

Attachment 2

This chart follows the organization of 603 CMR 46.00, Physical Restraint Regulations, and highlights specific key areas of comment and the final recommended language for those areas.

Technical changes to regulations and other minor changes, which received little or no comment, are not reflected in the chart below. The first column “citation” refers to the sections of the proposed amendments to 603 CMR 46.00, as re-organized or proposed for public comment (third column), and as recommended for final adoption (fourth column) with rationale for change (column five). Current regulatory language appears in column two. In all of the revisions displayed below, new and revised language is indicated by underline and deleted language (from the current regulation) by ~~strike-through~~.

Citation	Current Regulation	Initial Proposed Amendment	Final Recommended Language	Rationale
603 CMR 46.00	Title: Physical Restraint	<u>Prevention of Physical Restraint</u> <u>and Requirements If Used</u>	<u>Prevention of Physical Restraint</u> <u>and Requirements If Used</u>	This title reflects more accurately the purpose of this chapter.
46.02: Definitions Consent	Consent not defined.	<u>Consent shall mean agreement</u> <u>by a parent who has been fully</u> <u>informed of all information</u> <u>relevant to the activity for which</u> <u>agreement is sought, in his or her</u> <u>native language or other mode of</u> <u>communication, that the parent</u> <u>understands and agrees in</u> <u>writing to carrying out of the</u> <u>activity, and understands that the</u> <u>agreement is voluntary and may</u> <u>be revoked at any time. The</u> <u>agreement describes the activity</u> <u>and lists the records (if any)</u> <u>which will be released and to</u> <u>whom.</u>	<u>Consent shall mean agreement</u> <u>by a parent who has been fully</u> <u>informed of all information</u> <u>relevant to the activity for which</u> <u>agreement is sought, in his or</u> <u>her native language or other</u> <u>mode of communication, that the</u> <u>parent understands and agrees in</u> <u>writing to carrying out of the</u> <u>activity, and understands that the</u> <u>agreement is voluntary and may</u> <u>be revoked at any time. The</u> <u>agreement describes the activity</u> <u>and lists the records (if any)</u> <u>which will be released and to</u> <u>whom. In seeking parental</u> <u>consent, a public education</u> <u>program shall not condition</u> <u>admission or continued</u>	A number of commenters requested or suggested language to ensure that consent to the use of restraint was not “coerced” by conditioning admission or receipt of services on such consent. DESE response: This comment appears to be primarily directed at approved private special education schools, since public schools cannot conditionally admit students. Under current regulations (603 CMR

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			<u>enrollment upon agreement to the proposed use of any restraint.</u>	<p>46.07), the use of restraint may be included in an IEP, which generally must be agreed to by a parent to be implemented, and a school may ask parents to waive notice to them when the school restrains the student.</p> <p>We have revised the regulation based on the comments. The final regulations clarify that consent is necessary to administer a prone restraint under new §46.03(1)(b), and that a parent's refusal to give consent to the use of prone restraint is not a basis for denial of admission or continued service. This change aligns with EEC regulations, which include similar language.</p>

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46.02: Definitions Mechanical Restraint	Mechanical Restraint: The use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.	Mechanical restraint <u>shall mean</u> the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. <u>The term does not include an adaptive or protective device recommended by a physician and consented to by the parent, when used as recommended by the physician to promote normative body positioning and physical functioning.</u>	<u>Mechanical restraint shall mean the use of any physical device or equipment to restrict a student's freedom of the movement, of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.</u> The term 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 devices were designed. Examples of such devices include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;	A number of commenters stated that the existing and proposed definitions do not appropriately distinguish between mechanical devices used for restraint and appropriate protective or positioning devices or equipment necessary for participation in a program on a regular basis. Many recommended incorporating the definition of mechanical restraint used by the US Department of Education's Office for Civil Rights in its Civil Rights Data Collection (CRDC). DESE response: We agree. The final definition includes the CRDC definition with inclusion of "positioning and protective" language to more closely conform to the EEC language.

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			<u>restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.</u>	
46.02: Definitions Chemical Restraint	Chemical restraint: The administration of medication for the purpose of restraint.	<u>Medication restraint shall mean the administration of medication for the purpose of restraint temporarily controlling behavior.</u>	<u>Medication restraint shall mean the administration of medication for the purpose of restraint temporarily controlling behavior. Medication prescribed by a physician and authorized by the parent for administration in the school setting is not medication restraint.</u>	DESE received few comments on this provision. DESE added language to clarify that prescribed medication authorized by a parent for administration in a school setting is not medication restraint.
46.02: Definitions Physical Restraint	Physical restraint: The use of bodily force to limit a student's freedom of movement.	<u>Physical restraint shall mean direct physical contact that prevents or significantly restricts a student's freedom of movement. The term physical restraint does not include prone restraint, mechanical restraint, or medication restraint.</u> <u>Additionally, physical restraint does not include: providing brief physical contact, without force, to promote student safety or limit self-injurious behavior, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or a physical escort.</u>	<u>Physical restraint shall mean direct physical contact that prevents or significantly restricts a student's freedom of movement. Physical restraint does not include: brief physical contact to promote student safety, providing physical guidance or prompting when teaching a skill, redirecting attention, providing comfort, or a physical escort.</u>	Several commenters asked for removal of the language "without force" and "limit self-injurious behavior" because it was confusing. The reference to "self-injurious behavior" also was included in the then-proposed limited individual student plan for restraint. DESE response: We agree that the provision should be clearer and

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		<u>comfort, or a physical escort.</u>		have removed the objected-to language.
46.02: Definitions Public Education Programs	Public education programs: mean Public schools, including charter schools, virtual schools, collaborative education programs, special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs.	Public education programs <u>shall</u> mean P public schools, including charter schools, <u>virtual schools</u> , collaborative education programs, special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs. <u>The term “programs” may be used in 603 CMR 46.00 to refer to “public education programs.”</u>	Public education programs <u>shall</u> mean P public schools, including charter schools, <u>virtual schools</u> , collaborative education programs, and <u>the school day of</u> special education schools approved under 603 CMR 28.09, except as provided in 603 CMR 18.05(5)(h), and school events and activities sponsored by such programs. <u>The term “programs” may be used in 603 CMR 46.00 to refer to “public education programs.”</u> For purposes of 603 CMR 46.00, <u>public education programs shall not include the educational services provided within Department of Youth Services, Department of Mental Health, Department of Public Health, or County Houses of Corrections operated or contracted facilities.</u>	Several advocacy groups requested changes in this provision as well as to current 46.04(4) (which addresses “referral to law enforcement and other state agencies”) to require that school resource officers (SROs) be subject to the requirements of 603 CMR 46.00. Under current regulations, SROs, security personnel, and law enforcement are permitted to exercise their responsibilities within the school or program. DESE response: We do not recommend a change to the regulations. It is more appropriate to address the roles, duties, and limitations of the SRO in separate guidance relating to the recently enacted <i>Act Relative to the Reduction</i>

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				<p><i>of Gun Violence.</i> The new law establishes procedures and protocols for the assignment of SROs in schools, and their selection and training. It also specifies that a memorandum of agreement between the superintendent and local chief of police will identify the SRO's role and duties.</p> <p>Based on other comments, the final regulation includes language consistent with that in 46.01 which makes clear that programs in EOHHS contracted or operated facilities are public education programs for purposes of 603 CMR 46.00.</p>
46.02: Definitions Restraint - Other	Restraint - Other: Limiting the physical freedom of an individual student by mechanical means or seclusion in a limited	Restraint—Other: <u>shall mean Limiting limitation on a student's the physical movement using force against the student's resistance.</u>	Delete definition.	Some commenters objected to the phrase “against the student’s resistance.” They reasoned that it would allow restraint of a

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	space or location, or temporarily controlling the behavior of a student by chemical means.			student who was not resisting because the limitation on the student's movement would fall outside of the definition. DESE response: We have deleted the entire definition because it is unnecessary.
46.02: Definitions Seclusion Restraint & Time-out	Seclusion Restraint: Physically confining a student alone in a room or limited space without access to school staff. The use of "time out" procedures during which a staff member remains accessible to the student shall not be considered "seclusion restraint."	Seclusion <u>shall mean the involuntary confinement of a student alone in a room or area from which the student is physically prevented, or reasonably believes he or she will be prevented, from leaving.</u> Seclusion does not include a time-out as defined in 603 CMR 46.02. & Time-out shall mean a behavioral support strategy in which a student temporarily separates from the learning activity or the classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student shall not be involuntarily confined and must be continuously observed by a staff member. Staff shall be	Seclusion <u>shall mean the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.</u> Seclusion does not include a time-out as defined in 603 CMR 46.02. & Time-out shall mean a behavioral support strategy developed pursuant to 603 CMR 46.04(1) in which a student temporarily separates from the learning activity or the classroom, either by choice or by direction from staff, for the purpose of calming. During time-out, a student must be continuously observed by a staff	Many commenters raised questions and concerns about the distinction between seclusion and time-out in the proposed definitions. Commenters also were concerned about setting a time limit on time-out. Some thought that there should be no time limit, and the use of time-out should be left to the judgment of the professionals in programs. Others argued that the time limit should be lower for elementary age students than for secondary level students. Some also said that time-out is allowed to continue longer than necessary

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		<u>with the student or immediately available to the student at all times. Time-out shall cease as soon as the student has calmed or when thirty (30) minutes have passed, whichever event is earlier.</u>	<u>member. Staff shall be with the student or immediately available to the student at all times. The space used for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming. Time-out shall cease as soon as the student has calmed.</u>	<p>and is overused. Commenters recommended that the space used for time-out meet standards of cleanliness and size.</p> <p>DESE response: We appreciated the number and variety of comments that we received on seclusion and time-out. The only purpose of a definition of time-out in the restraint regulations is to distinguish it from seclusion, which is prohibited. Based on the comments, the final regulations clarify that seclusion means the student is confined alone in a room whereas a student in time-out must be with or continuously observed by a staff person. We have clarified that time-out is for the purpose of calming and must end when the student has calmed. We have added a new</p>

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				provision at 603 CMR 46.04(1)(j) which requires written procedures for the principal or designee to approve any time-out lasting more than 30 minutes. This is consistent with the EEC regulations. We also clarified that the space for time-out must be clean, safe, sanitary, and appropriate for the purpose of calming.
46.03 Use of Restraints	Use of restraint. Physical restraint may be used only in the following circumstances: (a) Non-physical interventions would not be effective; and (b) The student's behavior poses a threat of imminent, serious, physical harm to self and/or	<u>Physical restraint shall be considered an emergency procedure of last resort and shall be prohibited in public education programs except when a student's behavior poses a threat of imminent, serious, physical harm to self or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate under the circumstances.</u>	(c) <u>Physical restraint, including prone restraint where permitted, shall be considered an emergency procedure of last resort and shall be prohibited in public education programs except when a student's behavior poses a threat of assault, or imminent, serious, physical harm to self or others and the student is not responsive to verbal directives or other lawful and less intrusive behavior interventions, or such interventions are deemed to be inappropriate</u>	Commenters were generally supportive of language stating that restraints are an emergency procedure of last resort, and were supportive of protective procedures. See next row for a discussion of the recommended prohibition of prone restraint except under certain conditions.

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	others.		<u>under the circumstances.</u> (d) <u>All physical restraints, including prone restraint where permitted, shall be administered in compliance with 603 CMR 46.05.</u>	
46.03	<p>(3) Prohibitions. Physical restraint is prohibited in the following circumstances:</p> <p>(a) As a means of punishment; or</p> <p>(b) As a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or verbal threats that do not constitute a threat of imminent, serious, physical harm.</p>	<u>Prohibitions. Mechanical restraint, prone restraint, and seclusion shall be prohibited in public education programs. The use of medication restraint is prohibited unless specifically prescribed by a physician and consented to by the parent.</u> <u>Physical restraint shall not be used:</u> (a) As a means of <u>discipline</u> or punishment; <u>or</u> <u>(b) When the student cannot be safely restrained;</u> (c) As a response to property destruction, disruption of school order, a student's refusal to comply with a <u>school public education program</u> rule or staff directive, or verbal threats <u>that when those actions do not</u>	(1) <u>Prohibition.</u> (a) <u>Mechanical restraint, medication restraint, and seclusion shall be prohibited in public education programs.</u> (b) <u>Prone restraint shall be prohibited in public education programs except on an individual student basis, and only under the following circumstances:</u> 1. <u>The student has a documented history of repeatedly causing serious self-injuries and/or injuries to other students or staff;</u> 2. <u>All other forms of physical restraints have failed to ensure the safety of the student</u>	<p>Most commenters submitted their views – for and against – on the prohibition of prone restraint.</p> <p>DESE response: The final regulation prohibits prone restraints, but also includes an exception for students with a history of danger to self or others under specific conditions. This is consistent with the EEC regulations. The recommended effective date for the final regulations is January 1, 2016, which will allow schools a year to adjust their policies, practices, and procedures, and to provide additional training for staff to</p>

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		<p>constitute a threat of imminent, serious, physical harm; or</p> <p>(d) As a planned response for any individual student. As an emergency procedure of last resort, no written individual behavior plan or individualized education program (IEP) may include use of restraint as a standard response to any behavior. However, for students who prDESEnt with repetitive self-injurious behaviors, the principal may propose to the parent a separate written agreement for the use of restraint on an emergency basis over a limited and specified period of time. In such cases the plan must include detailed reporting to the parent on the frequency of the use and duration of restraints, and the specific time period over which the use of physical restraint will be reduced and eliminated. The principal shall obtain the parent's written consent to the plan prior to implementation.</p>	<p>and/or the safety of others;</p> <p>3. There are no medical contraindications as documented by a licensed physician;</p> <p>4. There is psychological or behavioral justification for the use of prone restraint and there are no psychological or behavioral contraindications, as documented by a licensed mental health professional;</p> <p>5. The program has obtained consent to use prone restraint in an emergency as set out in 603 CMR 46.03(1)(b), and such use has been approved in writing by the principal; and,</p> <p>6. The program has documented 603 CMR 46.03(1)(b) 1 - 5 in advance of the use of prone restraint and maintains the documentation.</p>	<p>prepare for this change.</p> <p>The final regulation also makes clear that use of physical restraint may not be included in any student's individual plan because it should always be treated as an emergency response and used as a last resort.</p> <p>The final regulations do not include an option for a time-limited plan to address repetitive self-injurious behaviors as it is adequately addressed by the new individual review requirements, which require a review of students who are restrained multiple times in a week. (603 CMR 46.06(5))</p>

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			<p>...</p> <p>(2) <u>Physical restraint shall not be used:</u></p> <p class="list-item-l1">(a) As a means of <u>discipline or punishment; or</u></p> <p class="list-item-l1">(b) <u>When the student cannot be safely restrained because it is medically contraindicated for reasons including but not limited to asthma, seizures, cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting;</u></p> <p class="list-item-l1">(bc) As a response to property destruction, disruption of school order, a student's refusal to comply with a <u>school public education program</u> rule or staff directive, or verbal threats <u>that when those actions</u> do not constitute a threat <u>of assault</u>, or imminent, serious, physical harm; or</p>	

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			<p><u>(d) As a standard response for any individual student.</u> <u>No written individual behavior plan or individualized education program (IEP) may include use of physical restraint as a standard response to any behavior.</u> Physical restraint is an emergency procedure of last resort.</p>	
46.04 Procedures	Procedures. Public education programs shall develop written procedures regarding appropriate responses to student behavior that may require immediate intervention. Such procedures shall be annually reviewed and provided to school staff and made available to parents of enrolled students. Such procedures shall include, but not be limited to:	Procedures. Public education programs shall develop <u>and implement</u> written restraint prevention and behavior support policy and procedures <u>consistent with 603 CMR 46.00</u> regarding appropriate responses to student behavior that may require immediate intervention. Such <u>policy and</u> procedures shall be annually reviewed and provided to <u>school</u> <u>program</u> staff and made available to parents of enrolled students. Such <u>policy and</u> procedures shall include, but not be limited to: (a) Methods for preventing student violence, self-injurious	As proposed with changes noted below.	We received few comments on this section, and they were generally supportive of the changes, including support for adding specific time-out procedures and reporting to parents on any physical restraint. DESE response: The final language is similar to the preliminary proposal, with changes to allow for email notice to parents if they so choose, and, due to the concerns about overuse and

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	<p>(a) Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;</p> <p>(b) A school policy regarding restraint that provides a description and explanation of the school's or program's method of physical restraint, a description of the school's or program's training requirements, reporting requirements and follow-up procedures, and a procedure for</p>	<p>behavior, and suicide, including <u>time-out and</u> de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;</p> <p>(b) A school policy regarding restraint that provides a description and explanation of the school's or program's method of physical restraint, a description of the school's or program's training requirements, reporting requirements and follow-up procedures, and a procedure for receiving and investigating complaints regarding restraint practices.</p> <p>(b) Methods for engaging parents in discussions about restraint prevention and the use of restraint solely as an emergency procedure;</p> <p>(c) A description and explanation of the school's or program's alternatives to physical restraint and method of physical restraint in</p>		extended use of time-out, an additional provision requiring the principal's approval of time-out if it will extend for more than 30 minutes.

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	<p>receiving and investigating complaints regarding restraint practices.</p> <p>(c) A description and explanation of the school's or program's method of physical restraint.</p> <p>(d) A description of the school or program's training requirements, reporting requirements, and follow-up procedures;</p> <p>(e) A procedure for receiving and investigating complaints regarding restraint practices;</p>	<p><u>emergency situations;</u></p> <p><u>(d) A statement prohibiting: medication restraint except as provided in 603 CMR 46.04, mechanical restraint, prone restraint, seclusion, and the use of physical restraint in a manner inconsistent with 603 CMR 46.00;</u></p> <p><u>(e) A description of the school or program's training requirements, reporting requirements, and follow-up procedures;</u></p> <p><u>(f) A procedure for receiving and investigating complaints regarding restraint practices;</u></p> <p><u>(g) A procedure for conducting periodic review of data and documentation on the use of physical restraints as described in 603 CMR 46.06(5) and (6);</u></p> <p><u>(h) A procedure for implementing the reporting requirements as described in</u></p>	<p><u>(d) a statement prohibiting: medication restraint, mechanical restraint, prone restraint unless permitted pursuant to 603 CMR 46.03(1)(b), seclusion, and the use of physical restraint in a manner inconsistent with 603 CMR 46.00;</u></p>	

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		<p><u>603 CMR 46.06; and</u></p> <p><u>(i) Oral parental notification of the use of restraint on a student within 24 hours of the restraint, followed by written notification postmarked no later than three school working days following the use of restraint.</u></p>	<p><u>(i) a procedure for making reasonable efforts to orally notify a parent of the use of restraint on a student within 24 hours of the restraint, and for sending written notification to the parent within three school working days following the use of restraint to an email address provided by the parent for the purpose of communicating about the student, or by regular mail to the parent postmarked within three school working days of the restraint;</u></p> <p><u>(j) If the program uses time-out as a behavioral support strategy, a procedure for the use of time-out that includes a process for obtaining principal approval of time-out for more than 30 minutes based on the individual student's continuing agitation.</u></p>	
46.04 Required	Required training for all staff. Each principal or director shall determine a time and method to	Required training for all staff. Each principal or director shall determine a time and method to provide all program staff with	As proposed.	We received few comments on this section, and they were generally supportive of

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training for all staff	<p>provide all program staff with training regarding the school's restraint policy. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment.</p> <p>Training shall include information on the following:</p> <ul style="list-style-type: none"> (a) The program's restraint policy; (b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors; (c) Types of restraints and related safety considerations, including information regarding the increased risk of 	<p>training regarding the <u>program's school's restraint prevention and behavior support policy and requirements when restraint is used</u>. Such training shall occur within the first month of each school year and, for employees hired after the school year begins, within a month of their employment. Training shall include information on the following:</p> <ul style="list-style-type: none"> (a) <u>The role of the student, family, and staff in preventing restraint;</u> (b) <u>The program's restraint prevention and behavior support policy and procedures, including use of time-out as a behavior support strategy distinct from seclusion;</u> (b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors <u>and other alternatives to restraint in emergency circumstances;</u> (ed) <u>Types of restraints and</u> 		<p>the changes. One suggestion was to regulate the content of training to include the role of the student, family and staff as well as known or suspected trauma history.</p> <p>DESE response: We believe the regulation is sufficiently detailed. The final language is unchanged from the preliminary proposal.</p>

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	<p>injury to a student when an extended restraint is used;</p> <p>(d) Administering physical restraint in accordance with known medical or psychological limitations and/or behavioral intervention plans applicable to an individual student; and</p> <p>(e) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.03(3) in the use of physical restraint.</p>	<p><u>When behavior prDESEnts an emergency that requires physical restraint, the types of permitted physical restraints and related safety considerations, including information regarding the increased risk of injury to a student when any restraint is used, in particular a extended restraint of extended duration is used;</u></p> <p>(de) Administering physical restraint in accordance with medical or psychological limitations, <u>known or suspected trauma history</u>, and/or behavioral intervention plans applicable to an individual student; and</p> <p>(ef) Identification of program staff who have received in-depth training pursuant to 603 CMR 46.03(3) in the use of physical restraint.</p>		
46.04 In-depth staff training	In-depth staff training in the use of physical restraint. At the beginning of each school year, the principal or director	In-depth staff training in the use of physical restraint. At the beginning of each school year, the principal or director of each public education program or his	In-depth staff training in the use of physical restraint. At the beginning of each school year, the principal or director of each public education program or his	Public and private school commenters were concerned about specifying the required length of training

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	<p>of each public education program or his or her designee shall identify program staff that are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint. The Department of Elementary and Secondary Education recommends that such training be at least sixteen (16) hours in length.</p>	<p>or her designee shall identify program staff that who are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint, which shall. The Department of Elementary and Secondary Education recommends that such training be competency-based and be at least-sixteen (16) hours in length. <u>Such individuals shall participate in at least one refresher course during subsequent school years of no less than eight (8) hours in length.</u></p>	<p>or her designee shall identify program staff that who are authorized to serve as a school-wide resource to assist in ensuring proper administration of physical restraint. Such staff shall participate in in-depth training in the use of physical restraint. The Department of Elementary and Secondary Education recommends that such training be competency-based and be at least-sixteen (16) hours in length <u>with refresher training occurring annually thereafter.</u></p>	<p>because, of more than ten recognized programs for training on the use of physical restraint, most have a different number of hours of recommended training. Further, districts that did not use physical restraint were equally concerned about the number of hours that staff would be absent from the schools every year if training of a certain length is mandated.</p> <p>DESE response: We agree with the concern. The final regulation recommends competency-based training of 16 hours and an annual refresher, but does not mandate the number of hours. This will give schools flexibility to choose from among several nationally recognized training programs.</p>

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46.05 Proper Administration of Physical Restraint Safest Method	Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor or prone restraints shall be prohibited unless the staff member administering the restraint has received in-depth training according to the requirements of 603 CMR 46.03(3) and, in the judgment of the trained staff member, such method is required to provide safety for the student or others present.	Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor or prone restraints shall be prohibited unless the <ins>at least one</ins> staff member administering the restraint has received in-depth training according to the requirements of 603 CMR 46.03(3) and, in the judgment of the trained staff member, such method is required to provide safety for the student or others present.	(3) Safest method. A person administering physical restraint shall use the safest method available and appropriate to the situation subject to the safety requirements set forth in 603 CMR 46.05(5). Floor restraints, including prone restraints otherwise permitted under 603 CMR 46.03(1)(b), shall be prohibited unless the <ins>staff members</ins> administering the restraint <ins>have</ins> received in-depth training according to the requirements of 603 CMR 46.04 3 (3) and, in the judgment of the trained staff members, such method is required to provide safety for the student or others present.	Several commenters strongly supported in-depth training for staff who administer restraints that impose risks to students, especially floor restraints. DESE: The final regulation clarifies that all of the staff members involved in floor restraints must participate in in-depth training.
46.05 Proper Administration of Physical Restraint Duration	Duration of restraint. A person administering physical restraint shall discontinue such restraint as soon as possible. If, due to unusual circumstances, a	Duration of restraint. <ins>All physical restraint must be terminated as soon as the student is no longer an immediate danger to himself or others, or the student indicates that he or she cannot breathe, or if the student is observed to be in severe</ins>	As proposed.	Several commenters supported the increased descriptive language in the proposed amendment. DESE response: The final regulation is unchanged from the

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	restraint continues for more than twenty (20) minutes, it shall be considered an "extended restraint" for purposes of the reporting requirements in 603 CMR 46.06.	<u>distress, such as having difficulty breathing, or sustained or prolonged crying or coughing. A person administering physical restraint shall discontinue such restraint as soon as possible. If, due to unusual circumstances, a restraint continues for more than twenty (20) minutes, it shall be considered an "extended restraint" for purposes of the reporting requirements in 603 CMR 46.06.</u>		proposed amendment.
46.05 Proper Administration of Physical Restraint Safety requirements	(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. A restraint shall be released immediately upon a determination by the staff member administering the	(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin <u>temperature and</u> color, and respiration. <u>A restraint shall be released immediately upon a determination by the staff member administering the restraint that the student is no longer at risk of causing imminent physical harm to him or herself or others.</u> (b) Restraint shall be	Retain proposed language with one change and one addition as below: (b) Restraint shall be	Commenters were generally supportive of increased detail. Some commenters said staff had refused to release a physical restraint upon the student's assertion of physical distress, saying, "If you can talk, you can breathe." Some commenters also expressed concern about the length of restraints, and the risks associated with longer restraints. DESE response: We have added language in subsection (b) to specify

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	<p>restraint that the student is no longer at risk of causing imminent physical harm to him or herself or others.</p> <p>(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm....</p>	<p>administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student demonstrates significant physical distress <u>including, but not limited to difficulty breathing</u>, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance....</p>	<p>administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student demonstrates <u>or expresses</u> significant physical distress <u>including, but not limited to difficulty breathing</u>, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.</p> <p>(c) <u>If a student is restrained for a period longer than 20 minutes, program staff shall obtain the approval of the principal or designee. The approval shall be based upon the student's continued agitation during the restraint justifying the need for continued restraint.</u></p>	<p>that program staff must release a restraint upon a student's <u>expression</u> of significant physical distress.</p> <p>In addition, we have added subsection (c) to require approval by the principal or designee for any restraints lasting longer than 20 minutes. This language also aligns with EEC regulations.</p>

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46.06 Reporting Requirements When to report	(1)Circumstances under which a physical restraint must be reported. Program staff shall report the use of physical restraint as specified in 603 CMR 46.06(2) after administration of a physical restraint that results in any injury to a student or staff member, or any physical restraint of a duration longer than five minutes.	Circumstances under which a physical restraint must be reported. Program staff shall report <u>and document</u> the use of physical restraint <u>in all circumstances, restraint as specified in 603 CMR 46.06(2) after administration of a physical restraint that results in any injury to a student or staff member, or any physical restraint of a duration longer than five minutes</u>	Circumstances under which a physical restraint must be reported. Program staff shall report the use of <u>any</u> physical restraint as specified in 603 CMR 46.06(2). after administration of any physical restraint, that results in any injury to a student or staff member, or any physical restraint of a duration longer than five minutes	No comments were received on this section. DESE: Retained the proposed concept with edits for clarity.
46.06 Reporting Requirements Informing Parents	(3)Informing parents. The principal or director of the program or his/her designee shall verbally inform the student's parents or guardians of the restraint as soon as possible <u>but no later than 24 hours after the event</u> , and by written report postmarked no later than three school working days following the use of restraint. If the school or program customarily provides a parent or guardian of a student with report cards and other necessary school-related	Informing parents. The principal or director of the program or his/her designee shall verbally inform the student's parents or guardians of the restraint as soon as possible <u>but no later than 24 hours after the event</u> , and by written report postmarked no later than three school working days following the use of restraint. If the school or program customarily provides a parent or guardian of a student with report cards and other necessary school-related	Informing parents. The principal or director of the program or his/her designee shall <u>make reasonable efforts</u> to verbally inform the student's parents or guardian of the restraint <u>as soon as possible within 24 hours of the event</u> , and <u>shall notify the parent</u> by written report sent postmarked no later than three school working days following the use of restraint either within three school working days of the restraint to an email address provided by the parent for	Some commenters supported the opportunity for parents to be informed and to comment on the use of the restraint and on the report. Some suggested using language from the new regulations on discipline, allowing notice through email. DESE response: We have added language here and in related

Citation	Current Regulation	Initial Proposed Amendment	Final Recommended Language	Rationale
	restraint. If the school or program customarily provides a parent or guardian of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent or guardian in that language.	information in a language other than English, the written restraint report shall be provided to the parent or guardian in that language. <u>The principal shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report.</u>	<u>communications about the student, or by regular mail</u> postmarked no later than three school working days <u>following of the restraint. If the school or</u> program customarily provides a parent <u>or guardian</u> of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent or guardian in that language. <u>The principal shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report.</u>	provisions to allow schools to notify parents via email if provided by the parent, to reduce administrative burden and cost.
46.06 Reporting Requirements Individual review	None	<u>Individual student review.</u> <u>The principal of the program shall convene a review team to make an assessment of an individual student's needs if a student has been restrained on two (2) separate occasions within a seven (7) day period or three (3) times within a thirty (30) day period.</u> Members of the grade level	<u>(5) Individual student review.</u> <u>The principal of the program shall conduct a weekly review of restraint data in order to identify students who have been restrained multiple times during the week. If such students are identified, the principal shall convene one or more review teams as the principal deems appropriate to</u>	School-based commenters were concerned about the increased administrative requirements. They expressed concerns about how to proceed with the small number of students who may be restrained multiple times in a day and asked how many meetings they would be required to hold.

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		<p><u>team and such other program staff as the principal may determine, shall participate in the assessment. Each member of the review team shall read the written reports developed in accordance with 603 CMR 46.06 and any comments provided by the student and parent about such reports and the use of the restraints. In addition to review and discussion of such reports by the team, the assessment shall include an analysis of the circumstances leading up to each restraint, including factors such as time of day, day of the week, antecedent events, and individuals involved. The assessment shall conclude with a plan for addressing any factors that may have contributed to escalation of behaviors, consideration of alternatives to restraint, including de-escalation techniques and possible interventions, and such other strategies and decisions, as appropriate, with the goal of reducing or</u></p>	<p><u>assess each student's progress and needs. The assessment shall include at least the following:</u></p> <p><u>(a) review and discussion of the written reports developed in accordance with 603 CMR 46.06 and any comments provided by the student and parent about such reports and the use of the restraints;</u></p> <p><u>(b) an analysis of the circumstances leading up to each restraint, including factors such as time of day, day of the week, antecedent events, and individuals involved;</u></p> <p><u>(c) consideration of factors that may have contributed to escalation of behaviors, consideration of alternatives to restraint, including de-escalation techniques and possible interventions, and such other strategies and decisions, as appropriate,</u></p>	<p>Other commenters supported the increased review requirements. Some suggested mandating that the school invite the parent to the individual review and asked that the results of the review be made available to the parent.</p> <p>Several commenters suggested adding a mandate that schools conduct a review based on the frequency of time-out.</p> <p>DESE response: The final regulation requires a principal to review restraint data weekly and to convene individual student reviews for students who are restrained multiple times in a week. The regulation leaves it to the principal to determine who will be part of the review team. The regulation has been edited for clarity.</p> <p>While the regulation does not require that a parent be included in the meeting,</p>

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		<p><u>eliminating the use of restraint in the future. If the principal directly participated in the restraint, a duly qualified individual designated by the superintendent or board of trustees shall lead the review team's discussion. The principal shall ensure that a record of each individual student review is maintained and made available for review by the Department, upon request.</u></p>	<p><u>with the goal of reducing or eliminating the use of restraint in the future;</u></p> <p><u>(d) an agreement on a written plan of action by the program.</u></p> <p><u>If the principal directly participated in the restraint, a duly qualified individual designated by the superintendent or board of trustees shall lead the review team's discussion. The principal shall ensure that a record of each individual student review is maintained and made available for review by the Department or the parent, upon request.</u></p>	<p>schools and programs may choose to do so. They must make a record of the review available to the parent upon request. The Department will develop a format for this review record.</p> <p>We are not mandating additional data collection or review of time-out data at the state level, as it is not the focus of the physical restraint regulations. Schools may adopt additional data and review procedures at the local level.</p> <p>DESE has learned from the comment that there is a great deal of interest in the use of time-out and behavior support generally. We plan to provide guidance to schools on behavioral support strategies, including the appropriate use of time-out, over the next year.</p>
46.06 Reporting	None.	<u>Administrative review. The principal of the program shall</u>	As proposed.	Some commenters expressed concern at the added

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Requirements Administrative review		<u>conduct a monthly review of school-wide restraint data.</u> <u>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.</u>		<p>administrative responsibilities that the monthly review of restraint data would require. Others strongly supported the increased review and reporting of data.</p> <p>DESE response: The final regulation maintains the requirement as proposed. The collection and reporting of restraint data in a more systematic way is critical to being able to gauge the use of restraint in Massachusetts, and to identify and curtail excessive use and extended use if and where it does exist. The Department will develop a report format that minimizes the administrative burden on schools.</p>
46.06 Reporting Requirements	Report to the Department of Elementary and Secondary Education.	(7)Report to the Department: of Elementary and Secondary Education restraint related injury. When a physical	(7)Report <u>all restraint-related injuries</u> to the Department: of Elementary and Secondary Education . When a physical	Several commenters advocate requiring schools to report restraint data to the DESE at least quarterly and that there

Citation	Current Regulation	Initial Proposed Amendment	Final Recommended Language	Rationale
Reporting to the Department	When a restraint has resulted in a serious injury to a student or program staff member or when an extended restraint has been administered, the program shall provide a copy of the written report required by 603 CMR 46.06(4) to the Department of Elementary and Secondary Education within five school working days of the administration of the restraint. The program shall also provide the Department with a copy of the record of physical restraints maintained by the program administrator pursuant to 603 CMR 46.06(2) for the thirty day period prior to the date of the reported restraint.	restraint has resulted in an <u>serious-injury</u> to a student or program staff member or when an extended restraint has been administered , the program shall provide a copy of the written report required by 603 CMR 46.06(4) to the Department of <u>Elementary and Secondary Education</u> within five postmarked no later than three (3) school working days of the administration of the restraint. The program shall also provide the Department with a copy of the record of physical restraints maintained by the <u>program administrator</u> <u>principal</u> pursuant to 603 CMR 46.06(2) for the thirty day period prior to the date of the reported restraint. The Department shall determine if additional action on the part of the public education program is warranted and, if so, shall notify the public education program of any required actions within thirty calendar days of receipt of the	restraint has resulted in an <u>serious-injury</u> to a student or program staff member or when an extended restraint has been administered , the program shall <u>provide send</u> a copy of the written report required by 603 CMR 46.06(4) to the Department of <u>Elementary and Secondary Education</u> within five postmarked no later than three (3) school working days of the administration of the restraint. The program shall also <u>provide send</u> the Department with a copy of the record of physical restraints maintained by the <u>program administrator</u> <u>principal</u> pursuant to 603 CMR 46.06(2) for the thirty <u>30</u> -day period prior to the date of the reported restraint. The Department shall determine if additional action on the part of by the public education program is warranted and, if so, shall notify the <u>public education</u> program of any required actions within thirty <u>30</u> calendar days of receipt of the	be additional monitoring. Some of the same commenters also advocate requiring schools to report time-out data to DESE. DESE response: We do not recommend expanding the data reporting requirements at this time. After we have an opportunity to review the additional data we will be receiving under these regulations, then we could revisit whether increased reporting is necessary. We do not recommend adding mandatory reporting of time-out to DESE, for reasons previously stated.

Citation	Current Regulation	Initial Proposed Amendment	Final Recommended Language	Rationale
	The Department shall determine if additional action on the part of the public education program is warranted and, if so, shall notify the public education program of any required actions within thirty calendar days of receipt of the required written report(s).	required written report(s). <u>(8) Report to the Department - all physical restraints. Every public education program shall collect and annually report data to the Department regarding use of physical restraints. Such data shall be reported in a manner and form directed by the Department.</u>	required written report(s). <u>(8) Report all physical restraints to the Department. Every program shall collect and annually report data to the Department regarding use of physical restraints. Such data shall be reported in a manner and form directed by the Department</u>	
46.07: Effective Date	<p><u>The effective date of 603 CMR 46.00, as amended, is January 1, 2016.</u></p> <p>DESE recognizes that some of the changes in the regulations will require time and training and revision of program policies, practices, and procedures. DESE has committed to creating appropriate forms and additional guidance to help with implementation of the regulations to accomplish their purpose of significantly reducing and eventually eliminating the use of physical restraint wherever possible in public education programs in the Commonwealth. DESE encourages programs to begin implementing the new regulations as soon as possible, but in all cases, no later than 1/1/2016.</p>			

