

APA-1  
11/96

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 290 Department or Agency State Department of Education  
Rule No. 290-3-1-.02  
Rule Title: Rules Governing Public Schools

New  Amend   
Repeal  Adopt by Reference  (Check appropriate box)

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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Does the proposed rule have an economic impact? No

If the proposed rule does have an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama, 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Larry E Craven  
Signature of certifying officer

9/6/11  
DATE

APA-2  
11/96

STATE DEPARTMENT OF EDUCATION

NOTICE OF INTENDED ACTION

AGENCY NAME: State Department of Education

RULE NO. & TITLE: 290-3-1-.02; Regulations Governing Public Schools

INTENDED ACTION: Amend existing rule

SUBSTANCE OF PROPOSED ACTION: Added rule 290-3-1-.02(1)(f) Seclusion and Restraint for ALL Students.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 9:30 a.m., November 8, 2011, Auditorium, Plaza Level, Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama. All persons wishing to express their views should contact the State Superintendent of Education (334-242-9702) no later than October 28, 2011, in order to be scheduled on the agenda. All persons wishing to express their views in writing to the State Superintendent of Education should address all written comments to the State Superintendent of Education, Gordon Persons Building, P.O. Box 302101, Montgomery, Alabama 36130-2101.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 8, 2011

CONTACT PERSON AT AGENCY: Mr. Frank Williamson  
Alabama State Department of Education  
P.O. Box 302101  
Montgomery, Alabama 36130-2101  
(334) 242-8156

  
Signature of certifying officer

ADMINISTRATIVE CODE

SUPP. NO. 98-4                      INSTRUCTIONAL SERVICES                      CH. 290-3-1

RULES

OF THE

STATE BOARD OF EDUCATION

STATE DEPARTMENT OF EDUCATION

CHAPTER 290-3-1

**PUBLIC SCHOOL GOVERNANCE**

290-3-1-.01                      **Short Title, Purpose, and Name Change.**

290-3-1-.02                      **Regulations Governing Public Schools.**

290-3-1-.01                      **Short Title, Purpose, and Name Change.**

(1)        Short Title. This chapter shall be entitled Public School Governance and shall refer specifically to Alabama Public School Governance.

(2)        Purpose. The purpose of Alabama Public School Governance is to provide governance guidelines for public schools in Alabama.

(3)        Name Change. Effective September 1, 1998, Student Instructional Services shall be changed to Instructional Services in this chapter.

**Author:** Dr. Ed Richardson

**Statutory Authority:** Ala. Const. amend. 284, *Code of Ala.*, (1975), §16-2-2, 16-3-11 through 12, 16-3-14, 16-26-1 through 3.

**History:** Amended 3-27-75, repromulgated 2-19-82, 06-13-91 repealed and replaced effective 07-25-91, repealed and replaced effective 07-25-91; repealed and replaced 8-10-95, effective 9-14-95; amended 07-14-98, effective 09-01-98.

| 290-3-1-.02(+)

290-3-1-.02\_(3)(1)(e)1.

**290-3-1-.02 Regulations Governing Public Schools.**

- (1) Safe School Equipment and Facilities, Laboratories, and Policies.
- (a) Safety precautions must be implemented and adequate facilities must be provided for implementation of programs prescribed by SDE Bulletin(s).
- (b) Effective with the 1995-96 school year and thereafter, local boards of education must:
1. Adopt a uniform policy allowing law enforcement agencies to make periodic visits to local public schools to detect the presence of illegal drugs, unannounced to anyone except the local superintendent and building principal.
  2. Adopt a uniform policy prohibiting the use of tobacco products on school property and prescribing specific penalties for violating this policy.
  3. Adopt and enforce a uniform policy prohibiting all persons, other than authorized law enforcement personnel, from bringing or possessing any deadly weapon or dangerous instrument on school property and prescribing specific penalties for students and school personnel who violate this policy, notwithstanding any criminal penalties which may also be imposed.
- (c) Local school systems which operate alternative educational programs shall provide a curriculum that stresses skills in recognizing and managing anger, alternatives to aggression (verbal and physical assault), strategies for developing self-control and personal responsibility, skills for getting along with others, success through academic achievement, and skills for success in the workplace.
- (d) All policies and actions implemented under these mandatory regulations affecting students with disabilities must comply with federal and state special education laws, regulations, and court rulings.
- (e) Unsafe School Choice Option
1. Definitions: A transfer option school (TOS) in the state of Alabama is one in which for three (3) consecutive school years the school has expelled one percent (1%) of the student population or five (5) students (whichever is greater) for violent criminal offenses committed on school property during school hours or committed at school-sponsored activities. The words "transfer option school," "TOS," or "TOS school" shall mean a "persistently dangerous school" as those words are used in the No Child Left Behind Act of 2001, Public Law 107-110, Title IX, §9532(a) and (b). For the purpose of this definition, a "violent criminal offense" shall mean homicide; robbery; assault in the first and/or second degree; sexual battery (including rape) as these offenses are defined in the Criminal Code of Alabama (see § 13A-6-1, et. seq., Ala. Code 1975); and use of a handgun, firearm component, explosive, knife, and other "unknown weapons" as defined by the Student Incident Report (SIR).

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2. A student who becomes a victim of a violent criminal offense committed on school property during school hours or at school-sponsored activities shall be given an opportunity to transfer to a safe public school within the LEA. The LEA shall notify the student's parent/guardian of the right to transfer as soon as practicable, not to exceed ten (10) calendar days from the date of a final determination by the school board or its designee that a violent criminal offense has occurred. All LEA transfer procedures will be observed. It shall be the policy of the Alabama State Department of Education (SDE) to notify the LEA annually when one or more of its schools have been identified as a transfer option school. Each Superintendent or his or her designee shall orally notify the Prevention and Support Services Section of the State Department of Education within twenty-four (24) hours of the decision that a violent criminal offense has occurred, followed by written confirmation. The State Department of Education will assist the LEA in resolving all safety issues. At a minimum, an LEA that has one or more schools identified as persistently dangerous must:

- ~~(a)~~(i) Step 1. Notify parents/guardians of each student attending the school within ten (10) working days that it has been identified as a transfer option school and offer students the opportunity to transfer to a safe public school within the LEA if another school is available.
- ~~(b)~~(ii) Step 2. Complete the transfer for those students who opt to do so within 20 working days.
- ~~(c)~~(iii) Step 3. Develop a corrective action plan to be submitted to the SDE for approval within 20 working days of the LEA's receipt of status.
- ~~(d)~~(iv) Step 4. Implement the corrective action plan.

Once a school has been identified as a transfer option school, it can return to safe status by (1) completing Steps One through Four above and (2) completing two consecutive years with less than one percent (1%) of the student population or five (5) students (whichever is greater) expelled for violent criminal offenses as defined in its policy.

290-3-1-.02(1)(f) Seclusion and Restraint for ALL Students.

I. Definitions.

(i) Chemical Restraint - Any medication that is used to control violent physical behavior or restrict the student's freedom of movement that is not a prescribed treatment for the student's medical or psychiatric condition. Use of chemical restraint is prohibited in Alabama public schools and educational programs.

(ii) Mechanical Restraint - The use of any device or material attached to or adjacent to a student's body that is intended to restrict the normal freedom of movement and which cannot be easily removed by the student. The term does not include an adaptive or protective device recommended by a physician or therapist when used as recommended by the physician or therapist to promote normative body positioning and physical functioning, and/or to prevent self injurious behavior. The term also does not include seatbelts and other safety equipment when used to secure students during transportation. Use of mechanical restraint is prohibited in Alabama public schools and educational programs.

(iii) Physical Restraint - Direct physical contact from an adult that prevents or significantly restricts a student's movement. The term physical restraint does not include prone restraint, mechanical restraint, or chemical restraint. Additionally, physical restraint does not include: providing limited physical contact and/or redirection to promote student

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290-3-1-.02(1)(f)(2)(v)

safety or prevent self-injurious behavior, providing physical guidance or prompting when teaching a skill, redirecting attention, providing guidance to a location, providing comfort, or providing limited physical contact as reasonably needed to prevent imminent destruction to school or another person's property.

(iv) Prone Restraint - A specific type of restraint in which a student is intentionally placed face down on the floor or another surface, and physical pressure is applied to the student's body that restricts the flow of air into the student's lungs. Use of prone restraint is prohibited in Alabama public schools and educational programs.

(v) Seclusion - a procedure that isolates and confines the student in a separate, locked area until he or she is no longer an immediate danger to himself/herself or others. The seclusion occurs in a specifically constructed or designated room or space that is physically isolated from common areas and from which the student is physically prevented from leaving. Seclusion does not include situations in which a staff member trained in the use of de-escalation techniques or restraint is physically present in the same unlocked room as the student, time-out as defined in paragraph (1)(vi) of this rule, in-school suspension, detention, or a student-requested break in a different location in the room or in a separate room. Use of seclusion is prohibited in Alabama public schools and educational programs.

(vi) Time-out - A behavioral intervention in which the student is temporarily removed from the learning activity. Time-out is appropriately used when:

(I) The non-locking setting used for time-out is appropriately lighted, ventilated, and heated or cooled.

(II) The duration of the time-out is reasonable in light of the purpose of the time-out and the age of the child; however, each time-out should not exceed 60 minutes.

(III) The student is reasonably monitored by an attending adult who is in reasonable physical proximity of the student while in time-out.

(IV) The time-out space is free of objects that unreasonably expose the student or others to harm.

## 2. Requirements.

(i) The use of seclusion is prohibited in Alabama public schools and educational programs.

(ii) The use of prone restraint is prohibited in Alabama public schools and educational programs.

(iii) The use of mechanical restraint is prohibited in Alabama public schools and educational programs.

(iv) The use of chemical restraint is prohibited in Alabama public schools and educational programs.

(v) The use of physical restraint is prohibited in Alabama public schools and educational programs except in those situations in which the student is an immediate danger to himself or others and the student is not responsive to less intensive behavioral interventions including verbal directives or other de-escalation techniques. Notwithstanding the foregoing, physical restraint is prohibited in Alabama public schools and educational programs when used as a form of discipline or punishment.

290-3-1-.02(1)(f)(2)(vi)

290-3-1-.02(1)(f)(2)(xii)

(vi) All physical restraint must be immediately terminated when the student is no longer an immediate danger to himself or others or if the student is observed to be in severe distress.

(vii) Schools and programs that use physical restraint in accordance with paragraph (2.)(v-xiv) of this rule must develop and implement written policies to govern the use of physical restraint. Parents must be provided information regarding the school or program's policies governing the use of physical restraint. The written policies must include the following provisions:

(I) Staff and faculty training on the use of physical restraint and the school or programs policy and procedures,

(II) Written parental notification when physical restraint is used to restrain their student within a reasonable time not to exceed one school day from the use of restraint,

(III) The use of physical restraint to be documented by staff or faculty participating in or supervising the restraint for each student in each instance in which the student is restrained,

(IV) Procedures for the periodic review of the use of restraint and the documentation described in paragraph (2.)(vii)(III),

(V) Procedures for reporting the use of restraint and the documentation described in paragraph (2.)(vii)(III) and any prohibited use of seclusion and chemical, mechanical, or physical restraint to the local board of education annually, and

(VI) The written policies described in paragraph (2.)(vii)(I and II) are to be included in each local education agencies' code of conduct and/or the student handbook.

(viii) Schools and programs that use physical restraints in accordance with paragraph (2.)(v-xiv) of this rule, must ensure that staff and faculty are trained in the use of physical restraint. This training shall be provided as a part of a program which addresses prevention and de-escalation techniques as well as positive behavioral intervention strategies. Schools and programs must maintain written or electronic documentation on training provided and the list of participants in each training. Records of such training must be made available to the Alabama Department of Education or any member of the public upon request.

(ix) Nothing in this rule shall be construed to interfere with a school system, school or program, or school or program employee's authority to utilize time-out as defined in paragraph (1.)(vi) of this rule or any other classroom management technique or approach, including a student's removal from the classroom, that is not specifically addressed in this rule.

(x) Nothing in this rule modifies the rights of school personnel to use reasonable force as permitted under the *Code of Alabama, 1975, §16-1-14* or modifies the rules and procedures governing discipline under the *Code of Alabama, 1975, §16-28-12*.

(xi) Nothing in this rule shall be construed to prohibit a school system, school, or program employee from taking reasonable action to diffuse or break up a student fight or altercation.

(xii) Nothing in this rule shall be construed to prohibit a school system, school, or program employee from taking reasonable action to obtain possession of a weapon or other dangerous objects on a student or within the control of a student.

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(xiii) Nothing in this rule shall be construed to eliminate or restrict the ability of an employee of a school system, school or program to use his or her discretion in the use of physical restraint to protect students or others from imminent harm or bodily injury. Nothing in this rule shall be construed to create a criminal offense or a private cause of action against any local board of education or program or its agents or employees.

(xiv) In some instances in which a student is an immediate danger to himself or herself or others, the school or program must determine when it becomes necessary to seek assistance from law enforcement and/or emergency medical personnel. Nothing in these rules shall be construed to interfere with the duties of law enforcement or emergency medical personnel. Parents must be promptly informed when students are removed from the school or program setting by emergency medical or law enforcement personnel.

**Author:** Dr. Ed Richardson

**Statutory Authority:** Const. of Ala. 1901, Amend No. 284, Code of Ala. (1975), 16-1-1, 16-2-2, 16-3-11, through 12, 16-3-14, 16-4-14, 16-8-35 through 36, 16-12-8, 16-26-1 through 3, 1982 Acts of Ala. No. 82-482, *No Child Left Behind Act* of 2001, Public Law 107-110, Title IX, § 9532 (a) and (b).

**History:** Adopted ER effective March 13, 2003; adopted ER as regular rule May 8, 2003, effective June 12, 2003. Adopted 290-3-1-.02(1)(f) as ER effective 12/11/2011.