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
MAJOR REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed policies will have no effect on costs or savings to state or local governmental units.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY16-17	FY17-18	FY18-19
STATE GENERAL FUND			
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Department has the necessary funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed action will not result in any cost, savings, or workload adjustment to local school systems.

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

No sources of funding will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

This proposed action will have no effect on revenue collection.

REVENUE INCREASE/DECREASE	FY16-17	FY17-18	FY18-19
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This proposed action will have no effect on revenue collection.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

None.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on income is anticipated as a result of this rule change.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The policy will have no effect on competition and employment.

COMPARISON DOCUMENT

Title 28
EDUCATION

**Part XLIII. Bulletin 1706—Regulations for Implementation of the
Children with Exceptionalities Act**

Chapter 5. Procedural Safeguards

Subchapter C. Seclusion and Physical Restraint

§540. Definitions

A. As used in these Sections 541 through 543:

1. *Imminent Risk of Harm*—an immediate and impending threat of a person causing substantial injury to self or others;
2. *Mechanical Restraint*—
 - a. the application of any device or object used to limit a person's movement;
 - b. does not include:
 - i. a protective or stabilizing device used in strict accordance with the manufacturer's instructions for proper use and which is used in compliance with orders issued by an appropriately licensed health care provider;
 - ii. any device used by a duly licensed law enforcement officer in the execution of his official duties;
3. *Physical Restraint*—
 - a. bodily force used to limit a person's movement;
 - b. does not include:
 - i. consensual, solicited, or unintentional contact;
 - ii. ~~holding of a student, by a school employee, for less than five minutes in any given hour or class period for the protection of the student or others~~ momentary blocking of a student's action if said action is likely to result in harm to the student or any other person;
 - iii. holding of a student, by one school employee, for the purpose of calming or comforting the student, provided the student's freedom of movement or normal access to his or her body is not restricted;
 - iv. minimal physical contact for the purpose of safely escorting a student from one area to another; or
 - v. minimal physical contact for the purpose of assisting the student in completing a task or response;
4. *Positive Behavior Interventions and Support*—a systematic approach to embed evidence-based practices and data-driven decision making when addressing student behavior in order to improve school climate and culture;
5. *Seclusion*—a procedure that isolates and confines a student in a separate room or area until he or she is no longer an immediate danger to self or others;
6. *Seclusion Room*—a room or other confined area, used on an individual basis, in which a student is removed from the regular classroom setting for a limited time to allow the student the opportunity to regain control in a private setting and from which the student is involuntarily prevented from leaving;
7. *School Employee*—a teacher, paraprofessional, administrator, support staff member, or a provider of related services;
8. *Written Guidelines and Procedures*—the written guidelines and procedures adopted by a school's governing authority regarding appropriate responses to student behavior that may require immediate intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1006 (April 2012), LR 42.

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. – H. ...

I. If a student is involved in five incidents in a single school year involving the use of physical restraint or seclusion, the student's Individualized Education Plan team shall review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports. Thereafter, if the student's challenging behavior continues or escalates requiring repeated use of seclusion or physical restraint practices, the special education director or his designee shall review the student's plans at least once every three weeks.

~~J.—The documentation compiled for a student who has been placed in seclusion or has been physically restrained and whose challenging behavior continues or escalates shall be reviewed at least once every three weeks.~~

~~J.K.~~ The governing authority of each public elementary and secondary school shall adopt written guidelines and procedures regarding:

1. reporting requirements and follow-up procedures;

2. notification requirements for school officials and a student's parent or other legal guardian; and
3. an explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.

K.L:The guidelines and procedures shall be provided to the LDE, all school employees and every parent of a child with a disability. The guidelines and procedures shall also be posted at each school and on each school system's website.

L.M:The governing authority of each public elementary and secondary school shall report all instances where seclusion or physical restraint is used to address student behavior to the state Department of Education through the Special Education Reporting (SER) System. At a minimum, all instances must be reported on a monthly basis.

M.N:The state Department of Education, using the data elements collected in SER, shall maintain a database of all reported incidents of seclusion and physical restraint of students with disabilities and shall disaggregate the data for analysis by school, student age, race, ethnicity, and gender, student disability, where applicable, and any involved school employees.

N.O: Based upon the data collected, the LDE shall annually compile a comprehensive report regarding the use of seclusion and physical restraint of students with exceptionalities, which shall at a minimum include the following:

1. The number of incidents of physical restraint disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.

2. The number of incidents of seclusion disaggregated by school system; student age, race, ethnicity, gender, and student disability classification.

3. A list of the school systems and charter schools that have complied with the reporting requirements pursuant to paragraph 2 of this subsection.

O.P: The state Department of Education shall post the annual report pursuant to O. of this section on its website and submit a written copy to the Senate and House committees on education and the Advisory Council on Student Behavior and Discipline established pursuant to R.S. 17:253.

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