

RIGHTS REGARDING THE USE OF RESTRAINT IN MASSACHUSETTS PUBLIC SCHOOLS

**Prepared by the Mental Health Legal Advisors Committee
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The Massachusetts Department of Elementary and Secondary Education (DESE) regulates public schools in their use of physical restraint on students.¹ This pamphlet describes these requirements. This pamphlet does not include the program and safety standards for Approved Public or Private Day and Residential Special Education School Programs.²

WHAT IS RESTRAINT?

Restraint is physically limiting an individual student's freedom of movement or controlling behavior by chemical means.³ It is used in emergency situations in order to protect a student or staff member when other, less intrusive methods have failed. The different types of restraint include:

- Physical restraint: Using bodily force to limit a student's freedom of movement.⁴
- Physical escort: Touching or holding a student without the use of force in order to direct his or her movement.⁵
- Mechanical restraint: The use of a physical device to restrict a student's movement, or the movement or normal function of part of his or her body.⁶
- Seclusion restraint: Physically confining a student alone in a room or limited space without access to school staff.⁷
- Chemical restraint: The use of medication for the purpose of restraint.⁸

WHAT ARE THE RISKS INVOLVED IN THE USE OF RESTRAINT?

When misused, restraint and seclusion can be dangerous and even deadly. In particular, a number of students have died as a result of the improper use of prone restraint. Prone restraint involves holding a child facedown against the floor. When a person administering prone restraint applies too much pressure to a student's torso, he or she can inadvertently suffocate the student or cause the student to have fatal heart problems. If the staff member ignores verbal or other signs of physical distress, does not release the student from the restraint upon noticing them and/or does not seek medical attention quickly enough, these problems can be fatal. Other physical restraints can also be harmful, mentally as well as physically, if used improperly.⁹

HOW AND WHEN MAY RESTRAINT BE USED IN A PUBLIC SCHOOL CLASSROOM?

Restraint may only be used when a student's behavior poses a threat of imminent, serious physical harm to him or herself or to others, and when all non-physical interventions would be ineffective.¹⁰ Only school personnel who have been trained in the use of restraint may use it. Furthermore, only staff members who have received in-depth training may use floor or prone restraints, and they may only do so if it is necessary for the safety of the student or others.¹¹

The person administering the restraint must use the safest method available, use no more force than is necessary to protect the student or others from physical injury, and discontinue the use of restraint as soon as it is possible and safe to do so.¹² If a restraint lasts more than 20 minutes, it is considered an extended restraint for the purposes of reporting.¹³ When possible, another adult should be present to witness the use of restraint.¹⁴ If at any time during the use of restraint the student shows signs of being in serious physical distress, he or she must be released immediately, and school staff must seek medical help.¹⁵

After the student has been released, the incident must be reviewed with the student in order to address the behavior that led to the use of restraint. The incident must also be reviewed with the staff member who administered the restraint to make sure that proper procedures were followed and whether any follow-up is necessary for the students who witnessed it.¹⁶

Some types of restraint cannot be used in Massachusetts public schools at all. This includes seclusion and types of restraint that prevent a student from speaking or breathing.¹⁷ Chemical and mechanical restraint may only be used with approval from a physician and written consent from the student's parents.¹⁸

Restraint may not be used as a means of punishment or as a response to property destruction, merely disruptive behavior, refusal to follow rules or verbal threats.¹⁹

WHO IS QUALIFIED TO ADMINISTER RESTRAINT?

Only school personnel who have been trained in the use of restraint may administer it to students.²⁰ All school staff must receive basic training within the first month of the school year or within one month of being hired to work there.²¹ Basic training should include information on:

- The program's restraint policy
- Alternatives to restraint in handling problematic behavior.
- Types of restraints and the safety concerns they raise
- The risk of injury involved in extended restraint

- How to use physical restraint on individual students who have known medical or psychological problems and behavioral intervention plans
- The names of staff members who have received in-depth training in the use of physical restraint.²²

Some staff members have received in-depth training on the use of restraints so that they can serve as a school-wide resource to make sure that proper restraint procedure is being followed.²³ In-depth training must include:

- Alternatives to restraint in de-escalating problematic behavior
- A description and identification of dangerous behaviors for which restraint may be necessary
- Methods of evaluating the level of risk in individual situations in deciding whether restraint is necessary
- Simulated experiences of using and receiving restraint
- Information on the effects of restraint on the person receiving it, including how to monitor physical distress and how to seek medical help if necessary
- Instruction on documentation, reporting requirements and investigation of injuries and complaints about the use of restraint
- Demonstration by participants of the proper use of physical restraint.²⁴

HOW AND WHEN MUST THE USE OF RESTRAINT BE REPORTED?

Schools must report the use of physical restraint when it lasts for more than five minutes and/or results in any injury to a student or staff member.²⁵ The person who administers the restraint must verbally tell the school administration about the incident as soon as possible, and submit a written report about it by the next school day.²⁶

The written report must include information about:

- The date and time of the restraint.
- *The people involved:* The names and titles of the person administering the restraint, any bystanders and the school official to whom the use of restraint was reported.
- *The events leading up to the restraint:* What was happening before restraint became necessary, what the student did to prompt the use of restraint, what alternatives to restraint were used to de-escalate the situation, and why restraint was necessary.
- *The restraint itself:* What holds were used and why, how the student reacted to the restraint, how the restraint ended, whether any injuries resulted, what kind of injuries resulted, and what sort of medical treatment was provided.
- *Whether extended restraints were used:* What alternatives to extended restraint were tried, what the outcomes of those alternatives were, and why the extended restraint was necessary.
- *Further action by the school:* Whether the school plans to take further disciplinary or other action against the student, and of what kind.

- Any opportunities for the student’s parents or guardians to meet with school officials to discuss the restraint, any further action and related matters.²⁷

The school principal or other administrator must keep all such reports on file so that DESE can review them on request.²⁸ The principal must verbally inform the parents of a restrained student about the incident as soon as possible, and send the written report within three school days after the restraint. If the school usually provides the family with information in a language other than English, the written report also must be in that language.²⁹

When a restraint results in a serious injury to a student or staff member, or when extended restraint is used, the school must provide DESE with a copy within five school days of the incident. The school also must provide DESE with a copy of the record of physical restraint for the 30 days before the reported restraint. If DESE requires any other documents, it will notify the school within 30 days of receiving the report.³⁰

HOW CAN YOU PROTECT YOUR CHILD AGAINST THE IMPROPER USE OF RESTRAINT?

If you believe that a school has improperly used restraint on your child and you have not been able to resolve the issue with the school itself, you may file a complaint with one of the following two organizations.

Program Quality Assurance Services (PQA) of Massachusetts DESE

PQA has authority to resolve complaints regarding:

- a student's *current* general education program; or
- a special education requirement that has been violated, and the violation occurred no more than *one year* before PQA received the written complaint.³¹

After contacting PQA, you will receive an intake information form that will provide PQA with information about the student, the incident and other relevant information. You must fill the intake information form out and send it within 30 days of receiving it, and forward it to the appropriate school administrator. Once PQA has received the intake information form, an Educational Specialist will contact you, the school and the school district in order to resolve the problem. In most cases, PQA will make a decision regarding a complaint within 60 days. PQA will

You can contact PQA at:

Program Quality Assurance Services
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906

(781) 338-3700
FAX: 781-338-3710
Email: compliance@doe.mass.edu
Web: <http://www.doe.mass.edu/pqa>

U.S. Department of Education's Office of Civil Rights (OCR)

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

You may file a complaint with OCR within 180 days of the use of restraint. If you have waited longer than 180 days, you must include information as to why you did not file the complaint within that time frame. Once your complaint has been received and reviewed, you will be contacted by an OCR employee within your state.

You can fill out a complaint with the OCR online at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/complaintform.cfm>, or contact the OCR's Boston office at:

Office of Civil Rights of the U.S. DOE
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
(617) 289-0111
FAX: 617-289-0150
Email: OCR.Boston@ed.gov
Web: <http://www2.ed.gov/about/offices/list/ocr/index.html>

ADDITIONAL RESOURCES

For more information on how to protect your child from the use of restraint, seclusion and aversive treatments, see The Alliance to Prevent Restraint, Aversive Interventions, and Seclusion, In the Name of Treatment, http://www.tash.org/dev/tashcms/ewebeditpro5/upload/In_the_Name_of_Treatmentfinal.pdf.

ENDNOTES

¹ Mass. Gen. L. ch. 71, § 37G and 603 Code of Massachusetts Regulation (CMR) 46.

² The Massachusetts regulations for these programs can be found at 603 CMR 18.

³ 603 CMR 46.02 (5).

⁴ 603 CMR 46.02 (3).

⁵ 603 CMR 46.02 (2).

⁶ 603 CMR 46.02 (5)(a).

⁷ 603 CMR 46.02 (5)(b).

⁸ 603 CMR 46.02 (5)(c).

⁹ United States Government Accountability Office, “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers” (2009). Testimony before the Committee on Education and Labor in the House of Representatives. Statement of Gregory D. Kutz.

¹⁰ 603 CMR 46.04 (1).

¹¹ 603 CMR 46.05 (1).

¹² 603 CMR 46.05 (2), (3), (4).

¹³ 603 CMR 46.05 (4).

¹⁴ 603 CMR 46.05 (1).

¹⁵ 603 CMR 46.05 (5)(b).

¹⁶ 603 CMR 46.05 (5)(d).

¹⁷ 603 CMR 46.02 (5); 603 CMR 46.05 (5)(a).

¹⁸ 603 CMR 46.02 (5).

¹⁹ 603 CMR 46.04 (3).

²⁰ 603 CMR 46.05 (1).

²¹ 603 CMR 46.03 (2).

²² 603 CMR 46.03 (2).

²³ 603 CMR 46.03 (3).

²⁴ 603 CMR 46.03 (2).

²⁵ 603 CMR 46.06 (1).

²⁶ 603 CMR 46.06 (2).

²⁷ 603 CMR 46.06 (4).

²⁸ 603 CMR 46.06 (2).

²⁹ 603 CMR 46.06 (3).

³⁰ 603 CMR 46.06 (5).

³¹ PQA, The Problem Resolution System Information Guide, <http://www.doe.mass.edu/pqa/prs/>.