**Agenda Topic:** Proposed Amendments - Part 1 (Public Schools Evaluation, Recognition and Supervision)

**Materials:** Recommended Amendments

**Staff Contact:** Christopher Koch

### Purpose of Agenda Item

To present the proposed amendments for adoption.

### Expected Outcome of Agenda Item

The Board’s adoption of these amendments.

### Background Information

These amendments implement Public Act 91-600, which requires the State Board to promulgate rules governing the use of time out and physical restraint in the public schools, including the record keeping that is to be required when these strategies are employed.

The scope of P.A. 91-600 is not limited to students with disabilities. Consequently these rules are presented in the context of existing material found in Part 1 on the subject of the maintenance of discipline in schools. Local school boards are already required (by Section 24-24 of the School Code) to develop policies on discipline. Section 1.280 refers to this requirement and will be amplified by the present amendments to require that local boards include certain information in their policies if they permit the use of isolated time out or physical restraint. A new Section 1.285 is also being added to define these strategies and describe the parameters that will apply to their use, some of which are taken directly from the statute (see language in all caps).

It should be noted that the rule explicitly limits the use of isolated time out and physical restraint to instances when such a strategy is needed for maintaining discipline (i.e., a safe and orderly learning environment); these actions are not to be used in the sense of discipline as punishment.

These amendments were presented for the Board’s initial review at the August meeting and subsequently published in the *Illinois Register* to elicit public comment. Eleven
letters of comment were submitted. Please see the “Summary and Analysis of Public Comment” which follows for a discussion of the issues raised by the commenters.

**Analysis and Implications for Policy, Budget, Legislative Action, and Communications**

*Policy Implications:* The goal involved in this rulemaking is to arrive at policy decisions that strike an appropriate balance between respect for the rights and physical freedom of individual students and respect for the rights of those around them with regard to the educational environment and their personal safety.

*Budget Implications:* This rulemaking has no budgetary implications for the agency.

*Legislative Action:* None needed.

*Communications:* Please see “Next Steps” below.

**Superintendent’s Recommendation**

Adopt the proposed amendments to Part 1, including the changes recommended in response to public comment.

**Next Steps**

Notice of the adopted amendments will be submitted to the Joint Committee on Administrative Rules to trigger JCAR’s review. When that process is complete, the adopted rules will be filed with the Secretary of State and disseminated as appropriate.
Summary and Analysis of Public Comment
Public Schools Evaluation, Recognition and Supervision (Part 1)

The following summary is presented in the order in which the issues identified occur in the proposed rules.

Section 1.280 - Discipline

Comment
It was proposed that the word “exceeded” in Section 1.280(c)(5) be changed to “reached,” to avoid implying that the stated time limits could be exceeded.

Analysis
This comment raises a valid semantic point, and the suggested change would improve the language of the rule. However, thanks to this commenter we have been reminded that absolute time limits were removed from an earlier version of the draft rules in favor of the review-related provisions of Section 1.285(f)(4). Consequently Section 1.280(c)(5) should be corrected correspondingly.

Recommendation
Section 1.280(c)(5) should be revised to require “a description of the alternative strategies that will be implemented when the time limits for isolated time out and physical restraint have been exceeded determined advisable pursuant to Section 1.285(f)(4) of this Part”.

Comment
One respondent requested the insertion of definitions of “punishment,” “safety,” and “serious injury,” with examples for each. The State Board was also requested to list examples of behavior for which isolated time out or physical restraint would be appropriate or inappropriate.

Analysis
There is no need to define in rules any word that is used as it is defined in a commonly used dictionary. Thus “punishment” and “safety” need no further elaboration here. The phrase “serious injury” is used in Section 1.280(c)(4), which requires school boards to evaluate incidents that result in serious injury to a student, a staff member, or another individual. This comment points to the necessity for determining when an injury is serious, and we acknowledge that subjective judgment would clearly be involved. On the other hand, to delete the word “serious” would require evaluation of any incident resulting in injury. This would entail a lesser degree of subjectivity but would increase the burden placed on school boards by this rule. A better alternative would be to state the rule so that the judgment of the injured individual is the deciding factor, because in any such case everyone involved would need to come to an understanding of what had occurred and whether the incident could or should have been handled differently.
Recommendation
Section 1.280(c)(4) should be revised as shown below:

4) the process the district or other administrative entity will use to evaluate any incident that results in serious injury to a student, a staff member, or another individual an injury that the affected student (or the responsible parent or guardian), staff member, or other individual identifies as serious;

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Section 1.285 – Requirements for the Use of Isolated Time Out and Physical Restraint

Comment
Several commenters stated that linking the use of isolated time out and physical restraint to the maintenance of discipline was confusing, misleading, or contradictory as set forth in Sections 1.280 and 1.285. It was pointed out that these should always be therapeutic measures and that the rule should not equate them with forms of punishment.

Analysis
The origin of this confusion obviously lies in the fact that the word “discipline” can mean both “orderly conduct” and “treatment that corrects or punishes.” The introductory paragraph to Section 1.285 as proposed does attempt to distinguish between these meanings by referring to the preservation of safety and excluding the punishment of students for misbehavior. Apparently this was not adequately understood by readers, and further clarification can be added to the rule. However, we cannot avoid use of the phrase “maintenance of discipline,” since that is the terminology used in Section 24-24 of the School Code and isolated time out and physical restraint may only be used as means to that end. It is appropriate that information relative to the use of these strategies be included in the policies school boards are required to adopt on that subject.

Comment
On a related note, one commenter stated that the proposed definitions of “isolated time out” and “physical restraint” are too broad and that virtually every space would qualify as an isolated time out enclosure for some group of individuals. Further, it was pointed out that “restricting movement” occurs even when students are asked to stand quietly in line, for example, and is therefore not definitive in the context of physical restraint.

Analysis
Generally speaking, these comments overlook the underlying meaning of the rule as a whole in favor of a more literal reading. We believe that the context would prevent readers from considering every classroom as an enclosure for isolated time out, despite the fact that students are not expected to leave their classrooms during certain periods of time, because students are not “isolated” under those circumstances. Similarly, we believe that oral requests or instructions will not be considered as “physical restraint” because no physical component is present. It would be difficult and awkward to provide further definition of “physical restraint” without re-using the word
“physical”. For example, reference to “forcible prevention of movement” or “the use of bodily contact to prevent movement” would not be advisable because of the other connotations conveyed by those phrases.

Rather than attempting to define these two terms more precisely, it might be helpful to provide some additional context in the introduction to this Section for the reader’s ease of understanding.

**Recommendation**
The introductory paragraph to Section 1.285 should be amplified as shown below.

> Isolated time out and physical restraint as defined in this Section shall be used only as means of maintaining discipline in schools (that is, as means of maintaining a safe and orderly environment for learning) and only to the extent that they are necessary to preserve the safety of students and others. Neither isolated time out nor physical restraint shall be used in disciplining administering discipline to individual students, i.e., as a form of punishment. Nothing in this Section or in Section 1.280 of this Part shall be construed as regulating the restriction of students’ movement when that restriction is for a purpose other than the maintenance of an orderly environment (e.g., the appropriate use of safety belts in vehicles).

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**Comment**
Several suggestions were made for increasing the protection to students in connection with these interventions. Language that had been suggested in earlier drafts was proposed for inclusion in the final rules:

- Positive interventions should be used to the maximum extent possible and are preferable to the use of aversive and more restrictive procedures;
- Isolated time out and physical restraint shall be utilized as a last resort when other preventative and/or verbal techniques have been utilized without success;
- In no event shall isolated time out or physical restraint be used to punish or discipline students or as a convenience to staff;
- The use of these more restrictive procedures should always be considered temporary; and
- Isolated time out and physical restraint shall not be utilized for a student whose medical condition, mental illness, developmental or psychological status contraindicates the use of these techniques.

**Analysis**
We believe that virtually all the points raised by this commenter are already dealt with in the rules as they are written, using language that is appropriate for rulemaking. (Because their function is to state what is required, rules cannot indicate that an action “should” occur or that one course of action is “preferable” to another.) The introduction
to Section 1.285 indicates that these interventions must be used “only to the extent that they are necessary to preserve the safety of students and others.” That language is all that is needed to preclude their use in favor of less restrictive interventions; to preclude their use as punishment (which is also explicitly forbidden); and to preclude their use as a matter of convenience. Adding more ways of stating these prohibitions would not add meaning to the rule.

Section 1.285(d)(1) conveys the statutory prohibition on using physical restraint when there is a “medical contraindication to its use.” That phrase will cover medical conditions and mental illness, since both are diagnosed by medical professionals. We do not believe the statute’s meaning should be expanded to include “developmental or psychological status,” since it is only to be expected that physical restraint will be negatively perceived by a student with whom it is employed.

Recommendation
The rules should not be amplified in accordance with these suggestions.

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Section 1.285(a) – Isolated Time Out

Comment
One commenter voiced concern that, by describing detailed requirements for the enclosures to be used for isolated time out, the State Board is justifying their use. This individual suggested that their use should be re-examined altogether, noting that his large, urban district has not used them for six years and that more appropriate approaches to behavior management should be used by other districts instead of resorting to isolated time out.

Analysis
It is probably true that different strategies by school staff could avoid the use of isolated time out in some instances, and districts that find preferable ways to de-escalate students’ behavior should be commended and emulated. Nevertheless, the statute not only allows the use of isolated time out but also requires the State Board to establish parameters for its use. Thus it is unavoidable that we will have detailed descriptive requirements in these rules.

Recommendation
No change should be made in response to this comment.

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Comment
Several respondents indicated that some existing enclosures meet previously existing “state regulations” or meet all the enclosure requirements except the dimensions. It was requested that there be a provision in Section 1.285(a) for approving the continued use of such structures since the cost of remodeling them in response to these new requirements would be prohibitive. The State Board was requested to review and
inspect these on a case-by-case basis and “grandfather” time-out structures that were previously approved and meet the intent of these rules.

**Analysis**
The agency has not had administrative rules in place to govern the characteristics of enclosures for isolated time out. However, it appears that districts and cooperatives have been relying on more or less formal guidance or advice that was provided by staff quite a number of years ago. As long as the enclosures achieve the degree of safety that is presumed to be inherent in the specifications currently given in subsection (a)(1)(A), we would have no desire to cause additional construction expenditures in these cases. It should not be necessary to ensure that existing enclosures have the precise dimensions given in the proposed rule as long as all the other conditions are met.

**Recommendation**
Section 1.285(a)(1)(A) should be revised to require:

> have the same ceiling height of not less than eight feet as the surrounding room or rooms and minimum floor dimensions of six feet by six feet be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;

Section 1.285(a)(1)(B) should be revised to require that an enclosure “be designed to that students cannot climb up the walls (including walls far enough apart so as not to offer the student being isolated sufficient leverage for climbing); and”

The second sentence of Section 1.285(a)(2) should be eliminated:

> If an enclosure used for isolated time out is fitted with a door, either a steel door or a wooden door of solid-core construction shall be used. Any door shall be at least three feet wide, with a minimum clear opening of 32 inches. If the door includes a viewing panel, the panel shall be unbreakable.

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**Comment**
Section 1.285(a)(1)(A) should also require that a student not be able to climb the enclosure by touching two or more walls.

**Analysis**
Subsection 1.285(a)(1)(B) requires that the design of an enclosure preclude a student from climbing up the walls and should be amplified as noted above. That change will also address this commenter’s concern.

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**Comment**
Section 1.285(a)(2) should allow either the door or a wall to have a viewing panel.
Analysis
Section 1.285(a)(2) does not prohibit the viewing panel from being in a wall. That rule should be read in conjunction with Section 1.285(a)(1)(C), which requires that the enclosure “permit continuous visual monitoring of and communication with the student.” This provision means that either the door or a wall must have a viewing panel, and subsection (a)(2) states what must be true if the panel is in the door.

Recommendation
No change is needed in response to this comment.

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Comment
One commenter asserted that the type of locking mechanism required in Section 1.285(a)(4) is not behaviorally sound in that it may cause a tug-of-war between the student and the supervising adult. A student could be harmed if this occurs. The language of Section 1.285(a)(3) (“An adult who is responsible for supervising the student shall remain within two feet of the enclosure.”) should suffice to keep students from being “forgotten” in isolated time out enclosures.

A related comment expressed dismay at the absence of language that had been included in any earlier draft of these rules stating that the door to an enclosure could not be one that remains closed when unattended and that, if the door were hooked up to the fire alarm system, the locking mechanism would automatically unlock or open manually from the inside of the enclosure if the system were triggered.

Analysis
The stated requirements for a locking mechanism (if one is used) were not intended to keep students from being left in enclosures through forgetfulness, but rather to ensure that there would be as few impediments as possible to a student’s ability to exit in an emergency. Nothing in the rules requires that the enclosure have a lock, but if there is one then the student must not be trapped inside if, for example, the supervising adult suddenly becomes incapacitated.

We believe that close adult supervision and operation of the lock should be required. While it may be true that some students would attempt to control the lock, we believe that risk is outweighed by the overall safety engendered by close supervision. In addition, we recognize from the comments received that some districts and cooperatives have installed automatic locking mechanisms that are released when the fire alarm system is triggered. We will need to accommodate this type of installation in the language of the final rule.

It was extremely difficult to develop language for this rule, chiefly because the physical properties of an enclosure and a locking mechanism will not result in the same ease of egress for all students. For example, we could not write a rule requiring a locking mechanism that, upon its release, enables a student to exit the enclosure, because some students do not possess the strength or the mobility to exit independently even when a door is open.
Similarly, we needed to be conscious of the difference between “unlocked” and “open”. That is, there are several possible goals for this rule:

- that an unattended door will automatically open; or
- that an unattended door will be able to be opened:
  - by someone from the outside; or
  - by the student from inside.

The goal that is appropriate to state is that a door whose locking mechanism is released will not be locked (and thus can be opened). There is no need to require that the door open automatically when the lock is released, which might not be safe. We cannot require that the student be able to open the door, for the same reason that we cannot require that the student be able to exit independently. Thus we believe that the provisions of Section 1.285(a)(4) as proposed conveyed requirements that are appropriate to preserving the safety of students who must be isolated at some time. However, we do need to amplify the rule to address the automatic mechanism discussed above.

**Recommendation**

Section 1.285(a)(4) should be revised as shown below:

4) The adult responsible for supervising the student must be able to see the student at all times. If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building’s fire alarm system is triggered.

   A) The door to such an enclosure shall not remain locked when unattended.

   B) Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.

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**Section 1.285(b) – Physical Restraint**

**Comment**

One commenter believed that giving examples of physical restraint techniques in Section 1.285(b)(2) encourages their use. It was suggested that the rule give no examples and instead encourage methods that are “least likely to cause harm”, or just use the first sentence of the proposed rule.

**Analysis**

Since the purpose of a rule is to state what is required, it would not suffice to “encourage” a particular course of action. Also, “least likely to cause harm” is open to interpretation in each different situation and thus conveys no requirement. It is true that
the use of examples is not absolutely necessary in a rule. Often, however, we are requested to include examples to demonstrate that specific references do exist and that we know what they are, as well as to provide a clearer frame of reference for the reader. Examples should not be understood as promoting the use of physical restraint in general, particularly in light of the fact that the entire purpose of this rule is to limit its use to very specific circumstances.

**Recommendation**
The examples given in this rule should not be deleted.

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**Section 1.285(d) – Use of Physical Restraint**

**Comment**
It was proposed that we include in the rules some examples illustrating when a student presents a danger versus when this is not the case, such as calling a teacher vile names. We were also requested to clarify what is meant by “a means to carry out” a threat (see Section 1.285(d)(2)).

**Analysis**
The rule as stated expressly precludes the use of physical restraint in response to “profanity or other verbal displays of disrespect,” as well as in response to a verbal threat alone, so the meaning desired is already present in the rule. The means of carrying out any threat would depend upon the threat as stated, and the presence or absence of the means will be largely self-evident. It should not be necessary to state in the rule that a student who threatens to shoot someone has no means of doing so unless he or she is carrying a firearm. When a student makes a threat that does not involve any means other than bodily force (such as to choke or hit someone), the supervising school staff member will have to be relied upon to make the necessary judgment about the student’s intention and ability to carry out that threat. It would not be possible to write a rule that correlates a student’s size, strength, and agility to arrive at a determination as to whether the student has the means of carrying out such a threat.

**Recommendation**
No examples of means should be inserted.

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**Comment**
Examples of “mechanical restraints” should be given in Section 1.285(d)(3).

**Analysis**
Since “mechanical restraint” is defined as “the use of any device other than personal physical force,” virtually any object that could be used to restrain someone is a “mechanical restraint.” This meaning is inherent in the rule as stated and does not need to be amplified with examples.
Recommendation
No examples of mechanical restraints should be inserted.

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Comment
The absolute prohibition on mechanical restraints (in Section 1.285(d)) was questioned. The respondent noted that the State Board’s current Behavior Intervention Guidelines do not prohibit these. Further, some restraining devices such as seat belts have appropriate uses that should not be forbidden. Finally, we were asked to review this rule in light of its applicability to settings such as hospitals and correctional facilities where students are served.

Analysis
We believe the prohibition on mechanical restraints is appropriate and should be maintained. This will require revision of the Behavior Intervention Guidelines to match. The appropriate use of restraining devices such as seat belts has been addressed above. It would not be our intention that these rules affect the use of these interventions in hospitals and correctional facilities for youth, which are governed by the rules of agencies such as the Departments of Human Services (DHS) and Corrections (DOC). We believe a revision to the rule acknowledging this situation would be advisable.

Recommendation
Section 1.285(d)(3) should be revised as shown below:

Except as permitted by the administrative rules of another State agency operating or licensing a facility in which elementary or secondary educational services are provided (e.g., the Illinois Department of Corrections or the Illinois Department of Human Services, mechanical or chemical restraint (i.e., the use of any device other than personal physical force to restrict the limbs, head, or body) shall not be employed.

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Comment
Additional safeguards were recommended for inclusion in Section 1.285(d). It was proposed that an additional adult staff member be required to be present when a student is “put into restraints.” Further, a student’s physical condition should be periodically evaluated by a nurse or other medical professional, and a school psychologist, social worker, or other behavior specialist should assess his or her psychological condition.

Analysis
The only reason for restraining a student in the first place is to prevent the student from inflicting physical injury on him- or herself or on another individual. However objectionable physical restraint may be, under the statute it is legitimate as a means of preventing that threatened harm from occurring. When a student poses a physical risk
and the supervising staff sees no alternative to physical restraint, it would be irresponsible to delay restraining the student until another adult could arrive.

Since the proposed rule entirely prohibits the use of mechanical means of restraint, students will not be “put into restraints” as the commenter feared. Further, since the proposed rule requires both the use of personal physical strength and the release of the student as soon as he or she ceases presenting an imminent threat, we can expect that physical restraint will be of very short duration in the vast majority of cases rather than requiring “periodic” evaluation.

It is very difficult to imagine that a student who is being physically restrained by another person because he or she is on the verge of doing bodily harm will be in a frame of mind to give responses to a psychologist or social worker that would shed light on his or her psychological condition. Taken to its logical conclusion, this recommendation suggests that some aspect of a student’s psychological condition could be identified during physical restraint that would then require a student’s release before he or she ceased posing a threat, implying that the student has a right to inflict harm on others if physical restraint is too upsetting. Such an interpretation is inherently contradictory and would result in a rule that might allow the protection afforded one student to override the protection offered to all other individuals.

Recommendation
These suggestions should not be incorporated into the rule.

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Comment
A method of physical restraint known as “full takedown” was described and blamed for some deaths that have occurred through asphyxiation when individuals have been restrained in a prone position. It was recommended that this method be prohibited for use with young or small children and strictly limited in the time it could be applied to other students. Finally, if it is to be permitted, a nurse or other medically trained individual should be present to ensure that the student will not be in danger.

A related comment suggested that we add further specificity to allow only methods that are appropriate in the school environment and specifically eliminate methods that involve “pain compliance” (used in law enforcement).

Analysis
It is true that the rule as written does not preclude any specific methods of physical restraint, including those which may inadvertently cause pain. Subsection (d)(5) refers to safety and security but does not address the issue of pain.

Given a lack of nationally accepted standards for the use of physical restraint, our preference is not to attempt to identify or describe methods that will be absolutely prohibited. However, we do believe that we should acknowledge the difference between intentional and unintentional infliction of pain. Further, some enhanced requirements for training are needed in connection with physical restraint, and a related recommendation stated later in this summary is intended in part to allay some of the
well-founded concern that exists with respect to the more restrictive forms of physical restraint.

**Recommendation**
Section 1.285(d)(5) of the rules should be amplified to indicate that the intentional infliction of pain is not an acceptable method of physical restraint.

Any application of physical restraint shall take into consideration the safety and security of the student. Further, physical restraint shall not rely upon pain as an intentional method of control.

**Comment**
Deficiency in classroom management was pointed to as being at the root of much escalation in students’ behavior. It was suggested that more in-depth training be required in the areas of classroom or behavior management and de-escalation techniques. The commenter stated that new staff have indicated that their preparation programs have not equipped them adequately in this area.

**Analysis**
It is to be hoped that incorporation of the Illinois Professional Teaching Standards into both teacher preparation programs and certification testing requirements will soon begin to result in increased skills for school staff in this area. Within those standards, knowledge and performance indicators related to the learning environment specifically address this aspect of teaching.

Requiring currently certified teachers to receive more training in any specified area would involve amending the existing rules for continuing professional development in connection with certificate renewal, as those are the agency’s only vehicle for in-service training requirements. Building an adequate consensus in support of any further specificity in those rules is doubtful, not only because that system is fairly new and many teachers are just beginning to address its complex requirements, but also because the certificate renewal law already provides a great deal of specificity about the purposes teachers must address in their professional development. Further, to require something of everyone implies that it is available in sufficient quantity to enable everyone to meet the requirement.

It should be noted that any teacher would be able to use training in classroom management to fulfill part of the continuing professional development requirements if the training met the requirements in the rules. However, we cannot effectively mandate that all districts offer such training or that all teachers engage in it.

**Recommendation**
No change is needed in response to this comment.

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Comment
Several commenters took issue with the prohibition in Section 1.285(d)(6) against removing a student from the location where physical restraint is initiated. They stated that removal to a more private location might very well be preferable due to emotional issues and in order to allow a student to de-escalate. Not having an “audience” may make it easier for some students to regain control of themselves. In addition, the best protection for “innocent peers” might be to put an end to the disruption and allow them to get back to what they need to be doing. It was recommended that this prohibition be deleted in favor of allowing professional judgment to be the deciding factor.

Analysis
These commenters’ point is a good one. The initial purpose of the rule was to avoid harming a student who is acting out through moving him or her. However, the rule can be rewritten to call for consideration of that potential among the factors that lead to the decision.

Recommendation
Section 1.285(d)(6) should be revised as shown below:

A In determining whether a student who is being physically restrained shall not be removed from the area where such restraint was initiated, except when necessary to protect the student or others or in an emergency such as fire or tornado the supervising adult(s) shall consider the potential for injury to the student, the student’s need for privacy, and the educational and emotional well-being of other students in the vicinity.

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Section 1.285(e) – Time Limits

Comment
A commenter noted that Section 1.285(e) sets forth no time limits for the use of isolated time out or physical restraint, even though a previous version of the draft rules included a two-hour limit. The commenter pointed out that four hours is the maximum allowed for individuals over 18 under both federal standards for hospitals and IDHS standards for mental health facilities, but that a two-hour maximum applies to youth from 9 to 17 years of age and one hour to children under the age of 9. Shorter timeframes were recommended for inclusion in these rules because medical personnel are not always available in schools. Another commenter recommended adding an absolute time limit in addition to the requirement for immediate release from physical restraint when the student is no longer in imminent danger of causing harm.

Analysis
We believe it is most appropriate to permit the exercise of professional judgment in light of the specific circumstances that exist at a given time. The review and evaluation requirements of Section 1.285(f)(4) should provide adequate protection against excessively long imposition of either of these interventions. Also, it should be noted that the maximum times noted by the commenter may apply in settings where mechanical restraints are permitted, making it appropriate to set more rigid time parameters.
Recommendation
No absolute limits should be inserted into Section 1.285(e).

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Section 1.285(f) – Documentation and Evaluation

Comment
With regard to the requirements for documentation found in Section 1.285(f)(1), the large amount of paperwork that is involved when students have severe behavioral problems led to an objection to the requirement that the documentation of each incident be placed into the temporary student record. It was pointed out that, in some cooperatives, that official record is maintained by the district of residence and therefore involves mailing. The maintenance of “annual documentation summaries” in students’ temporary records was suggested instead, with maintenance of actual incident reports at the school required for at least one year or until included in such a summary. Commenters believed these would have value in planning for individual students because of the ready overview they would provide. Full records were considered less beneficial not only because of the large volume of paper but also because when students transfer (and many transfer often), these reports will be passed on to others who may not be in a position to understand improvements that have occurred since the incidents took place. It was stated that such records would remain in a student’s record for his or her entire school career, leading to a fear that records taken out of context might be prejudicial to some students.

Another commenter stated that the recordkeeping requirements imposed by this rule were too onerous and would take school staff away from teaching and working directly with students. This commenter noted that it is not possible to ensure complete safety in the use of these techniques and stressed the need to balance these competing priorities so that the system does not harm students by devoting too much staff time to bureaucratic activities.

Analysis
It should be noted that the rules for “Student Records” (23 Ill. Adm. Code 375.40) require a review of each student’s records no less frequently than every four years or upon a change in attendance centers, whichever occurs first. As part of this review, school staff are to “eliminate or correct all out-of-date, misleading, inaccurate, unnecessary or irrelevant information...” Consequently there is no need to assume that all records of incidents that lie far in the past need to be preserved or transmitted.

Doubtless there are other records that are routinely transmitted as these incident reports would be, and we believe districts’ and cooperatives’ existing procedures can be used to deal with the need to file the incident reports in cases where students’ temporary records are not maintained in the schools where they are served.

Recommendation
No change is needed in Section 1.285(f) in connection with these comments.
Comment
Section 1.285(f)(4) requires, among other things, an assessment of the student’s need for nourishment or medication when an episode of isolated time out or physical restraint has lasted beyond a specified period of time. It was suggested that the student’s need for bathroom privileges and personal hygiene be considered as well.

Analysis
These are undoubtedly reasonable items to take into account in conjunction with the other factors that dictate the use of one of these strategies.

Recommendation
Section 1.285(f)(4)(b) should be revised to require:

The evaluation shall consider the appropriateness of continuing the procedure in use, including the student’s potential need for medication, or nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).

Comment
The reporting requirements found in subsection (f)(4) were stated to be cumbersome and to go beyond “supervision requirements used by hospitals and mental health facilities.” The commenter believed that, if a student’s IEP identifies isolated time out or physical restraint as an appropriate intervention, meetings to document instances of its use should not be needed and that this unnecessary requirement could be eliminated from the rules by mentioning the behavior management plans that cover these interventions in students’ IEPs.

On the other hand, another commenter believed these requirements should pertain to every incident, as either isolated time out or physical restraint should be used only in extraordinary situations.

Analysis
Several points of clarification may be needed in order to respond to these comments. First, these rules will apply to all students, whether or not they are eligible for special education. Second, nothing in these rules or in the rules for special education requires that isolated time out or physical restraint must first be identified in a special education student’s Individualized Education Program (IEP) as an appropriate intervention before it can be applied to that student. Third, no meeting is called for as the commenter has assumed. The intent of subsection (f)(4) is only to ensure that these restrictive measures are not applied after they prove ineffective and that timely consideration is given to other appropriate steps.

A decision to continue one of these procedures for an extensive period of time indicates a fairly serious situation, and the decision should be backed up by a written analysis.
Given the requirements stated in Section 1.285(f)(1) for documenting each incident, however, we do not believe that subsection (f)(4) needs to apply to incidents of shorter duration. Finally, we do not know whether the hospitals and mental health facilities referred to by the commenter serve adults or students and therefore cannot respond to that portion of the comment.

**Recommendation**
Section 1.285(f)(4) should not be changed in response to these comments.

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**Comment**
The three-incident threshold set forth in Section 1.285(f)(5) for requiring a review and individual behavior plan was criticized as an inappropriate trigger for an IEP team meeting to “discuss the major decision of changing a student’s placement.” It was pointed out that many factors should be considered, and the commenter suggested that the IEP team be allowed to make the decision about when a meeting would be necessary. Another commenter suggested that the severity of a student’s need should determine how many incidents would trigger this review. It was stated that the number of incidents would be very different in a resource behavioral program than in a separate day school for students with behavior disorders.

**Analysis**
This rule does not refer to considering the need for a change in “placement,” since, as noted above, there is no assumption that the affected student has a special education placement at all. Indeed, the rule states that the review is required to encompass the student’s potential need for special education.

The second commenter may have interpreted this rule as requiring a review after every three incidents, but the rule was intended to refer to the first three incidents a student experiences.

We believe that it is appropriate to require the review contemplated in this subsection when a student begins to exhibit a pattern of behavior that leads to repeated incidents of isolated time out or physical restraint. It might be difficult to assess the effectiveness of a particular intervention or prepare a useful behavior plan after just one or two incidents, yet we would not like to see a student’s repeated acting out go unattended. Consequently we believe that three incidents is a suitable threshold for this requirement.

**Recommendation**
To assist in avoiding misinterpretation of the requirement stated in subsection (f)(5), that provision should be revised as shown below:

> Whenever a student has first experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall review....

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Comment
It was suggested that subsection (f)(5) require the student’s parents to be involved in the review of incidents and development of the plan. Another commenter proposed that the district should also be required to conduct an evaluation of the student’s eligibility for special education at this point (with parental consent).

Analysis
We agree that it would be advisable for a student’s parent(s) to be involved in this activity. We assume that in most cases school personnel would be inclined to work with the parents, but we also recognize that they may not be able to secure a parent’s involvement. We should not impose an absolute requirement in this instance but should provide for the parent(s) to be included. With regard to evaluating the student for special education, we believe the rule already goes far enough by requiring that the need for special education be considered. This is another good reason to include the parents in the discussion, because then either they or any school staff member could initiate a referral if it were thought necessary.

Recommendation
Section 1.285(f)(5) should be amplified as shown below (assuming the change discussed immediately above).

When a student has first experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedure(s) used and prepare an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student’s temporary student record. The review shall also consider the student’s potential need for an alternative program or for special education.

A) The district or other entity serving the student shall invite the student’s parent(s) or guardian(s) to participate in this review and shall provide ten days’ written notice of its date, time, and location.

B) The notification shall inform the parent(s) or guardian(s) that the student’s potential need for special education or an alternative program will be considered and that the results of the review will be entered into the temporary student record.

Section 1.285(g) – Notification to Parents

Comment
One commenter believed the written notification to parents called for in Section 1.285(g)(2) was inadequate and proposed that school staff be required to notify parents by telephone, since that was the only way they could intervene while isolated time out or physical restraint was in progress. This commenter believed that, unless no telephone number were available, written notification should be permitted only after repeated
attempts during the remainder of the school day to reach the parents by telephone. On the other hand, another respondent stated that the 24-hour stipulation would require costly overnight mail. Monthly or quarterly reporting to parents should be permitted since they sign off on the use of these interventions.

Analysis
As explained above, these rules will apply not only in the context of special education but also to the entire student body. In fact, prior parental consent is not required for the use of these interventions. Parents may have no knowledge about behavior problems exhibited by their children unless they are notified beginning when incidents first occur. While we might agree that telephone contact would be preferable because it could be more immediate and less costly, there must be means of verifying that notification has occurred, and written notification provides protection to all the parties by allowing for that verification. The 24-hour requirement was intended to apply to the provision of notification, not to its receipt by the parent, so overnight mail would not be required as the commenter assumed. Finally, notification to parents does not and should not occur for the purpose of allowing them to intervene while these strategies are in use.

Recommendation
The first sentence of Section 1.285(g)(2) should be clarified as shown below:

A student’s parent(s) shall be notified in writing within 24 hours after any use of isolated time out or physical restraint, the school district or other entity serving the student shall send written notice of the incident to the student’s parent(s), unless the parent has provided the district or other entity with a written waiver of this requirement for notification.

Section 1.285(h) – Requirements for Training

Comment
Several comments were received that dealt with requirements for training. The cost of training was mentioned in conjunction with a proposal that the State Board fund a pool of trainers or provide training at no cost, particularly to help smaller districts with this issue. Insertion of a list of approved providers was also recommended.

One commenter stated that we were mandating that teachers intervene when necessary but prohibiting them from intervening without training. Questions were raised as to whether all staff would have to be trained; if not, how trained staff who leave their classrooms to intervene elsewhere would be replaced; and whether the district or the teacher would be liable when a teacher hasn’t been trained.

A member of the committee that was convened to assist staff in developing the original draft of these rules noted that that version had required a systematic training program with annual follow-up and stated that these requirements were needed, while another proposed requiring at least biannual updating for each individual trained. It was suggested that training requirements be specified for the use of isolated time out as well, as opposed to the orientation discussed in Section 1.285(h)(1).
One respondent also advocated a requirement for maintaining records describing the training received by employees, including the specific method(s) of physical restraint in which each individual was trained.

**Analysis**

First we should clarify that there is no mandate for the use of either isolated time out or physical restraint. The statute does not require use of these interventions, and these rules describe the conditions that must apply if they are used. Section 1.280 goes to this point by stating, “Any use of isolated time out or physical restraint permitted by a board’s policy shall conform…” A board of education that wishes to prohibit its staff from using these techniques has the right to do so. Thus the requirement for training follows upon the decision of the local board that these interventions may be appropriate in some cases. Whether or not the State Board can assist local entities in defraying the cost of training is not an issue that would be addressed in a rule.

With respect to isolated time out, we have distinguished “training” from “orientation” because what we intend to require is that each district’s staff understand their employer’s relevant policies and procedures. There are not likely to be “providers” of such locally specific training programs, so we believe “orientation” is apt in this context.

As these rules were being developed, there were two schools of thought regarding the providers of training in physical restraint. On the one hand, it would be very desirable to exercise the kind of quality control that is implicit in a finite list of approved providers. On the other hand, limiting training opportunities in this way would be likely to result in a scarcity of adequately trained staff and contribute to a higher level of cost. We know of no entity that accredits trainers in this field, and school districts and cooperatives advocated allowing them to train their own staff members as needed. In no case would a list be included in the rule, however, because then the rule would have to be amended – a process that takes approximately six months - every time a new training entity successfully sought approval.

The rule does require that training be systematic and involve the demonstration and practice of structured techniques. We assumed it would be clear that the certificate of completion would identify the techniques for which an individual had received training. That rule can be made more explicit, and the definition of “physical restraint” found in Section 1.285(b) can be strengthened as well. As to the issue of follow-up training, we do agree that a person’s training should be fairly recent. Rather than require re-training on a specified schedule, therefore, we believe it would be more reasonable to state the requirement in terms of recency. Someone who leaves the teaching force for a period of time and then returns, for example, should not be precluded from using physical restraint when necessary, provided that he or she has undergone training in the not-too-distant past.

The earlier discussion regarding the use of more restrictive techniques has led us to realize that some assumptions about the nature of the training have not been stated explicitly in these rules. That is, training in the use of physical restraint should cover a broad range of interventions rather than isolated techniques. We believe this requirement would help allay concerns about the use of overly restrictive strategies,
since all could be assured that anyone using physical restraint had received more comprehensive training.

Since the use of physical restraint may very well occur without any opportunity for consultation and is inherently dependent upon the judgment of the supervising adult, we believe it is self-evident that each individual who receives training will need to maintain his or her own documentation of that fact in case of a challenge. Finally, if the rule allows employing districts to train their own staff, some statement about the training of the trainers will be needed.

**Recommendation**

Section 1.285(b) should be revised as follows:

> “Physical restraint” means holding a student or otherwise restricting his or her movements. “Physical restraint” as permitted pursuant to this Section includes **only** the use of specific, planned techniques (e.g., the “basket hold” and “team control”).

Section 1.285(h)(2)(A) should be amplified as shown below:

> Physical restraint as defined in this Section shall be applied only by individuals who have received systematic training that includes all the elements described in subsection (h)(2)(B) of this Section and who have received a certificate of completion or other written evidence of participation. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two years, as indicated by written evidence of participation.

Section 1.285(h)(2)(B)(iii) should be revised to require:

> the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;

The second portion of subsection (iii) should become a new subsection (iv), with subsections (iv) and (v) relabeled accordingly.

> iv) instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

A new subsection 1.285(h)(2)(C) should be added to state:

> An individual may provide training to others in a particular method of physical restraint only if he or she has received written evidence of completing training in that technique that meets the requirements of subsection (h)(2)(B) of this Section within the preceding one-year period.

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Comment
One individual recommended that there be a phase-in period for implementation of the rules.

Analysis
This commenter did not indicate which aspects of the proposed rules he thought would take time to implement, so we cannot respond to the specifics of his concern. In addition, we have no reason to believe the members of the General Assembly would wish for the agency to delay implementing legislative provisions adopted in 1999. The statute already does give school districts some lead time in responding to this rulemaking. Section 14-8.05 of the School Code provides that local boards must amend their policies on behavioral intervention for students with disabilities if necessary to conform to these requirements “not later than one month after commencement of the school year after the State Board of Education’s rules are adopted.”

Recommendation
No phase-in period should be incorporated into the language of the rules.