

For Immediate Release

Tuesday, December 10, 2019

ISBE PROPOSES PERMANENT RULES THAT PROTECT THE SAFETY OF ALL STUDENTS AND STAFF

PROPOSED RULES WILL PERMANENTLY BAN PRONE RESTRAINTS

SPRINGFIELD – The Illinois State Board of Education (ISBE) has filed proposed [permanent rules](#) (/Documents/23-1RG-P.pdf) for time out and restraint that protect the safety of all students and staff in Illinois schools. The proposed rules will permanently ban prone restraints, which are not necessary to safely de-escalate crisis situations.

The public will have multiple opportunities to provide feedback on the proposed permanent rules before they are finalized in spring 2020. The first opportunity for public comment begins now and extends until Feb. 4. The emergency rules that are currently in effect will expire on April 17.

"I sincerely thank all of the advocates, especially in the special education community, for their thoughtful partnership in ISBE's development of the proposed permanent rules. I also deeply appreciate our educators, who do one of the hardest and most important jobs in the world," said State Superintendent of Education Dr. Carmen I. Ayala. "Our schools and students are now safer as a result of this collaboration and swift action. Students should not have had to go through the horrific trauma they experienced for Illinois to implement safer policies to protect them. The new data collection for all instances of time out and restraint, in conjunction with the new protections in rule, will help prevent the inexcusable treatment they experienced from happening to another Illinois student."

The emergency rulemaking that has been in effect since Nov. 20 made Illinois the fifth state in the nation to ban isolated seclusion. The proposed permanent rules will maintain this ban and further detail the health and safety requirements for instances of time out, which may occur only in an unlocked space with a trained adult in the room. The rules will require that a student in time out must have reasonable access to food, medication, and toileting facilities and that the adult supervising the time out must assess every 15 minutes whether the student has ceased presenting dangerous behavior.

The proposed permanent rules clarify that these restrictions on time out do not pertain to student-initiated breaks; sensory breaks; brief removals to the hallway; or to appropriate disciplinary measures, such as in-school suspensions and detentions.

The proposed permanent rules will ban supine restraints, except in emergency situations when less restrictive interventions have been tried and not succeeded in stopping the imminent danger to students or staff. The rules will require that a trained adult who is not involved in the physical holding of the student observe the student during the entire incident of supine restraint. The rules also will require an additional layer of review by a psychologist, social worker, nurse, or behavior specialist if a student is restrained in a supine position in at least two separate instances within a 30-school day period.

The proposed permanent rules mandate that physical restraints must not impair a student's ability to breathe or communicate normally or be used with students who have medical or psychological limitations that contraindicate their use. Any restraint must end immediately when the threat of imminent serious physical harm ends.

The proposed permanent rules will further specify the requirements for annual training and for the notification to parents or guardians and to ISBE after any incident of time out or restraint.

Public comment on the proposed permanent rules may be submitted to ISBE via email at rules@isbe.net (mailto:rules@isbe.net), by phone, by physical mail, or to anyone in the agency. Ex parte requires any employee who receives an oral or written comment on rulemaking that is open for public comment to submit the conversation to ISBE's

rules coordinator.

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ISBE EMERGENCY RULES AND RELATED DIRECTIVES

As you are no doubt aware, an [article](#) published by the Chicago Tribune earlier this week has resulted in grave concerns about the use of isolated time-out and physical restraint of students in schools across Illinois. In response, the Illinois State Board of Education (ISBE) has published emergency rules and related directives to school districts and special education cooperatives in order to ensure student safety and the termination of inappropriate time out and physical restraint practices. ECB&S understands the public and ISBE concerns but also understands that there are instances when the use of these behavior management techniques may be therapeutically necessary to ensure student safety.

To support our school district and special education cooperative clients in their implementation of the ISBE [emergency rules](#), which are effective as of November 20, 2019, we offer the preliminary guidance below on how to move forward at this time. We anticipate that more media articles and more legislation may follow and will keep you updated as that occurs.

SUMMARY OF EMERGENCY AMENDMENTS TO TITLE 23 OF THE ILLINOIS ADMINISTRATIVE CODE, SECTIONS 1.280 AND 1.285

Section 1.280 (Discipline)

Originally, references to isolated time out or physical restraint were included in the Discipline section of Title 23 of the Illinois Administrative Code, with specific requirements for a board of education policy authorizing the use of isolated time out or physical restraint. As a result of the ISBE's emergency rules, this section of the Illinois Administrative Code has been revised to emphasize that these behavior management techniques are not to be used as a disciplinary measure or punishment.

Section 1.285 (Requirements for the Use of Time Out and Physical Restraint)

The emergency rules delete the term "isolated" from this section to ensure that when implementing a time out, a student may not be left alone. Other revisions to this regulatory provision are as follows:

Time Out:

- 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 for a brief time, in a non-locked setting.

- Time out may only be used for therapeutic purposes, or as a means of maintaining a safe environment for learning, to the extent necessary to preserve the safety of students and others.
- Time out must not be used as a form of punishment.
- Enclosures used for time out must meet health/life safety requirements of 23 Ill. Admin. Code 180.
- If enclosures used for time out are fitted with a door, the door must not be locked at any time during the time out.
- An adult, who is trained in de-escalation, restorative practices, and behavior management practices, must remain with the student at all times during the time out. (Note: This amendment deletes the original language that a supervising adult must be able to see the student and remain within two feet of the enclosure; now, the trained, supervising adult must remain in the unlocked enclosure with the student if an enclosure is used for time out.)
- 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 must only be used for therapeutic purposes, or as a means of maintaining a safe environment for learning, to the extent necessary to preserve the safety of students and others.
- Physical restraint must not be used as a form of punishment.
- Physical restraint must not be applied in a manner that impairs a student's ability to breath or speak normally.
- Prone and supine physical restraints are not permitted.
- The emergency rules continue to provide that 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 to its use, and c) the staff applying the restraint have been trained in its safe application and de-escalation, restorative practices, and behavior management practices.

Momentary Periods of Physical Restriction

The emergency rules continue to allow for 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.

The requirements for physical restraint do not apply to such momentary periods of physical restriction.

Documentation

The emergency rules expand the documentation requirements when time out or physical restraint is used with a student by adding:

- A “[written record](#)” of each episode of time out or physical restraint must be maintained in the student’s temporary record and by the designated school official. The “written record” must include at least the content previously required by the rules. ISBE had created a “[written record](#)” form that must be completed by school personnel (see attached).
- Within 24 hours of the use of time out or physical restraint, the “[written record](#)” must be sent to the student’s parents/guardians.
- No later than 48 hours after the use of time out or physical restraint, the “[written record](#)” must be submitted to the State Superintendent via e-mail to restrainttimeout@isbe.net.

Although not specified within the emergency rules, ISBE has directed all educational entities serving Illinois public school students to report all incidents of time out and physical restraints for the current and past two school years. Documentation of incidents that occurred during the 2017-2018, 2018-2019, and 2019-2020 school years, through November 19, 2019, must be submitted to ISBE via e-mail to restrainttimeout@isbe.net by the close of business on December 20, 2019.

Board Policy

The emergency rules include a minor change to the requirements for any board policy authorizing the use of time out or physical restraint. The policy must now include the process that the school district or other entity serving public school students will use to

evaluate any incident of time out or physical restraint that results in an injury to the affected student.

Complaint Procedure

The emergency rules add a new complaint process that allows any parent, individual, organization, or advocate to file a signed, written complaint with the State Superintendent alleging that a local school district or other entity serving the student has violated Section 1.285.

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.

ECB&S GUIDANCE ON IMPLEMENTATION OF THE EMERGENCY RULES

We recommend that our school district and special education cooperative clients take the following actions and ensure that all staff are informed of these action items **immediately**:

1. Cease the use of time out and physical restraint for disciplinary/punishment purposes if these behavior management techniques were used for these purposes.
2. Ensure that all staff receive training on the emergency rules and that staff who supervise students during time outs and/or who perform physical restraints are trained in de-escalation, restorative practices, and behavior management practices.
3. Consider providing applicable staff with refresher training on the use of de-escalation techniques and other behavioral interventions with students.
4. If you utilize an enclosure for time out that incorporates a locking mechanism, discontinue locking the enclosure and, if possible, permanently disable the locking feature.
5. If there is a concern about having a single trained adult supervising the student during a time out within an enclosure, consider having multiple staff remain in the enclosure. (Note: The enclosure must be large enough to accommodate the student and supervising adult(s).)

6. Discontinue the implementation of any prone or supine physical restraint.
7. Consult with staff and other entities with expertise in behavior management techniques about physical restraint and other techniques which exist that will not have the potential to impair a student's ability to breathe or speak normally.
8. Consult with staff and/or other entities with expertise in behavior management techniques about alternative behavioral interventions that staff may implement to maintain safety.
9. Note that the emergency rules do not promote allowing harm to staff or any student; therefore, if necessary to prevent a student from completing an act that would result in potential physical harm to self/others or damage to property, the use of momentary periods of physical restriction by direct person-to-person contact with limited force is allowable.
10. If you have students placed in ISBE-approved therapeutic day or residential facilities, contact the facilities to inform them about the emergency rules. ISBE-approved therapeutic day and residential facilities must comply with this part of the Illinois Administrative Code and, therefore, must implement the emergency rules regarding time out and physical restraint.
11. Ensure that the ISBE "[written record](#)" form is readily available to staff, and assign a staff member(s) responsible for submitting such forms to ISBE and providing copies to students' parents/guardians within the required timelines.
12. Recommend that the board revise the policy on time out and physical restraint, if any, to include the process that will be used to evaluate any incident of time out or physical restraint that results in an injury to the affected student.

ECB&S SUGGESTED COMMUNICATIONS

Parents/Guardians

- Determine whether a communication is needed to update parents/guardians on the use of time out and physical restraint and to address their concerns. If so, please see attached sample memo.
- If contacted by parents/guardians, reassure them about your commitment to the safety of their students.

Staff

- Please see the attached sample memo.

Media Outlets

- If the media contacts you or other staff regarding your use of time out or physical restraint, we advise that you decline to comment.

- However, should you decide to reply to the media inquiry, it would be important to highlight:
 - The true purpose of your program to support the educational and social emotional development of students.
 - If you use time out or physical restraint, emphasize that these behavior management techniques are used as a last resort after other behavioral intervention models (*e.g.*, PBIS) and the use of de-escalation techniques have proven unsuccessful in addressing a student in crisis.
 - Inform them of your compliance with the law in the use of these behavior management techniques.

- If the media wants to discuss a specific student matter, decline to comment based on student record/information confidentiality requirements.

If you have any questions about the emergency rules or this preliminary guidance, or would like assistance in aligning your policies, procedures, or practices to comply with the emergency rules, do not hesitate to contact Teri Engler, Cindy Baasten, Dawn Hinkle, Luis Rodriguez, or one of our other ECB&S attorneys at 630-313-4750 or by e-mail.

**Please contact one of our attorneys or ashellberg@ecbslaw.com to be added to our legal update distribution list.*