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LEGAL ADVISORY:

AMENDMENTS TO STUDENT RESTRAINT REGULATIONS

I. SUMMARY

The Massachusetts Board of Elementary and Secondary Education adopted revised student restraint regulations on December 16, 2014, effective January 1, 2016. The amended regulations, codified at 603 Code of Massachusetts Regulations 46.00 (“603 CMR 46.00”), are applicable to students in publicly funded elementary and secondary education programs including: public school districts, charter schools, virtual schools, collaborative education programs, and, via conforming amendments to 603 CMR 18.00, special education schools.

At the start of the school year we think it will be helpful to review the new regulations. Among the most anticipated revisions are outright prohibitions on mechanical and medication/chemical restraint, prohibitions on prone restraint in all but the specifically prescribed circumstances outlined below, any restraint longer than twenty (20) minutes and a “timeout” longer than thirty (30) minutes without principal approval. Seclusion remains prohibited without exception. Other significant changes include increased staff training, program policy and reporting requirements, with an even more stringent mandate that alternatives to restraint be implemented whenever possible.

II. SIGNIFICANT CHANGES IMPACTING PUBLIC SCHOOLS

603 CMR 46.01(2) Scope:

- Inclusion of “virtual schools”

603 CMR 46.01(3) Purpose:

- Strengthening language ensuring that students be “free from the use (not just the “unreasonable” use as previously stated) of physical restraint” in all but “emergency

situations of last resort...,” and only “with extreme caution” after “lawful and less intrusive alternatives” have failed...

603 CMR 46.02 Definitions:

- Inclusion of or updates to the following terms: commissioner, consent, department (Department of Elementary and Secondary Education, (“DESE”)), mechanical restraint, medication restraint, parent, physical escort, physical restraint, principal, prone restraint, public education programs/programs, school working day, seclusion, time-out.
- Removal of the following terms: extended restraint, restraint – other, seclusion restraint, chemical restraint.

603 CMR 46.03 Use of Restraint:

- Inclusion of more stringent “prohibitions” in lieu of previous “limitations,” including **outright prohibition** of mechanical restraint, medication restraint, and seclusion in public education programs. See 46.03(1)(a).
- Prohibitions on prone restraint except on an individual student basis and only upon meeting all of the following prescribed circumstances under 46.03(1)(b):

(1) student has documented history of self-injury, or causing injury to other students or staff; (2) all other physical restraints have failed to ensure safety of student and/or others; (3) no documented medical contraindications exist; (4) psychological or behavioral justification exists, with no documented contraindications; (5) consent has been obtained to use prone restraint in an emergency and principal has provided written approval; and (6), 603 CMR 46.03(1)(b)1-5 has been documented in advance of prone restraint and documentation has been maintained.

- Physical restraint shall not be used when medically contraindicated, as a standard response for any individual student, **physical restraint is not to be included in an individualized behavior plan or individualized education program as a standard response**. See 46.03(2)(b) and (d).

603 CMR 46.04 Policy and Procedures; Training

- Requirement that public education programs develop and implement written restraint prevention and behavior support policy and procedures, including but not limited to a description and explanation of the program’s alternatives to physical restraint and method of restraint in emergency situations, including a statement prohibiting medication restraint, mechanical restraint, prone restraint except as prescribed, seclusion, and use of any physical restraint inconsistent with 603 CMR 46.00. 603 CMR 46.04(1).

- Requires that public education programs develop procedures for periodically reviewing data and documentation on use of physical restraints, implementing reporting requirements, making reasonable efforts to notify parents of restraint within 24 hours, and obtaining the principal's approval for a time-out lasting for more than thirty (30) minutes. See 603 CMR 46.04(1).

603 CMR 46.05: Proper Administration of Physical Restraint

- Strengthened requirement that restraint be terminated as soon as the student is no longer an immediate danger to himself or others, or if the student indicates trouble breathing or is in severe distress such as sustained or prolonged crying or coughing, in lieu former "as soon as possible." See 603 CMR 46.05(4).
- Requirement principal approval be obtained for a restraint lasting for more than twenty (20) minutes. See 603 CMR 46.05(5)(c).

603 CMR 46.06: Reporting Requirements

- Program staff mandated to report on **any** physical restraint; mandatory reporting not limited to only restraints resulting in injury and/or lasting for more than five (5) minutes. 603 CMR 46.06(1).
- Staff obligated to inform principal of **any** restraint; if principal performed restraint, obligated to report to individual or team designated by the Superintendent or Board of Trustees. 603 CMR 46.06(2).
- Parents shall be informed of any restraint within twenty-four (24) hours rather than "as soon as possible. See 603 CMR 46.06(3).
- Principals must conduct weekly restraint review and complete assessments and written action plans if a student is retained multiple times within a week; Principals must conduct a monthly review of school wide restraint data. 603 CMR 46.06(5) and (6).
- Strengthened reporting requirements to the DESE – all physical restraints and all restraint related injuries must be reported. 603 CMR 46.06(7) and (8).

Former 603 CMR 46.07: Special Circumstances

- Section regarding provisions specific to students with disabilities, IEPs, individual waiver of reporting requirements removed.

III. CONCLUSION

The amended student restraint regulations effective January 1, 2016 are more restrictive than their prior iteration. The revised regulations subject districts to increased training, policy

developed and reporting responsibilities. You should review the new regulations and contact local counsel with any questions.

This advisory is for informational purposes only and may be considered advertising. It is not intended to and does not constitute legal advice with respect to any specific matter and should not be acted upon without consultation with legal counsel.