# MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education |
| **From:** | Russell D. Johnston, Acting Commissioner  |
| **Date:** | January 21, 2025 |
| **Subject:** | Discussion on Use of Time-Out Practices under Current Regulations (603 CMR 46.00 and 603 CMR 18.00) |

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This memorandum provides an update to the Board of Elementary and Secondary Education (Board) on the use of time-out practices in Massachusetts education settings, including public schools, education collaboratives, and approved private special education schools.

Time-out is a behavioral support strategy in which a student temporarily separates from the learning environment. It is referenced in current regulations, 603 CMR 46.00, and also in 603 CMR 18.00, as it relates to approved public and private special education programs.

Currently, time-out is defined in the regulations as:

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 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.

603 CMR 46.01. Over the last several years, there has been growing attention to the use of time-out and time-out practices nationally as well as in Massachusetts. In the 2020-2021 school year, the Department of Elementary and Secondary Education (Department) began engaging with numerous stakeholders with the goal of updating state education guidance. This process resulted in the Department issuing new guidance in September 2021, entitled “Reducing or Eliminating the Use of Timeout Rooms during the 2021-2022 School Year.” The document replaced existing guidance that was outdated and required clarification. The September 2021 guidance document continues in effect today.

In spring 2024, the Department invested more than $1.5 million in competitive grants to school districts and educational collaboratives with the goal to reduce or eliminate the use of exclusionary time-out rooms and increase the amount of time that students spend learning with their peers. The funding was intended to expand alternative behavioral supports and strategies for students, enable positive educational environments, and improve communication and collaboration between schools, parents, and the community to establish holistic support systems.

More recently, in late summer and early fall 2024, the Department established a working group to provide input regarding potential regulatory changes. Members of the working group included representatives from the following organizations: American Federation of Teachers, Administrators of Special Education, Disability Law Center, EdLaw Project, Department of Early Education and Care, Massachusetts Association of Approved Private Schools, Massachusetts Advocates for Children, Massachusetts Association of School Superintendents, Massachusetts Charter Public School Association, Massachusetts Association of School Administrators, Massachusetts Organization of Educational Collaboratives, and the Massachusetts Teachers Association.

At the national level, the U.S. Department of Education, Office for Civil Rights (OCR) issued a Dear Colleague letter in 2016 informing school districts how the use of seclusion[[1]](#footnote-2) may result in discrimination against students with disabilities, violating Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. It also discussed the legal standards that OCR would use to determine whether seclusion practices violate Section 504 and offered resources to schools and districts. Then, in 2019, the U.S. General Accountability Office (GAO) testified before Congress and reported on the use of seclusion in schools nationwide. The testimony also discussed how OCR collects data on the use of seclusion, what the data tells us about the use of seclusion in public schools, and initiatives at the federal level to address the use of seclusion.

Since 2021, the U.S. Department of Justice (DOJ) has brought enforcement actions against various school districts across the country related to time-out and seclusion practices and at least seven have entered into settlement agreements.

Because the overuse or inappropriate use of time-out and time-out rooms may cause academic loss and trauma to students, it is in the best interest of our students and school communities to reduce or eliminate these practices. After analyzing the feedback obtained from the Department’s summer-fall 2024 working group as well as multiple discussions with key stakeholders, I expect to propose amended regulations for the Board’s consideration at the February 2025 Board meeting. The proposals would further the work we launched in September 2021 to reduce or eliminate the use of time-out practices in Massachusetts educational settings.

At the January 28 meeting, Iraida J. Álvarez, Acting Executive Director of Special Education, Jamie Camacho, Acting State Director of Special Education, Janelle Roberts, Director of the Office of Approved Special Education Schools, and Arabela Thomas, Deputy General Counsel, will present to the Board, invite discussion, and respond to your questions.

1. Seclusion is defined as an involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. [↑](#footnote-ref-2)