

# *In Brief*

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November 2019

## **EMERGENCY RULES AND ISBE DIRECTIVES ON TIME OUT AND RESTRAINT: WHAT DISTRICTS NEED TO KNOW TO BE COMPLIANT**

ISBE filed Emergency Rules, effective November 20, 2019, on the use of “time out” and “physical restraint” by all educational entities serving Illinois public school students, as defined by sections 23 Illinois Administrative Code 1.280 and 1.285.

These Emergency Regulations take effect immediately. They will remain in effect for 150 days, unless a statutory exemption is created. The normal proposed rulemaking may be initiated by ISBE simultaneously to allow for public comment and eventually more permanent rules.

The Emergency Regulations are available on the ISBE website at:

<https://www.isbe.net/Documents/23-1RG-E.pdf>

### **New Time Out and Restraint Requirements**

The Emergency Regulations modify the requirements related to “isolated time out” and physical restraint. ISBE no longer permits “isolated time out” and has redefined the conditions for use of “time out” and physical restraint.

Time out and physical restraint may be used only for (1) therapeutic purposes, or (2) as a means of providing a safe environment for learning to the extent necessary to preserve the safety of students and others. Note that conditions permitting the use of time out and physical restraint are further defined as provided below.

#### **Time Out**

- Isolated time out (i.e. time out without the presence of an adult in the room) is prohibited.
- Time out is defined as a behavior management technique that involves the monitored separation of a student from classmates with a trained adult for part of the school day, usually a brief time, in a non-locked setting.
- “Time out” is permitted with the presence of a trained adult in an enclosure that meets the following requirements:
  - Meets all of the health/life safety requirements of 23 Ill. Adm. Code 180;
  - Has the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being placed on time out, but also the trained staff member who is required to accompany that student under the Emergency Regulations; and

- Must be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls.
- If an enclosure used for a time out is fitted with a door, the door may not be locked at any time during the time out.
- A student shall not be kept in time out for longer than is therapeutically necessary. No less than once every 15 minutes, the trained adult must assess whether the student has ceased presenting the specific behavior for which the time out was imposed.

### **Physical Restraint**

- Physical restraint means holding a student or otherwise restricting the student's movements.
- Physical restraint includes only the use of specific, planned techniques (e.g., the "basket hold" and "team control").
- Prone or supine physical restraint is prohibited.
- Educational entities may not restrain students in any way that impairs a student's ability to breath or speak normally.
- Physical Restraint does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and designed to:
  - 1) prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or
  - 2) remove a disruptive student who is unwilling to leave the area voluntarily.
- Physical restraint may only be employed when:
  - A) the student poses a physical risk to himself, herself, or others,
  - B) there is no medical contraindication prohibiting its use, and
  - C) the staff applying the restraint have been trained in its safe application.
- Students may not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger unless a student also demonstrates a means of or intent to carry out the threat.
- A student must be released from physical restraint immediately upon a determination by the staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.

## **Recommendations**

- The Emergency Regulations and the ISBE Form are not entirely consistent. In light of the inconsistencies between the Emergency Regulations and the ISBE Form, we would recommend that schools only use time out and restraint in situations where the student is an imminent danger to self or others.
  - The Emergency Regulations fail to provide a definition of “therapeutic purposes,” which is one of the two lawful purposes for which time out and restraint may continue to be used.
  - Additionally, the ISBE “Physical Restraint and Time Out Form” outlines two situations which would allow for the use of restraint and time out – Imminent Danger to Self and Imminent Danger to Others. This language is more restrictive than the language of the Emergency Regulations.
  - The ISBE Form does not include “therapeutic purpose” as an option to check for the reason for using time out or restraint.
- For instances of time out, schools should not lock the doors of any enclosures, nor should schools manually hold the doors shut.
- Under the Emergency Regulations, schools are still permitted to block a student from eloping if the student is still an imminent danger to self or others.
- Although not clear from the Emergency Regulations, we suggest that if a classroom is cleared because a student is engaging in behavior that poses an imminent danger to self or others, Districts should consider this as a time out for documentation purposes. A staff member who has received all of the required training for the use of time out or restraint must remain in the classroom with the student.
- Regardless of the name of the room (i.e. calming room, time out room, converted office or classroom), if the student is separated from classmates in an enclosure, due to engaging in behaviors that are an imminent danger to self or others, schools should consider such a time out and document it accordingly.

## **Documentation Practices for Restraint and Time Out**

Effective November 20, 2019, all educational entities serving Illinois public school students are required to document any use of physical restraint or time out using the ISBE created Form titled “Physical Restraint and Time Out Form.”

The ISBE Form is found at: <https://www.isbe.net/Documents/11-01-Physical-Restraint-Time-Out-Form.pdf>

### **Notification**

- The completed ISBE Form must be sent to the student’s parents or guardians within 24 hours of the use of time out or physical restraint.
- The completed ISBE Form must be emailed to ISBE at [restrainttimeout@isbe.net](mailto:restrainttimeout@isbe.net) within 48 hours of the use of time out or physical restraint.

### **Notable Form Requirements**

- The ISBE Form requires staff to attach a log of student behaviors during time out and restraint and any other interaction between the student and staff to the Form.
- The ISBE Form requires an evaluation by the nurse and the nurse's signature and comments.
- The ISBE Form requires information about whether a "postvention" meeting was held with the student to process the events leading up to the incident, to develop alternative solutions, and to plan for re-entry into the student's routine.
- The ISBE Form requires the school staff to establish and record the date and time staff will meet to discuss recommended changes in approach or follow-up needed within 48 hours of the incident.

### **Recommendations**

- If restraint or time out occurs on a Friday, the Form should be emailed to ISBE by the end of the day the same Friday to meet the 48 hour deadline, unless the school intends to transmit it over the weekend.
- If a nurse is not available for evaluation of the student after the restraint or time out, we recommend that a school administrator conduct the evaluation and note that on the Form. The student should then be evaluated by the nurse when the nurse returns to the building, or if the school has no nurse, then document this on the Form.
- The ISBE Form requires documentation that a team meeting has been scheduled within 48 hours of the use of time out or physical restraint to discuss "changes in approach or follow up needed." While this requirement is not included in the regulations, it suggests that schools should schedule a team meeting within 48 hours after any time out or restraint.
- The ISBE Form asks if there was a meeting with the student to process the events leading up to the incident, to develop alternative solutions and to plan for re-entry into the student's routine and if there was, who held this meeting with the student. Although the Emergency Regulations, ISBE Letters to the Field, and ISBE Form do not require this meeting with the student, it is a recommended practice and should be done when possible.

### **Requirements Related to Convening Team Meetings and IEP Meetings**

The Emergency Regulations now require that if a student experiences three instances of non-therapeutic time out or physical restraint, not the first three as the regulation previously outlined, schools must convene an IEP meeting or team meeting, if the student does not have an IEP. In addition, the ISBE Mandated Form "Physical Restraint and Time Out" indicates that a team meeting must be scheduled within 48 hours of an incident of time out or physical restraint to discuss changes in approach or whether follow up is required.

### Convening of a Meeting After Three Instances of Time Out or Restraint

When a student experiences three instances of non-therapeutic time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents must initiate a review of the effectiveness of the procedures used. Schools must convene an IEP meeting or a team meeting, if the student does not have an IEP.

The Emergency Regulation requires such a meeting after any three instances of non-therapeutic time out or physical restraint.

- This review process must include preparation of an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions.
- The plan must be placed into the student's temporary student record.
- The review must also consider the student's potential need for an alternative program or for special education eligibility, or, for a student already eligible for special education, change in program.
- The District or other entity serving the student must invite the student's parents or guardians to participate in this review and shall provide ten days' notice of its date, time, and location.
  - The notification must inform the parents or guardians of the student's potential need for special education, for an alternative program, or, for students already eligible for special education, the student's potential need for a change in their program, and that the results of the review will be entered into the student's temporary student record.

The ISBE Form provides four options as next steps following three instances of non-therapeutic time out or physical restraint.

- Convene a problem solving meeting (for students not IEP eligible) to determine the extent to which additional interventions or supports or services may be needed.
- Refer to a domain meeting (if not IEP or 504 eligible).
- Schedule an IEP or 504 meeting to determine if additional interventions or supports are needed, to determine if current interventions are being properly implemented, and to remedy any denial of FAPE resulting from the school's use of restraint or time out.
- Other: \_\_\_\_\_.

While the Emergency Regulations indicate that such a meeting must occur after three instances of non-therapeutic time out or restraint, because therapeutic time out or restraint is not defined we recommend you convene such a meeting after three incidents of time out or restraint for safety purposes (i.e. when a student's conduct poses an imminent danger to self or others).

### **Scheduling a Team Meeting within 48 hours**

While not outlined in the Emergency Regulations, the ISBE Mandated Form “Physical Restraint and Time Out” indicates that a team meeting must be scheduled within 48 hours of an incident of time out or physical restraint to discuss the intervention and determine whether any follow up is required. The ISBE Form distinguishes this requirement from the formal IEP, 504, domain or problem solving meeting that is required to occur after three instances of restraint and time out and that must include notice to the parent. To comply with the ISBE Form requirement, we would recommend, at a minimum, the school schedule a school based team meeting within 48 hours of the use of time out or restraint to discuss the restraint or time out, including the approach taken and any changes or follow-up needed. Those who will be invited to attend the meeting must also be listed on the ISBE Form.

### **Requirements for Training**

The Emergency Regulations impose different requirements for training for those who may be involved in time out or physical restraint activities. The regulations continue to focus on de-escalation strategies but have added requirements related to restorative practices and behavior intervention strategies.

#### **New or Additional Training Requirements from Emergency Regulations**

- Any adult who is supervising a student in time out or applying physical restraint shall be trained in de-escalation, restorative practices, and behavior management practices.
- For any District which has a policy permitting the use of time out, the District must provide training to all staff implementing time out procedures.
- For any District which has a policy permitting the use of physical restraint, the training requirements for any adult who may be participating in physical restraint are the same, with the addition of training in restorative practices and behavior management practices.

### **Requirements Related to Policy Development or Revision**

The Emergency Regulations contain specific requirements related to the elements of a Board Policy related to the use of time out and physical restraint. According to the Emergency Regulations, the Board Policy must include specific information and must also outline procedures related to the use of time out and physical restraint.

#### **Board Policy Requirements**

Districts that permit the use of time out or physical restraint must adopt a policy that addresses behavioral interventions, including the following elements:

- The circumstances under which time out or physical restraint will be applied;
- A written procedure to be followed by staff in cases of time out or physical restraint;
- Designation of a school official who will be informed of incidents and maintain the documentation required by the Emergency Regulations when time out or physical restraint is used;

- The process the District or other entity serving public school students will use to evaluate any incident that results in an injury to the affected student;
- A description of the District's or other entity's annual review of the use of time out or physical restraint, which shall include at a minimum:
  - the number of incidents involving the use of these interventions;
  - the location and duration of each incident;
  - identification of the staff members who were involved;
  - any injuries or property damage that occurred; and
  - the timeliness of parental notification, timelines of agency notification, and administrative review.

### **Recommendations**

- Revisit your Board policies and procedures to ensure compliance with the Emergency Regulations.
- The Board Policy will need to be individualized to address each District's procedures to be followed by staff in cases of time out or physical restraint to provide specific, clear guidance related to:
  - when time out and restraint can be used or when they cannot be used;
  - the procedures to follow during the time out intervention;
  - the requirements related to documentation and notice to a District Administrator, Parents, and ISBE; and
  - the need to convene meetings after the use of time out or restraint.

### **New Complaint Process**

The Emergency Regulations include a process specific to filing Complaints related to time out and physical restraint. This is a new section of the regulations, as such a Complaint process did not previously exist.

### **Complaint Procedures**

The Emergency Regulations provide for the following Complaint Procedures:

- Any parent, individual, organization, or advocate may file a signed, written complaint with the State Superintendent alleging that a local school District or other entity serving the student has violated the Emergency Regulations related to the use of time out or physical restraint. The complaint must include:
  - the facts on which the complaint is based; the signature and contact information for the complainant;
  - the names and addresses of the students involved (and the name of the school of attendance), if known;
  - a description of the nature of the problem, including any facts relating to the problem; and
  - a proposed resolution of the problem to the extent known.

- The State Superintendent shall only consider a complaint if it alleges a violation occurring not more than one year prior to the date on which the complaint is received.
- The State Superintendent must issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion; the reasons for the State Board of Education's final decision; and orders for any action, including technical assistance.
- This complaint procedure does not limit, diminish, or otherwise deny the federal and State rights and procedural safeguards afforded to students with disabilities.

### **Additional ISBE Data Requirements**

#### **Timeout and Physical Restraint Documentation Submission to ISBE**

- Per ISBE's November 21, 2019 Dear Colleague correspondence, all educational entities serving Illinois public school students must submit documentation of their use of time out or physical restraint to ISBE.
- Documentation must include all instances of restraint and timeout that occurred during the 2017-18, 2018-19, and 2019-20 school years through November 19, 2019.
- Documentation must be submitted to ISBE, via email, to [restrainttimeout@isbe.net](mailto:restrainttimeout@isbe.net) by the close of business on **December 20, 2019**.

### **Ongoing Issues and Developments**

The Emergency Regulations are designed to be effective for 150 days from November 20, 2019. We will carefully monitor any developments related to the Emergency Regulations, any permanent regulations proposed by ISBE, or any guidance issued by ISBE.

Districts may need to make changes to Board Policy based on changes to the Regulations or guidance issued by ISBE.

As IEP meetings are being held, teams should review student IEPs, especially Behavior Intervention Plans, to remove any practices or actions that are not consistent with the Emergency Regulations. For instance, references to the use of *isolated* time out should be removed. If there is language which identifies when time out or physical restraint may be implemented, the conditions for use of these interventions must be consistent with the Emergency Regulations and the ISBE Form. Finally, if statements regarding notice to parents of the use of time out or physical restraint are included in the IEP, such statements must be consistent with the Emergency Regulations.

### **Robbins Schwartz Breakfast Briefings**

Robbins Schwartz will be offering Breakfast Briefings on December 3rd and December 16th at the Hyatt Lodge in Oak Brook to discuss the Emergency Regulations and ISBE Directives on physical restraint and time out. Registration will begin at 8:00 and the Briefing will be conducted from 8:30-10:00. Please visit [www.robbs-schwartz.com](http://www.robbs-schwartz.com) to register. We are currently working on securing a date and location for a Breakfast Briefing to be held downstate and will share this information as soon as it is confirmed.