



## NOVEMBER 22, 2019 CLIENT ALERT

### ALERT: ISBE FILES EMERGENCY RULES ON TIME OUT & RESTRAINT

On November 20, 2019, the Illinois State Board of Education filed with the Joint Commission on Administrative Rules (JCAR) emergency rules that amend the regulations at Part 1.280 (Discipline) and 1.285 (Requirements for Use of Time Out and Physical Restraint) of Title 23 of the Illinois Administrative Code. A copy of the emergency rules is enclosed for your reference. These emergency rules are **effective immediately** and expire in 150 days. However, it is our understanding that permanent rules will be filed through the regular JCAR rulemaking process for comment and approval sooner. Therefore, the purpose of this memo is to review what public school districts and private special education schools need to be aware of immediately to be in compliance with the new regulations:

- The use of time outs and physical restraints are limited to use for “therapeutic purposes” or as a means to maintain a safe environment for learning, to the extent necessary to preserve the safety of students and others. Time outs or physical restraints, as before, shall not be used as form of punishment.
- **Time outs:** There is no longer a recognition of “*isolated* time out” as an acceptable behavioral management intervention, and all references to “isolated” were removed from the rules. “Time outs” are still permitted as a behavior management technique but is now defined as the monitored separation of a student from his/her classmates with a trained adult in a non-locked setting for a period of the school day.
  - Monitored: While previously the supervising adult could remain two feet from the enclosure, that language has been removed and the trained adult must remain “with the student at all times during the time out.”
  - Non-locked: Any door to the enclosure for the time out shall not be locked during the time out.
  - Trained Adult: Personnel supervising students in time out and under Part 1.285 must meet the requirements of renumbered subparagraph (i) of this Part, which now also includes training in de-escalation, restorative practices and behavior management practices.
  - Time-Limits: Assessment of whether the student continues to require the time out must be conducted every 15 minutes to determine if the student has ceased presenting the behavior for which the time out was imposed.
- **Physical Restraints:** While the definition of physical restraint has primarily remained the same, the critical change is ISBE has put into place a **blanket prohibition on prone or**

**supine physical restraints.** Further, a physical restraint “shall not impair a student’s ability to breath or speak normally.”

- **Prohibition on Prone & Supine:** Schools are advised to immediately comply with this practice and remove prone and supine physical restraints as behavioral management techniques utilized by the school. School districts and private therapeutic schools should review their behavioral management methodologies to determine which alternative planned physical restraint techniques may be used in compliance with these rules. The ISBE published form for purposes of reporting use of time outs and physical restraints, which is discussed below, lists the following as options for “physical restraint”: I-person child hold in seated position; I-person child hold in standing position; team hold in seated position; team hold in standing position.
  - **Momentary Restraint:** For purposes of the emergency rules, “restraint” continues to not include momentary periods of physical restraint by direct person-to-person contact (no material or mechanical device may be used) with limited force for the purpose of preventing “a student from completing an act that would result in potential harm to self or others or damage to property, or to remove a disruptive student who is unwilling to leave an area voluntarily.” However, even in momentary periods of restraint, we read the emergency rules to prohibit the use of supine or prone physical restraints.
  - **Time-Limits:** This rule was unchanged and a student must still be released from the physical restraint immediately upon him/her no longer being in imminent danger of callusing physical harm to self or others.
- **Documentation, Evaluation & Reporting to Parents and State Superintendent:**
    - **ISBE Form:** The ISBE has published a form, enclosed with this memo, which is the prescribed manner in which each episode of time out or physical restraint is required to be recorded. All school districts and private therapeutic schools are advised to utilize this form and suspend the use of other forms for purposes of recording time outs and physical restraints.
    - **Notification to Parents:** Parents are still required to be notified of any use of time out or physical restraint within 24 hours after use and the above-described ISBE form must be sent to the parents.
    - **Report to State Superintendent:** No later than **48 hours** after any use of time out or physical restraint, the school district or private therapeutic school shall submit the same above-described form to the State Superintendent. The form is required to be submitted to [restrainttimeout@isbe.net](mailto:restrainttimeout@isbe.net). Under the new emergency rules, school districts may be required to submit information required under subparagraph (f) of Part I.285 from prior school years.
  - **School Policy:** Part I.285 now includes a renumbered subparagraph (j) that provides the requirements of what must be included a school board’s policy regarding the use of time out and physical restraints, including the following:
    - Circumstances under which time outs and physical restraints will be used
    - Written procedures for use
    - Designation of school officials required to be informed of use and maintain requisite documentation

- Process the school entity will use to evaluate any incident that results in injury to affected student
- A description of the school entity's annual review of the use of time outs and physical restraints, including: number of incidents involving the use; location and duration of each use; staff members involved, injuries or property damage that occurred; and timeliness of parental and ISBE notification and administrative review.

While subparagraph (j) references "board policy", we recommend that private therapeutic schools utilize this as a baseline for creating and/or amending their own policies to comply with these rules.

- **Complaint Procedure:** The emergency rules put into place a specific process by which a parent, individual or organization can file a signed, written complaint with the State Superintendent alleging a violation of these rules. Complaints of a violation shall be made within one year of the alleged violation. The State Superintendent is required to issue a written decision to the complaint addressing each allegation. Students with disabilities and their parents/guardians maintain their federal and State rights and procedural safeguards to seek recourse.

## RECOMMENDATIONS

- Immediate compliance with prohibition on the use of *isolated* time out/seclusion and supine and prone physical restraints.
- School entities are advised to immediately train staff on the implementation of these new rules and the school's revised procedures for the implementation of time outs and physical restraints, including replacement techniques for supine and prone physical restraints.
- School entities are encouraged to put into place protocols when allowable behavioral management techniques are unsuccessful and a student's behavior cannot be deescalated, including:
  - Contacting local law enforcement for required intervention
  - Reviewing appropriateness of current placement and services, including a student's behavior intervention plan, by calling an IEP
  - For private therapeutic schools, reviewing the appropriateness of placement and providing 20 business days' or emergency notice for termination of placement, if necessary
- Update school policies and procedures to reflect new behavioral management techniques
- Utilize and circulate enclosed ISBE form for recording use of time outs and physical restraints, and in order to timely provide requisite notice to parents/guardians and the State Superintendent.

We expect that permanent rules will be filed by the ISBE soon. Please stay-tuned for updates and participate with your thoughts and feedback in the public comment period by submissions to the ISBE and JCAR. Should you have questions regarding the information provided in this alert, please feel free to contact [Shermin Ali-Andani](#) or [Neal Takiff](#).