

The Deborah — Greenblatt Act

NC House Bill 1032
Seclusion and Restraint

Deborah Greenblatt

- North Carolina attorney and a passionate advocate for children and adults with mental disabilities in her role as the executive director of Carolina Legal Assistance for twenty-three years.
- Represented clients in special education disputes, fair housing cases, class action suits for individuals in state hospitals and employment discrimination cases.
- Responsible for bringing together a diverse coalition of disability advocates and education stakeholders who drafted the current bill promoting the safe use of seclusion and restraint in public schools.

N.C. Gen. Stat. §115C-391(a)(in part)

Notwithstanding any school board discipline policies, “school personnel may use **reasonable** force...to control behavior or to remove a person from the scene in those situations when necessary to:

- 1.) To quell a disturbance threatening injury to others;
- 2.) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;
- 3.) For self-defense;
- 4.) For the protection of persons or property; or
- 5.) To maintain order on school property, in the classroom, or at a school-related activity on or off school property.”

What is Reasonable Force?

- Not extreme or excessive
 - Moderate or fair
- Possessing sound judgement

Physical Restraint

Definition:

The use of physical force to restrict the free movement of all or a portion of a student's body.

Physical Restraint

Physical Restraint shall be considered to be a reasonable force when used in the following circumstances when reasonably needed:

1. to obtain possession of weapons or other dangerous objects on the person, or within the control of a student;
2. to maintain order or to prevent or break up a fight;
3. for self-defense;
4. to ensure the safety of any student, employee, volunteer, or other person present;

Physical Restraint

Physical Restraint shall be considered to be a reasonable force when used in the following circumstances when reasonably needed:

5. to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior;
6. to escort a student safely from one area to another;
7. if used as provided for in an IEP, Section 504, or behavior intervention plan; or
8. to prevent imminent destruction to school or another person's property.

NC Gen. Stat. §115C-391.1(c)(1) (House Bill 1032)

Physical Restraint

- Physical restraint of students shall not be considered a reasonable use of force and its use is prohibited (except as set forth in subsection B). NC Gen. Stat. §115C-391.1(c)(2)(House Bill 1032)
- Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence. NC Gen. Stat. §115C-91.1(c)(3)(House Bill 1032)
- This shall not be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties. NC Gen. Stat. §115C-391.1(c)(4)(House Bill 1032)

Mechanical Restraint

Definition:

The use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove.

Mechanical Restraint

Mechanical Restraint of student by school personnel is permissible only in the following circumstances:

1. when properly used as assistive technology device included in the student's IEP, Section 504, Behavior Intervention Plan, or as otherwise prescribed by a medical or related service provider;
2. when using seat belts or other safety restraints to secure students during transportation;

Mechanical Constraint

3. to obtain possession of weapons or other dangerous objects on the person or within the control of a person;
 4. for self-defense;
 5. to ensure the safety of any student, employee, volunteer, or other person.
- NC Gen. Stat. §115C-391.1(d)(1)(1)(House Bill 1032).

Mechanical Restraint

- Except as set forth above, mechanical restraint, including the tying, taping, or strapping down of a student shall not be considered to be a reasonable use of force and its use is prohibited. NC Gen. Stat. §115C-391.1(d)(1)(2)(House Bill 1032).
- This shall not be construed to prevent the use of mechanical restraint devices, such as handcuffs, by law enforcement officers in the lawful exercise of their law enforcement duties. NC Gen. Stat. §115C-391.1(d)(3)(House Bill 1032)

Seclusion

Definition:

The confinement of a student alone in an enclosed space from which the student is:

- Physically prevented from leaving
- Incapable of leaving due to physical or intellectual capacity

Seclusion

Seclusion of students by school personnel may be used as reasonably needed only in the following circumstances:

1. to respond to a person in control of a weapon or other dangerous object;
2. to maintain order or prevent or break up a fight;
3. for self-defense;
4. when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property

Seclusion

5. When used as specified in the student's IEP, Section 504, Behavior Intervention Plan; and

- student is constantly monitored by an adult in close proximity who is able to see and hear the student at all times;
- the student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in IEP, 504, or behavior intervention plan;
- the confining space has been approved for such use by the local education agency;
- the space is appropriately lighted, ventilated and heated or cooled; and
- the space is free from objects that unreasonably expose the student or others to harm.

Seclusion

- Except as noted previously, the use of seclusion is not considered to be reasonable force and its use is *not permitted*.
- Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
- This shall not be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

NC Gen. Stat. §115C-391.1(e)(2)(House Bill 1032)

Isolation

Definition:

A behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving.

Isolation

Isolation is permitted as a behavior management technique provided that:

- the isolation space is appropriately lighted, ventilated and heated or cooled;
- the duration of the isolation is reasonable in light of the purpose for the isolation;
- the student is reasonably monitored; and
- the isolation space is free from objects unreasonably expose the student or others to harm.

NC Gen. Stat. §115C-391.1(f)(House Bill 1032)

Time-Out

Definition:

A behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting.

Time-Out

- No Regulation of the use of time-out
- Nothing in the new law is intended to prohibit or regulate the use of time-out.

NC Gen. Stat. §115C-391.1(g)(House Bill 1032)

Aversive Procedures

Definition:

A systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:

1. Significant physical harm, such as tissue damage, physical illness, or death;
2. Serious, foreseeable long-term psychological impairment;

Aversive Procedures

3. Obvious repulsion on the part of observers who cannot reconcile such extreme procedures with acceptable standard practice, for example:

- electric shock applied to the body
- extremely loud auditory stimuli
- forcible introduction of foul substances to the mouth, eyes, ears, nose or skin;
- slapping, pinching, hitting or pulling hair;
- placement in a tub of cold water or shower;
- blindfolding or other forms of visual blocking;
- unreasonable withholding of meals;
- eating one's own vomit; or
- denial of reasonable access to toileting facilities.

Aversive Procedures

The use of aversive procedures in public schools is prohibited.

NC Gen. Stat. §115C-391.1(b)(2)(House Bill 1032)

Notice, Reporting, and Documentation

Each local board of education is required to provide copies of G.S. 115C-391.1, and copies of all local board policies developed to implement the statute to all school personnel and parents and/or guardians of students at the beginning of the school year.

NC Gen. Stat. §115C-391.1(j)(House Bill 1032)

Notice, Reporting, and Documentation

School personnel are required to promptly notify the principal or principal's designee of:

(1) any use of aversive procedures

(2) any prohibited use of mechanical restraint

(3) any use of physical restraint

(4) any prohibited use of seclusion

(5) any seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.

Notice, Reporting, and Documentation

Notification to the principal or designee shall occur the same workday the incident occurs. If same-day notification is not reasonable under the circumstances, then notification may be made the following workday, but no later.

Within a reasonable period of time, but in no event later than 30 days after the incident, the school shall complete the Notice of Use of Unreasonable Restraint, Seclusion, and Aversive Procedures Form and provide a copy to the parent or guardian of the student.

Notice, Reporting, and Documentation

When a principal or his designee has personal knowledge or actual notice of any **impermissible** use of seclusion or restraint, the principal or designee must promptly notify the parent or guardians of the student involved and provide the name of the school employee the parent or guardian can contact regarding the incident.

NC Gen. Stat. §115C-391.1(j)(2)(House Bill 1032)

Notice, Reporting, and Documentation

Within a reasonable period of time, but not later than 10 days following an incident of seclusion or restraint the student's parent or guardian shall receive a written incident report which must include:

- The date, time, location, duration, and description of the incident and interventions
- The event(s) leading up to the incident
- The nature and extent of any injury to student
- The name of a school employee the parent can contact regarding the incident

Notice, Reporting, and Documentation

Non-Retaliation for Reporting:

An employee making a report alleging a prohibited use of physical or mechanical restraint, seclusion, or aversive procedure shall NOT be discharged, threatened, or retaliated against through compensation, terms, conditions, location, or privilege of employment by any local board of education or any employee unless the employee knew or should have known that the report was false.

NC Gen. Stat. §115C-391.1(j)(5)(House Bill 1032)

Notice, Reporting, and Documentation

Local boards of education are required to maintain a record of incidents reported to the principal and parents under G.S. 115C-391.1(j)(4) and provide this information annually to the State Board of Education.

Limitations on Liability

Limitation in New Statute

Nothing in NC Gen. Stat. §115C-391.1(j)(5)(House Bill 1032) shall be construed to create a private cause of action against Envision Science Academy, its agents or employees, and does not create a criminal offense.

NC Gen. Stat. §115C-391.1(k)(House Bill 1032)

Limitations on Liability

Pre-Existing Civil Liability Protection

“Notwithstanding any other law, no officer or employee... of a local board of education shall be held civilly liable for using reasonable force, including corporal punishment, in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable.”

NC Gen. Stat. §115C-391(h)

Final Thoughts

- Use Physical Restraint as a last resort and only as allowed by law
- Know what level of behavior the student is operating on
- Help students talk out instead of acting out their problems

Sexual Harassment in the Workplace



Discussion Topics

In this session, you will learn:

- How to recognize sexual harassment
- What to do if you encounter sexual harassment
- How to prevent sexual harassment in your work place



Three Kinds of Discrimination

- **Adverse Treatment** – Intentionally treating someone different based on their personal traits, not their ability
- **Adverse Impact** – Usually and unintentional form of discrimination where a policy acts to prohibit qualified people from applying for a job.
- **Retaliation** – The targeted person is penalized or harmed due to a claim that they **have filed**.

Women and Gender Inequality

- 2000 Wall Street Journal/NBC News survey on women in the workplace
 - finds more than 80% of Americans (and a higher percentage of men) say women have made considerable progress over the past generation in jobs.
 - Women see progress as too slow with great difficulty in women advancing to top levels.
 - There is discrimination and harassment against working class women.
 - There are serious overall pay inequities.



Sexual Harassment:

- Is a form of gender-based discrimination
- Involves
 - unwelcome sexual advances,
 - requests for sexual favors, or
 - other unwanted verbal or physical conduct of a sexual nature
- Is illegal if it
 - becomes a condition of employment,
 - affects decisions about a person's job or career,
 - interferes with work performance, or
 - creates a hostile work environment

Sexual Harassment in the Workplace



Types of Harassment

- VERBAL, VISUAL OR PHYSICAL -

- Quid Pro Quo
- Hostile Work Environment



Types of Harassment

- VERBAL, VISUAL OR PHYSICAL -

- Quid Pro Quo - Requires an employee submit to sexual harassment to keep their job or to get a promotion
- Hostile Work Environment - Unwelcome, repetitive behavior that is based on sex and gender-related. It must be severe, offensive, and interfere with job performance.

Landmark Sexual Harassment Cases: 1998

- Faragher vs. Boca Raton upheld a former lifeguard's verdict against the city
- Burlington Industries Inc. vs. Ellerth allowed a woman to sue her former employer over threats allegedly made but never carried out

In these cases, the court ruled that an employer could defend itself if

(a) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior and

(b) the employee failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.



Appropriate Dress



- The law states that attire can be used in court to determine if sexual conduct is welcomed or unwelcomed
- Know the appropriate dress for your work environment

What To Do If You Encounter Sexual Harassment

- Stay Calm
- Explain What Is Offensive
- Confront The Harasser
- Put It In Writing
- Report To Supervisor or Human Resources
- Follow Organizational Procedures
- Don't Delay/ Report Immediately



Motivation To Harass

- Desire to have power over another person
- Desire to boost harasser up by having control over another
- Desire to protect turf
- Build dominance and superiority

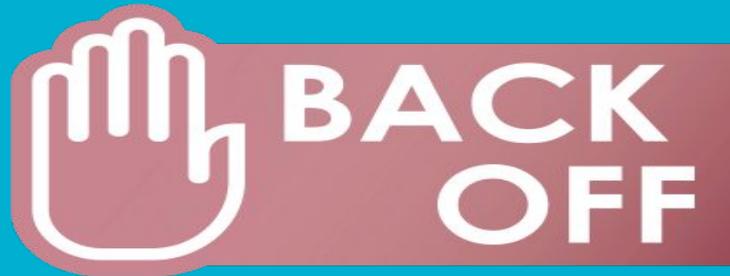
Common Responses

- Submit
- Ignore
- Participate
- Act out anger
- Be internally angry, but act appropriately by confronting harasser and contacting supervisor or human resources (ex. Exec. Dir, Dean, Board, etc)

Sexual Harassers

Some people accused of sexual harassment are simply clueless, they “don’t get it” and are in denial of their role....

- Watch use of jokes, emails and daily interactions
- Think how you would want your mother/father, wife/husband, sister/brother, daughter/son treated in same situation



The ONLY test:
Sexual Content + Discrimination =
Sexual Harassment

An employee must demonstrate that the sexual content they experienced led to discrimination in the same way as they would if they experienced race, national origin, or religious discrimination. This is an important point about which employers must educate their employees and supervisors.

How to act if you are Harassed

- Keep your cool and be discreet
- Confront the source of harassment
- Clearly state that the activity is unwelcome
- Document your activities and the harassment thoroughly
- If the harassment does not stop, make an official complaint to the appropriate management level



Stop harassment

EEOC

The EEOC enforces

- Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin;
- the Age Discrimination in Employment Act; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal sector;
- sections of the Civil Rights Act of 1991;
- and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments.

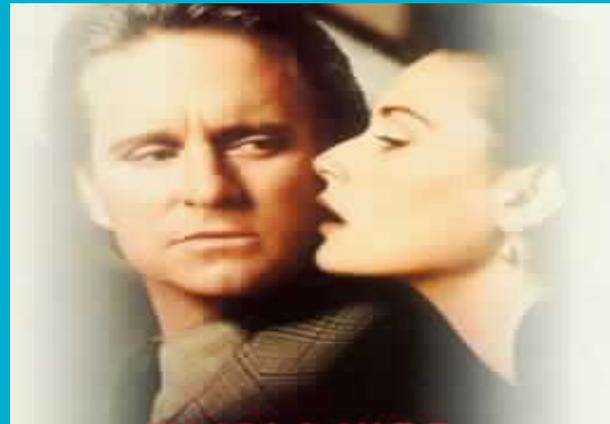


Further information about the Commission is available on the agency's web site at www.eeoc.gov.

Sexual Harassment and Men

- Sexual harassment is not limited to male-on-female harassment in the workplace

“Men account for 11.6 percent of all sexual harassment cases filed with the EEOC.”



Oncale v. Sundowner Offshore Services, Inc. -1998

Same Sex Harassment

In the case of Oncale v. Sundowner Offshore Services, Inc. the Supreme Court ruled that same-sex sexual harassment is a form of discrimination protected by Title VII of the Civil Rights Act. The Oncale ruling gave both the employee and employer victories.



The ONLY test:
Sexual Content + Discrimination = Sexual Harassment

Sexual Harassment Prevention

- Know the law
- Educate yourself on your organization's policies regarding sexual harassment
- Take steps to set a positive personal example
- Take personal responsibility to make sure your organization has appropriate policies and people are educated about them

Who Do You Contact?

Title IX Coordinator- Ms. X. Johnson

Lower Elementary School Dean- Ms. X. Johnson

Upper Elementary School Dean- Mrs. Erica Prentice

Executive Director- Dr. Charles Fuller

Board of Directors

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Final Thoughts?
Questions?

