

KROKIDAS & BLUESTEIN

ATTORNEYS

WEBINAR FOLLOW-UP QUESTIONS: PHYSICAL RESTRAINT REGULATIONS

Thank you for participating in the webinar entitled Physical Restraint Regulations, held by the Massachusetts Charter Public School Association on September 17, 2015. The updated physical restraint regulations which were the subject of the webinar are set to take effect on January 1, 2016. We received a number of questions during the webinar, and in anticipation of the upcoming effectiveness date, we are providing a summary of these questions, together with answers.

Drafting and Adoption of Physical Restraint Policy and Procedures:

The regulations require public schools, including charter schools, to have a written policy and procedures for physical restraint of students which must include certain specified information. The regulations do not indicate whether the physical restraint policy and procedures should be included in a staff or parent handbook, or whether they should be written as a separate document. This is left to the discretion of the schools. The regulations also do not require that the policy and procedures be submitted to the Massachusetts Department of Elementary and Secondary Education (“DESE”).

Designation of “Principal” (for Charter Schools):

The board of trustees of each charter school is required to designate who will serve as “principal” for purposes of the physical restraint regulations. The regulations do not require the board of trustees to approve the physical restraint policy.

Training:

Schools are not required to train staff before the regulations take effect on January 1, 2016. However, we recommend that schools schedule training for their staff in January 2016, or prior thereto, in order to ensure compliance with the updated regulations. Although the regulations require at least one staff member to receive in-depth training, the regulations do not specify the required length of the in-depth training. DESE recommends that the in-depth training be at least sixteen hours in length.

The regulations specify certain elements that must be included in the training for school staff. The training is required to include information regarding the administration of physical restraint in accordance with the medical or psychological limitations applicable to individual students.

DESE has not officially approved any particular training program for schools. DESE has stated that it intends to schedule a training series for schools in early 2016 regarding strategies to improve school environment and reduce the need for the administration of physical restraint.

Physical Escort:

Physical escort is not considered to be physical restraint. “Physical escort” is defined as 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.” Picking up a student out of his or her chair, or guiding the student to a separate table in the cafeteria, when the student is agitated so that the student can calm himself or herself is considered physical escort and therefore not physical restraint.

Time-Out:

A room designated as the time-out area may have additional safety measures installed, such as padding on the walls, but this is not required. The regulations only require the time-out area to be clean, safe, sanitary, and appropriate for the purpose of calming.

DESE has advised us that a school staff member may permit a student to leave the classroom or the learning activity voluntarily in order to calm himself or herself. However, this separation from the classroom or activity will still be considered a time-out, regardless of whether the student left voluntarily or was required to leave. Therefore, if the student removes himself or herself from the classroom or activity for more than 30 minutes, approval of the principal will be required. Further, if the student remains separated from the classroom or learning activity for more than half a day, the student’s separation will be considered an in-school suspension, regardless of whether the student chose to leave or was directed by a school staff member to leave, and the requirements of the Student Discipline Regulations at 603 CMR 53.00 will need to be satisfied.

Use of Physical Restraint:

Prior consent of families to use physical restraint is not required under the updated regulations because the updated regulations only permit physical restraint to be administered as an emergency procedure of last resort. Including physical restraint as a standard response in a student’s Individualized Education Program is also prohibited.

The regulations do not prohibit the use of physical restraint multiple times in a day, as long as the need to administer physical restraint arises multiple times. It should be noted that reporting and review requirements are triggered for each administration of physical restraint, including a written report for each incident.

Report of Physical Restraint:

Certain reporting requirements are triggered once physical restraint is administered to a student. These include the following:

- Written Report: A written report must be compiled for each instance of physical restraint administration, including, among other required information, a description of the administration of restraint and the alternatives to restraint that were attempted.
- Weekly and Monthly Reviews: School principals must conduct weekly reviews of restraint data to identify students who have been restrained multiple times during the week. Additionally, school principals must conduct monthly reviews of school-wide restraint data to consider patterns in the use of restraints and to determine if any actions should be taken. DESE has provided optional forms to guide the reviews at <http://www.doe.mass.edu/sped/docs.html>.
- Injury Report: If the administration of physical restraint results in an injury to a student or to staff, regardless of the seriousness of the injury, the written report must be submitted to DESE no later than three school days after administration of the restraint. DESE has indicated that the required form of the injury report will be released at the beginning of 2016.

Schools are expected to continue to comply with the physical restraint regulations in effect through December 31, 2015 by submitting an injury report, the form of which is currently available on DESE's website, for a physical restraint that lasts longer than twenty minutes or for a physical restraint that results in serious injury.

- Annual Report: Each school is required to collect and report physical restraint data to DESE on an annual basis. DESE has provided a form to record each incidence of physical restraint, with instruction, at <http://www.doe.mass.edu/sped/docs.html>.

If you have any additional questions or if you would like assistance in drafting your physical restraint policy so that it will comply with the updated regulations, please contact Attorney Elka Sachs at esachs@kb-law.com, Attorney Judith Kim at jkim@kb-law.com, or Attorney Gabriel Balzano-Brookes at gbalzano-brookes@kb-law.com.