

# RIGHTS REGARDING THE USE OF RESTRAINT IN MASSACHUSETTS PUBLIC SCHOOLS

Prepared by the Mental Health Legal Advisors Committee  
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## WHAT RIGHTS DOES THIS FLIER COVER?

The Massachusetts Department of Elementary and Secondary Education (DESE) regulates public schools in their use of restraint.<sup>1</sup> This flier describes these rules.

## WHO DO THESE REGULATIONS APPLY TO?

These regulations apply to all Massachusetts public school districts, charter schools, virtual schools, collaborative education programs, and to the *school day* of special education schools approved by DESE under 603 CMR 28.09 (Public or Private Day and Residential Special Education School Programs).<sup>2</sup>

## WHAT IS RESTRAINT?

The regulations define four types of restraint: mechanical, medication, physical and seclusion.

- **Physical restraint:** direct physical contact that prevents or significantly restricts a student's freedom of movement.<sup>3</sup>
- **Mechanical restraint:** the use of any physical device or equipment to restrict a student's freedom of movement.<sup>4</sup>
- **Medication restraint:** the administration of medication for the purpose of temporarily controlling behavior.<sup>5</sup>
- **Seclusion:** the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.<sup>6</sup>

## WHAT IS NOT RESTRAINT?

The regulations define actions that are not restraint:

- **Physical restraint does not include:**
  - brief physical contact to promote student safety, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or

- a physical escort (which is a temporary touching or holding, without the use of force, of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is agitated to walk to a safe location).<sup>7</sup>
- **Mechanical restraint does not include:**
  - devices for positioning or protective purposes (such as devices or supports for proper body position, balance, or alignment;
  - vehicle safety restraints;
  - restraints for medical immobilization; **or**
  - orthopedically prescribed supports.<sup>8</sup>
- **Medication restraint does not include:**
  - medication prescribed by a physician and authorized by the parent for administration in school.<sup>9</sup>
- **Seclusion does not include:**
  - time-out.<sup>10</sup>

## **WHAT KIND OF RESTRAINT IS ALLOWED IN SCHOOL?**

Only physical restraint is allowed. Mechanical restraint, medication restraint, and seclusion are prohibited.<sup>11</sup>

## **WHEN IS PHYSICAL RESTRAINT ALLOWED?**

Physical restraint is an emergency technique that may only be used when all these circumstances exist:

- as a last resort;
- when a student's behavior poses a threat of assault, or imminent, serious, physical harm to self or others; **and**
- student doesn't respond to directions or other less intrusive behavior interventions, or such interventions would be inappropriate.<sup>12</sup>

## **WHEN IS PHYSICAL RESTRAINT NOT ALLOWED?**

Restraint may not be used:

- to discipline or punish;
- when it's unsafe because it is medically contraindicated;
- in response to
  - property destruction,

- disruption of school order,
- a refusal to comply with a school rule or staff directive, **or**
- verbal threats (that aren't a threat of assault and aren't posing imminent, serious physical harm);
- as a standard response for a student, such as in an individual behavior plan or individualized education program (IEP);<sup>13</sup>
- if restraint involves more force than is reasonable necessary to protect a student or another member of the school community from assault or imminent, serious physical harm.<sup>14</sup>

## **ARE ALL TYPES OF PHYSICAL RESTRAINT ALLOWED?**

Except when certain criteria are met, prone restraint is not allowed.

## **WHAT IS PRONE RESTRAINT?**

Prone restraint is a physical restraint in which a student is placed face down on the floor or another surface, and staff apply pressure to keep the student face-down.<sup>15</sup>

## **WHEN IS PRONE RESTRAINT ALLOWED?**

Prone restraint may only be used for a student if:

- the student has a documented history of repeatedly causing serious self-injuries and/or injuries to other students or staff;
- all other forms of physical restraints have failed to ensure the safety of the student and/or others;
- a physician documents that there are no medical contraindications;
- a licensed mental health professional documents that there is psychological or behavioral justification for using prone restraint and there are no psychological or behavioral contraindications;
- the program obtains (and a principal approves in writing) consent to use prone restraint in an emergency; **and**
- the program documents the above steps in advance of using prone restraint.<sup>16</sup>

## **WHO MAY ADMINISTER RESTRAINT?**

Only school personnel trained in the use of physical restraint may use restraint.<sup>17</sup> To do floor or prone restraints, staff must have in-depth training.<sup>18</sup>

## **HOW MUST RESTRAINT BE ADMINISTERED?**

The person doing a physical restraint must:

- use no more force than necessary to protect the student or others from injury;<sup>19</sup>

- use the safest method available and appropriate;<sup>20</sup>
- believe that the safety of the student or others requires such a method;<sup>21</sup>
- allow for breathing or speaking;<sup>22</sup>
- continuously monitor the student's physical status, including skin temperature and color, and respiration;<sup>23</sup>
- prevent or minimize physical harm;<sup>24</sup>
- consider
  - any medical or psychological limitations,
  - known or suspected trauma history, **and/or**
  - behavioral intervention plans regarding the use of restraint.<sup>25</sup>

### **WHAT MUST HAPPEN AFTER 20 MINUTES IN RESTRAINT?**

If a student is restrained for than 20 minutes, staff must obtain principal approval to continue the restraint.<sup>26</sup> The principal can only approve continued restraint if the student remains agitated.<sup>27</sup>

### **WHEN MUST RESTRAINT END?**

All physical restraint must end if:

- the student is no longer an immediate danger to himself or others;
- the student cannot breathe; **or**
- the student is in severe distress (such as having difficulty breathing, or sustained or prolonged crying or coughing).<sup>28</sup>

### **WHAT MUST HAPPEN IF THE STUDENT SUFFERS SIGNIFICANT PHYSICAL DISTRESS IN RESTRAINT?**

If the student experiences significant physical distress, staff must immediately release the student and seek medical assistance.<sup>29</sup>

### **WHAT HAPPENS AFTER RELEASE?**

- Staff must review the incident with the student to address the behavior that led to restraint.
- Administrators must review the incident with the staff member who administered the restraint to
  - make sure that proper procedures were followed and
  - determine whether follow-up is necessary for any student witnesses.<sup>30</sup>

### **WHAT MUST BE INCLUDED IN TRAINING?**

**All** school staff must receive basic training within the first month of the school year or within one month of being hired.<sup>31</sup>

**Some** staff, who receive in-depth training on restraints, serve as a school-wide resource to make sure that proper restraint procedure is followed.<sup>32</sup>

The regulations spell out the details of what basic and in-depth training must include.

### **HOW AND WHEN MUST RESTRAINT BE REPORTED?**

Schools must report physical restraint.<sup>33</sup>

The person administering the restraint must

- verbally tell the principal about the incident as soon as possible, **and**
- submit a written report by the next school day.<sup>34</sup>

The principal or director must keep each report on file so that DESE or a student's parent can review it on request.<sup>35</sup>

### **WHAT NOTIFICATION DO PARENTS RECEIVE?**

The principal shall:

- make reasonable efforts to verbally inform the student's parent of the restraint within 24 hours of the event; **and**
- shall notify the parent by written report sent within 3 school days of the restraint either
  - by email, **or**
  - by regular mail.<sup>36</sup>

If the program customarily provides a parent with information in a language other than English, the program must provide the restraint report in that language.<sup>37</sup>

The principal shall provide the student and parent an opportunity to comment orally and in writing on the restraint and on the report.<sup>38</sup>

### **WHAT INFORMATION MUST THE REPORT CONTAIN?**

The written report must include:

#### **Names and dates:**

- the name of the student;
- the names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint;
- the time the restraint began and ended;
- the name of the principal or designee who was verbally informed following the restraint; **and**

- if applicable, the name of the principal or designee who approved restraint beyond 20 minutes.<sup>39</sup>

**Description of activity prior to restraint:**

- a description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately before the restraint;
- the behavior that prompted the restraint;
- the efforts to prevent escalation of behavior (including de-escalation strategies);
- attempted alternatives to restraint; **and**
- the justification for starting the restraint.<sup>40</sup>

**A description of the restraint:**

- the holds used and reasons for them;
- the student's behavior and reactions during restraint;
- how the restraint ended; and
- documentation of injury to the student and/or staff, if any, **and**
- any medical care provided.<sup>41</sup>

**Any further action(s):**

- the school's actions;
- the school's possible future actions; **and**
- any consequences that might be imposed on the student.<sup>42</sup>

**How parents can discuss with school officials:**

- the administration of the restraint,
- any consequences that might be imposed on the student, **and**
- any other related matter.<sup>43</sup>

**WHAT REVIEW MUST THE PRINCIPAL DO?**

**Individual student review:**

Each week, the principal must review restraint data to identify students who have been restrained multiple times during the week. For identified students, the principal must convene a review team to assess the student's progress and needs.<sup>44</sup>

The principal must keep a record of each individual student review and make it available to DESE or the parent, upon request.<sup>45</sup>

**Administrative review:**

Each month, the principal must review school-wide restraint data, looking for patterns and taking necessary and appropriate steps in response.

## WHAT MUST A PRINCIPAL REPORT TO DESE?

### If there is an injury:

If a physical restraint results in an injury to a student or staff, the school must send DESE a report within 3 school days of the restraint, as well as other data.<sup>46</sup>

### Annually:

Every school must annually send DESE data regarding use of physical restraints.<sup>47</sup>

## WHAT CAN A PARENT DO IF HE OR SHE BELIEVES RESTRAINT WAS USED IMPROPERLY?

If a parent believes that a school has improperly used restraint on a child and hasn't been able to resolve the issue with the school, the parent can complain to either of two offices.

- **Program Quality Assurance Services (PQA) of DESE<sup>48</sup>**

75 Pleasant Street  
Malden, MA 02148-4906  
(781) 338-3700  
FAX: 781-338-3710  
Email: [compliance@doe.mass.edu](mailto:compliance@doe.mass.edu)  
Web: <http://www.doe.mass.edu/pqa>

PQA will send the parent an intake form which the parent completes within 30 days of receipt and sends to PQA and an appropriate school administrator. Once PQA receives the form, an Educational Specialist will contact the parent, the school, and the school district to resolve the problem. In most cases, PQA makes a decision within 60 days.

- **Office of Civil Rights (OCR) of the U.S. Department of Education<sup>49</sup>**

5 Post Office Square, 8<sup>th</sup> Floor  
Boston, MA 02109-3921  
(617) 289-0111  
FAX: 617-289-0150  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

Web: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Complaint online: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

A parent may file a complaint within 180 days of the restraint (or after 180 days, including a reason why filing is late). An OCR employee will then contact the parent.

## ENDNOTES

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<sup>1</sup> Mass. Gen. L. ch. 71, § 37G and 603 Code of Massachusetts Regulation (CMR) 46.00. DESE has these resources regarding restraint:

- DESE, Final Regulations on Physical Restraint, <http://www.doe.mass.edu/boe/docs/fy2015/2014-12/item2.html> (with links to DESE, 104 CMR 46 & DESE 104 CMR 18)
- DESE, Technical Assistance Advisory SPED 2016-1, Time-out and Seclusion (July 31, 2015), <http://www.doe.mass.edu/sped/advisories/2016-1ta.html>
- DESE, Q & A Guide Related to Implementation of 603 CMR 46.00, <http://www.doe.mass.edu/sped/advisories/QuestionAnswerGuide-603CMR.pdf>
- DESE, General Overview of Physical Restraint Requirements for Public Education Programs including Revisions that Take Effect January 1, 2016 (PowerPoint), <http://www.doe.mass.edu/lawsregs/603cmr46-UpdatedRequirements.pdf>

<sup>2</sup> 603 CMR 46.01(2).

<sup>3</sup> 603 CMR 46.01(2).

<sup>4</sup> 603 CMR 46.01(2).

<sup>5</sup> 603 CMR 46.01(2).

<sup>6</sup> 603 CMR 46.02.

<sup>7</sup> 603 CMR 46.02.

<sup>8</sup> 603 CMR 46.02.

<sup>9</sup> 603 CMR 46.02.

<sup>10</sup> 603 CMR 46.02. See MHLAC's flier on time-out in schools for more information.

<sup>11</sup> 603 CMR 46.03(1)(a).

<sup>12</sup> 603 CMR 46.03(1)(c).

<sup>13</sup> 603 CMR 46.03(2).

<sup>14</sup> 603 CMR 46.03(3).

<sup>15</sup> 603 CMR 46.02.

<sup>16</sup> 603 CMR 46.03(1)(b).

<sup>17</sup> 603 CMR 46.05 (1).

<sup>18</sup> 603 CMR 46.05 (3).

<sup>19</sup> 603 CMR 46.05 (2).

<sup>20</sup> 603 CMR 46.05 (3).

<sup>21</sup> 603 CMR 46.05 (3).

<sup>22</sup> 603 CMR 46.05 (5)(a).

<sup>23</sup> 603 CMR 46.05 (5)(a).

<sup>24</sup> 603 CMR 46.05 (5)(b).

<sup>25</sup> 603 CMR 46.05 (5)(d).

<sup>26</sup> 603 CMR 46.05 (5)(c).

<sup>27</sup> 603 CMR 46.05 (5)(c).

<sup>28</sup> 603 CMR 46.05 (4), 5(a).

<sup>29</sup> 603 CMR 46.05 (5)(b).

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<sup>30</sup> 603 CMR 46.05 (5)(e).

<sup>31</sup> 603 CMR 46.03 (2).

<sup>32</sup> 603 CMR 46.03 (3).

<sup>33</sup> 603 CMR 46.06 (1).

<sup>34</sup> 603 CMR 46.06 (2).

<sup>35</sup> 603 CMR 46.06 (2).

<sup>36</sup> 603 CMR 46.06 (3).

<sup>37</sup> 603 CMR 46.06 (3).

<sup>38</sup> 603 CMR 46.06 (3).

<sup>39</sup> 603 CMR 46.06 (4)(a).

<sup>40</sup> 603 CMR 46.06 (4)(b).

<sup>41</sup> 603 CMR 46.06 (4)(c).

<sup>42</sup> 603 CMR 46.06 (4)(d).

<sup>43</sup> 603 CMR 46.06(4)(e).

<sup>44</sup> 603 CMR 46.06(5).

<sup>45</sup> 603 CMR 46.06(5).

<sup>46</sup> 603 CMR 46.06(7).

<sup>47</sup> 603 CMR 46.06(8).

<sup>48</sup> PQA resolves complaints regarding a student's *current* general education program or a special education requirement that has been violated -- if the violation occurred no more than *one year* before PQA received the written complaint. PQA, The Problem Resolution System Information Guide, <http://www.doe.mass.edu/pqa/prs/>.

<sup>49</sup> OCR has authority to investigate complaints alleging violations of certain federal anti-discrimination provisions, including provisions that prohibit discrimination on the basis of disability.