

# KROKIDAS & BLUESTEIN

## ATTORNEYS

### CLIENT ALERT

#### **“BACK TO SCHOOL” REMINDER: NEW PHYSICAL RESTRAINT REGULATIONS**

As preparations begin for the upcoming school year, school administrators should review the updated Massachusetts regulations regarding physical restraint at 603 CMR 46.00 (the “New Physical Restraint Regulations”), which become effective January 1, 2016. The New Physical Restraint Regulations apply to all publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, and approved special education schools. Not only do the regulations address the use of physical restraints, but they also regulate the use of “time-outs”.

The following are some highlights of the New Physical Restraint Regulations:

1. **Use of Physical Restraint:** Physical restraint (direct physical contact that prevents or significantly restricts a student’s freedom of movement) can only be used in emergency situations of last resort when the student’s behavior poses a threat of assault or imminent, serious, physical harm to himself or herself or to others, and the student does not respond to other efforts to control his or her behavior. Physical restraint cannot be used to discipline or punish a student.
2. **Time-Out:** A time-out can only be used to calm a student. A staff member must continuously observe the student, and staff must always be immediately available to the student. Approval must be granted by the principal for a time-out that lasts for more than 30 minutes. In contrast, the use of seclusion – confinement of a student without staff present or immediately available while the student is prevented from leaving – is prohibited. For more information regarding the difference between time-out and seclusion, see the Technical Assistance Advisory available at: <http://www.doe.mass.edu/sped/advisories/2016-1ta.html>.
3. **Policies and Procedures:** The New Physical Restraint Regulations require a school’s written policies and procedures regarding the use of physical restraints to include new elements, including procedures for obtaining approval of time-outs, and for documentation and review of physical restraint data. These policies and procedures must be provided to program staff, made available to parents of students, and reviewed on an annual basis. In anticipation of the January 1, 2016 effective date of the New Physical Restraint Regulations, schools should take the

- opportunity before the fall term begins to update their written policies and procedures to comply with the Regulations' requirements.
4. **Reporting:** The New Physical Restraint Regulations impose requirements regarding reporting incidents to the school's principal and the affected student's or students' parents.
  5. **Review:** The New Physical Restraint Regulations impose significant review requirements. The school's principal must review the school's data on the use of physical restraint on a weekly basis to determine if a student is being restrained multiple times during the week. If a particular student is being restrained multiple times during a week, the principal must assemble a team to review the circumstances surrounding the physical restraint and to create a written plan of action. The principal must also review the data on the use of physical restraint at the school on a monthly basis to identify any patterns that can be avoided by modifying the school's policies or by providing additional staff training.
  6. **Role of the Board of Trustees:** The board of trustees of every charter school and the board of directors of every special education school must designate the individual who will serve as "principal" for all purposes under the New Physical Restraint Regulations, including the reporting and review requirements. Although this individual may sometimes be the school's named principal, boards may elect to identify another administrator for this purpose.

The Massachusetts Department of Elementary and Secondary Education (DESE) has provided additional guidance on the New Physical Restraint Regulations. DESE strongly recommends that schools review students' Individualized Education Programs to determine if changes need to be made to comply with the Regulations. See <http://www.doe.mass.edu/sped/advisories/QuestionAnswerGuide-603CMR.pdf>.

For a copy of the full New Physical Restraint Regulations, visit <http://www.doe.mass.edu/boe/docs/2014-12/item2.html>.

For any questions, please contact Attorney Elka Sachs ([esachs@kb-law.com](mailto:esachs@kb-law.com)), Attorney Jill Brenner Meixel ([jmeixel@kb-law.com](mailto:jmeixel@kb-law.com)), or Attorney Judith Kim ([jkim@kb-law.com](mailto:jkim@kb-law.com)). We are also happy to assist with drafting or reviewing you school's physical restraint policies and procedures.