

USE OF FORCE

Current Law and Guidance for Law Enforcement
Officers and Distinctions within the School Environment

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Road Map

1. Use of Force by Law Enforcement Officers

- a) State Law & Fourth Amendment to U.S. Constitution
- b) TREC Report Guidance and LEA Policies
- c) Pending Legislation on Use of Force
- d) Wake County Board of Education Policy

2. Reasonable Force and Seclusion & Restraint by School Officials

- a) State Law
- b) Wake County Board of Education Policy

Use of Force by Law Enforcement Officers

Use of Force Under State Law

Use of force in arrest is governed by § 115A-401 (d)(1):

A law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

- a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
- b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

Use of Force Under State Law

§ 115A-401 (d) continued:

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

Use of Force Under 4th Amendment to U.S. Constitution

- *Graham v. Connor*, 490 U.S. 386, (1989) – held that claims of excessive use of force by law enforcement officials in the course of an arrest, investigatory stop, or other seizure of a person are properly analyzed under the 4th Amendment’s “objective reasonableness” standard
- The “reasonableness” of the use of force should be analyzed on a case-by-case basis looking at the totality of the circumstances
 - Ex: severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, whether the suspect is actively resisting arrest or attempting to evade by flight

Use of Force Under 4th Amendment to U.S. Constitution

- Reasonableness is judged from the perspective of a reasonable officer on the scene
- The true question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them WITHOUT regard to their underlying intent or motivation

TREC Proposals re Use of Force

Governor Cooper's Task Force on Racial Equity in Law Enforcement (TREC) 2020 Report recommends the following revisions to LEAs' procedures and protocols for use of force by law enforcement officers:

1. Require that officers use the minimum amount of force reasonably necessary to apprehend a suspect;
2. Require that officers use de-escalation tactics when reasonable instead of using force (with such tactics including, but not being limited to, verbal persuasion, redirection, creating time/space/distance, and tactical repositioning/shielding);
3. Prohibit neck holds (consistent with sample policy language articulated by TREC);
4. Explicitly prohibit use of deadly force when a reasonable officer would conclude that a person presents an imminent threat of death or serious physical injury only to themselves;

TREC Proposals re Use of Force

5. Require that an officer alert his/her supervisor any time the officer points a gun at someone;
6. Ban of hog-tying subject (defined as connecting a subject's hand and foot restraints behind the subject's back), including when transporting them face down in a vehicle);
7. Prohibit use of projectiles against a subject's head, neck, face, and spine unless deadly force is justified;
8. Prohibit use of force to retaliate against subject for talking back or running away.

RPD Use of Force Policy

Force should be used only when all other means of resolving a situation have been exhausted or are clearly inapplicable. Force will be used only to the degree reasonably necessary to control the situation. The extent of force in terms of degree and level will vary according to the situation. The nature of the offense, the physical make-up of the parties involved, actions of third parties who may be present, potential for injury to officers, citizens or suspects, the risk of escape, the availability of alternatives and other exigent circumstances are factors to be considered.

RPD Use of Force Policy

Officers are required to make split second decisions in quickly evolving circumstances. Officers must continuously evaluate the need for force and be prepared to respond to changing circumstances which could include the need to escalate the force used, de-escalate the force used or to disengage from the use of force. It must be stressed that the use of force is not left to the unfettered discretion of the involved officer. This is not a subjective determination. The use of force must be objectively reasonable. The officer must only use that force which a reasonably prudent officer would use under the same or similar circumstances.

RPD Use of Force Policy

This term means that, in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.

Nothing in this policy shall be construed as approving the unwarranted, reckless or excessive use of force.

Non-deadly force may be used by law enforcement officers in the performance of duty under the following conditions: (1) In self-defense, or defense of another against unlawful violence, or to prevent suicide or self inflicted injury. (2) In overcoming resistance to a lawful arrest or search, or to prevent an escape from custody

RPD Use of Force Policy

A chokehold could be considered a use of deadly force; therefore, for the purposes of the force continuum, it is not considered a restraining technique. Officers should use restraining techniques that do not impair respiration.

Officers should only use a chokehold in those situations where it appears the officer would be authorized to use deadly force.

Pending Legislation on Use of Force

H532, Criminal Justice Equity Act of 2021

S656, Equity in Justice Act of 2021

S300, Criminal Justice Reform

S565, Supporting Law Enforcement

H536, Law Enforcement Duty to Intervene

Pending Legislation on SROs

H532, Criminal Justice Equity Act of 2021

S656, Equity in Justice Act of 2021

S484, School-Based Complaint/SROs

- Proposed change would define SROs as part of 115C (under new provision, 105.7)
- Proposed change would require that a principal or school social worker sign on to school-based delinquency complaint initiated by SRO before it is referred to court

H159, Education Law Changes

WCBOE Policy 1510 School Safety

2. Use of Force

It is the philosophy of the Board to use de-escalation and other non-physical means to address safety concerns. When force is necessary, it should be limited to the amount needed to prevent harm to self and others.

School personnel may use physical restraint only in accordance with [G.S. 115C-391.1](#) and Board policy on the use of restraints and seclusion.

Reasonable Force and Seclusion & Restraint by School Officials

§ 115C-390.3. Reasonable force.

(b) School personnel may use reasonable force to control behavior or to remove a person from the scene in those situations when necessary for any of the following reasons:

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

WCBOE Policy 4302: Use of Seclusion and Restraint

It is the policy of the Wake County Board of Education to promote the safety of all students, staff, and visitors in its schools. To further this policy, school personnel may, in compliance with [G.S. 115C-391.1](#) and state and local policies and procedures, employ reasonable restraint or seclusion techniques with students.

The Superintendent or designee shall provide copies of this policy and [G.S. 115C-391.1](#) to school personnel and parents/guardians at the beginning of each school year. School personnel shall promptly notify the principal or principal's designee of any use of aversive procedures, any prohibited use of mechanical restraint, any use of physical restraint resulting in observable physical injury to a student, or any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan. Principals shall notify the student's parent or guardian of any prohibited use of seclusion, restraint, or aversive techniques by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday, and shall provide a written incident report within 30 days of any such incident as required by [G.S. 115C-391.1](#) and applicable policies and procedures. The Superintendent or designee shall annually provide a record of reported incidents to the State Board of Education.

§ 115C-391.1. Permissible Use of Seclusion and Restraint

Physical Restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:

- a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
- b. As reasonably needed to maintain order or prevent or break up a fight.
- c. As reasonably needed for self-defense.
- d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
- e. As reasonably needed to escort a student safely from one area to another.
- f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
- g. As reasonably needed to prevent imminent destruction to school or another person's property.

§ 115C-391.1. Permissible Use of Seclusion and Restraint

- (2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.
- (3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
- (4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

§ 115C-391.1. Permissible Use of Seclusion and Restraint

Seclusion of students by school personnel may be used in the following circumstances:

- a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.
- b. As reasonably needed to maintain order or prevent or break up a fight.
- c. As reasonably needed for self-defense.
- d. As reasonably needed 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.
- e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan;

§ 115C-391.1. Permissible Use of Seclusion and Restraint

- (2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.
- (3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
- (4) Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties

Crisis Prevention Institute (CPI) Training

- Advises that staff should consider the use of a physical intervention only as an emergency intervention to respond to an individual posing an immediate danger to self or others.
- CPI also teaches that physical restraint should be used only as a last resort when all other attempts to calm escalating behavior have been tried and have failed.
- Specific training on conducting physical restraints

Questions?
