

**PROPOSED FINAL REGULATIONS GOVERNING PROGRAM AND SAFETY  
STANDARDS FOR APPROVED PUBLIC OR PRIVATE DAY AND  
RESIDENTIAL SPECIAL EDUCATION SCHOOL PROGRAMS  
603 CMR 18.00**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **September 23, 2014**
- Period of public comment: **through November 10, 2014**
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**603 CMR 18.00:**

**Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs**

**Section:**

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**18.01: Authority, Scope and Purpose**

(1) 603 CMR 18.00 is promulgated pursuant to MGL c. 71B, §10. 603 CMR 18.00 governs the program and safety standards for day and residential special education schools operated by public and private entities and serving publicly funded students.

(2) The requirements set forth in 603 CMR 18.00 are in addition to, or in some instances clarify or further elaborate, the program approval standards set forth in 603 CMR 28.09.

(3) Some approved special education schools may have a residential component with a current license from the state agency responsible for licensing programs providing residential services to children pursuant to 102 CMR 3.00. At the discretion of the Department, some of the requirements in this section may be met through obtaining a license under 102 CMR 3.00. However, the special education school's educational component remains fully subject to these regulations, as deemed appropriate by the Department of Elementary and Secondary Education.

**18.02: Definitions**

(1) *Approved private special education school or approved program* shall mean a private day or residential school, within or outside Massachusetts, that has applied to, and

received approval from, the Department according to the requirements specified in 603 CMR 28.09.

(2) *Approved public special education school* shall mean a program operated by a public school or an educational collaborative providing full day or residential special education services to eligible students in a facility serving primarily students with disabilities. Such program shall be approved when it has applied to, and received approval from, the Department according to the requirements specified in 603 CMR 28.09.

(3) *Consent* shall mean agreement by a parent who has been fully informed of all information relevant to the activity for which agreement is sought, in his/her native language or other mode of communication, that the parent understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent agreement is voluntary and may be revoked at any time. The agreement describes the activity and lists the records (if any) which will be released and to whom. In seeking parental consent, a public education program shall not condition admission or continued enrollment upon agreement to the proposed use of any restraint.

(4) *Day* shall mean calendar day unless the regulation specifies school day, which shall mean any day, including a partial day, that students are in attendance at school for instructional purposes.

(5) *Department* shall mean the Massachusetts Department of Elementary and Secondary Education.

(6) *District* or *school district* shall mean a Massachusetts municipal school department or regional school district, acting through its school committee or superintendent of schools; a county agricultural school, acting through its board of trustees or superintendent/director; and any other Massachusetts public school established by statute or charter, acting through its governing board or director.

(7) *Eligible student* shall mean a person aged three through twenty-one (3-21) who has not attained a high school diploma or its equivalent, who has been determined by an IEP Team to have a disability(ies), and as a consequence is unable to progress effectively in the general education program without specially designed instruction or is unable to access the general curriculum without a related service. An eligible student shall have the right to receive special education and any related services that are necessary for the student to benefit from special education or that are necessary for the student to access the general curriculum. In determining eligibility, the school district must thoroughly evaluate and provide a narrative description of the student's educational and developmental potential.

(8) *Emergency termination* shall mean removal of a student from a program due to an unplanned circumstance, including a student endangering his/her physical health or safety or endangering the physical health or safety of others.

(9) *Individualized Education Program (IEP)* shall mean a written statement, developed and approved in accordance with federal special education law in a form established by the Department that identifies a student's special education needs and describes the services a school district shall provide to meet those needs.

(10) *Parent* shall mean father, mother, guardian, person acting as a parent of the child, or an educational surrogate parent appointed in accordance with federal law. For students in the Department of Children and Families care or custody, an Educational Surrogate Parent's authority to act as a parent is limited to special education decision-making. When the father and mother are not living together, the parent shall be the father or mother with legal custody of the child for the purposes of educational decision-making. In the absence of any court decree to the contrary, legal authority of the parent shall transfer to the student when the student reaches eighteen (18) years of age.

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### **18.05: Required Policies and Procedures**

#### **(1) Admissions.**

(a) No school, or program operated by a school, shall enroll eligible students under the provisions of 603 CMR 28.00 unless approved to do so by the Department.

(b) Prior to admission, the school shall provide to the parents and the local school district a written copy of the school's policies and procedures, including:

1. The school's statement of purpose;
2. The type of services provided;
3. Admission criteria;
4. Parents' rights as described in 18.05(4);
5. Health care, including provisions for emergency health care and/or hospitalization as described in 18.05(9);
6. Planning for both foreseen and emergency terminations as described in 18.05(6), (7);
7. Methods of behavior support, violence prevention, discipline, management of harmful behavior by a student to himself/herself or others, and proper use of restraints as described in 18.05(5);
8. Activities related to daily living skills;

9. Contractual obligations with regard to payment for services. The school shall inform in writing any party, other than a local school district, responsible for placement of a student that said party is financially responsible for any costs incurred as a result of any placement not made pursuant to the requirements of 603 CMR 28.00;

10. Clothing requirements;

11. A description of normal daily routines;

12. Any specific treatment strategy employed by the facility;

13. A description of any normally occurring religious practices;

14. Visiting hours and other procedures related to communication with students and the facility as described in 18.036(9);

15. Name and telephone number of a staff person whom the parents may contact on an ongoing basis;

16. A description of a procedure which the parents or student may use to register complaints regarding the student's education and care at the facility.

17. A copy of the approved school calendar.

(c) No student shall be placed in any approved special education school until the local school district or the parent provides documentation from a licensed physician of a complete physical examination of the student not more than twelve (12) months prior to the admission. In the event of emergency placements, the school shall make provisions for a complete examination of the student within 30 days of admission. The results of all physical examinations shall be made part of the student's health record.

## **(2) Admission Interview.**

(a) Prior to admission, and upon request, the director of the school or designee shall be available to the parents, the student and the public school for an interview.

(b) The interview shall include an explanation of the school's purpose and services, policies regarding parent and student rights including student records, the health program including the procedures for providing emergency health care, and the procedure for termination of a student.

(c) The interview shall allow the opportunity for the student and parents to see the facilities, to meet staff members, and to meet other students enrolled.

**(3) Placement Preparation for Residential Students.**

(a) The school shall establish procedures to prepare the staff and students in the living unit for the new student's arrival and shall provide staff with appropriate information to receive the new student and assist in his/her adjustment.

(b) Upon admission, the school shall designate and prepare sleeping quarters for the student and space for the student's personal belongings.

(c) The school shall assign at least one staff member to help orient a newly admitted student to the facility and to explain the opportunities and programs available.

**(4) Parental Involvement.**

(a) The school shall have a written plan for involving parents, and shall have a Parents' Advisory Group. The Parents' Advisory Group shall advise the school on matters that pertain to the education, health, and safety of the students in the program.

(b) The school shall have a procedure for assuring that it is informed by a parent or guardian of any changes in a student's legal status and of the results of all judicial and administrative proceedings concerning the student, and for disseminating this information to appropriate personnel.

**(5) Behavior Support.**

(a) Each school shall provide a written statement of the rules, policies and procedures for the behavior support of students. The statement shall contain a description of the safeguards for the emotional, physical and psychological well-being of the population served; measures for positive responses to appropriate behavior; and definition and explanation of behavior management procedures used in the facility including, where applicable:

1. Methods of assessing and monitoring students' progress in the program;
2. The type and range of restrictions a staff member can impose for behavior which is unacceptable;
3. The type of restraint used in an emergency; the array of interventions used as alternatives to restraint; and the controls on the misuse and abuse of restraint;
4. The use of the behavioral support strategy of time-out;
5. Any denial or restrictions of on-grounds program services.

- (b) Students shall participate in the establishment of such rules, policies and procedures whenever feasible and appropriate.
- (c) Prior to admission, the school shall provide students and parents with a written copy of its behavior support policy.
- (d) The school shall inform parents and students of any significant changes in the behavior management procedures.
- (e) No student shall be subjected to abuse or neglect, cruel, unusual, severe or corporal punishment, including the following practices:
1. Any type of physical hitting or pain inflicted in any manner upon the body;
  2. Requiring or forcing the student to take an uncomfortable position such as squatting or bending or requiring or forcing the student to repeat physical movements when used as punishment;
  3. Punishments which subject the student to verbal abuse, ridicule or humiliation;
  4. Denial of visitation or communication privileges with family;
  5. Denial of sufficient sleep;
  6. Denial of shelter, bedding, food or bathroom facilities.
- (f) The goal of behavior support shall be to maximize the growth and development of the student and to protect the group and the individuals in it.
- (g) The school shall directly relate consequences to the specific misbehavior and shall apply such consequences without prolonged delay.
- (h) Day educational programs approved under 603 CMR 28.09 shall develop a policy on the use of physical restraint and administer physical restraint in accordance with the requirements of 603 CMR 46.00. Residential educational programs approved under 603 CMR 28.09 shall comply with the requirements contained in 102 CMR 3.00 except for the school day, during which the requirements of 603 CMR 46.00 shall apply for students enrolled in such programs. Educational programs within a program or facility subject to M.G.L.c.123 or Department of Mental Health Regulations shall comply with the restraint requirements of M.G.L.c.123, 104 CMR 27.12 or 104 CMR 28.05, as applicable.
- (i) Any behavior support policy which results in a student being separated in a room apart from the group or program activities shall include, but not be limited to, the following:

1. Guidelines for staff in the utilization of such an area;
2. Persons responsible for implementing such procedures;
3. The duration of the procedures including procedures for approval by the chief administrative person or his/her designee for any period longer than 30 minutes, except that during the school day in a residential educational program, and in an day educational program approved under 603 CMR 28.09, the duration of the procedures shall be governed by 603 CMR 46.00;
4. Requirement that students shall be observable at all times and in all parts of the room, and that the staff shall be in close proximity at all times;
5. A procedure for staff to directly observe the student at least every fifteen minutes;
6. A means of documenting the use of such area including, at a minimum, length of time, reasons for this intervention, who approved the procedure, and who directly observed the student at least every fifteen minutes.
  - (i) Time out rooms shall not be locked.
  - (ii) Any room or space used for the practice of separation must be physically safe and appropriate to the population served by the facility.

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#### **18.06: Effective Date**

The effective date of 603 CMR 18.00, as amended, is January 1, 2016.