

**RIGHTS REGARDING THE USE OF RESTRAINT
IN GROUP CARE PROGRAMS
REGULATED BY THE MASSACHUSETTS
DEPARTMENT OF EARLY EDUCATION AND CARE**

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

The Massachusetts Department of Early Education and Care (DEEC) regulates the use of restraint in DEEC licensed group care programs.¹ Group care programs include (but are not limited to) programs serving teen parents under age 16; transition to independent living programs; private residential schools that provide special services to children with special needs in which children with special needs constitute 30% or more of the school's population; and group residences or group homes.²

This pamphlet describes these rules.

DURING WHAT HOURS DO THESE REGULATIONS APPLY TO PRIVATE RESIDENTIAL SPECIAL EDUCATION SCHOOLS?

These DEEC regulations apply to those private residential special education schools (approved under DESE regulation 603 CMR 28.09 to provide special education services and with a population that includes at least 30% children with special needs) during **non-school hours**.³

During **in-school hours**, private day and residential educational programs, approved under Department of Elementary and Secondary Education (DESE) regulation 603 CMR 28.09 to provide special education services, must, like their public counterparts, follow DESE regulation 603 CMR 46.00 regarding use of restraint.⁴

Rights regarding restraint during in-school hours are explained in MHLAC's flier regarding restraint in Massachusetts public schools. These DESE rules are similar to but not identical to the DEEC rules during non-school hours.

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 resident's freedom of movement.⁵

- **Mechanical restraint:** the use of any device or equipment to restrict a resident's movement or normal body function.⁶
- **Medication restraint:** the administration of medication to temporarily control a resident's behavior.⁷
- **Seclusion:** the involuntary confinement of a resident alone in a room or area from which the resident is physically prevented from leaving.⁸

WHAT IS NOT RESTRAINT?

The regulations define actions that are not restraint.

- **Physical restraint does not include:**
 - providing brief physical contact, without force, to promote resident safety or limit self-injurious behavior, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or a physical escort.⁹
- **Mechanical restraint does not include:**
 - an adaptive or protective device recommended by a physician and consented to by the parent, when used as recommended by the physician for protection of a resident from serious self-injury, or to promote normative body positioning and physical functioning.¹⁰
- **Seclusion does not include:**
 - permissible group separation allowed by DEEC¹¹ or
 - permissible group separation allowed by Department of Youth Services (DYS)¹² for room confinement.¹³

WHAT KIND OF RESTRAINT IS ALLOWED IN RESIDENTIAL SCHOOLS?

In most settings, only physical restraint is allowed. Mechanical restraint is only allowed in DYS operated and contracted facilities when they use handcuffs.¹⁴ Medication restraint and seclusion are prohibited.¹⁵

WHEN IS PHYSICAL RESTRAINT ALLOWED?

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

- when a resident's behavior poses a threat of imminent, serious, physical harm to self or others;¹⁶

- the resident is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances;¹⁷ **and**
- the restraint is the least intrusive means necessary to protect the resident, other residents and staff.¹⁸

WHEN IS PHYSICAL RESTRAINT NOT ALLOWED?

Staff may not restrain a resident:

- to punish;
- for the convenience of others;
- solely for non-compliance with a program rule, staff directive or expectation.¹⁹

ARE ALL TYPES OF PHYSICAL RESTRAINT ALLOWED?

No. Except when certain criteria are met, prone restraint is not allowed.²⁰

Physical restraint also cannot include choke holds, headlocks, full nelsons, half-nelsons, hog tying or the use of pressure points to inflict pain.²¹

WHAT IS PRONE RESTRAINT?

Prone restraint is when a person is placed face down on the floor or another surface, and physical pressure is applied to the resident's body to keep the resident in the prone position.²²

Prone restraint does not include temporary prone positioning used by the Department of Youth Services in the course of handcuffing a youth.²³

WHEN IS PRONE RESTRAINT ALLOWED?

Prone restraint may only be used, on an individual basis, if the program obtains and maintains documentation in accordance with DEEC regulation.²⁴

Before prone restraint may be used:

- the agency's chief administrator/executive director must obtain and approve in writing consent to use prone restraint;
- a licensed mental health professional must document that there is psychological or behavioral justification for the use of prone restraint with no contraindications;
- a licensed physician must document that there are no medical contraindications;
- the resident must have a documented history of repeatedly causing serious self-injuries and/or injuries to other residents or staff; and
- the program must confirm that all other forms of physical restraint have failed to ensure the safety of the resident and/or safety of others.²⁵

WHO MAY ADMINISTER RESTRAINT?

Only staff trained in physical restraint shall participate in a restraint.²⁶

WHAT MUST HAPPEN AFTER 20 MINUTES IN RESTRAINT?

If a resident is restrained for over 20 minutes, the chief administrative person or designee must approve any further use. Such approval shall be based upon the resident's continued behavior justifying the need for continued restraint.²⁷

WHEN MUST RESTRAINT END?

All physical restraint must end:

- if a resident exhibits any sign of significant physical distress;²⁸
- at the first indication that it is safe to do so.²⁹

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 provide medical assistance.³⁰

WHAT HAPPENS AFTER RELEASE FROM RESTRAINT?

As soon as possible after the restraint and within 24 hours of the restraint, staff must offer the resident the opportunity to comment in writing on the restraint. Such comment shall be attached to the restraint incident report.³¹

Within 48 hours following release of a resident from a restraint, the program shall implement its processing and follow-up procedures.³²

HOW AND WHEN MUST RESTRAINT BE REPORTED?

The program must document all restraints, including any required administrative approval, and all processing and follow-up, on a physical restraint incident report.³³ These reports are kept in the resident's record.³⁴

WHAT NOTIFICATION MIGHT PARENTS RECEIVE THAT A RESTRAINT OCCURRED?

If a resident is restrained multiple times during the previous week, the resident's case manager or clinician must convene a meeting to review the resident's clinical and behavioral needs.³⁵ The program must invite parents or guardians.³⁶ At the review, the attendees can consider changing the resident's service plan.³⁷ Such changes require parental consent.³⁸

The form that programs must prepare after each restraint must contain information regarding opportunities for the resident's parents or guardians to discuss the administration of the restraint and/or any consequences imposed on the student, if applicable.³⁹

HOW CAN A PARENT COMPLAIN ABOUT A RESTRAINT?

If a parent believes that a program has used restraint improperly during non-school hours, the parent can contact the:

Department of Early Education and Care (DEEC)
1-617-988-6600, then press '0' to speak with the operator

The parent should inform the operator of the name and location of the youth's program. The operator will provide the parent contact information for the appropriate regional office to call. Once the parent calls the regional office, the parent will be directed to a staff person who can record a complaint or concern over the phone.

Complaints about restraint during in-school hours are handled through a different process. These complaints should be sent to DESE, not DEEC. For more information, see MHLAC's flier regarding restraint in Massachusetts public schools.

ENDNOTES

¹ Mass. Gen. L. ch. 15D, §3, 8(a) and 606 Code of Massachusetts Regulation (CMR) 3.00.

² 606 CMR 3.02(1).

³ 606 CMR 3.11(1).

⁴ 603 CMR 18.05(5)(h); *see also* 603 CMR 46.01(2).

⁵ 606 CMR 3.02(2).

⁶ 606 CMR 3.02(2).

⁷ 606 CMR 3.02(2).

⁸ 606 CMR 3.02(2).

⁹ 606 CMR 3.02(2).

¹⁰ 606 CMR 3.02(2).

¹¹ See DEEC regulation 606 CMR 3.07(7)k.

¹² See DEEC regulation 606 CMR 3.07(7)n. DYS may use room confinement for purposes of population control, during shift changes, and during investigation. 606 CMR 3.02(2).

¹³ 606 CMR 3.02(2).

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- ¹⁴ 606 CMR 3.07(7)(j).
¹⁵ 606 CMR 3.07(7)(j).
¹⁶ 606 CMR 3.07(7)(j)(1)a.
¹⁷ 606 CMR 3.07(7)(j)(1)a.
¹⁸ 606 CMR 3.07(7)(j)(7).
¹⁹ 606 CMR 3.07(7)(j)(2), (3).
²⁰ 606 CMR 3.07(7)(j).
²¹ 606 CMR 3.07(7)(j)(7).
²² 606 CMR 3.02(2).
²³ 606 CMR 3.02(2).
²⁴ 606 CMR 3.07(7)(j).
²⁵ 606 CMR 3.07(7)(j)15
²⁶ 606 CMR 3.07(7)(j)(4).
²⁷ 606 CMR 3.07(7)(j)(8).
²⁸ 606 CMR 3.07(7)(j)(10).
²⁹ 606 CMR 3.07(7)(j)(11).
³⁰ 606 CMR 3.07(7)(j)(10).
³¹ 606 CMR 3.04(3)(i).
³² 606 CMR 3.07(7)(j)(12).
³³ 606 CMR 3.07(7)(j)(14); *see also* 606 CMR 3.04(3)(i) (lists all the information that
must be contained in the report).
³⁴ 606 CMR 3.07(7)(j)(14).
³⁵ 606 CMR 3.07(7)(j)(13).
³⁶ 606 CMR 3.07(7)(j)(13).
³⁷ *See* 606 CMR 3.07(7)(j)(13).
³⁸ 606 CMR 3.07(7)(j)(13).
³⁹ 606 CMR 3.04(3)(i)(15).