

ILLINOIS REGISTER

STATE BOARD OF EDUCATION

NOTICE OF EMERGENCY AMENDMENT TO EMERGENCY RULE

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER a: PUBLIC SCHOOL RECOGNITION

PART 1

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SUBPART B: SCHOOL GOVERNANCE

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

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Time out and physical restraint as defined in this Section shall be used only for therapeutic purposes, or as a means of maintaining a safe environment for learning, to the extent necessary to preserve the safety of students and others. Neither time out nor physical restraint shall be used as a form of punishment.

- a) "Time out" means a behavior management technique that involves the monitored separation of a student from classmates with a trained adult for part of the school day, usually for a brief time, in a non-locked setting.
 - 1) Any enclosure used for time out shall:
 - A) meet all of the health/life safety requirements of 23 Ill. Adm. Code 180;
 - B) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being placed on time out but also the other individual who is required to accompany that student under this Section; and
 - C) be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls.
 - 2) If an enclosure used for time out is fitted with a door, the door shall not be locked at any time during the time out.
 - 3) An adult trained under this Section who is responsible for supervising the student must remain with the student at all times during the time out.
- b) "Physical restraint" means holding a student or otherwise restricting the student's 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"). A physical restraint shall not impair a student's ability to breath or speak normally. Prone or supine physical restraint shall not be permitted, except if all of the following criteria are met:-
 - 1) Before using a prone or supine physical restraint, the school district or other entity serving the student shall review and determine if there are no

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known medical or psychological limitations that contraindicate the use of a prone or supine restraint.

- 2) The school district or other entity serving the student deems the situation an emergency, defined as a situation in which immediate intervention is needed to protect a student or other individual from imminent danger of causing serious physical harm to himself, herself, or others and less restrictive and intrusive interventions have been tried and proven ineffective in stopping the imminent danger.
- 3) Prone or supine physical restraint is used in a manner that does not restrict or impair a student's ability to breathe or communicate normally, obstruct a student's airway, or interfere with a student's primary mode of communication.
- 4) Prone or supine physical restraints are used only by personnel with required credentials who have completed required training under this Section.
- 5) Prone and supine restraints are used only if those interventions are the least restrictive and intrusive interventions to address the emergency and stop the imminent danger of serious physical harm to the student or others. During each incident, one school staff person trained in identifying the signs of distress must be assigned to observe the student during the entire incident. That staff person may not be involved in the physical holding of the student. The number of staff involved in physically restraining the student may not exceed the number necessary to safely hold the student.
- 6) The prone or supine physical restraint ends immediately when the threat of imminent serious physical harm ends, but in no event shall prone or supine physical restraint last longer than 30 minutes. If, after 30 minutes, the emergency has not resolved or if an additional emergency arises the same school day that meets the standards under subsection (b)(2), a school administrator, in consultation with a psychologist, social worker, nurse, or behavior specialist may authorize the continuation of the restraint or an additional prone or supine restraint. No restraint may be continued nor may additional restraints be applied unless it is authorized by a school administrator.

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- 7) If the student is restrained in a prone or supine physical restraint in at least 2 separate instances within a 30-school day period, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedures used. If the personnel involved in the restraints do not include a psychologist, social worker, nurse, or behavior specialist, at least one of those staff members must be included in the review. The review must include, but is not limited to:
- A) conducting or reviewing a functional behavioral analysis, reviewing data, considering developing additional or revised positive behavioral interventions and supports, considering actions to reduce the use of restrictive procedures, or, if applicable, modifying the individualized educational program or the behavior intervention plan, as appropriate; and
 - B) reviewing any known medical or psychological limitations that contraindicate the use of a restrictive procedure, considering whether to prohibit that restrictive procedure, and, if applicable, documenting any prohibition in the individualized education program or behavior intervention plan.
- c) The requirements set forth in subsections (d) through (i) of this Section shall not apply to the actions described in this subsection (c) because, pursuant to Section 10-20.33 of the School Code [105 ILCS 5/10-20.33], *"restraint" does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and designed to:*
- 1) *prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or*
 - 2) *remove a disruptive student who is unwilling to leave the area voluntarily.*
- d) The use of physical restraint shall be subject to the following requirements.
- 1) Pursuant to Section 10-20.33 of the School Code, physical restraint may only be employed when:
 - A) *the student poses a physical risk to himself, herself, or others,*

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- B) *there is no medical contraindication to its use, and*
 - C) *the staff applying the restraint have been trained in its safe application* as specified in subsection (i)(2) of this Section.
- 2) Students shall not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger unless a student also demonstrates a means of or intent to carry out the threat.
 - 3) 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, the Illinois Department of Juvenile Justice, 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.
 - 4) Medically prescribed restraint procedures employed for the treatment of a physical disorder or for the immobilization of a person in connection with a medical or surgical procedure shall not be used as means of physical restraint for purposes of maintaining discipline.
 - 5) Any application of physical restraint shall take into consideration the safety and security of the student. Physical restraint shall not rely upon pain as an intentional method of control.
 - 6) In determining whether a student who is being physically restrained should be removed from the area where the restraint was initiated, the supervising adult 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.
 - 7) If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief periods, unless the supervising adult determines that this freedom appears likely to result in harm to the student or others.
- e) Time Limits

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- 1) A student shall not be kept in time out for longer than is therapeutically necessary. No less than once every 15 minutes, the trained adult must assess whether the student has ceased presenting the specific behavior for which the time out was imposed.
 - 2) A student shall be released from physical restraint immediately upon a determination by the staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.
- f) Documentation and Evaluation
- 1) In a form and manner prescribed by the State Superintendent, a written record of each episode of time out or physical restraint shall be maintained in the student's temporary record. The official designated under this Section shall also maintain a copy of each of these records. Each record shall include, but is not limited to, all of the following:
 - A) the student's name;
 - B) the date of the incident;
 - C) the beginning and ending times of the incident;
 - D) a description of any relevant events leading up to the incident;
 - E) a description of any interventions used prior to the implementation of time out or physical restraint;
 - F) a description of the incident and/or student behavior that resulted in time out or physical restraint;
 - G) a log of the student's behavior in time out or during physical restraint, including a description of the restraint techniques used and any other interaction between the student and staff;
 - H) a description of any injuries (whether to students, staff, or others) or property damage;

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- D) a description of any planned approach to dealing with the student's behavior in the future;
 - J) a list of the school personnel who participated in the implementation, monitoring, and supervision of time out or physical restraint;
 - K) the date on which parental notification took place as required by subsection (g) of this Section.
- 2) The school official designated under this Section shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.
 - 3) The record described in subsection (f)(1) of this Section shall be completed by the beginning of the school day following the episode of time out or physical restraint.
 - 4) The requirements of this subsection (f)(4) shall apply whenever an episode of time out exceeds 30 minutes, an episode of physical restraint exceeds 15 minutes, or repeated episodes have occurred during any three-hour period.
 - A) A licensed educator knowledgeable about the use of time out or trained in the use of physical restraint, as applicable, shall evaluate the situation.
 - B) The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, 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).
 - C) The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student's temporary student record and provided to the official designated under this Section.
 - 5) When a student experiences three instances of non-therapeutic time out or physical restraint, the school personnel who initiated, monitored, and

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supervised the incidents shall initiate a review of the effectiveness of the procedures 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 eligibility, or, for a student already eligible for special education, change in program.

- A) The district or other entity serving the student shall invite the student's parents or guardians to participate in this review and shall provide ten days' notice of its date, time, and location.
- B) The notification shall inform the parents or guardians that the student's potential need for special education, an alternative program, or, for students already eligible for special education, the student's potential need for a change in program, will be considered and that the results of the review will be entered into the temporary student record.

g) Notification to Parents

- 1) A district whose policies on the maintenance of discipline include the use of time out or physical restraint shall notify parents to this effect as part of the information distributed annually or upon enrollment pursuant to Sections 10-20.14 and 14-8.05(c) of the School Code [105 ILCS 5/10-20.14 and 14-8.05(c)].
- 2) Within 24 hours after any use of time out or physical restraint, the school district or other entity serving the student shall send the form required under subsection (f)(1) to the student's parents.

h) Report to the State Superintendent

- 1) No later than 48 hours after any use of time out or physical restraint, the school district or other entity serving the student shall, in a form and manner prescribed by the State Superintendent, submit the information required under subsection (f)(1) to the State Superintendent.

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- 2) The State Superintendent reserves the authority to require districts to submit the information required under subsection (f)(1) for previous school years.
- i) Requirements for Training
 - 1) Any adult who is supervising a student in time out or applying physical restraint shall be trained in de-escalation, restorative practices, and behavior management practices.
 - 2) Time Out
Each district, cooperative, or joint agreement whose policy permits the use of time out shall provide training.
 - 3) Physical Restraint
 - A) 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 (i)(3)(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 training within the preceding two years, as indicated by written evidence of participation.
 - B) Training with respect to physical restraint may be provided either by the employer or by an external entity and shall include, but need not be limited to:
 - i) appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint;
 - ii) a description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;

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- iii) the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;
 - iv) instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
 - v) instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
 - vi) demonstration by participants of proficiency in administering physical restraint.
- C) 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 (i)(3)(B) of this Section within the preceding one-year period.
- j) Any use of time out or physical restraint permitted by a board's policy shall include:
- 1) the circumstances under which time out or physical restraint will be applied;
 - 2) a written procedure to be followed by staff in cases of time out or physical restraint;
 - 3) designation of a school official who will be informed of incidents and maintain the documentation required under this Section when time out or physical restraint is used;
 - 4) the process the district or other entity serving public school students will use to evaluate any incident that results in an injury to the affected student;
 - 5) a description of the district's or other entity's annual review of the use of time out or physical restraint, which shall include at least:

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- A) the number of incidents involving the use of these interventions;
 - B) the location and duration of each incident;
 - C) identification of the staff members who were involved;
 - D) any injuries or property damage that occurred; and
 - E) the timeliness of parental notification, timelines of agency notification, and administrative review.
- k) Complaint Procedures
- 1) Any parent, individual, organization, or advocate may file a signed, written complaint with the State Superintendent alleging that a local school district or other entity serving the student has violated this Section. The complaint shall include the facts on which the complaint is based; the signature and contact information for the complainant; the names and addresses of the students involved (and the name of the school of attendance), if known; a description of the nature of the problem, including any facts relating to the problem; and a proposed resolution of the problem to the extent known.
 - 2) The State Superintendent shall only consider a complaint if it alleges a violation occurring not more than one year prior to the date on which the complaint is received.
 - 3) The State Superintendent must issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion; the reasons for the State Board of Education's final decision; and orders for any action, including technical assistance.
 - 4) The complaint procedure under this Section does not limit, diminish, or otherwise deny the federal and State rights and procedural safeguards afforded to students with disabilities.

(Source: Amended by emergency rulemaking at 43 Ill. Reg. 14305, effective November 20, 2019, for a maximum of 150 days; emergency amendment to emergency rule at 43 Ill. Reg. _____, effective _____, for the remainder of the 150 days.)