

GUIDANCE: ISBE EMERGENCY RULES ON TIME OUT AND PHYSICAL RESTRAINT

Effective November 20, 2019, the Illinois State Board of Education issued emergency regulations, 23 IAC 1.285, regarding requirements for the use of time out and physical restraint. ISBE also issued a Physical Restraint and Time Out Form to be completed after each instance of time out or physical restraint and submitted to the parent and to ISBE. Below is a summary of the important revisions to the regulations and our guidance regarding some questions that we have received from clients.

Revisions to Time Out and Physical Restraint

- Time out and Physical Restraint may only be used for “therapeutic purposes” to maintain a safe environment for learning and to preserve the safety of students and others.
- The emergency regulations eliminate the use of “isolated time out” and broadly define time out 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.”

- A trained adult must be present with the student during time out and if there is a door in the time out enclosure, it cannot be locked. Enclosures for time out must satisfy all health/life safety requirements. Every 15 minutes the trained adult must assess whether the student has ceased the behavior for which time out was imposed.

- The adult monitoring the student in time out or applying physical restraint must be trained in de-escalation techniques, restorative practices and behavior management practices.

- Prone restraint is no longer permitted.

- Although the regulations continue to provide that physical restraint may only be used when a student poses a physical risk to him/herself or others, the ISBE form describes the reasons for restraint or time out as “imminent danger” to self, other students or staff members.

- After 3 incidents of time out or physical restraint, school personnel must determine if a student without an IEP or Section 504 plan should be referred to a problem solving team or for an evaluation under IDEA or Section 504. For a student with an IEP or Section 504 plan, the team must determine whether an IEP or Section 504 meeting should be held to develop or revise a behavior intervention plan, review the effectiveness of behavior interventions, or to consider a change of



placement for the student.

Notification and Reporting Requirements

- The new ISBE Physical Restraint and Time Out Form must be completed after each incident of physical restraint or time out, must be sent to the parent within 24 hours and to ISBE within 48 hours.
- ISBE is also requiring districts, cooperatives and other educational facilities to submit to ISBE physical restraint and time out data for the 2017-2018, 2018-2019 and 2019-2020 school years by December 20, 2019.



Other Requirements:

- The regulations amend policy requirements for districts, cooperatives and other educational facilities that employ physical restraint and time out.
- The regulations establish a Complaint procedure in which a parent, advocate or other individual may complain to ISBE that a district, cooperative or nonpublic facility is violating the physical restraint and time out regulations.

The Emergency Regulations are unclear in some areas and at times contradictory. They are effective for 150 days and we will



be monitoring any changes or further guidance from ISBE. Below are some questions and concerns that some of our clients have raised about the regulations, with answers that include our current interpretation of the ISBE regulations and form:

Questions Regarding Time Out and Physical Restraint Emergency Rules:

1. How does ISBE define “imminent danger”?

“Imminent” is not defined by ISBE in the regulations or on the form. The regulations continue to indicate that physical restraint may be used only if the student poses a “physical risk” to himself, herself or others. When a legislature does not define a term, courts look to the term’s ordinary meaning. According to the dictionary, imminent means that something will happen very soon. Danger is a synonym for risk. So, we interpret this to

mean that the risk of physical harm to the student or others will happen very soon and therefore the time out or restraint is necessary.

2. What constitutes “time out?”

The definition of “time out” in the regulations is very broad and includes a “behavior management technique” that involves the monitored separation of a student from classmates with a trained adult for part of the school day in an unlocked setting. The regulation also provides, however, that “time out” is used as a means of maintaining a safe environment for learning to the extent necessary to preserve the safety of students and others. Furthermore, the ISBE form to be completed for restraint and time out requires staff to check one of two reasons for a restraint or time out: (a) imminent danger to self or (b) imminent danger to another student or to staff.

- a. If a student chooses to take a break, but they are separated from their peers, is that considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE?

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This seems to be an accommodation to the student. Using the broad definition in the regulation, this is a monitored separation of the student from his classmates. However, if the student is not choosing to take a break at a time when the student is exhibiting behavior that results in imminent danger to him or herself or others, we believe that the ISBE form would not need to be completed. If the student were to request a break three times, that would not seem to be a situation where we would hold an IEP meeting to change interventions or placement. To the contrary, the student's strategy is effective and positive. This situation does not seem to fall within the intention of the regulations or the ISBE form.

- b. If students become disruptive in a classroom and the classroom is cleared except for the disruptive student, is that considered a "time out"? Does that require the completion of the form, notification of parents, and submission to ISBE?

This is a situation that seems to fit within the intent of the regulations. Presumably a classroom is cleared because the student is exhibiting behavior that results in

imminent danger to him or herself or others. The room is cleared to maintain a safe environment and to preserve the safety of the student and others. We recommend completing the ISBE form in this situation.

- c. If a student leaves the classroom and processes with a social worker in their office or an alternate location, is that considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE?

Similar to example a above, unless the student’s behavior is causing imminent danger, we would not consider this situation to be within the intent of the regulations and would not complete the form.

- d. Is the use of a barrier, such as a divider or study carrel, that separates a student from their peers within a classroom considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE?

As with examples a and c above, we don’t believe this is within the intent of the regulations unless the student’s behavior is causing imminent danger. Use of a barrier may

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be an accommodation to a student, for example to lessen distractions caused by other students.

- e. Is a “chill zone” within a classroom considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE?

We see this in the same way as example a. Additionally, depending on how the “chill zone” is set up, it may not be a separation from peers. Also, typically a “chill zone” is available to all students in the classroom.

- f. Is a student going to or sitting in the Principal’s office to do work considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE?

Again, we do not consider this to be within the intent of the regulations unless the student’s behavior that caused the removal to the principal’s office resulted in imminent danger. However, in a Dear Colleague Letter on disciplining students with disabilities, OCR cautioned that repeatedly sending a student to the principal’s office may be considered an in-school suspension, i.e. exclusionary discipline.

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g. Is an in-school suspension considered a “time out”? Does that require the completion of the form, notification of parents, and submission to ISBE? Where is the line drawn between “time out” and “in-school suspension”?

In school suspension is a discipline matter. Time out and physical restraint may not be used for discipline. Rather than completing a time out/restraint ISBE form for a suspension, complete your form for a 1-3 day suspension or a suspension over 3 days, as applicable.

3. How does ISBE define a “trained adult?”

The regulations require that any adult supervising a student in time out or applying physical restraint must be trained in de-escalation, restorative practices and behavior management practices.

4. What is required to demonstrate training in “restorative practices”?

The regulations do not define the components of training in restorative practices. For what it’s worth, the Illinois Unified Code of Corrections defines training in restorative practices to include “programs and activities

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based on a philosophical framework that emphasizes the need to repair harm through a process of mediation and peace circles in order to promote empowerment and reparation.”

5. What is required to demonstrate training in “behavior management”?

The regulations provide only the components of de-escalation/restraint training (unchanged from the previous version of the regulations). What is required for training in behavior management is not defined. It is unclear whether training in PBIS, for example, satisfies this requirement.

6. Who should be maintaining these student records and submitting them to ISBE? Is it the location where it occurred or the resident district who maintains student records?

The location where the restraint or time out occurred should maintain the records and submit them to ISBE. The regulations state that the “entity serving the student” is to send the form to the parent and to ISBE. See 1.280 (g)(2) and (h).

7. With regards to reporting to parents and ISBE the use and required documentation, does that mean all incidents that occur on a Friday must be submitted before everyone leaves for the day to comply with the “24 hour” and “48 hour” timelines?

This is unclear from the regulations. Reg. 1.285 (f)(3) provides that the ISBE restraint/time out form must be completed by the beginning of the school day following the episode of restraint or time out. Completing the form by Monday morning would comply with this section of the regulations. Yet, sections (g) and (h) of the regulations require sending the form to parents within 24 hours and to ISBE no later than 48 hours after the use of restraint or time out. The ISBE form requires that written parent notification occur within 24 hours of the incident. The most conservative approach would be to complete and send the Form by the end of the day on Friday. However, Line 11 of the ISBE form provides options to check for notification to parents, including a) phone call, b) email, c) other and d) required written parent notification, therefore contemplating that there may be situations in which parents are contacted by multiple

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means. A possible solution is that if paperwork cannot be completed timely, or if completion of the form by the beginning of the next school day exceeds the 24 hour parent notification period, that a designated team member contact the parent by email (so that the notification is written), explain that a restraint or timeout occurred and the information that will be documented on the form and tell the parent that the form will be sent to the parent on Monday.

The other thing to note is that ISBE does not indicate the means by which the written notification must be sent to the parent. Letter to Breton (OSEP 2014) indicates that IEPs and progress reports may be sent to parents through email as long as the parent and district agree and security measures are in place. If the team wants to send restraint/time out forms through email, parent permission should be obtained and measures should be in place to ensure that there is confidential transmission of the emailed form to the parent.

8. What does “non-therapeutic” timeout mean? Must you have a meeting after every third “therapeutic” time out, since it

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only says after “non-therapeutic” timeouts?

Presumably, a non-therapeutic time out or restraint is one that is performed to administer discipline to a student and this is not permitted by the regulations. The regulatory requirement to hold a meeting when there are three “non-therapeutic” time outs or restraints does not make sense. However, the ISBE restraint/time out form, in line 15, provides options for meeting discussions upon the third incident of restraint or time out (as opposed to non-therapeutic restraints or time outs), so a meeting is required after 3 incidents. The form provides the choices to hold a problem-solving meeting or a domain meeting for a student not already eligible for an IEP or Section 504 Plan, or a meeting to review interventions for students with an IEP or Section 504 Plan. An “other” choice is given, which, according to the regulations, could include a meeting to determine if a change in placement is necessary.

9. Are resident districts liable for the actions of a therapeutic day school’s adherence to the new legislation? There is a new complaint process in which the parent can

file a complaint with ISBE against the facility that performed the time out or restraint. In that case, ISBE would investigate the facility. However, if a parent files a request for a due process hearing, that hearing request must be filed with the Superintendent of the school district in which the student resides. If the parent alleged that the restraint/time out denied the student a FAPE, the district could be held liable, for example for compensatory services. When a district places a student out of district, the district is required to monitor the placement to ensure that FAPE is being provided.

10. If a dean momentarily restrains a student in the hallway to break up a fight, is this a physical restraint that should be documented on the ISBE form and sent home to parents?

The regulations continue to include the exception that, pursuant to Section 10-20.33 of the School Code, physical restraint does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished

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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.

If you have questions regarding the Emergency Regulations, please call one of our attorneys in Flossmoor at 708-799-6766 or in Oak Brook at 630-928-1200.