



DECEMBER 4, 2019 CLIENT ALERT

ALERT: ISBE FILES EMERGENCY AMENDMENTS TO EMERGENCY RULES ON TIME OUT & RESTRAINTS

As you are already aware, on November 20, 2019, the Illinois State Board of Education (ISBE), filed with the Joint Commission on Administrative Rules (JCAR) emergency rules that amended 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. As part of that emergency rulemaking, several amendments were made to the rules impacting public school districts and private special education schools' ongoing use of physical restraints and isolated time outs, specifically resulting in the prohibition of the use of isolated time outs, and supine and prone restraints. Please refer to our November 22, 2019 Client Alert for more detailed information regarding the initial emergency rulemaking filed by ISBE.

Subsequent to this filing and as a result of the feedback received by school entities struggling to maintain students in their current least restrictive environments due to the prohibition on these behavioral interventions, on December 4, 2019, the ISBE filed emergency amendments to the emergency rules with JCAR. A copy of the emergency amendments to the November 20th emergency rulemaking is enclosed for your reference. These emergency amendments are **effective immediately** and will expire with the emergency rules 150 days from November 20th. It is also our understanding that ISBE is preparing to file the permanent rules shortly, which will then undergo the public comment and approval process by JCAR. The purpose of this alert is to provide you with the following information regarding how ISBE changed the emergency rules with its filing with JCAR today:

- **Time Outs:** Isolated time outs remain prohibited under this emergency rulemaking. The emergency amendments to the November 20th emergency rulemaking do not concern the use of time outs. Please reference our November 22nd Client Alert for guidance on how to remain in compliance when using time outs in your school.
- **Physical Restraints:** Pursuant to the emergency amendments, **ISBE has removed the blanket prohibition on the use of prone and supine restraints**, and now provides that these behavior management techniques may be utilized if specific criteria are met, as discussed below. Notably, any use of a physical restraint "shall not impair a student's ability to breathe or communicate normally, obstruct a student's airway, or interfere with a student's primary mode of communication." All of the following criteria is required to be met in order to utilize prone and supine restraints to address a student's behavior in your school:
 - ✓ **Determination of Permissible Use:** Before using a prone or supine physical restraint, the school district or other entity serving the student shall review and determine if there are no known medical or psychological limitations that contraindicate the use of a prone or supine restraint.

- ✓ **Emergency Situations Only:** Prone and supine restraint may only be used when the school district or other entity serving the student deems the situation an emergency. Emergency is defined as “a situation in which immediate intervention is needed to protect a student or other individual from imminent danger of causing serious physical harm to himself, herself, or others and less restrictive and intrusive interventions have been tried and proven ineffective in stopping the imminent danger.”
- ✓ **Safe Use:** Prone or supine physical restraint is used in a manner that does not restrict or impair a student’s ability to breathe or communicate normally, obstruct a student’s airway, or interfere with a student’s primary mode of communication.
- ✓ **Trained & Credentialed Staff:** Only personnel with required credentials and who have completed the required training per this amended Section may administer prone and supine restraints.
- ✓ **Least Restrictive Intervention:** Prone and supine restraints may only be used if they are the “least restrictive and intrusive interventions to address the emergency and stop the imminent danger of serious physical harm to the student or others.” Further, the emergency amendments require that during each incident requiring the use of prone or supine restraints, “one school staff person trained in identifying the signs of distress **must be assigned to observe** the student during the entire incident.” (Emphasis added.) That staff person may not be involved in the physical holding of the student. Further, the number of staff involved in physically restraining the student may not exceed the number necessary to safely hold the student.
- ✓ **Time Limits:** The prone or supine physical restraint must end immediately when the threat of imminent serious physical harm ends, but in no event shall prone or supine physical restraint last longer than 30 minutes. Additionally, it should be noted that,
 - If, after 30 minutes, the emergency, as defined above, has not resolved or if an additional emergency arises the same school day, a school administrator, in consultation with a psychologist, social worker, nurse, or behavior specialist may authorize the continuation of the restraint or an additional prone or supine restraint.
 - No restraint may be continued nor may additional restraints be applied, unless it is authorized by a school administrator.
- ✓ **Review of Effectiveness of Procedures:** When a student is restrained in a prone or supine physical restraint in at least two (2) separate instances within a 30-school day period, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedures used. Please note, that if the personnel involved in the restraints does not include a psychologist, social worker, nurse, or behavior specialist, at least one of those staff members must be included in the review. The emergency regulations require that this review include, but not be limited to, the following:
 - Conducting or reviewing a functional behavioral analysis, reviewing data, considering developing additional or revised positive behavioral interventions and supports, considering actions to reduce the use of restrictive procedures, or, if applicable, modifying the student’s individualized educational program or the behavior intervention plan, as appropriate; and

- Reviewing any known medical or psychological limitations that contraindicate the use of a restrictive procedure, considering whether to prohibit that restrictive procedure, and, if applicable, documenting any prohibition in the student's individualized education program or behavior intervention plan.
- ✓ With the exception of the above, the emergency rulemaking still includes the other provisions regarding the use of physical restraints as per the filing on November 20th. Please reference with November 22nd Client Alert for details regarding any other requirements that remain applicable.

- **Documentation, Evaluation & Reporting to Parents and State Superintendent:**

- All requirements concerning the documentation, evaluation and reporting to Parents and the State Superintendent remain unchanged by the emergency amendments to the emergency rules.
- Please note, your school is required to document as required by the emergency rulemaking all instances regarding the use of physical restraints and time-outs, which now may include prone and supine restraints if the above discussed criteria is met.

RECOMMENDATIONS

- Schools should continue to comply with the prohibition on the use of *isolated* time out, and uphold the new requirement regarding time out.
- Schools are permitted to restore administration of supine and prone restraints; however, such restraints shall only be utilized if the above-discussed criteria is met. We recommend that schools utilize a checklist or document in the ISBE-provided form that the above criteria was met. Specifically, schools should plan to document that it was determined that an “emergency” existed; no lesser restrictive means could have been used to address the emergency or prevent imminent danger of serious physical harm to the student or others; if necessary, the use of a continued or additional restraint was approved by a school administrator in consultation with a psychologist, social worker, nurse or behavioral specialist; and, that no conditions existed that contraindicate the use of the physical restraint intervention.
- School entities are advised to immediately train staff on the implementation of these new rules, including the emergency amendments. Additionally, we suggest that a school nurse provide some of the training related to recognizing signs of distress during a restraint.
- Schools should maintain information regarding trained staff who administer supine and prone restraints, and schedule and staff classrooms accordingly. Further, school entities should ensure that sufficient staffing exists to allow the assignment of a trained observer to monitor and review the effectiveness of the use of prone and supine restraint and who does not participate in the restraint.

Should you have questions regarding the information provided in this alert, please feel free to contact [Shermin Ali-Andani](#) or [Neal Takiff](#).

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