603 CMR 46.00: PREVENTION OF PHYSICAL RESTRAINT AND REQUIREMENTS IF USED

Section

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46.01: Scope, Purpose and Construction

(1) Scope. 603 CMR 46.00 governs the use of physical restraint on students in publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, virtual schools, collaborative education programs, and the school day of special education schools approved under 603 CMR 28.09: *Approval of Public or Private Day and Residential Special Education School Programs*, as provided in 603 CMR 18.05(5)(h). Educational programs in facilities operated by the Department of Youth Services, the Department of Mental Health, the Department of Public Health, or County Houses of Correction shall be governed by the restraint, seclusion, and time-out requirements of such agencies.

(2) Purpose. The purpose of 603 CMR 46.00 is to ensure that every student participating in a Massachusetts public education program is free from the use of physical restraint that is inconsistent with 603 CMR 46.00. Physical restraint shall be used only in emergency situations of last resort, after other lawful and less intrusive alternatives have failed or been deemed inappropriate, and with extreme caution. School personnel shall use physical restraint with two goals in mind:

(a) To administer a physical restraint only when needed to protect a student and/or a member of the school community from assault or imminent, serious, physical harm; and

(b) To prevent or minimize any harm to the student as a result of the use of physical restraint.

(3) Construction. Nothing in 603 CMR 46.00 shall be construed to limit the protection afforded publicly funded students under other state or federal laws, including those laws that provide for the rights of students who have been found eligible to receive special education services. Nothing in 603 CMR 46.00 precludes any teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

46.02: Definitions

As used in 603 CMR 46.00, the following terms shall have the following meanings:

Commissioner shall mean the commissioner of the Department of Elementary and Secondary Education appointed in accordance with M.G.L. c. 15, § 1F, or his or her designee.

Consent shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which agreement is sought, in his or her native language or other mode of communication, that the parent understands and agrees in writing to carrying out of the activity, and understands that the agreement is voluntary and may be revoked at any time. The agreement describes the activity and lists the records (if any) which will be released and to whom. In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint.

Department shall mean the Department of Elementary and Secondary Education.

Mechanical Restraint shall mean the use of any physical device or equipment to restrict a student's freedom of the movement. Mechanical Restraint does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional, and are used for the specific and approved positioning

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or protective purposes for which such devices were designed. Examples of such devices include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Medication Restraint shall mean the administration of medication for the purpose of temporarily controlling behavior. Medication prescribed by a licensed physician and authorized by the parent for administration in the school setting is not medication restraint.

Parent shall mean a student's father, mother, or legal guardian, or person or agency legally authorized to act on behalf of the student in place of or in conjunction with the father, mother, or legal guardian.

Physical Escort shall mean a temporary touching or holding, without the use of force, of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is agitated to walk to a safe location.

Physical Restraint shall mean direct physical contact that prevents or significantly restricts a student's freedom of movement. Physical restraint does not include: brief physical contact to promote student safety, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or a physical escort.

Principal shall mean the instructional leader or headmaster of a public education school program or his or her designee. The board of directors of a charter school or virtual school, or special education school or program approved under 603 CMR 28.09: *Approval of Public or Private Day and Residential Special Education School Programs*, shall designate in the restraint prevention and behavior support policy who will serve as principal for purposes of 603 CMR 46.00.

Prone Restraint shall mean a physical restraint in which a student is placed face down on the floor or another surface, and physical pressure is applied to the student's body to keep the student in the face-down position.

Public Education Programs shall mean public schools, including charter schools, virtual schools, collaborative education programs, and the school day of special education schools approved under 603 CMR 28.09: *Approval of Public or Private Day and Residential Special Education School Programs*, as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs. "Programs" may be used in 603 CMR 46.00 to refer to "public education programs". For purposes of 603 CMR 46.00, public education programs shall not include the educational services provided within Department of Youth Services, Department of Mental Health, Department of Public Health, and County Houses of Correction operated or contracted facilities.

School Working Day shall mean a day or partial day that students are in attendance at the public education program for instructional purposes.

Seclusion shall mean the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time-out as defined in 603 CMR 46.02.

Time-out shall mean a behavioral support strategy developed pursuant to 603 CMR 46.04(1) in which a student temporarily separates from the learning activity or the classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student must be continuously observed by a staff member. Staff shall be with the student or immediately available to the student at all times. The space used for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming. Time-out shall cease as soon as the student has calmed.

46.03: Use of Restraint

(1) Prohibition.

(a) Mechanical restraint, medication restraint, and seclusion shall be prohibited in public education programs.

(b) Prone restraint shall be prohibited in public education programs except on an individual student basis, and only under the following circumstances:

1. The student has a documented history of repeatedly causing serious self-injuries and/or injuries to other students or staff;

2. All other forms of physical restraints have failed to ensure the safety of the student and/or the safety of others;

3. There are no medical contraindications as documented by a licensed physician;

4. There is psychological or behavioral justification for the use of prone restraint and there are no psychological or behavioral contraindications, as documented by a licensed mental health professional;

5. The program has obtained consent to use prone restraint in an emergency as set out in 603 CMR 46.03(1)(b), and such use has been approved in writing by the principal; and,

6. The program has documented 603 CMR 46.03(1)(b)1. through 5. in advance of the use of prone restraint and maintains the documentation.

(c) Physical restraint, including prone restraint where permitted, shall be considered an emergency procedure of last resort and shall be prohibited in public education programs except when a student's behavior poses a threat of assault, or imminent, serious, physical harm to self or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances.

(d) All physical restraints, including prone restraint where permitted, shall be administered in compliance with 603 CMR 46.05.

(2) Physical restraint shall not be used:

(a) As a means of discipline or punishment;

(b) When the student cannot be safely restrained because it is medically contraindicated for reasons including but not limited to asthma, seizures, cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting;

(c) As a response to property destruction, disruption of school order, a student's refusal to comply with a public education program rule or staff directive, or verbal threats when those actions do not constitute a threat of assault, or imminent, serious, physical harm; or

(d) As a standard response for any individual student. No written individual behavior plan or individualized education program (IEP) may include use of physical restraint as a standard response to any behavior. Physical restraint is an emergency procedure of last resort.

(3) Limitations on Use of Restraint. Physical restraint in a public education program shall be limited to the use of such reasonable force as is necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm.

(4) Referral to Law Enforcement or Other State Agencies. Nothing in 603 CMR 46.00 prohibits:

(a) The right of any individual to report to appropriate authorities a crime committed by a student or other individual;

(b) Law enforcement, judicial authorities or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk; or

(c) The exercise of an individual's responsibilities as a mandated reporter pursuant to M.G.L. c. 119, § 51A. 603 CMR 46.00 shall not be used to deter any individual from reporting neglect or abuse to the appropriate state agency.

46.04: Policy and Procedures; Training

(1) Procedures. Public education programs shall develop and implement written restraint prevention and behavior support policy and procedures consistent with 603 CMR 46.00 regarding appropriate responses to student behavior that may require immediate intervention. Such policy and procedures shall be annually reviewed and provided to program staff and made available to parents of enrolled students. Such policy and procedures shall include, but not be limited to:

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(a) Methods for preventing student violence, self-injurious behavior, and suicide, including individual crisis planning and de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;
(b) Methods for engaging parents and youth in discussions about restraint prevention and the use of restraint solely as an emergency procedure;
(c) A description and explanation of the program's alternatives to physical restraint and method of physical restraint in emergency situations;
(d) A statement prohibiting: medication restraint, mechanical restraint, prone restraint unless permitted pursuant to 603 CMR 46.03(1)(b), seclusion, and the use of physical restraint in a manner inconsistent with 603 CMR 46.00;
(e) A description of the program's training requirements, reporting requirements, and follow-up procedures;
(f) A procedure for receiving and investigating complaints regarding restraint practices;
(g) A procedure for conducting periodic review of data and documentation on the use of physical restraints as described in 603 CMR 46.06(5) and (6);
(h) A procedure for implementing the reporting requirements as described in 603 CMR 46.06;
(i) A procedure for making reasonable efforts to orally notify a parent of the use of restraint on a student within 24 hours of the restraint, and for sending written notification to the parent within three school working days following the use of restraint to an email address provided by the parent for the purpose of communicating about the student, or by regular mail to the parent postmarked within three school working days of the restraint; and
(j) If the program uses time-out as a behavioral support strategy, a procedure for the use of time-out that includes a process for obtaining principal approval of time-out for more than 30 minutes based on the individual student's continuing agitation.

(2) Required Training for All Staff. Each principal or director shall determine a time and method to provide all program staff with training regarding the program's restraint prevention and behavior support policy and requirements when restraint is used. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Training shall include information on the following:
(a) The role of the student, family, and staff in preventing restraint;
(b) The program's restraint prevention and behavior support policy and procedures, including use of time-out as a behavior support strategy distinct from seclusion;
(c) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors and other alternatives to restraint in emergency circumstances;
(d) When behavior presents an emergency that requires physical restraint, the types of permitted physical restraints and related safety considerations, including information regarding the increased risk of injury to a student when any restraint is used, in particular a restrain of extended duration;
(e) Administering physical restraint in accordance with medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans applicable to an individual student; and
(f) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.04(3) in the use of physical restraint.

(3) In-depth Staff Training in the Use of Physical Restraint. At the beginning of each school year, the principal of each public education program or his or her designee shall identify program staff who are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint. The Department recommends that such training be competency-based and be at least 16 hours in length with refresher training occurring annually thereafter.

(4) Content of In-depth Training. In-depth training in the proper administration of physical restraint shall include, but not be limited to:
(a) Appropriate procedures for preventing the use of physical restraint, including the de-escalation of problematic behavior, relationship building and the use of alternatives to restraint;

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(b) A description and identification of specific dangerous behaviors on the part of students that may lead to the use of physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
(c) The simulated experience of administering and receiving physical restraint, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
(d) Instruction regarding documentation and reporting requirements and investigation of injuries and complaints;
(e) Demonstration by participants of proficiency in administering physical restraint; and
(f) Instruction regarding the impact of physical restraint on the student and family, recognizing the act of restraint has impact, including but not limited to psychological, physiological, and social-emotional effects.

46.05: Proper Administration of Physical Restraint

(1) Trained Personnel. Only public education program personnel who have received training pursuant to 603 CMR 46.03(2) or (3) shall administer physical restraint on students. Whenever possible, the administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint. The training requirements contained in 603 CMR 46.00 shall not preclude a teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from assault or imminent, serious, physical harm.

(2) Use of Force. A person administering a physical restraint shall use only the amount of force necessary to protect the student or others from physical injury or harm.

(3) Safest Method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor restraints, including prone restraints otherwise permitted under 603 CMR 46.03(1)(b), shall be prohibited unless the staff members administering the restraint have received in-depth training according to the requirements of 603 CMR 46.04(3) and, in the judgment of the trained staff members, such method is required to provide safety for the student or others present.

(4) Duration of Restraint. All physical restraint must be terminated as soon as the student is no longer an immediate danger to himself or others, or the student indicates that he or she cannot breathe, or if the student is observed to be in severe distress, such as having difficulty breathing, or sustained or prolonged crying or coughing.

(5) Safety Requirements. Additional requirements for the use of physical restraint:
(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin temperature and color, and respiration.
(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student expresses or demonstrates significant physical distress including, but not limited to, difficulty breathing, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.
(c) If a student is restrained for a period longer than 20 minutes, program staff shall obtain the approval of the principal. The approval shall be based upon the student's continued agitation during the restraint justifying the need for continued restraint.
(d) Program staff shall review and consider any known medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans regarding the use of physical restraint on an individual student.
(e) After the release of a student from a restraint, the public education program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student to address the behavior that precipitated the restraint, reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident.

46.06: Reporting Requirements

(1) Circumstances under which a physical restraint must be reported. Program staff shall report the use of any physical restraint as specified in 603 CMR 46.06(2).

(2) Informing the Principal. The program staff member who administered the restraint shall verbally inform the principal of the restraint as soon as possible, and by written report no later than the next school working day. The written report shall be provided to the principal for review of the use of the restraint. If the principal has administered the restraint, the principal shall prepare the report and submit it to an individual or team designated by the superintendent or board of trustees for review. The principal shall maintain an on-going record of all reported instances of physical restraint, which shall be made available for review by the Department or the student's parent, upon request.

(3) Informing Parents. The principal shall make reasonable efforts to verbally inform the student's parent of the restraint within 24 hours of the event, and shall notify the parent by written report sent either within three school working days of the restraint to an email address provided by the parent for communications about the student, or by regular mail postmarked no later than three school working days of the restraint. If the program customarily provides a parent of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent in that language. The principal shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report.

(4) Contents of Report. The written report required by 603 CMR 46.06(2) and (3) shall include:

(a) The name of the student; the names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; the name of the principal or designee who was verbally informed following the restraint; and, as applicable, the name of the principal or designee who approved continuation of a restraint beyond 20 minutes pursuant to 603 CMR 46.05(5)(c).

(b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made to prevent escalation of behavior, including the specific de-escalation strategies used; alternatives to restraint that were attempted; and the justification for initiating physical restraint.

(c) A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.

(d) Information regarding any further action(s) that the school has taken or may take, including any consequences that may be imposed on the student.

(e) Information regarding opportunities for the student's parents to discuss with school officials the administration of the restraint, any consequences that may be imposed on the student, and any other related matter.

(5) Individual Student Review. The principal shall conduct a weekly review of restraint data to identify students who have been restrained multiple times during the week. If such students are identified, the principal shall convene one or more review teams as the principal deems appropriate to assess each student's progress and needs. The assessment shall include at least the following:

(a) review and discussion of the written reports submitted in accordance with 603 CMR 46.06 and any comments provided by the student and parent about such reports and the use of the restraints;

(b) an analysis of the circumstances leading up to each restraint, including factors such as time of day, day of the week, antecedent events, and individuals involved;

(c) consideration of factors that may have contributed to escalation of behaviors, consideration of alternatives to restraint, including de-escalation techniques and possible interventions, and such other strategies and decisions as appropriate, with the goal of reducing or eliminating the use of restraint in the future;

(d) an agreement on a written plan of action by the program.

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If the principal directly participated in the restraint, a duly qualified individual designated by the superintendent or board of trustees shall lead the review team's discussion. The principal shall ensure that a record of each individual student review is maintained and made available for review by the Department or the parent, upon request.

(6) Administrative Review. The principal shall conduct a monthly review of school-wide restraint data. This review shall consider patterns of use of restraints by similarities in the time of day, day of the week, or individuals involved; the number and duration of physical restraints school-wide and for individual students; the duration of restraints; and the number and type of injuries, if any, resulting from the use of restraint. The principal shall determine whether it is necessary or appropriate to modify the school's restraint prevention and management policy, conduct additional staff training on restraint reduction or prevention strategies, such as training on positive behavioral interventions and supports, or take such other action as necessary or appropriate to reduce or eliminate restraints.

(7) Report All Restraint-related Injuries to the Department. When a physical restraint has resulted in an injury to a student or program staff member, the program shall send a copy of the written report required by 603 CMR 46.06(4) to the Department postmarked no later than three school working days of the administration of the restraint. The program shall also send the Department a copy of the record of physical restraints maintained by the principal pursuant to 603 CMR 46.06(2) for the 30-day period prior to the date of the reported restraint. The Department shall determine if additional action by the program is warranted and, if so, shall notify the program of any required actions within 30 calendar days of receipt of the required written report(s).

(8) Report All Physical Restraints to the Department. Every program shall collect and annually report data to the Department regarding the use of physical restraints. Such data shall be reported in a manner and form directed by the Department.

REGULATORY AUTHORITY

603 CMR 46.00: M.G.L. c. 69, § 1B and c. 71, § 37G.