QUESTION AND ANSWER GUIDE RELATED TO IMPLEMENTATION OF 603 CMR 46.00 *THE REGULATIONS FOR THE PREVENTION OF PHYSICAL RESTRAINT AND REQUIREMENTS IF USED*

AND CONFORMING AMENDMENTS TO 603 CMR 18.00 *PROGRAM AND SAFETY STANDARDS FOR APPROVED PUBLIC OR PRIVATE DAY AND RESIDENTIAL PROGRAMS*[i]

A. SCOPE, PURPOSE, AND TIMING

1) Why did ESE revise the regulations?

There were a variety of factors that led to the revision of 603 CMR 46.00 and conforming changes to 603 CMR 18.00. One was the age of the existing regulations, which the then-Board of Education adopted in 2001, and the national discussion of the risks associated with, and the need for, use of restraints in public schools, as well as a growing desire among state agencies and advocacy groups to do more to reduce the use of restraint with children and youth. There is clear evidence documenting both the risk of injury and the emotional toll that restraint has on children as well as on staff. Additionally, there was a need to better align the restraint regulations of the Department of Early Education and Care (EEC) and the Department of Elementary and Secondary Education (the Department), because both agencies regulate approved private residential special education programs .

2) Are all students in Massachusetts covered under these restraint regulations?

603 CMR 46.00 governs the use of restraint of students in publicly-funded Massachusetts schools, including all public school districts, charter schools, virtual schools, collaboratives, and the school day of all private special education schools approved under 603 CMR 28.09. Facilities operated by the Department of Youth Services, the Department of Mental Health, the Department of Public Health, or County Houses of Correction are governed by the requirements and regulations of the respective agencies and not by Department regulations.

3) When do the revised restraint regulations take effect?

Revisions to 603 CMR 46.00 and conforming revisions to 603 CMR 18.00 will take effect **on January 1, 2016**. However, schools are encouraged to begin implementation of their change in practices as soon as they are ready to do so.

4) Are schools and districts expected to be in compliance as of January 1, 2016?

Yes. The revised regulations require schools to take steps such as updating policies and procedures on behavioral support and use of restraint, arranging for training, and developing systems for collecting and reporting data in different ways. For this reason, the Department proposed, and the Board of Elementary and Secondary Education voted, a January 1, 2016 effective date. Schools and districts are strongly encouraged to begin working towards implementation in the fall of the school year 2015-16 in order to make the transition smoothly and appropriately to the new regulatory requirements.

5) What are the differences in these regulations from the restraint regulations that have been in place since 2001?

There are several important differences between the revised regulations and those adopted in 2001; some of the most pertinent are:

- a greater emphasis on identifying and using behavior support alternatives to the use of restraint in schools;
- emphasis on the emergency circumstances surrounding the use of restraint; and
- prohibition against including the use of restraint in a student IEP or behavior plan.
- prohibition of the use of prone restraint except under specific conditions (see Question #6 & Question #12);
- additional training requirements that encourage districts to incorporate more positive behavioral interventions into their schools;
- inclusion of a definition of time-out to better distinguish it from seclusion;
- increased reporting and self-monitoring requirements to help districts more closely examine the frequency and triggers for using restraint;

B. PRONE AND RELATED RESTRAINT DETAILS

6) Is prone restraint banned in all instances?

The use of prone restraint is now prohibited except when the following criteria, set out in 603 CMR 46.03(1) (b), are met:

- the student has a documented history of repeatedly causing serious injury to self or others;
- all other forms of restraint have been unsuccessful in ensuring safety;
- there are no medical contraindications as documented by a licensed physician;
- there is psychological or behavioral justification with no psychological or behavioral contraindications as documented by a licensed mental health professional;
- the program has obtained consent from the parent to use prone restraint in an emergency, and the consent has been approved in writing by the principal;[ii] and
- the program has documented all of the above **in advance** of the use of prone restraint.

These additional precautions and requirements are necessary to reduce the risk to the student, because use of prone restraint has been linked to significant injury and even death.

7) Does the strict limitation on the use of prone restraint disregard the students' right to receive effective treatment?

It is important to highlight that the use of **any** restraint is not "treatment." It is a last resort, emergency intervention to prevent a student from imminent, serious, physical harm to self or others. These regulations put in place a process designed to support a safer outcome for students, namely, that if prone restraint is used in an emergency pursuant to parental permission and principal approval, it is not done as a "standard" response and it follows a careful consideration of factors that might otherwise pose an increased risk to the student's health and safety.

8) ***What is considered last resort?***

The use of restraint as a last resort means that other methods of de-escalation or behavior support have been unsuccessful, or would be inappropriate, and the student represents an imminent danger to self or others.

9) What should programs do if they have determined that the use of prone restraint is needed, but a licensed physician or licensed mental health professional is unwilling to document that there are no contraindications? DCF has indicated that their social workers would not sign documents around the use of restraint; what should be done in these instances?

If a licensed physician and/or a licensed mental health professional (as required) will not document there are no contraindications for a particular student then prone restraint cannot be used on that student.

The goal of these regulations is to reduce the overall use of restraint generally, and to create a process that assures prone restraint is used only following deliberate and documented consideration and resolution of risk factors, written parental consent, and principal approval. These required steps (see Question #6) may result in significantly reduced use of prone restraint. It is important to note that the documentation expected of a licensed physician and licensed mental health professional does not require the individual to state his or her agreement to the use of prone restraint with a particular student. It requires only that the professional state his or her informed opinion that there are no contraindications with respect to the use of that type of restraint.

10) Does 603 CMR 46.00 apply to school resource officers?

Nothing in 603 CMR 46.00 prohibits law enforcement, judicial authorities or school security personnel from exercising their responsibilities. However, anyone employed by the school district and working in a school security role (e.g. school resource officer) should receive the in-depth training.

11) What are the alternatives to prone restraint for a highly agitated student for whom restraint is determined to be the only option?

Other forms of physical restraint, including supine restraint, are permissible in emergency situations as long as those participating in the restraint have received the required training. See section C for more information about training.

12) Are other forms of restraint prohibited?

Yes. In addition to prone restraint (see Question #6), mechanical restraint, medication restraint,[iii] and seclusion are prohibited. Mechanical restraint does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional, and are used for the specific and approved positioning or protective purposes for which such devised were designed. For example, the use of a Rifton chair for positioning is allowed; however it may not be used to restrain a student for behavior management purposes. Medication

restraint does not include use of medication prescribed by a licensed physician and authorized by parent for administration in the school setting.

13) Is there a restriction on how long a restraint can last?

Yes. All physical restraint must end as soon as the student is no longer an immediate danger to himself or others. Additionally, a restraint must be stopped if the student indicates that he or she cannot breathe, or if the student is observed to be in severe distress, such as having difficulty breathing or sustained or prolonged crying or coughing. Furthermore, if it appears that a student may need to be restrained for more than 20 minutes, program staff members must obtain the approval of the principal *before* continuing the restraint beyond the 20 minutes. Before making a decision on the extension, the principal must be informed of all critical details regarding the restraint of the student, including the type of restraint and the student's behavior and condition during the restraint, so that he or she may determine whether continued restraint is justified based on the student's continued agitation.

14) When monitoring a student in a restraint what are staff members looking for in regards to appropriate skin temperature and skin color?

When monitoring students who are being restrained, staff members must look for any changes in how the student typically presents. A noticeable change in skin color or skin temperature may indicate that the student is in distress and he or she should be released from the restraint.

15) Physical restraint is defined as direct physical contact that prevents or significantly restricts a students' freedom of movement. The definition notes that "brief physical contact to promote student safety" is not considered a restraint. What does this mean?

The language "brief physical contact to promote student safety" refers to measures taken by school personnel consisting of physical contact with a student for a short period of time solely to prevent an imminent harm to a student, for example, physically redirecting a student about to wander on to a busy road, grabbing a student who is about to fall, breaking up a fight between students.

16) Is an escort to time-out to be considered a restraint?

Physical escort is the temporary touching or holding without the use of force for the purpose of guiding or inducing a student who is agitated to walk to a safe location. An escort to time-out is considered a restraint only if physical force is required to move the student against his/her will.

C. TRAINING AND DOCUMENTATION REQUIREMENTS

17) What are some recommended tools to manage aggressive behavior?

There are many tools available to schools when determining how to help students who are exhibiting aggressive behavior, they include, but are not limited to: Positive Behavioral Interventions and Supports (PBIS) https://www.pbis.org/ is a proactive approach to behavior management and offers a wide variety of tools to help all students. Collaborative Problem Solving http://www.livesinthebalance.org/ is another tool that can be used to help students who have difficulty

regulating their behavior. Restorative Justice http://www.restorativejustice.org/ can be used to empower students to talk about and solve problems they face in an appropriate manner and forum. Social Emotional Learning principles http://www.casel.org/ can be helpful for all students across different learning environments. Additionally, training in Trauma-Informed Care http://traumasensitiveschools.org/ can help teachers to better understand the needs of students who have a history of trauma. Educators working in Early Childhood settings can also benefit from incorporating the Pyramid Model http://www.pyramidmodel.org/ into their classrooms and schools. These methods are not mutually exclusive and they can be combined to help create a safe and welcoming environment for students.

18) Will the Department be providing schools with resources to help them find ways to reduce the need for physical restraint?

Yes. The Department is planning a training series to be held in the fall of 2015 for schools to further familiarize school and district administrators with some proven school-wide programs that help improve school climate and reduce restraints.

19) Can you provide specifics around the training requirements related to use of restraints?

a. Is there a specific state-approved training methodology for restraints?

There are no state-approved training methods for the use of restraint. There are a number of national models that districts and schools have selected. The type of training is left to districts and schools to decide what best fits their needs. However, the regulations do identify certain aspects that must be included in the training (see Question #6).

b. Who is required to participate in training and how much restraint training is required?

All staff must be trained within a month of the beginning of each school year on the school or district's restraint prevention and behavior support policy and on the requirements for when restraint is used. New staff beginning work in the school or district after the start of the year must receive the same training within one month of the start of their employment.

The principal must identify program staff who will receive in-depth staff training in the use of physical restraint. These individuals will serve as a school-wide resource to assist others and help to ensure the proper administration of physical restraint. District and school leaders are encouraged to carefully consider how many individuals should participate in in-depth training so that if and when restraints are administered, they are done safely. Consider too that only individuals with in-depth training can administer a floor restraint. The Department recommends that initial training for these staff members be 16 hours with at least one annual refresher training. Any employee whose duties are primarily related to maintaining school safety (e.g., school resource officers) should be included in the in-depth training.

c. Is the 16 hours mentioned in the regulations a requirement?

No, a 16-hour training is recommended, not required.

d. What is required to be included in the general restraint training for all staff and for the in-depth training?

The general training for all staff must cover information (consistent with 603 CMR 46.04(2)) on the role of the student, family, and staff in preventing restraint. The training must cover the program's or district's restraint prevention and behavior support policy and procedures, including the use of time-out as distinct from seclusion. Participants must hear about interventions that could be used to preclude the need for restraint, as well as de-escalation techniques and other alternatives. Staff must receive information on the types of permitted physical restraints and related safety considerations, including medical or psychological limitations, known or suspected trauma history. Staff who have received or will receive in-depth training and who can serve as resources to others should be identified to the school staff as a whole.

For in-depth training, the Department recommends that training in the use of physical restraint be at least 16 hours and include an annual refresher training. According to regulation at 603 CMR 46.04(4), such training must include at least the following:

- Appropriate procedures for preventing the use of physical restraint, including the de-escalation of problematic behavior, relationship building and the use of alternatives to restraint;
- A description and identification of specific dangerous behaviors on the part of students that may lead to the use of physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
- The simulated experience of administering and receiving physical restraint, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- Instruction regarding documentation and reporting requirements and investigation of injuries and complaints;
- Demonstration by participants of proficiency in administering physical restraint; and,
- Instruction regarding the impact of physical restraint on the student and family, recognizing the act of restraint has impact, including but not limited to psychological, physiological, and social-emotional effects.

20) Who may be involved in the restraint?

Only public education program personnel, who have received training in the use of physical restraint as a member of the program staff, or in-depth training as a school-wide resource, can administer a physical restraint. If a floor restraint, which includes but is not limited to prone restraint (see Question #6), is used; **only** staff members who have received the in-depth training can administer the restraint. Whenever possible, the restraint must be witnessed by at least one person who is not participating in the restraint.

21) Does every restraint need to be documented?

Yes. Programs and schools are required to track and document every restraint that is conducted during the school day. There is a requirement for local notification to the principal of the school or program who will maintain an ongoing record of restraints. There is a requirement for notification to the parents both verbally and by written report (see 603 CMR 46.06(2-3)). The written report must include the following:

- The name of the student; the names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; and the name of the principal or designee who was verbally informed following the restraint; and, as applicable, the name of the principal or designee who approved continuation of the restraint beyond 20 minutes pursuant to 603 CMR 46.05(5) (c).
- A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made to prevent escalation of behavior, including the specific de-escalation strategies used; alternatives to restraint that were attempted; and the justification for initiating physical restraint.
- A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.
- Information regarding any further action(s) that the school has taken or may take, including any consequences that may be imposed on the student.
- Information regarding opportunities for the student's parents to discuss with school officials the administration of the restraint, any consequences that may be imposed on the student and any other related matter.

22) What responsibilities do the programs have for review of these reports?

Individual reviews must be conducted on a **weekly basis** by the school principal to determine if any student has been restrained multiple times during the week. If so then the principal must convene a review team to discuss and assess the written reports for each individual student identified. In addition, the review team will consider any comments provided by the student or parent and will analyze the circumstances leading up to each restraint in order to consider factors that may have contributed to the escalation of behaviors and alternatives that could be used in the future. The goal of the review team is to reduce or eliminate the use of restraint in the future. The review team will agree on a written plan of action to that end for each student discussed.

Additionally, the principal shall conduct a monthly review of school-wide restraint data. This review shall consider patterns of use of restraints by similarities in the time of day, day of the week, or individuals involved; the number and duration of physical restraints school-wide and for individual students; the duration of restraints; and the number and type of injuries, if any, resulting from the use of restraint. The principal shall determine whether it is necessary or appropriate to modify the school's restraint prevention and management policy, conduct additional staff training on restraint reduction/prevention strategies, such as training on positive behavioral interventions and supports, or take such other action as necessary or appropriate to reduce or eliminate restraints.

23) What information gets reported to the Department?

Under current regulations, schools and districts must report all serious restraint-related injuries to the Department. As of January 1, 2016 when a physical restraint results in **any** injury to a student or program staff member the program must send a copy of the written report required by 603 CMR 26.06(4) (see Question #21) to the Department postmarked no later than three school working days of the administration of the restraint. The program must also send the Department a copy of the record of physical restraints maintained by the principal pursuant to 603 CMR 46.06(2) for the 30-day period prior to the date of the reported restraint.

Additionally, under the revised regulations, programs and schools will report **all** physical restraints to the Department in a manner and form directed by the Department. The exact method of such report is being developed and will be made available to all schools prior to the implementation date of January 1, 2016.

24) Will reviews be publicly available?

Individual restraint reviews are conducted by school personnel and are part of the individual student's education record. They contain personally identifiable student information and are not public documents. The schools monthly restraint tracking and data may be requested and are public documents as long as personally identifiable student information is removed. The monthly tracking and data should be maintained in central files and may be reviewed by the Department. Overall restraint data for schools and districts that is reported to the Department may be made publicly available.

D. CONSENT AND IEP PROCESS

25) Is consent to the use of restraint required for admission to an approved private special education program?

No. Consistent with amendments to 603 CMR 46.00 discussed in this Q and A, 603 CMR 18.00 was revised to remove language requiring that approved public and private special education programs were required to provide parents of students a copy of its behavior management policy, which included use of restraint, time-out, etc, and to obtain parental consent to the use of techniques described in the policy. Under section 18.05(5)(c), effective on January 1, 2016, programs must provide its behavior support policy to the parent of a student, and may even ask the parent to sign a document acknowledging receipt of it, but the program cannot require the parent to consent to use of restraints as a condition of admission or continued enrollment. Revisions to 603 CMR 46.00 and 18.00 now make clearer that restraint is to be used as a last resort, emergency measure that is taken to respond to a threat of assault, or imminent serious, physical harm to self or others, and alternative options are inappropriate under the circumstances. It is not a "treatment" option. The only type of restraint requiring consent is the use of prone restraint, and programs may not condition enrollment on consent to the use of prone restraint. However, no approved private special education program is required to admit an applicant or

maintain a student in its program if it believes that the program will not be able to meet the needs of the student.

26) In 603 CMR 46.02 the definition for consent states "In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint." Doesn't this mean that public education programs should be seeking parental consent for the use of any restraint?

No. As explained in the previous answer, restraint is a last resort, emergency measure; it is not a treatment option, and use of restraint may not be a condition of admission or continued enrollment. Programs may not seek parental consent to the use of restraint except for prone restraint. If consent is not given or the other criteria set out in 603 CMR 46.03(1) (b) are not met, prone restraint is prohibited and may not be administered.

27) Do school districts need to amend IEPs that currently have language regarding the use of restraint in them?

The Department **strongly** recommends that Team meetings convened between now and January 1, 2016 include review of IEPs (and behavior plans) to determine if they are affected by revisions to 603 CMR 46.00, and if so, to make the appropriate changes.

As adopted in 2001, 603 CMR 46.07 allows accepted IEPs and other written behavior plans to include the use of restraints (except for chemical, mechanical, and seclusion restraint) as part of the student's program. Upon consent of the parent, it also permits waiver of parental notice of the administration of a restraint provided the restraint did not exceed 20 minutes or result in serious injury to the student or staff. As of January 1, 2016, however, the regulation is no longer effective and the previously agreed-upon use of restraints cannot be part of a student's IEP or behavior plan.

Teams should be proactive at IEP meetings between now and January 1, 2016 to remove references to the use of restraint to avoid the need for amendments in January 2016.

E. SECLUSION AND TIME-OUT

A separate advisory detailing the difference between seclusion and time –out has been issued and is available at: http://www.doe.mass.edu/sped/advisories/2016-1ta.html.

[i] Both sets of revised regulations are available at: http://www.doe.mass.edu/lawsregs/

[ii] The regulatory definition of principal is "the instructional leader or headmaster of a public education program or his or her designee. The board of directors of a charter school or virtual school, or special education school or program approved under 603 CMR 28.09, shall designate in the restraint and behavior support policy who will serve as principal for purposes of 603 CMR 46.00." 603 CMR 46.02

[iii] Medication restraint is referred to as "chemical restraint" in the 2001 physical restraint regulations.