maaps

EXCEPTIONAL SCHOOLS
FOR EXCEPTIONAL CHILDREN

Massachusetts Association of 766 Approved Private Schools

Revised Restraint Regulations Feedback

Introduction

During the fall of 2014, the Executive Office of Education (EOE), the Department of Elementary and Secondary Education (ESE) and the Department of Early Education and Care (EEC) conducted a review and revision of their respective regulations pertaining to physical restraints in public and private schools and child care settings. The regulation revisions are scheduled to go into effect January 1, 2016. The Massachusetts Association of 766 Approved Private Schools (**maaps**) provided extensive written and oral comment on the proposed revisions to improve the behavioral support and management of students and children in educational settings. However, one of the approved regulation amendments will cause significant and unnecessary confusion, disruption and cost to schools, parents and the involved state agencies.

The Issue - Restraint Regulation Amendment Will Make It Impossible to Assure Safety of Students and Staff and Will Result in Costly Litigation

The regulation amendment in question is a definition of "consent" which was added to 603 CMR 46.02 and 102 CMR 3.02. In both regulations, the new definition contains a single sentence which is highly problematic: "In seeking parental consent, a "licensee" (102 CMR 3.02), or "public education program" (603 CMR 46.02) shall not condition admission or continued enrollment upon agreement by the parent to the proposed use of any restraint."

The addition of this sentence to the definition of consent will make it impossible for approved private special education schools to assure the physical safety of students and staff. For example, C766 approved schools provide special education and treatment services to students who are known to have behavior which is highly aggressive and assaultive. If a parent refuses to provide consent for the use of <u>any</u> restraint to control the behavior, the school is prohibited from using the restraint and is prohibited from refusing admission to the student or terminated the student from the program. C766 approved schools will be in the completely untenable position of being required to maintain aggressive, assaultive students in their classrooms without the means to assure the safety of other students and staff.

ESE and EEC have taken some steps to mitigate the problem created by the regulation amendment concerning parental consent. On July 31st, ESE issued written guidance in the form

of a Question and Answer Guide (attached) which states in part, "*...no approved private special education program is required to admit an applicant or maintain a student in its program if it believes that the program will not be able to meet the needs of the student.*" (See Question 25)

Representatives from EEC have indicated that they are developing additional guidance but have issued nothing to date. While the efforts of ESE and EEC are appreciated, the actual language of the regulation revision is in conflict with the guidance from ESE and will inevitably cause confusion and conflict between schools and parents, leading to unnecessary and costly litigation between C766 schools and parents. It is also highly likely that state agencies and local school districts will be drawn into court proceedings at taxpayer expense.

Proposed Resolution

maaps recommends that the following sentence should be removed from the pending regulation amendments, *"In seeking parental consent, a "licensee" (102 CMR 3.02), or "public education program" (603 CMR 46.02) shall not condition admission or continued enrollment upon agreement by the parent to the proposed use of any restraint."*