MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education  |
| **From:** | Patrick Tutwiler, Interim Commissioner |
| **Date:** | June 17, 2025 |
| **Subject:** | Time-Out Practices: Amendments to Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs (603 CMR 18.00) and Prevention of Physical Restraint and Requirements if Used (603 CMR 46.00) |

At the January 28, 2025 meeting of the Board of Elementary and Secondary Education (Board), we discussed the use of time-out practices in educational settings, including ways to reduce or eliminate the use of certain practices and to safeguard the well-being of students and school staff. On March 27, 2025, Acting Commissioner Russell Johnston recommended proposed amendments to 603 CMR 46.00, the regulations for Prevention of Physical Restraint and Requirements, and 603 CMR 18.00, the regulations for Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs, for initial discussion and a vote to solicit public comment. Following the Board’s approval, the Department of Elementary and Secondary Education (DESE) invited public comment on the proposed regulations from March 25 to May 2, 2025. As discussed below, based upon the comments received, I am recommending additional changes to the proposed regulations. Enclosed with this memorandum are the proposed amended regulations, 603 CMR 46.00, and 603 CMR 18.00, for final adoption.

**Background**

The proposed amendments to 603 CMR 46.00 that went out for public comment sought to:

1. Align the definition of seclusion in 603 CMR 46.02​ more closely with the definition used by the U.S. Department of Education’s Office for Civil Rights for data collection purposes.
2. Provide more clarity as to the term “time-out” by updating the definition of time-out to specifically include "in an unlocked setting from which the student is permitted to leave." ​
3. Add requirements for the use of time-out as well as documentation and reporting requirements for any use of seclusion. Specifically, the proposed regulations:
	1. Added the requirement that any room or area that is used for time-out must be of appropriate size for the age and the needs of the student; appropriately lighted, ventilated, and heated or cooled, consistent with the remainder of the building; free of objects or fixtures that are inherently dangerous to the student; ​in compliance with any applicable local fire and building code requirements; and in compliance with any other standards listed by DESE in guidance. ​
	2. Added emergency circumstances under which a type of seclusion, where an adult is present and monitoring the student, may be used as a last resort and list specific conditions that must be met before its use. Among other conditions, the proposed regulations would require that:
		1. This emergency intervention may only be used on an individual student basis, when there is an imminent threat of assault or imminent serious physical harm to the student or others;​
		2. There is documentation from a licensed mental health professional and physician;​
		3. There is consent from the student’s parent and, if appropriate, the student, and such use has been approved in writing by the principal; and
		4. At all times during the emergency, a staff member is continuously and actively monitoring and observing the student and is immediately available to the student.

The proposed amendments build in various safeguards when such an emergency intervention is used, such as parental notification​, conducting weekly and monthly review of data relating to the use of such an emergency intervention, and documenting and reporting such use to DESE.

1. Any schools or programs that utilize such an emergency intervention must examine alternatives and strategies for reducing and eliminating its use no later than 3 years from the effective date of the proposed regulations​.
2. The proposed regulations would take effect on September 2, 2025.

In addition, the proposed amendments to 603 CMR 18.00 (regulations applicable to approved special education programs) that went out for public comment sought to:

1. Require approved special education day programs, including the day component of special education residential programs, to comply with the updated version of 603 CMR 46​.
2. More closely align documentation requirements currently applicable to special education programs to the proposed documentation requirements in 603 CMR 46.
3. The proposed regulations would take effect on September 2, 2025.

**Summary of Public Comment**

During the public comment period, DESE received a total of 93 comments via email and 24 comments through a dedicated public comment survey tool for a total of 117 comments. Among the 24 comments submitted through the survey tool, 15 came from individuals representing their school, district, or organization, while 9 were submitted by individuals on their own behalf. A summary of the public comment and the Department’s responses is enclosed.

**Response to the Public Comment**

Based on the public comment received, I am recommending three additional changes to the regulations proposed at the March 24, 2025 meeting.

First, to provide greater clarification on the definition of seclusion, we propose moving the following language from 603 CMR 46.07(5) (Safeguards) to 46.02 (Definition of Seclusion), so that the definition of Seclusion would include: “*The term does not include: a classroom or school environment where, as a general rule, all students need permission to leave the room or area, such as to use the restroom; a behavior support technique that is part of the district’s, school’s or program’s designated procedures for behavior support which involves the monitored separation of a student in an unlocked setting, from which the student is allowed to leave and it is implemented for the purpose of calming; or placing a student in a separate location within a classroom with others or with an instructor, so long as the student has the same opportunity to receive and engage in instruction.”*

Second, in response to comments suggesting that the use of seclusion is now permitted rather than prohibited and to emphasize its prohibition, DESE proposes to change the language in 603 CMR 46.07(2) (Safeguards) from “Notwithstanding 603 CMR 46.02(1)(a)” to “s*eclusion shall be prohibited in”* a public education program except in an emergency situation.

Third, to address the comments regarding the need for a phased implementation of the regulations to facilitate staff training, DESE proposes to change the implementation date from September 2, 2025 to August 17, 2026. DESE also plans to provide guidance relating to the implementation of the proposed regulatory updates and plans to issue funding opportunities to support professional development in advance of the implementation deadline.

At the June 24, 2025, Board meeting, Iraida J. Álvarez, Acting Executive Director of Special Education, Jamie Camacho, Acting State Director of Special Education, and Jannelle Roberts, Director of the Office of Approved Special Education Schools will present a summary of the public comment as well as discuss these additional proposed changes to the regulations.

All public comment received, with personal data redacted as required, is available upon request.

Enclosures:

March 18, 2025 memorandum

Summary of public comment and Department’s response

603 CMR 46.00 Strikethrough showing proposed amendments

603 CMR 18.00 Strikethrough showing proposed amendments

Motion