



**Education Client Alert
August 2015**

**DESE PUBLISHES GUIDANCE ON CHANGES TO
PHYSICAL RESTRAINT AND TIME-OUT**

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On approximately July 31, 2015, the Department of Elementary and Secondary Education (“DESE”) published additional guidance on the implementation of physical restraint and time-out under the revised regulations at 603 CMR 46.00 *et seq.* Although the revised regulations are not effective until January 1, 2016, DESE has indicated that schools are strongly encouraged to begin working towards implementation in the fall of the 2015-2016 school year.

I. Technical Assistance Advisory SPED 2016-1: Time-Out and Seclusion

In this advisory, DESE creates a new distinction between “inclusionary time-out” and “exclusionary time-out,” which are not separately defined in the revised regulations. Inclusionary time-out occurs when the student is removed from full participation in classroom activities but remains within the classroom. Exclusionary time-out occurs when the student is separated either in a walled-off space within the classroom or in a separate time-out space elsewhere in the building.

DESE emphasizes that exclusionary time-out should only be used when students are displaying behaviors that are potentially unsafe or overly disruptive. The advisory goes beyond the language of the revised regulations when it states that staff members must be physically present with the student in the exclusionary time-out setting, unless such staff presence poses a safety risk. The advisory also clarifies that the requirement to seek a Principal’s approval for a time-out lasting beyond thirty (30) minutes only applies to exclusionary time-outs.

The advisory also includes a helpful flowchart distinguishing an exclusionary time-out from seclusion. The revised regulations do not specify the type of staff who should be continuously observing and immediately available to a student in time-out. However, the flowchart demonstrates that a student may be involuntarily confined in the time-out room; may be physically prevented from leaving the time-out room; and may be alone with no staff members inside the room, but the time-out will still not be considered a seclusion so long as there is a school counselor or other behavioral support professional continuously observing and immediately available outside of the time-out room.

II. Q&A Guide Related to the Implementation of 603 CMR 46.00

One major area of concern for schools has been the ambiguous distinction between a physical restraint and a physical escort. Under the revised regulations, physical escorts are defined as a



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temporary touching without the use of force. This has given rise to the concern that when force is necessary to escort the student, such an escort may qualify as a physical restraint. In the Q&A, DESE confirms that a physical escort to a time-out space is properly considered a restraint if physical force is required to move the student against his/her will. On the other hand, DESE provides additional examples of brief physical contact to promote safety which are not physical restraints, including physically redirecting a student about to wander on to a busy road, grabbing a student who is about to fall, or breaking up a fight between students.

Another area of concern has been preexisting IEPs and behavior plans which contain language regarding the use of physical restraint. Under the revised regulations, no behavior plan or IEP may include use of physical restraint as a standard response to any behavior. In the Q&A, DESE strongly recommends that Teams convening over the fall of 2015 review and propose changes to such IEPs or behavior plans so as to avoid the need for last-minute amendments in January, 2016. However, the Q&A is silent as to whether DESE contemplates taking any action against schools if the revisions or amendments to such plans have not been accepted by January 1, 2016.

In its Q&A, DESE also confirms that the physical restraint regulations do not apply to school resources officers (SRO). However, for the first time, DESE also takes the position that anyone employed by the school and working in a school security role should receive the in-depth physical restraint training described in the regulations. Therefore, schools may wish to inquire into the physical restraint training that an assigned SRO or any other school security officer has received.

Schools are advised to review both the Technical Assistance Advisory and the 27-Question and Answer Guide in full when considering changes to existing policies, procedures, and staff training on physical restraint.

DESE's Technical Assistance Advisory on Time-Out and Seclusion may be accessed here:
<http://www.doe.mass.edu/sped/advisories/2016-1ta.html> .

DESE's Q&A on the revised physical restraint regulations may be accessed here:
<http://www.doe.mass.edu/sped/advisories/QuestionAnswerGuide-603CMR.pdf>.

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