

SUBMITTING COMMENTS ON THE NEW PROPOSED STATE REGULATIONS ABOUT RESTRAINT AND SECLUSION IN SCHOOLS

Disability Law Center / www.dlc-ma.org
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Who should receive these comments?

Ms. Tracy Collins
Office of Special Education, Planning and Policy Development (SEPP)
Department of Elementary and Secondary Education (DESE)
75 Pleasant Street
Malden, MA 02148

Please mail them to the address above, or fax them to 781-338-3371, or send them by e-mail to restraintcomment@doe.mass.edu

What is the deadline?

Comments must be received by DESE by **Monday, November 3, 2014.**

How can I read the proposed regulations?

Please go to: <http://www.doe.mass.edu/news/news.aspx?id=13497>

What do the new proposed regulations say?

The DESE regulations govern restraint and seclusion during the school day in public, day and residential schools. Other regulations govern what happens during non-school hours at residential schools.

--The new proposed regulations ban prone restraints. These are extremely dangerous because students are placed face-down on the floor and pressure from the restraint may endanger breathing.

--The proposed regulations continue to ban seclusion, but partially close a loophole that previously allowed students to be isolated when practices like seclusion was labeled as "timeout."

--The proposed regulations require better reporting of restraints, and require schools to develop new approaches when restraints have been frequently used.

This is only a partial summary. Read more below for more detail.

What is the purpose of commenting on the proposed regulations?

DESE will collect comments from members of the public, including parents, students, advocates, teachers and school administrators. Based on the comments they receive, DESE may decide to modify the final regulations, to make them either better or worse than the proposed regulations.

What could students and parents say to comment on the proposed regulations?

1. Support DESE's proposed ban on prone restraints.
2. Ask that "restraint" be defined more broadly. Under the proposed regulations, a student can be held in any way, for any duration, if they are not actively resisting.
3. Support DESE's proposed plan to close the "timeout loophole" where schools place children in seclusion and call it "timeout" instead. As the proposed regs provide, timeout should be defined and very limited. It should be used to help students calm themselves, and not used for routine discipline.
4. Urge that the proposed regulations need go still further and require that schools keep track of excessive use of timeout and report excessive use to DESE. Right now, some children are placed in timeout for hours on end, often for many days out of any school week or month. When timeout is used excessively, the school must be required to have a meeting to think through other behavioral or academic approaches.
5. Support new proposed requirements for schools to report use of restraints, and ask that these be further strengthened.
6. Ask that schools not be allowed to coerce parents into "consenting" to plans to use restraints on their children.

Is there a guide or a template I could use to help me draft comments?

Yes. Please see the attached **template** for family members and students.

Disability rights advocates and student advocates, including DLC and other organizations, will also be submitting comments on both substantive and technical changes that should be made to the proposed regulations. DLC will post its comments on its website by November 3, 2014.

Are there any other regulations about restraint and seclusion that are being proposed?

Yes. In mid October, the Department of Early Education and Care (EEC) will also be proposing new regulations governing seclusion and restraint during non-school hours at residential schools. Currently, EEC regulates some aspects of seclusion and restraint even less than DESE. For this reason, it is important that parents of students in residential schools also comment on these proposed regulations when they are released. Please check the EEC website about how to comment on the proposed EEC regulations. See <http://www.mass.gov/edu/government/departments-and-boards/departments-of-early-education-and-care/>

Can you give me more detail about the issues in the proposed DESE regulations? Why is it important that I comment about this?

Schools that favor the use of seclusion and restraint, or excessive use of timeout, are pushing back from the other direction. It is important for DESE to hear the experiences of students and family members when young people have been restrained or isolated from the classroom. If you are writing to explain what happened to your child, it might be helpful to use some of his or her own words.

Many parents are able to explain experiences in which their children have become traumatized or physically injured by the use of seclusion or restraint. Others have seen their children become re-traumatized when these measures have been used on children with trauma histories. Many parents relate that these techniques have been used not to prevent emergencies but instead as part of routine discipline, often directed at behaviors that are attributable to disabilities, and that the student has difficulty controlling. These approaches rarely work. Students report losing academic progress when they are repeatedly removed from the classroom and punished. They are often held for hours on end in padded rooms without windows, often places that are dirty and may smell of urine, and may be locked and without adequate staff supervision. Many parents have had greater success when schools are well trained in positive behavioral supports and conduct functional behavioral assessments, and use these and other strategies to avoid seclusion and restraint.

Students and parents need to make their voices heard by DESE, and explain their experiences with seclusion, timeout and restraint, and the need to strengthen the law.

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[TEMPLATE FOR WRITING COMMENTS TO DESE]

[date]

Ms. Tracy Collins
Office of Special Education, Planning and Policy Development
(SEPP)
Department of Elementary and Secondary Education (DESE)
75 Pleasant Street
Malden, MA 02148

Re: Comments to DESE proposed seclusion and
restraint regulations

Dear Ms. Collins:

[Begin by explaining who you are. If you are a parent, give some background about yourself as well as the age of your child and some background about his or her disabilities.]

[Explain that you are writing to support DESE's proposed regulations, and in some cases, to urge the Department to go still further in regulating seclusion, timeout and restraint.]

[After this, please write about any or all of the topics below. The section numbers below are listed just for your reference. They do not need to be included in your comments:]

1. Support DESE's proposed ban on prone restraints. [Section 46.03]

[--Parents with children who have experienced any restraints, and especially prone restraints, should try to describe what happened to their children, and also describe any long term effects they have experienced. It can also be helpful to discuss any ways in which your child was traumatized by watching other children become restrained.]

[--Experts should speak about the dangers associated with prone restraints, even when staff are trained in using them.]

[--Advocates should talk about the dangers of prone restraints and how and why they are banned in many other places.]

2. Defining “restraint.” [Section 46.02 and 46.03]

[Parents, students, experts and advocates should urge DESE to adopt a narrower definition of “restraint.”

We appreciate that under the proposed regulations, “physical restraint” is limited to emergency situations where there is a threat of imminent serious physical harm. However the proposed regulations also say that an action is a “restraint” only when there is “force against a student’s resistance.”

This loophole means that a staff person can hold a student in any way, for any duration, under any circumstances, without any reporting obligation, so long as the student is not resisting. This loophole needs to be closed.

The proposed regulations also say that as an emergency response, restraint should not be incorporated into a behavior plan or an IEP. We support this language. However, the principal can propose in a separate written agreement that the parent agree to restraints on a time limited basis. Here, we believe that the regulations require additional language to say that schools cannot make the admission or continued participation of the student dependent upon the “consent” of the parents to such a plan to use restraints. If you are a parent that has been required to “consent” to school policies on seclusion and restraint, you might also want to comment about this section.]

3. Defining and limiting timeout. [Section 46.02]

[The proposed regulations provide that “timeout” cannot be used for punishment or discipline and only to calm the student. Timeout

should not last longer than 30 minutes or until the student becomes calm, whichever happens first.

This is an improvement over current law. Parents and students can support the proposed regulation, but may urge that the time limits be shorter, such as 5 minutes for elementary school students and 20 minutes for secondary school students (or when the student is calm, whichever happens first.)

Parent should describe when practices like seclusion have been mislabeled as “timeout” and how their children have constantly cycled in and out of timeout for long periods of time.]

4. Reporting excessive timeout to the state.

[Right now, the proposed regulations say nothing about this. Schools should be required to report excessive use of timeout to the DESE. Explain why this is important to you. Parents who have had their children in and out of “timeout” for days or weeks on end should describe this to DESE.]

5. Individual student reviews for restraint. [Section 46.06(5)].

[This is an important provision that says if there is frequent use of restraint, the staff has to do an assessment with knowledgeable members of the team to develop a plan to address this. We should support this draft regulation, as well as other provisions for better reporting of restraints.]

6. Individual reviews for excessive timeout.

[There is no similar provision for conducting an assessment by experts and a plan when schools use excessive timeout. There ought to be. Parents who have had their children in and out of “timeout” for days or weeks on end should describe why schools need to be required to use alternative approaches when timeout has not worked.]

7. Monthly administrative reviews of restraint [Section 46.06(6)]

[This is a very good provision that says schools need to do a monthly analysis of school wide restraint data. We should support this proposed change, but also say that more is needed, specifically two things:

First, this review should be sent to the state on a quarterly basis. Right now, under the proposed regulations, there is only an annual report required and the content of that is vague. See 46.06(8). The state cannot monitor effectively both good practices and noncompliance, if it only gets the data on an annual basis. The data also needs to be reported in a way that will allow families to compare rates of restraint and timeout between different schools with similar populations. Please tell DESE why you believe this is important to you and your family.

Second, schools should also do a monthly review of any excessive use of timeout and also report that to the state on a quarterly basis.]

[Close letter by thanking DESE for the opportunity to comment. Finish with your name, address and email.]