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## LEGAL UPDATE

Legal Services Division



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### ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — SEPTEMBER 8, 2020

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **EDUCATION DEPARTMENT, Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students, 8/28/20 IAB, ARC 5146C, NOTICE.**

**Background.** This rulemaking rewrites rules governing corporal punishment, physical restraint, and physical confinement and detention of students in public and accredited nonpublic schools. The rulemaking bans corporal punishment and prone or mechanical restraints. The rulemaking sets standards for the use of reasonable and necessary force in schools and the use of seclusion rooms, as well as training and reporting requirements.

**Commentary.** Committee members asked about the origin of the rulemaking. Mr. Thomas Mayes, speaking for the department, explained that the rulemaking was commenced in response to a petition for rulemaking submitted by a coalition of interested stakeholders. Members asked if the department considered using “serious physical injury” rather than “bodily injury” for the standard for when physical restraint or seclusion of a student is reasonable and necessary. Mr. Mayes noted that the current rule uses “injury” with no modifier and that this issue was a key reason the State Board of Education decided not to adopt prior noticed rulemaking on this subject, and he discussed how the board sought to balance the needs for protecting students and protecting school staff. Members asked for information about how family counseling services would be provided, particularly in rural areas. Mr. Mayes said he would investigate, but that area education agencies provide such services in rural areas. Members suggested that the department take an inventory of seclusion rooms that do not currently meet the size requirements provided in the rulemaking, and Mr. Mayes said the department would consider doing so.

Members asked for clarification of language providing that “[r]easonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics” are not considered corporal punishment. Mr. Mayes explained that this language was taken from current rules and no concerns had been raised about it. In a scenario such as student athletes being required to run laps during an athletic practice, he explained that the department would consider the particular facts and circumstances at issue and give deference to coaches and athletic directors. Members asked for a list of states that have banned seclusion rooms and information on what alternatives such states use. Mr. Mayes explained that when the option of seclusion rooms is taken away, a larger number of affected students are placed in state facilities, and schools rely more on law enforcement to resolve such situations. He said the department would provide a list of states. Mr. William Tilly, also speaking for the department, noted that the department did consider procedures used by other states when formulating these rules.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 103, Statehouse, on Tuesday, October 13, 2020, beginning at 9:00 a.m. Instructions for participation by videoconference can be found at the Committee's Internet site below.

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