

**General Summary of 2014 Changes to DESE and EEC Regulations on Restraint, Seclusion and Timeout, Effective 1/1/16.**

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Last Revised: 1/18/15

<u>Issue</u>	<u>Prior DESE Rule</u>	<u>Additional Changes in Current DESE Rule</u> <i>(Governs public &amp; day schools, and school portion of day at residential schools)</i>	<u>Prior EEC Rule</u>	<u>Additional Changes in Current EEC Rule</u> <i>(Governs non-school part of day at residential schools)</i>	<u>Comments</u>
<b>1. Timeout</b>	Unregulated; Not defined. Timeout was a loophole; seclusion was prohibited but “timeout” was allowed without limitation, so long as staff was “available” or “accessible.”	<b>Now defined (in 603 CMR 46.02) as separation by choice or direction by staff. Only for purpose of calming, not punishment; continuous observation required; Area must be clean, safe, sanitary and appropriate. Timeout must cease when student has calmed.</b>  <b>After 30 min. principal approval required.</b> (46.02(1)(j)).	Unclear distinction between timeout and seclusion. Behavior management policy may allow “separation from the group” if student is “observable” and in close proximity to staff in unlocked setting and observed every 15 min. Any use over 30 min. must be documented and approved. Presumably may be used for discipline.	<b>Same as prior EEC regs, but resident must be “returned to the group and regular program activities as soon as his or her behavior indicates that it is safe to do so.” 606 CMR 3.0 (7)(k)(7). This would seem to preclude use of seclusion / timeout for disciplinary purposes, as opposed to calming.</b>	Important, positive changes to DESE regs. We received widespread complaints of students excluded for many hours of the day, and for days on end, labeled as “timeout.”  Still missing from DESE regs: (1) Requirements that schools report use of timeout to parents and DESE; (2) Requirements that schools conduct an assessment when timeout has been used very frequently; (3) Clear time limit.  EEC regs should be aligned with revised DESE regs with additional changes described above.

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<b>2. Parental / Guardian consent</b>	<p>No definition of consent. School could seek “consent” to waive reporting requirements for restraints of 5 min. or less, not resulting in injury.</p> <p>“Public education program” may not require waiver as condition of admission or provision of services.</p>	<p><b>“Consent” defined as being fully informed in native language / mode of communication, with voluntary, written agreement.</b></p> <p><b>School may not condition admission or continued enrollment upon agreement to proposed use of restraint. (46.02). See also 603 CMR 18.02(3).</b></p>	<p>“Consent” defined as being fully informed in native language / mode of communication, with voluntary, written agreement.</p>	<p><b>Same as new DESE regulation. See 606 CMR 3.02(1).</b></p>	<p>An important, positive change to both DESE and EEC regulations. We received repeated complaints of parents of students in day and residential schools being told that admission or continued participation was conditioned on their agreeing to the school’s policies or plan for seclusion, restraint and timeout. It is also important that regs of both departments are now more closely aligned.</p> <p>Prohibition on coercing “consent” should cover seclusion &amp; timeout as well as restraint.</p>
<b>3. Seclusion</b>	<p>Defined as keeping a student alone or in a limited space without access to school staff. Prohibited, but “timeout” permitted and not clearly</p>	<p><b>The definition of seclusion is clearer, because timeout has now been defined. See description of Timeout above.</b></p>	<p>See description of Timeout above.</p> <p>Extensive separation from the group prohibited. (3.07(g)(7)).</p>	<p><b>New definition of “seclusion”: involuntary confinement alone in a room or area from which resident is physically prevented from leaving. Seclusion is prohibited under 3.02 (1).</b></p>	<p>See comments above, noting further improvements needed for definition of Timeout.</p>

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	defined.	<b>See also 603 CMR 18.05(5)(i).</b>	Requirements in 3.07(7)(k)	<p><b>In contrast, “separation from the group” is allowed under certain conditions, and as part of a behavior support plan. (606 CMR 3.07 (7)(k)).</b></p> <p><b>Student must be returned to group when safe to do so. (3.07(7)(k)).</b></p> <p><b>See description of Timeout above.</b></p>	
<b>4. Use of Restraint</b>	Restraint is not permitted to punish, and may not be used in other circumstances without a threat of imminent serious, physical harm.	<p><b>Same.</b></p> <p><b>Any physical restraint also prohibited when not safe because of medical contraindications such as asthma, seizures, cardiac conditions, obesity, bronchitis, communication-related disabilities and risk of vomiting. (46.03(2)(b)).</b></p>	May not use restraints as punishment or for convenience of others. Least intrusive means must be used. Must immediately release upon signs of significant physical distress or when safe to do so.	<b>Detailed policy statement required. (3.07(7)(a)).</b>	

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		<p><b>Not to be used for discipline. (46.03(2)(a)).</b></p> <p><b>Restraints are emergency procedures “of last resort” (46.01 (3)) and in response to threat of assault or imminent serious physical harm where student is not responsive to verbal directives and less intrusive interventions are not possible. (46.03 (1)(c)).</b></p> <p><b>Revisions to written restraint prevention and behavior support policy required with 10 components. (46.04 (1)).</b></p>			
<b>5. IEP or written plan lowering restraint / seclusion requirements</b>	IEP or written plan determines finding of compliance with certain regs.	<b>Restrained may not be used as a standard response, e.g., through a written behavior plan or IEP as a standard</b>	N/A	N/A	Seclusion /Separation not discussed in these regulations.

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		<p>response. It is an emergency procedure of last resort. (46.03(2)(d)).</p> <p>Individual crisis planning is permitted and encouraged (46.04(1)).</p>			
<b>6. Prone Restraints</b>	Prone or floor restraints permitted if staff member received in-depth training and in the judgment of staff, this is required for safety.	<p><b>Defined in 46.02. Under 46.03 (1)(b), prone restraint is prohibited. Exception on individual basis, if all of 6 conditions are met (documented history; other forms failed; no medical contraindications; is documented psychological justification; written consent for emergency use approved by principal and all of above documented. See medical contraindications listed in 46.03(2)(c).</b></p>	Permitted, subject to training requirements and policies in Behavior Management & Physical Restraint Policy :P-EEC-R&P-03.	<p><b>Not permitted except for very limited exception: Parental consent required; Six conditions very similar to current DESE regulation must be met and documented, See 606 CMR 3.07(7)(j)(15), or prone restraint is required in emergency situation to prevent serious injury. 3.07(7)(j)</b></p> <p><b>Resident must be placed in a position that allows airway access and does not compromise respiration. 3.07(7)(j)(1)(b).</b></p>	<p>DLC objected to any use of prone restraints, for reasons explained in more detail in our white paper on this subject. <a href="http://www.dlc-ma.org/dese/DLC_Comments_to_DESE_and_EEC_on_Prone_Restraints.pdf">http://www.dlc-ma.org/dese/DLC_Comments_to_DESE_and_EEC_on_Prone_Restraints.pdf</a></p> <p>While we would have preferred that there be no exceptions, the ones adopted by DESE and EEC are narrow in scope.</p>

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		<b>Also other emergency conditions 46.03(1)(c) met, and safety requirements in 46.05 followed.</b>			
<b>7. Other floor restraints: (supine and side).</b>	See above.	<b>See above and below.</b>	Behavior Management & Physical Restraint Policy :P-EEC-R&P-03.  Discontinue if significant physical distress. 3.07(7)(j)(10)	Same	We continue to maintain that all restraints, especially all floor restraints, are potentially dangerous and frequently overused. We encourage the community to work towards the reduction and elimination of these techniques.
<b>8. Safety requirements related to restraints</b>	All restraints must be administered in way that student is not prevented from breathing or speaking; must monitor physical status, respiration; other safety requirements; follow-up procedures.	<b>Generally the same, but regs clarify restraint must end when immediate danger is over, or when student indicates s/he cannot breathe, or is observed to be in severe distress, such as having difficulty breathing or prolonged crying or coughing.</b>	Behavior Management & Physical Restraint Policy :P-EEC-R&P-03.  See 3.07(7)(g) and (j).	<b>Same; additional language about airways and respiration (3.07(7)(j)(1)).</b>	

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		<b>Restraint over 20 min. requires approval of principal. Staff must consider trauma history. (46.05.)</b>			
<b>9. Mechanical and medication restraints</b>	Mechanical restraint prohibited, unless authorized in writing by physician and approved in writing by parent or guardian.	<b>New detailed definition of mechanical restraint (prohibited) and other adaptive devices prescribed by medical or related professional (permitted) in 46.02.</b>  <b>Medication restraint prohibited in 46.02; defined as administration of medication to temporarily control behavior; does not include medication prescribed by physician and approved by parent.</b>		<b>Mechanical restraints prohibited with DYS exception. Medication restraints prohibited. (3.07(7)(j)).</b>	Parental consent should be required in all circumstances.
<b>10. Reporting restraints to family and</b>	Restraints of 5 minutes or less were not required to be	<b>Universal reporting to parents, ideally within 24 hrs; 3 school days'</b>	Opportunity of resident to comment. 3.04(3)(i).	<b>Change to 3.04(3)(i) re documenting opportunities for parents or guardians to</b>	Universal reporting is a major, important change. Based on a review of data in

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<b>guardian.</b>	reported unless resulting in an injury.	<b>written notice; Opportunity for student and parent to comment. (46.06(3))</b>		<b>discuss restraint.</b>	CT, we estimated that it is possible that as many as 90% of all restraints were not reported under the old rules.
<b>11. Reporting restraints to school</b>	Restraints of 5 minutes or less were not required to be reported unless resulting in an injury.	<b>Universal reporting, as soon as possible and by next school day report to principal.</b>	Required to administrative designee 3.07(7)(j)(5) and after 20 minutes approval necessary. 3.07(7)(j)(8).	<b>Licensee must analyze restraint data on quarterly basis and implement corrective measures. (3.07(7)(a)(6)).</b>	See above.
<b>12. Reporting restraints to state agency</b>	Restraints under 20 minutes were not required to be reported unless resulting in injury.	<b>Universal reporting of physical restraints to state on an annual basis. (46.06(8)).</b>			<p>Universal reporting is a major, important and positive change.</p> <p>Unfortunately, reporting is annual and not quarterly, and does not include seclusion or timeout.</p> <p>DESE will be developing forms for reporting on restraint and seclusion. We have urged the Department to include race and ethnicity in reporting. We have also requested that DESE require reporting using a uniform.</p>

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					standardized measurement (rate) of restraint that can permit parents, students, advocates, staff, teachers, administrators, state officials and members of the public to compare readily the restraint seclusion and timeout practices at comparable schools with populations of different sizes. This is common practice in reporting restraints in other human services contexts.
<b>13. General school oversight</b>	N/A	<b>Administrator must do weekly review of restraint data to identify residents restrained multiple times during the week. Assessment has 4 attributes required. (46.06(5)).</b>  <b>Principal must do monthly restraint data with specific</b>	Incident reports must document use of restraints. and chief admin. officer must review.. Resident must have opportunity to comment. (3.04(3)(i)).  Trigger for review, but with very high bar (5x in 7 day period). 3.07(7)(j)(13).	<b>Administrator must do weekly review of restraint data to identify residents restrained multiple times during the week. Triggers review of clinical &amp; behavioral needs by case manager or clinician, with parents invited. 3.07(j)(13).</b>	Both DESE and EEC have important new provisions related to obligations of schools to assess and act upon restraint data.

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		<b>considerations towards reduction and elimination. (46.06(6)).</b>			
<b>14. Training</b>	<p>Only trained personnel can restrain students. General training requirements and topics for new staff.</p> <p>In-depth training required for those using floor restraints. 16 hours of training recommended; specified topics for in-depth training.</p>	<p>For general training,</p> <p><b>For in-depth training, same, by training should be competency based, and should include the psychological, physiological and social-emotional effects of restraint. Also annual refresher trainings recommended. (46.04(3) &amp;(4)).</b></p>	See 3.04(7), especially 3.07(7)(g)(1) (describing training requirements)	Same.	
<b>15. Applicability to school resource officers and other law enforcement personnel.</b>	N/A	<b>No changes adopted</b>	N/A	<b>No changes adopted</b>	This is an area in which advocates urged changes that were not adopted. We remain concerned that in certain school districts, use of restraint will shift to law enforcement personnel that are not subject to these regulations.

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<b>16. Parents requested to pick up children from school, in lieu of seclusion or timeout.</b>	N/A	N/A	N/A	N/A	Most likely these cases are now covered by the new student discipline regulations, 603 CMR 53, e.g.. 57.03