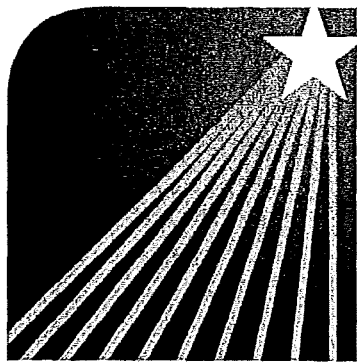


# MAINE STATE LEGISLATURE

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**Maine**  
Department of  
**Education**

**REPORT ON THE EFFECT OF THE 2013 CHANGES IN  
DEPARTMENT RULE CHAPTER 33:  
REGULATING THE USE OF PHYSICAL RESTRAINT AND SECLUSION**

A REPORT TO THE JOINT STANDING COMMITTEE ON  
EDUCATION AND CULTURAL AFFAIRS  
Pursuant to Resolves 2013, Chapter 8

January, 2014



## INTRODUCTION

This report is submitted pursuant to Resolves 2013, chapter 8. That Resolve authorized the Department of Education to adopt an amended version of Rule Chapter 33 Regarding Physical Restraint and Seclusion, and required the Department to provide follow-up information on the impact of the amended rule on students, school staff and parents. The following background section provides a history of the development of Rule Chapter 33 and the changes made by Resolves 2013, chapter 8. (See Attachment A)

## BACKGROUND

On February 12<sup>th</sup>, 2012, the Department of Education filed with the Legislature a complete rewrite of the rule regulating the use of restraint and seclusion in educational settings, Rule Chapter 33.

That proposal, submitted to the Legislature as a provisionally-adopted rule, was based on recommendations of between 15 and 20 stakeholders engaged in a consensus-based rulemaking process facilitated by a Department staffer between January and October 2011. Among the key changes recommended by the stakeholder group and carried forward into the proposed rule were the following:

- Limiting the use of restraint or seclusion to situations in which a student's behavior presents an imminent risk of injury or harm to the student or others;
- Requirements for documentation and debriefing of each use of restraint or seclusion;
- Clear definitions of "restraint" and "seclusion;"
- A requirement for staff training by approved training entities;
- Development of local complaint processes; and
- Data collection and reporting.

The rule was presented to the Education Committee in a public hearing on March 7, 2012. No one testified in opposition to the rule, although comments were made about the need to clarify the rule, the potential cost of training, the time required to implement notifications and debriefings, and about 2 types of interventions that were excluded from the definition of "physical restraint."

The committee and the Legislature, through Resolve 2011, chapter 146, authorized the Department to finally adopt the rule with some changes specified in the Resolve. (See Attachment B) The amended rule took effect July 1, 2012.

Soon after the rule took effect, school administrators, teachers, staff and parents expressed significant concerns about the rules. In particular, they criticized the restrictiveness of the rule and pointed to the rule as the cause of classroom disruption and property damage. Examples of adverse rule impact include:

- Teachers claimed that they were told by administrators not to ever touch a child, and that this prevented them from being able to intervene even when there was a risk of physical harm.
- Administrators claimed that staff was not able to prevent thousands of dollars of damage to computers, classrooms and other school property.
- Parents claimed that their children were being denied educational opportunities because teaching stopped when students disrupted the class and could not be escorted out of the classroom.
- Staff at schools said it was difficult to determine when danger was “imminent.”

As directed by the Resolve authorizing final adoption of the rule in 2012, the Department of Education provided guidance to the field regarding permissible and impermissible uses of restraint or seclusion. As required by the rule, school administrative units sent staff to training programs to learn strategies for de-escalating student behavior to avoid the need for restraint or seclusion. Schools were also attending trainings presented by the law firm of Drummond-Woodsum.

Despite the information provided by the Department, we believe that misunderstanding and misinterpretation of the rule persisted. We heard from teachers and superintendents that they believed that the rule prohibited physical interventions unless the behavior presented “a matter of life or death.” In reality, the rule allows physical intervention when there was an imminent risk of physical injury or harm, without requiring any degree of harm or injury.

The Department was urged to amend the rule to alleviate these concerns. Because the rule is a major substantive rule that required legislative approval, the Department suggested that the Legislature take up the issue directly and determine what changes should be made in the rule.

L.D: 243, Resolve to Direct the Department of Education to Amend its Rules Regarding Restraint of Students, was introduced to the First Regular Session of the 126<sup>th</sup> Legislature. It proposed to require the Department to amend Rule Chapter 33 to do the following:

1. Replace the definition of “physical escort” with language that provides that physical escort is the temporary touching or holding of a student who is acting out, for the purpose of inducing that student to walk to a safe location and that if the student is under 8 years of age, physical escort includes picking up the student, with the use of minimal force, in order to move the student to a safe location;
2. Provide that physical restraint may include a brief period of physical restriction by person-to-person contact accomplished with minimal force and designed to prevent a student from causing injury or harm, property destruction or disruption of the educational environment;
3. Allow the use of seclusion or restraint to prevent significant property damage and to prevent disruption of the educational environment; and
4. Allow restraint or seclusion of a student under the circumstances described in a written document signed by that student's parent.

In response to the bill, a group of stakeholders met to discuss a potential amendment to the language of the bill. The stakeholders included representatives of MADSEC, MEA, MSMA and the Disability Rights Center. Their recommended amendment formed the basis of the Education Committee’s report. The final version of L.D. 243 contained language requiring the Department of Education to do the following:

- Amend Rule Chapter 33 to change the threshold for the use of physical restraint or seclusion from “imminent risk of injury or harm” to “risk of injury or harm”
- Amend the Rule to provide that a risk of injury or harm is when a student has the means to cause physical harm or injury to self or others and such injury or harm is likely to occur such that a reasonable and prudent person would take steps to protect the student and others against the risk of such injury or harm
- Amend the rule so that a brief period of physical contact necessary to break up a fight is not considered a reportable “physical restraint”
- Amend the rule’s definition of “physical escort,” which is not considered a physical restraint, to delete the requirement that the student move “voluntarily” and replacing it with a requirement that the escort is to induce the student to walk to another location, and that “escort” includes assisting the student to the student’ feet in order to be escorted”
- Amend the rule to require the Department of Education to annually ensure that teachers and administrators are provided with consistent and accurate information regarding the requirements of the Rule
- Adopt the changes to the rule through an expedited process, without the need for further legislative approval

- Submit a report to the Joint Standing Committee on Education and Cultural Affairs describing the effect of the changes required by the Resolve, after consulting with stakeholders and including feedback from the stakeholders
- Provide non-regulatory guidance designed to provide accurate information to teachers and administrators regarding the requirements of the rule, and submit a report regarding these trainings before the end of the Second Regular Session

This report is provided in response to the requirement to report on the effect of the changes made to the rule pursuant to Resolve 2013, chapter 8.

### **DEPARTMENT COMMENTS ON EFFECT OF THE RULE CHANGE**

The Resolve directing the Department to amend Rule Chapter 33 took effect April 15, 2013. On April 24<sup>th</sup>, the Department filed the rule with the changes required by the Resolve, and the revised rule took effect on April 29<sup>th</sup>, 2013.

Since the amended Rule Chapter 33 took effect, the Department has not received any formal complaints from parents, teachers, administrators or others on the misuse, overuse or failure to use restraint or seclusion in Maine schools. We receive occasional phone calls from parents who have not yet pursued the local complaint process; in accordance with the rule, they are directed to try the local resolution process and to call the Department if that process does not satisfy their concerns. To date, no parents have called back to pursue the complaint with the Department.

The Department has highlighted changes to the rule in our Commissioner's Update, emailed weekly to over 3,500 recipients. The Department's Website includes a Webinar describing the rule, non-regulatory guidance on the application of the rule and other materials to assist schools in complying with the rule. (See Attachments C, D and E) We have also invited stakeholders to participate in an effort to create a "Best Practices" manual, similar to the manual on Bullying Prevention.

The first data regarding the use of restraint and seclusion in Maine schools, covering school year 2012-13, was collected by the Department in the summer of 2013 and released in September 2013. (See Attachment F) This data covered the period both before and after the rule change. It's difficult to discern the impact of the rule from this data, since (1) the data covers an entire school year; and (2) one provision of the rule could have increased the permissible use of physical restraint or seclusion by deleting the requirement that the risk of injury or harm be "imminent" and another provision could have decreased the reported use by expanding the types of interventions that are not considered restraints and therefore do not need to be reported as restraints. Without looking in detail at reports, it would be difficult to determine the impact of the rule changes on the number and/or type of restraints or seclusions.

To provide some information to the Committee, the Department has contacted school departments and stakeholders to gather narrative explanations of the impact of the rule. These are presented in the next section.

## STAKEHOLDER COMMENTS

### Special Education Directors' comments (sampling across the State)

**RSU 14:** Thank you for reaching out. Below are comments from the RSU 14 district perspective. In general it is reported that in district we have used fewer restraints this year at the middle school, but that's more related to the students than the rules. With regard to the rule, it's not so much that they are not clear as much as it relates to determining the point at which a restraint is necessary. However, there will always be ambiguity in that sense as each situation is unique in terms of what may be required at which point.

Overall consensus in district from administrators & a few others that reached out to me: Think the rules are clear. We think the challenge arises when people are reacting to the differences between what the law says and what Safety Care language says - specifically when it comes up around what is seclusion, escort vs restraint, and how disruptive is disruptive?

I think the guidance and webinars were pretty clear so it may be just a practice and education piece. If anything were to be changed in the focus of Ch 33, we recommend that there be more importance placed upon the use of comprehensive behavior support plan components --- i. e. what to do prior to the need for a restraint or seclusion. This is an area that more Professional Development is needed though we only speak from our district perspective. This Professional Development need is especially true for parents/guardians, case-managers etc.

**Auburn:** With the changes to Chapter 33 we can now intervene, thus be more effective in dealing with difficult student situations. Our number of restraints has gone down from last year because we can implement interventions, whereas before we could not.

**AOS #66:** (E. Millinocket) Staff is far more comfortable now that they can intervene.

**AOS #43:** (Howland) We had a very tough year last year. Teachers were very afraid to do anything. Things were very out of hand. Now that we can do regular escorting things have calmed down a lot.

**Harrington:** Things are better; teachers feel as though they can do something. Since the Rule revision, the change has been positive.



**Gorham:** Teachers have become more comfortable with the Rule change. They feel less leery and more settled than last year. There have been far fewer questions.

**RSU #15:** Teachers are more at ease. Teachers are far less worried about taking a student's hand when they need to or intervening if there is a fight.

**RSU #19: (Newport)** The changes in the Rule have been absolutely positive. The language was way too restrictive before. Our numbers have gone way down. The way the Rule is worded now, the numbers give a much more accurate depiction of needed restraints.

**AOS #92: (Vassalboro, Winslow, Waterville)** We have xxx students, who bite, kick, and swing. Our staff wears protective gear. With the rule change, things have settled down a lot. There are far fewer questions. We stay in contact with the parents of these children and maintain our documentation.

**RSU #72: (Fryburg)** The changes have lessened staff fear. They can now take the hand of a little one to escort and not be afraid.

**RSU #51: (Cumberland)** The question was raised about stabilizing a student to release their hand from a hair pull of another. Is this considered a restraint? This question has been raised with Directors across York and Cumberland County. The changes that have been made to the Rule are very positive overall and much more realistic.

**Kittery:** The change has been good by making things clear. It was difficult for us before the change. We generated a lot of paper. We teach all our educational techs TCI and have been very proactive for quite a while. Last year was very difficult to keep up with the documentation so we are pleased with the changes.

**Maine Education Association, Lois Kilby-Chesley, MEA President**

Following the changes to the rule, the MEA has not heard complaints from members. We went from such a problem of complaints before the changes to nothing following the changes. This makes me think the changes solved many of the problems and clarified for Superintendents our members' rights to protect themselves and other students in the event a student has a melt-down.

**Disability Rights Center, Atlee Reilly, Esq.**

Initially, after the changes were made in the Rule, calls from parents went down. Now, the number of calls is creeping up. There seems to be an inconsistency in language specific to "escorting" in approved training programs. For example, CPI does consider an escort a restraint,

when a child is escorted against his/her will. Having the inconsistency in language for "escort" is creating an opportunity for questions.

Secondly, it is questionable how seclusion is being used. We have heard that schools are getting around the need to report by placing an ed tech in the doorway of the room where a child is secluded and essentially blocking the child from leaving. This could go on for 2 hours or longer, showing lack of attention to the 10-minute rule (requiring an administrator or designee to be called after 10 minutes to determine whether continued seclusion is warranted).

## CONCLUSION

As a result of the feedback we received, it appears that the amended Rule Chapter 33 has alleviated many of the concerns about the 2012 version of the rule. It appears that teachers and school staff feel able to keep control in classrooms, and that these changes have not triggered a rash of parent concerns. The Department will continue to be available to answer questions, provide guidance and address complaints regarding the use of restraint and seclusion in educational settings.

For additional information on restraint and seclusion or Rule Chapter 33, see the Department Website at [www.maine.gov/doe/school-safety/restraints](http://www.maine.gov/doe/school-safety/restraints) or contact:

Stephanie Galeucia  
Student Assistance Coordinator  
Maine Department of Education  
[Stephanie.Galeucia@maine.gov](mailto:Stephanie.Galeucia@maine.gov)  
(207) 624-6685

## ATTACHMENTS

- A. Resolves 2013, chapter 8 (L.D. 243)
- B. Resolves 2011, chapter 146 (L.D. 1838)
- C. Maine Department of Education Website Content Listing
- D. Non-regulatory Guidance to the Field on Rule Chapter 33
- E. Questions and Answers Provided to the Field on the DOE Website
- F. Data on the Use of Restraints and Seclusions for the 2012-13 School Year

**Maine Department of Education**  
**State House Station 23**  
**Augusta, Maine 04333**  
**(207) 624-6600**  
[www.maine.gov/doe](http://www.maine.gov/doe)

**ATTACHMENT A**  
**RESOLVES 2013, CHAPTER 8**



STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

—  
S.P. 79 - L.D. 243

**Resolve, To Direct the Department of Education To Amend Its Rules  
Regarding Restraint of Students**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, significant revisions to Department of Education Rule Chapter 33 governing the restraint and seclusion of students took effect July 1, 2012; and

**Whereas**, educators, administrators and parents have expressed concern with the limitations on the use of restraint and seclusion; and

**Whereas**, because Rule Chapter 33 is a major substantive rule, changes to the rule require legislative review before the changes may be made; and

**Whereas**, the Legislature has authority to direct the Department of Education to amend its rule to reflect legislative policy determinations; and

**Whereas**, educators and administrators need tools immediately to restore order to classrooms through limited additional uses of restraint or seclusion; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Amendment of rule. Resolved:** That the Department of Education shall amend portions of Chapter 33: Rule Governing Physical Restraint and Seclusion as follows.

1. The rule must be amended in Section 2 to replace the definition of physical escort with language that provides that physical escort is temporary touching or holding for the purpose of inducing a student to walk to another location, including assisting the student to the student's feet in order to be escorted.

2. The rule must be amended to modify the threshold for the use of physical restraint as follows:

A. In the summary of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

B. In Section 1 of the rule to provide that physical restraint and seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others;

C. In Section 2, subsection 6 of the rule to provide that dangerous behavior is behavior that presents a risk of injury or harm to a student or others;

D. In Section 2, subsection 9 of the rule to provide that risk of injury or harm describes a situation in which a student has the means to cause physical harm or injury to self or others and such injury or harm is likely to occur such that a reasonable and prudent person would take steps to protect the student and others against the risk of such injury or harm;

E. In Section 5, subsection 1, paragraph A to provide that seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others and only after other less intrusive interventions have failed or been determined inappropriate;

F. In Section 5, subsection 2, paragraph B to provide that seclusion may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm;

G. In Section 5, subsection 3, paragraph A to provide that a student in seclusion must be continuously monitored until the student no longer presents a risk of injury or harm to self or others;

H. In Section 5, subsection 4, paragraph A to provide that the staff involved in the use of seclusion shall continually assess the student for signs that the student is no longer presenting a risk of injury or harm to self or others and to provide that the seclusion must be discontinued as soon as possible;

I. In Section 6, subsection 1, paragraph A to provide that physical restraint may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others and only after other less intrusive interventions have failed or been determined inappropriate;

J. In Section 6, subsection 2, paragraph B to provide that physical restraint may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm;

K. In Section 6, subsection 3, paragraph B to provide that a student in physical restraint must be continuously monitored until the student no longer presents a risk of injury or harm to self or others;

L. In Section 6, subsection 4, paragraph A to provide that the staff involved in the use of physical restraint must continually assess the student for signs that the student in physical restraint is no longer presenting a risk of injury or harm to self or others

and to provide that the physical restraint must be discontinued as soon as possible;  
and

M. In Section 6, subsection 4, paragraph D to provide that if attempts to release the student from physical restraint have been unsuccessful and the student is still presenting behaviors that create a risk of injury or harm to self or others, the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local emergency management services or other community resources.

3. The rule must be amended in Section 2, subsection 16 to provide that physical restraint does not include a brief period of physical contact necessary to break up a fight.

4. The rule must be amended to require the Department of Education to ensure annually that teachers and administrators throughout the State are provided with consistent and accurate information regarding the requirements of Rule Chapter 33; and be it further

**Sec. 2. Expedited amendment process. Resolved:** That, notwithstanding the Maine Revised Statutes, Title 5, chapter 375, subchapters 2 and 2-A or any other law, the Department of Education shall amend its Rule Chapter 33: Rule Governing Physical Restraint and Seclusion as provided in this resolve and shall file the amended rule with the Secretary of State as a final amended rule within 7 business days of the effective date of this resolve. Rules adopted pursuant to this resolve are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Beginning July 1, 2013, any changes to Rule Chapter 33 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and be it further

**Sec. 3. Report. Resolved:** That the Department of Education, not later than January 10, 2014, shall submit a report to the Joint Standing Committee on Education and Cultural Affairs describing the effect of the changes required by this resolve. The Department of Education shall consult with relevant stakeholders and include feedback from these stakeholders in its report. The committee may submit a bill related to the report to the Second Regular Session of the 126th Legislature if the committee determines it is necessary to amend or adjust any language contained in this resolve; and be it further

**Sec. 4. Nonregulatory guidance. Resolved:** That the Department of Education shall, within 45 days of the effective date of the changes to Rule Chapter 33: Rule Governing Physical Restraint and Seclusion filed with the Secretary of State, develop non-regulatory guidance designed to provide accurate information to teachers and administrators regarding the requirements of the revised rule. The Department of Education shall submit a report detailing these training efforts to the Joint Standing Committee on Education and Cultural Affairs before the end of the Second Regular Session of the 126th Legislature.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.





**ATTACHMENT B**  
**RESOLVES 2011, CHAPTER 146**



## STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

H.P. 1360 - L.D. 1838

**Resolve, Regarding Legislative Review of Chapter 33: Regulations  
Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public  
Schools and Approved Private Schools, a Major Substantive Rule of the  
Department of Education**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Adoption. Resolved:** That final adoption of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2 to provide that public charter schools are covered entities;
2. The rule must be amended in section 2 to clarify that physical restraint does not include:
  - A. Physical contact when the purpose of the contact is to comfort a student and the student voluntarily accepts the contact; or
  - B. Momentarily deflecting the movement of a child when the child's movements would be destructive, harmful or dangerous to the child or to others;
3. The rule must be amended in section 6 to clarify that when a staff person who is not certified in a state-approved training program initiates physical restraint, trained personnel must be summoned to the scene only if the emergency situation continues;
4. The rule must be amended in section 7 to clarify that a staff person who initiates physical restraint or seclusion that involves a student who has been placed in an out-of-district placement must report the incident to the entity responsible for the student's education within 24 hours or by the next business day;
5. The rule must be amended in section 8 to clarify that the incident report documenting the use of physical restraint or seclusion must indicate if any of the personnel involved in the incident were certified in a state-approved training program; and
6. The rule must be amended in section 12 to clarify that the state-approved training programs may include regional training programs and regional "train the trainer" program models to provide the required training for personnel in the covered entities; and be it further

**Sec. 2. Department of Education; nonregulatory guidance. Resolved:** That, no later than September 1, 2012, the Department of Education shall provide nonregulatory guidance to school administrative units, public charter schools, private schools and other covered entities that are subject to the requirements of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools. The guidance provided by the department to the covered entities must include, but is not limited to, examples of what is and is not considered to be physical restraint or seclusion. The guidance must be disseminated to all covered entities in writing, and the department shall post the guidance on the department's publicly accessible website.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

**ATTACHMENTS C, D and E  
DOE WEBSITE MATERIALS**



## Maine Department of Education

Home → School Safety → Restraints and Seclusion

# Restraints and Seclusion

The Maine Department of Education adopted a comprehensive revision of rules governing restraint and seclusion of students (Rule Chapter 33) which took effect July 1, 2012. Changes to the rule, effective April 29, 2013, have been made in accordance with the requirements of legislative Resolve 2013, Chapter 8.

## Training

Under the rule, a certain number of staff in schools and other covered programs must receive training regarding the use of restraint and seclusion. The training must be obtained from training programs approved by the Maine DOE.

- Department seeking applications for training programs
- Training program application and requirements
- List of approved training programs in the use of restraints and seclusion

## Rule Chapter 33: Rule Governing Physical Restraint and Seclusion

- Rule Chapter 33 as amended, effective April 29, 2013

## Reporting

- 2012-13 Data Reported By Schools (as of 9/23/13)
- File 2013 annual report of restraint and seclusion data (as of 9/23/13)
- List of SAUs that have yet to file 2013 restraint (as of 9/23/13)

## Resources & Materials

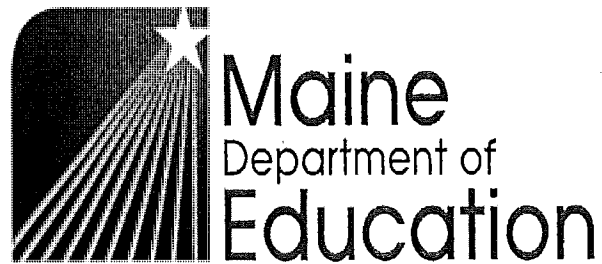
- Non-Regulatory Guidance (RTF, 1.8MB)
- Guided Tour of the Original Chapter 33 Regulations (Flash\*, approximately 90 minutes). Webinar explaining revisions to Chapter 33.
- Maine DOE Restraint & Seclusion Incident Report Form (DOC, 31KB). Covered entities are not required to use this form to record incidents of restraint or seclusion, but proper completion of this form will ensure that the incident information required in Rule Chapter 33 is recorded.
- Maine DOE Rule Chapter 33 Questions and Answers
- Management of Challenging Behaviors: Resources

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**Rule Chapter 33:  
Rule Governing Physical Restraint and Seclusion**

**Non-Regulatory Guidance**

August, 2013

## **Purpose**

This guidance document is designed to help school staff, parents, students and the public understand the limitations and requirements related to the use of physical restraint or seclusion of students in schools and other educational settings.

The limitations and requirements are set forth in Department of Education Rule Chapter 33, which is part of this document and is also available at <http://www.maine.gov/sos/cec/rules/05/chaps05.htm> .

This document explains the Rule and provides examples of its applications, but is not part of the Rule. A complementary document describing techniques for de-escalating student behavior, thereby avoiding the need to use restraint or seclusion, is being created by a stakeholder group, and is expected to be available before the end of 2013.

## Contents

- I. A guide to the types of interventions addressed in Chapter 33
- II. Key terms
- III. Sample scenarios and analysis under the Rule
- IV. Requirements during and after an incident of restraint or seclusion
- V. Training requirements
- VI. Resources for managing student behavior
- VII. Maine DOE Contact Information

## Appendices

- Text of Chapter 33: Rule Governing Restraint and Seclusion (as revised effective April 29, 2013)
- Sample Incident Report Form

## I. A guide to the types of Interventions addressed in Chapter 33

The stated purpose of Rule Chapter 33 is to establish standards for the use of physical restraint and seclusion to provide for the safety of all individuals.

In doing so, the Rule identifies actions that:

- A. Are not considered to be physical restraint or seclusion and therefore are not subject to the requirements of the Rule;
- B. Constitute physical restraint or seclusion, which may be utilized in certain situations and which are subject to requirements and limitations set forth in the Rule; and
- C. Are prohibited under all circumstances under the Rule.

A. The following actions are not considered to be physical restraint or seclusion under the Rule.

These actions:

- 1) are not limited to situations where a student's behavior presents a risk of injury or harm; and
- 2) are not subject to requirements for reporting, notification or debriefing:

- Breaking up fights  
Brief physical contact necessary to break up a fight.
- Comforting  
Physical contact with the purpose of comforting the student, providing the student voluntarily accepts the contact.
- Deflection  
A momentary deflecting of the student's movement when that movement might otherwise be destructive, harmful or dangerous to the student or others.
- Passenger restraints and harnesses  
A seat belt, safety belt or other passenger restraint (used as intended during the transportation of a student in a motor vehicle), or a medically-prescribed harness (used as intended)

- Physical escort  
Temporary touching or holding for the purpose of inducing a student to walk to another location, including assisting the student to his/her feet in order to be escorted.
- Physical prompt  
A teaching technique that involves physical contact with the student and enables the student to learn or model the physical movement involved in the competency being taught.

B. The following interventions are considered to be physical restraint or seclusion under the Rule.

These actions are:

- 1) limited to situations where a student's behavior presents a risk of injury or harm; and
- 2) subject to requirements for reporting, notification or debriefing.

- Physical restraint  
Physical contact that restricts a student's freedom of movement or normal access to his/her body, including moving a student who has not moved voluntarily.
- Seclusion  
Involuntarily confining a student alone in a room or clearly defined area from which the student is prevented from leaving.

C. The following actions are prohibited under the Rule:

- Airway restriction  
Physical restraint that restricts movement of the diaphragm or chest or restricts the airway so as to interrupt normal breathing or speech
- Aversive procedure  
The use of a substance or stimulus, intended to modify behavior, which the person administering knows or should know is likely to cause physical and/or emotional trauma to a student, including infliction of bodily pain, extreme physical exercise, costumes or signs.
- Chemical restraint

Medication given involuntarily to control student behavior (Note: prescribed medications are not chemical restraints when administered by a health care provider consistent with a student's health care plan).

- Mechanical restraint  
Any item worn by or placed on a student to limit behavior or movement and which cannot be removed by the student (Note: prescribed assistive devices are not mechanical restraints when used as prescribed and supervised by qualified individuals).
- Preventing property destruction  
Physical restraint or seclusion used to prevent property destruction or disruption of the environment, unless such behavior also presents a risk of injury or harm.

## II. Key Terms

Rule chapter 33 provides definitions and explanations for terms relevant to restraint and seclusion. This section further explains some key terms.

### *Incident*

- The term "incident," as used in the rule refers to a period of time during which one or more physical restraints or seclusions are implemented on a student. The incident begins when the student is restrained or secluded because he is considered to pose a risk of injury or harm and ends when he is no longer considered to pose that risk and returns to normal educational programming (or is sent home or away from the school).
- Incident reports, notifications and debriefings are based on the occurrence of incidents. An incident may involve multiple "uses" of restraint or seclusion.
- For purposes of aggregate data collection from schools, the rule requires the number of "uses" of physical restraint or seclusion, not the number of incidents. Accurately completing the data collection may require careful review of the incident report for the number of uses of restraint or seclusion.

### *Risk of injury or harm*

- Must be present before a student may be restrained or secluded
- Refers to physical injury or harm
- Such a risk is present: (1) when a student has the means to cause physical harm or injury to self or others; and (2) injury or harm is likely to occur, such

that a "reasonable and prudent person" would take steps to protect the student and others against the risk of such injury or harm

- Risk of injury or harm does not have to be immediate or imminent

### *Physical Escort*

- Physical escort is NOT considered to be physical restraint under the rule
- Physical escort involves temporary touching or holding to induce a student to walk to another location; the student may not want to move to another location, but if she is walking toward that location, even while being "shepherded" by a staff person, she is being escorted, not restrained

### *Physical restraint*

- Occurs when a student's freedom of movement or normal access to his or her body is restricted
- Deflection, physical escort and comforting are not physical restraint
- Breaking up a fight by the use of a brief period of physical contact is excluded from the definition of physical restraint
- Seat belts, harnesses, prescribed assistive devices and prescribed medications are not prohibited as restraints if their use meets criteria set forth in the rule
- Any method of restraint that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech must not be used.
- Only trained staff should perform a restraint, to ensure that it is performed safely for the student and the staff member. However, due to the nature of some emergencies, this may not be possible. In such cases, a trained staff person should be summoned to the scene as quickly as possible.

### *Seclusion*

- Seclusion involves a student being (1) placed ALONE in a room or other defined area; and (2) from which the student is physically prevented from leaving.

### *Serious Bodily injury*

- Must involve substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.



- Any occurrence of a serious bodily injury to a student involved in a restraint or seclusion must be reported to the Maine Department of Education within 24 hours of its occurrence.

#### *Timeout*

- Timeout is different from seclusion – a student who requests a break, or voluntarily complies with a request to take a break, is having a timeout, not involved in seclusion.
- Timeout is not seclusion or physical restraint and is therefore not subject to limitations or reporting requirements set forth in Chapter 33

### **III. Sample Scenarios and Analysis under the Rule**

*A student is being disruptive in the lunch room, and does not respond to a staff member's verbal directions. The staff member takes hold of the student's hand while walking him/her to a particular location. The student allows him/herself to be led, but is cursing and complaining.*

The staff member here is using physical escort, which is not restraint and therefore permitted even though the student is not creating a risk of injury or harm. The fact that the student was cursing and complaining while walking with the staff member would not convert the movement to restraint. Only if the student began to physically struggle against the movement, pulling away with more than merely token resistance, would the activity cross the line to become restraint.

*A student is singing loudly in the classroom, and refuses verbal requests to be quiet. The student actively and physically resists attempts to be escorted from the classroom.*

Unless the student shows signs of having escalated to the extent that staff reasonably believes that injury or harm is likely to occur, restraint and seclusion may not be used merely to control challenging behavior or disruption of the environment. Staff should be familiar with and should follow any behavior intervention plan for the student.

*A student is knocking over desks and throwing chairs. Attempts to de-escalate the student have failed.*

Even though the student may not be directly attempting to injure himself or others, the student's behavior presents a risk of physical injury or harm to himself or others, as they could be hurt by flying furniture. Trained staff, if

not already present, may be summoned and the student restrained. Staff should be familiar with and should follow any behavior intervention plan for the student.

*A student is climbing on top of a bookcase. Attempts to de-escalate the student have failed.*

The student's behavior presents a risk of physical injury or harm to herself as she could fall. Trained staff, if not already present, may be summoned and the student restrained. Staff should be familiar with and should follow any behavior intervention plan for the student.

*A student loudly curses the teacher, who tells the student to go to the principal's office. The student goes to the office, waits in the reception area and then meets with the vice principal in his office.*

The student's behavior was disruptive, but presented no risk of injury or harm. No restraint was involved. The teacher verbally directed the student to go to the office, and the student complied. The student also was not in seclusion in the office as, even if there was no one else in the reception area, the student was not physically prevented from leaving.

For more scenarios, see the Ch. 33 Questions and Answers on the DOE Ch. 33 web page: <http://www.maine.gov/doe/school-safety/restraints/index.html>

#### **IV. Requirements during and after an incident of restraint or seclusion**

##### A. During a restraint or seclusion -- Implementation

*Physical restraint and seclusion:*

- ❖ Only after less intrusive interventions have failed or been deemed inappropriate.
- ❖ Implemented only by staff certified in a state-approved training program, to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a restraint or seclusion, trained personnel must be summoned as quickly as possible.

##### B. During a restraint or seclusion -- Monitoring and Termination

*Physical restraint:*

- ❖ Two adults present at all times (unless precluded for safety reasons);

- ❖ Monitor continuously;
- ❖ Discontinue when student no longer presents risk of injury or harm; and
- ❖ If restraint continues for more than 10 minutes, administrator determines whether to continue and continues to do so every 10 minutes until terminated.

*Seclusion:*

- ❖ One adult present at all times, situated so that student is visible;
- ❖ Monitor continuously;
- ❖ Discontinue when student no longer presents risk of injury or harm;
- ❖ If seclusion continues for more than 10 minutes, administrator determines whether to continue and continues to do so every 10 minutes until terminated; and
- ❖ Location must have adequate light, heat, ventilation and normal room height. If designated seclusion room used, must be at least 60 square feet, contain unbreakable observation window and be free of all hazardous material and objects.

C. Following a restraint or seclusion -- Notification

*Notify school administrator:*

- Orally, as soon as possible after the incident, but no later than the end of school day.
- If student is out of district, notice to sending district within 24 hours or by end of next business day.

*Notify parents:*

- As soon as practical, within school day when incident occurs, by phone or other appropriate means. If incident occurs outside school day, comply with procedures for emergency situations.

*Notify the Maine Department of Education:*

- Within 24 hours or the next business day if serious bodily injury or death of a student occurs during an incident

D. Following a restraint or seclusion -- Documentation

*Incident Report:*

- Complete and provide to administrator as soon as practical after each incident, but within two school days.
- Provide to parent within seven calendar days. Also provide to the sending district if the student is placed out of district.

E. Following a restraint or seclusion – Debriefing; Plan review or development

*After each incident:*

- Within two school days:
  - Administrator must review incident (debrief) with all staff who implemented the restraint or seclusion.
  - Administrator must debrief with the student.

Following debriefing, staff must prepare or review/revise a written plan for response and de-escalation in future situations with the student.

*After the third incident with a student in a school year*

- Within 10 school days:
  - If the student is in special education or has a 504 plan, the IEP/504 Team meets and considers the need for Functional Behavioral Assessment and/or Behavior Intervention Plan (or to amend existing plan)
  - If the student is not in special education and has no 504 plan, a team including parent, administrator, teacher, and staff member involved in the incident must meet to consider whether to make referral, and considers the need for Functional Behavioral Assessment and/or a Behavior Intervention Plan.

<b>V. Training Requirements</b>
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*Staff Training – 2 types*

- ✓ All staff, annually, must receive overview and awareness information about Ch. 33 and local policies on restraint and seclusion
- ✓ A sufficient number of staff must maintain certification in a DOE-approved training program relating to non-physical interventions (avoiding the need for seclusion or restraint), safe techniques for restraint or seclusion, monitoring, and debriefing following an incident. A list of trained staff must be available in each building office and central office.

### *Parent Awareness*

- ✓ Annual notice about Ch. 33 and local policies on restraint and seclusion must be provided to parents. The information must include a description of the local complaint process.

A Guided Tour of the requirements of Chapter 33 can be found on the Maine Department of Education Website on Restraint and Seclusion. <http://www.maine.gov/doe/school-safety/restraints/index.html>. This Webinar, along with updates or supplemental information, may be used to inform staff of the rule requirements.

## **VI. Resources for managing student behavior**

Finding the best way to manage challenging behaviors of individual students may require consultation with behavioral experts. However, educational systems can also benefit from system-wide approaches to behavior such as Response to Intervention (RtI) programs and Positive Behavioral Supports and Interventions.

RtI includes both academic and behavioral interventions. The Department of Education provided statewide RtI trainings for several years prior to the required implementation date of school year 2012-2013. Materials related to those trainings are available on the Department's website at [www.maine.gov/doe/rti/resources.html](http://www.maine.gov/doe/rti/resources.html).

A number of professional development providers offer training in RtI and Positive Behavioral Interventions and Supports (PBIS).

The Department of Education is working with a small group of stakeholders to create a "best practices" manual in the management of student behavior and the avoidance of the need for restraint or seclusion. That manual will be available before the end of the year.

For additional information, see the resources collected on the DOE Ch. 33 web page:  
<http://www.maine.gov/doe/school-safety/restraints/challenging.html>

## **VII. Maine Department of Education Contact Information**

Maine DOE is currently in the process of hiring a staff person to serve as a student assistance coordinator, who will have responsibility for compliance with Rule Chapter 33 among other duties.

Once that person is hired, his or her name will be provided in updates of this document. Until then, questions on Chapter 33 can be directed to [Jonathan.Braff@maine.gov](mailto:Jonathan.Braff@maine.gov).

## APPENDIX: TEXT OF CHAPTER 33

05-071 DEPARTMENT OF EDUCATION

### Chapter 33: RULE GOVERNING PHYSICAL RESTRAINT AND SECLUSION

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**SUMMARY:** This rule establishes standards and procedures for the use of physical restraint and seclusion. Physical restraint and seclusion may only be used as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others. The rule sets forth permitted and prohibited uses of restraint and seclusion, required notification and documentation of incidents of restraint or seclusion, aggregate reporting of incidents to administrators and the department of education, notification of parents, response to multiple incidents of restraint or seclusion of a student, local and state complaint processes and department approval of training programs.

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#### SECTION 1. POLICY AND PURPOSE

This rule establishes standards for the use of physical restraint and seclusion to provide for the safety of all individuals. Physical restraint and seclusion may only be used as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others.

#### SECTION 2. DEFINITIONS

1. **Aversive procedure** means the use of a substance or stimulus, intended to modify behavior, which the person administering it knows or should know is likely to cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include but are not limited to: infliction of bodily pain, (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.
2. **Behavior Intervention Plan (BIP)** is a comprehensive plan for managing problem behavior by changing or removing contextual factors that trigger or maintain it, and by strengthening replacement skills.
3. **Chemical Restraint** is the use of medication, including those administered PRN (as needed), given involuntarily to control student behavior.
4. **Covered Entity** means an entity that owns, operates or controls a school or educational program that receives public funds from the Maine Department of Education including, but not limited to: public schools, public regional programs, public charter schools, private schools, publicly-supported private schools, special purpose private schools, Career and Technical Education schools, public pre-kindergarten, and Child Development Services (CDS).
5. **De-escalation** is the use of behavior management techniques intended to cause a situation involving problem behavior of a student to become more controlled, calm and less dangerous, thus reducing the risk for injury or harm.
6. **Dangerous Behavior** is behavior that presents a risk of injury or harm to a student or others.

7. **Emergency** is a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.
8. **Functional Behavioral Assessment (FBA)** is a school-based process that includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child's environment. The term includes direct assessments, indirect assessments and data analysis designed to assist the team to identify and define the problem behavior in concrete terms, identify the contextual factors (including affective and cognitive factors) that contribute to the behavior, and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior. Formal documentation of the assessment by appropriately qualified individuals becomes part of the child's educational record.
9. **Risk of injury or harm** describes a situation in which a student has the means to cause physical harm or injury to self or others and such injury or harm is likely to occur; such that a reasonable and prudent person would take steps to protect the student and others against the risk of such injury or harm.
10. **Individualized Education Plan (IEP)** is a term used under special education law to reference the written document that states goals, objectives and services for students receiving special education.
11. **Individual Health Plan (IHP)** is a plan of action for a student with special health care needs, actual and potential. It is an adaptation of the nursing care plans commonly used in health care institutions.
12. **Mechanical Restraint** is any item worn by or placed on the student to limit behavior or movement and which cannot be removed by the student.
13. **Parent** means a parent, as defined in Title 20-A MRSA, section 1, subsection 20, with legal custody of a minor child, except that the "parent" of a child with disabilities means a parent as defined in the federal Individual with Disabilities Education Act, 20 United States Code, Section 1401 (23).
14. **Physical escort** is temporary touching or holding for the purpose of inducing a student to walk to another location, including assisting the student to the student's feet in order to be escorted.
15. **Physical prompt** is a teaching technique that involves physical contact with the student and that enables the student to learn or model the physical movement necessary for the development of the desired competency.
16. **Physical Restraint** is an intervention that restricts a student's freedom of movement or normal access to his or her body, and includes physically moving a student who has not moved voluntarily. Physical restraint does not include:
  - A. Physical escort;
  - B. Physical prompt;
  - C. Physical contact when the purpose of the intervention is to comfort a student and the student voluntarily accepts the contact;



- D. Momentarily deflecting the movement of a student when the student's movement would be destructive, harmful or dangerous to the student or to others;
  - E. The use of seat belts, safety belts or similar passenger restraint, when used as intended, during the transportation of a child in a motor vehicle; or
  - F. The use of a medically prescribed harness, when used as intended; or
  - G. A brief period of physical contact necessary to break up a fight.
17. **Positive alternatives** are a set of instructional and environmental supports to teach students pro-social alternatives to problem behaviors with high rates of positive feedback.
18. **School Day** is a day in which a school or program is in operation as an instructional day and/or a teacher in-service day.
19. **Seclusion** is the involuntary confinement of a student alone in a room or clearly defined area from which the student is physically prevented from leaving. Seclusion is not timeout.
20. **Section 504 Plan** refers to a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
21. **Serious bodily injury** is any bodily injury that involves—
- A. A substantial risk of death;
  - B. Extreme physical pain;
  - C. Protracted and obvious disfigurement; or
  - D. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
22. **Student** is a child or adult aged 3 to 20 enrolled in a school or a program owned, operated or controlled by a covered entity as defined in this section
23. **Timeout** is an intervention where a student requests, or complies with an adult request for, a break, and is not covered by this rule. Timeout is not seclusion.

### SECTION 3. APPLICATION OF RULE

#### 1. **Actions covered**

This rule applies to actions of a covered entity and its employees, contractors and agents during the conduct of the covered entity's educational program.

**2. Contracts with non-covered entities**

The Department of Education and any covered entity that places or funds the placement of a student in an educational program owned, operated or controlled by an entity other than a covered entity must include in the contract with that other entity a requirement that the entity and its employees, contractors and agents comply with the rule while the student is engaged in the educational program.

**3. Relationship to Statutory Protection**

Nothing in this rule may be construed to restrict or limit the protections afforded under 20-A MRSA §4009. The application of those protections to a person does not in any way relieve that person from the requirements and restrictions of this rule.

**SECTION 4. LOCAL POLICY; NOTICE TO PARENTS**

**1. Local Policy Required**

All covered entities shall have local policies, consistent with this rule, regarding the use of physical restraint and seclusion. Covered entities must also have a procedure available by which parents may submit a complaint regarding the use of physical restraint or seclusion on their child, based upon which the covered entity shall investigate the circumstances surrounding the incident complained of, make written findings and, where appropriate, determine to take corrective action.

Covered entities shall revise existing policies or develop policies consistent with this rule within 90 calendar days of the effective date of this rule.

**2. Annual notification of rule and local policies**

Annually, each covered entity shall provide overview and awareness information to all staff, including contracted providers, regarding the content of this rule and any local policies or procedures related to the use of physical restraint and seclusion.

Each covered entity shall provide an annual notice informing parents of students enrolled at the covered entity of this rule and any local policies or procedures related to the use of physical restraint and seclusion, including the local complaint process.

**SECTION 5. SECLUSION**

**1. Permitted uses of seclusion**

- A. Seclusion may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.
- B. Seclusion must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a seclusion, trained personnel must be summoned to the scene and assume control of the situation as rapidly as possible.

**2. Prohibited uses of seclusion**

- A. Seclusion may not be used for punitive purposes, staff convenience or to control challenging behavior.
- B. Seclusion may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm.
- C. Seclusion may not be used as a therapeutic or educational intervention.
- D. Seclusion may not take place in a locked room.

**3. Monitoring of a student in seclusion**

- A. At least one adult must be physically present to continuously monitor a student in seclusion. The adult, while not present in the room or defined area, must be situated so that the student is visible at all times. Students must be continuously monitored until the student no longer presents a risk of injury or harm to self or others.
- B. In the event of an injury to the student or staff, the local policy for emergency response must be initiated.

**4. Termination of seclusion**

- A. The staff involved in the use of seclusion shall continually assess for signs that the student is no longer presenting a risk of injury or harm to self or others, and the seclusion must be discontinued as soon as possible.
- B. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- C. The covered entity may request assistance from parents at any time during the incident.
- D. If attempts to release from seclusion have been unsuccessful and a student is still presenting behaviors that create a risk of injury or harm to self or others, then the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local EMS, or other community resources.
- E. If seclusion continues for more than 10 minutes, an administrator or designee shall determine whether continued seclusion is warranted, and shall continue to monitor the status of the seclusion every 10 minutes until the seclusion is terminated.

**5. Location of seclusion**

Seclusion can be achieved in any part of a school building with adequate light, heat, ventilation and of normal room height. If a specific room is designated as a seclusion room, it must be a minimum of 60 square feet with adequate light, heat, ventilation, be of normal room height, contain an unbreakable observation window in a wall or door and be free of hazardous material and objects with which a student could self-inflict bodily injury.

**SECTION 6. PHYSICAL RESTRAINT**

**1. Permitted uses of physical restraint**

- A. Physical restraint may be used only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.
- B. Physical restraint must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a physical restraint and if the need for physical restraint continues, trained personnel must be summoned to the scene and must assume control of the situation as rapidly as possible.
- C. Physical restraint may be used to move a student only if the need for movement outweighs the risks involved in such movement.
- D. Protective equipment or devices that are part of a treatment plan as prescribed by a licensed health care provider are not prohibited by this rule.

**2. Prohibited forms and uses of physical restraint**

- A. Physical restraint may not be used for punitive purposes, staff convenience or to control challenging behavior.
- B. Physical restraint may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm.
- C. No physical restraint may be used that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech (restraint-related positional asphyxia) of a student.
- D. No physical restraint may be used that relies on pain for control, including but not limited to joint hyperextension, excessive force, unsupported take-down (e.g. tackle), the use of any physical structure (e.g. wall, railing or post), punching and hitting.
- E. Physical restraint may not be used as a therapeutic or educational intervention.
- F. Aversive procedures and mechanical and chemical restraints may not be used under any circumstances.
- G. Prescribed assistive devices are not considered mechanical restraints when used as prescribed. Their use must be supervised by qualified and trained individuals in accordance with professional standards.
- H. Prescribed medications are not considered chemical restraints when administered by a health care provider consistent with a student's health care plan are permitted.

**3. Monitoring of a student in physical restraint**

- A. At least two adults must be present at all times when physical restraint is used except when, for safety reasons, waiting for a second adult is precluded.

- B. A student in physical restraint must be continuously monitored until the student no longer presents a risk of injury or harm to self or others.
- C. In the event of an injury, local policy must be followed.

**4. Termination of physical restraint**

- A. The staff involved in the use of physical restraint must continually assess for signs that the student in physical restraint is no longer presenting a risk of injury or harm to self or others, and the physical restraint must be discontinued as soon as possible.
- B. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- C. The covered entity may request assistance from parents at any time during the incident.
- D. If attempts to release the student from physical restraint have been unsuccessful and the student is still presenting behaviors that create a risk of injury or harm to self or others, the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local emergency medical services, or other community resources.
- E. If physical restraint continues for more than 10 minutes, an administrator or designee shall determine whether continued physical restraint is warranted, and shall continue to monitor the status of the physical restraint every 10 minutes until the physical restraint is terminated.

**5. Exclusions**

Those restraints used by law enforcement officers or school resource officers employed by a police department in the course of their professional duties are not subject to this rule.

**SECTION 7. NOTIFICATION OF INCIDENT**

**1. Reporting to an Administrator or Designee, others**

After each incident of physical restraint or seclusion, a staff member involved shall:

- A. Report to the administrator or designee by oral notification as soon as possible after each incident, but in no event later than the end of the school day of its occurrence, and
- B. If the student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, report the incident to the entity responsible for the student's education within 24 hours or by the end of the next business day.

**2. Notification to parents**

- A. An administrator or designee shall notify the parent that physical restraint or seclusion and any related first aid have occurred as soon as practical but within the school day in which the incident occurred, utilizing all available phone numbers and other appropriate means. If the parent is unavailable, a phone message must be left for the parent to contact

the school as soon as possible. If a parent does not have access to a phone, the entity must use whatever contact information is available for emergencies. The parent must be informed that written documentation will be provided to them within 7 calendar days.

- B. If a restraint or seclusion has occurred outside the school day, notification of the restraint or seclusion and any related first aid must occur as soon as possible in compliance with the entity's procedures for emergency situations

### **3. Reporting of Serious Bodily Injury or Death**

If serious bodily injury or death of a student occurs during the implementation of restraint or seclusion:

- A. Oral notification of the incident must follow local health and safety procedures as outlined by the covered entity's policies and procedures; and
- B. The administrator or designee shall notify the Department of Education within 24 hours or the next business day.

## **SECTION 8. DOCUMENTATION; INCIDENT REPORT**

### **1. Incident Report**

Each use of physical restraint or seclusion must be documented in an incident report. The incident report must be completed and provided to an administrator or designee as soon as practical after the incident, and in all cases within two school days. At a minimum, the incident report must include:

- A. Student name;
- B. Age, gender, grade;
- C. Location of the incident;
- D. Date of incident;
- E. Date of report;
- F. Person completing the report;
- G. Beginning and ending time of each physical restraint and seclusion;
- H. Total time of incident;
- I. Description of prior events and circumstances;
- J. Less restrictive interventions tried prior to the use of physical restraint or seclusion. If none used, explain why;
- K. The student behavior that justified the use of physical restraint or seclusion;

- L. A detailed description of the physical restraint or seclusion used;
- M. The staff person(s) involved, their role in the use of physical restraint or seclusion and their certification, if any, in an approved training program;
- N. Description of the incident, including the resolution and process of return to program, if appropriate;
- O. Whether the Student has an: a. IEP; b. 504 plan; c. behavior plan; d. IHP; or e. other plan;
- P. If a student or staff sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
- Q. Date, time, and method of parent notification; and
- R. Date, time of staff debriefing.

**2. Incident Report Provided to Parents, others**

A copy of the incident report must be provided, within 7 calendar days of the incident to:

- A. The parent; and
- B. If the student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, the entity responsible for the student's education.

**3. Duration of Incident**

For purposes of this Section and Section 9, an "incident" consists of all actions between the time a student begins to create a risk of harm and the time the student ceases to pose a risk of harm and returns to his or her regular programming.

**SECTION 9. RESPONSE TO THE USE OF PHYSICAL RESTRAINT OR SECLUSION**

**1. Debriefing**

- A. Following each incident of physical restraint or seclusion, the covered entity shall ensure that, within two school days, an administrator or designee reviews the incident:
  - (1) With all staff persons who implemented the use of physical restraint or seclusion to discuss:
    - (a) Whether the use of restraint or seclusion was implemented in compliance with this rule and local policies, and
    - (b) How to prevent or reduce the future need for physical restraint and/or seclusion; and
  - (2) With the student who was restrained or secluded to discuss:

- (a) What triggered the student's escalation; and
  - (b) What the student and staff can do to reduce the future need for restraint or seclusion.
- B. When physical restraint or seclusion has resulted in serious bodily injury to a student or staff member requiring emergency medical treatment, the debriefing must take place as soon as possible but no later than the next school day.
- C. Following the debriefing, staff must develop and implement a written plan for response and de-escalation for the student, or, if a plan already exists, staff must review and, if appropriate, revise it.

## 2. Multiple Incidents of Physical Restraint and Seclusion

- A. **Special Education/504 Students after Third Incident.** After the third incident of physical restraint or seclusion in a school year of a student who has been found eligible for special education or has a Section 504 plan, the student's IEP or 504 team shall meet within 10 school days of the third incident to discuss the incident and consider the need to conduct an FBA and/or develop a BIP or amend an existing one.
- B. **For all other students after Third Incident.** For students not described in Paragraph A, a team shall meet within ten school days of the third incident in a school year to discuss the incidents.
  - (1) The team shall consist of the parent, an administrator or designee, a teacher for the student, a staff member involved in the incident (if not the teacher or administrator already invited), and other appropriate staff members.
  - (2) The team shall consider the appropriateness of a referral to special education and, regardless of whether a referral to special education is to be made, the need to conduct an FBA, and/or develop a BIP.
- C. Nothing in this section is meant to prevent the completion of an FBA or BIP for any student who might benefit from these measures but who has had fewer than three restraints or seclusions.

## 3. Parent Participation

The covered entity shall make reasonable, documented efforts to encourage parent participation in the meetings required in subsection 2 of this section and to schedule them at times convenient for parents to attend.

A covered entity may not seek written permission from a parent to provide restraint and seclusion to a student.

## 4. Duration of Incident

For purposes of this Section, the time period described in Section 8 (3) constitutes a single incident.



## **SECTION 10. CUMULATIVE REPORTING**

### **1. Building-level reporting, analysis**

A cumulative report by building must be made to the superintendent or chief administrator on a quarterly and annual basis to include:

- A. Aggregate number of uses of physical restraint;
- B. Aggregate number of students placed in physical restraint;
- C. Aggregate number of uses of seclusion;
- D. Aggregate number of students placed in seclusion;
- E. Aggregate number of serious bodily injuries to students related to the use of restraint and seclusions; and
- F. Aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.

The superintendent or chief administrator shall review cumulative reports received as set forth in this section and identify those areas that can be addressed to reduce the future use of physical restraint and seclusion. These cumulative reports may be requested by the Department of Education at any time.

### **2. Reporting Data to the Department of Education**

Each covered entity shall submit to the Department of Education an annual report of the incidence of physical restraint and seclusion that must include:

- A. Aggregate number of uses of physical restraint;
- B. Aggregate number of students placed in physical restraint;
- C. Aggregate number of uses of seclusion;
- D. Aggregate number of students in placed in seclusion;
- E. Aggregate number of serious bodily injuries to students related to physical restraint and seclusion; and
- F. Aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.

## **SECTION 11. COMPLAINT PROCESS**

### **1. Local Complaint Process**

Parent complaints related to restraint and seclusion must be submitted to the covered entity in accordance with local policy and procedure.

## 2. Department of Education Complaint Process

Any parent who is dissatisfied with the result of the local complaint process may file a complaint with the Department of Education, which complaint is not considered an appeal of that local process. The Department shall review the results of the local complaint process and may initiate its own investigation of the complaint, and shall issue to the complaining parent and the covered entity a written report with specific findings within 60 days of receiving the complaint. If a violation is found, the Department shall develop a corrective action plan by which the entity will achieve compliance.

## SECTION 12. STAFF TRAINING; APPROVED PROGRAMS

The Department of Education shall maintain a directory of approved training programs on its website at <http://maine.gov/education/>. The list of approved training programs may include regional training programs and regional “train the trainer” model programs. These training programs must require participants to demonstrate competency to achieve certification, and must include instruction in at least the following core components:

1. The use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives;
2. Identification of dangerous behaviors that may indicate the need for physical restraint or seclusion and methods for evaluating the risk of harm to determine whether such interventions are warranted;
3. Instruction and simulated experience in administering safe physical restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a student, and in recognizing and avoiding positions involving a high risk of restraint-related positional asphyxia (restricting a student’s ability to breathe);
4. The effects of physical restraint and seclusion on a student, including monitoring physical and psychological signs of distress and when to obtain medical assistance in compliance with the covered entity’s procedures for emergency interventions;
5. The risks and realities of physical restraint and seclusion; and
6. A review of the process of student and staff debriefing.

Each covered entity shall ensure that a sufficient number of administrators or designees, general and special education staff, maintain certification in an approved training program. A list of staff with the required approved training must be made available in each building office, as well as any central office, along with other school-wide emergency procedures and must be updated at least annually.

## SECTION 13: DEPARTMENT OF EDUCATION NON-REGULATORY GUIDANCE

The Department shall annually ensure that teachers and administrators throughout the State are provided with consistent and accurate information regarding the requirements of this rule.

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STATUTORY AUTHORITY: 20-A MRSA §4502(5)(M); Resolves 2013 ch. 8

EFFECTIVE DATE:

July 29, 2001 - added as sub-section 17(D) to Chapter 125, "Basic Approval Standards: Public Schools and School Units".

EFFECTIVE DATE:

April 27, 2002 - filing 2002-104 accepted March 28, 2002: sub-section 125.17(D) removed from Chapter 125 and established as new Chapter 33, "Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools"

REPEALED AND REPLACED:

July 1, 2012 - filing 2012-164 (final adoption, major substantive), retitled as "Rule Governing Physical Restraint and Seclusion"

AMENDED:

April 29, 2013 - filing 2013-106 in accordance with Resolves 2013 ch. 8, routine technical

APPENDIX: INCIDENT REPORT FORM

**INCIDENT REPORT UNDER MAINE DOE RULE CHAPTER 33  
(PHYSICAL RESTRAINT or SECLUSION OF A STUDENT)**

Name of School/Program \_\_\_\_\_  
Name of Person Completing the Report \_\_\_\_\_  
Date of Report \_\_\_\_\_

**Student Involved**

Student name \_\_\_\_\_ Age \_\_\_\_\_ Gender \_\_\_\_\_  
Grade \_\_\_\_\_

Student has (check all that apply): IEP \_\_\_; 504 plan \_\_\_; behavior plan \_\_\_;  
IHP \_\_\_; other plan (identify) \_\_\_\_\_; none of these plans \_\_\_

**Description of the Incident**

Date of incident \_\_\_\_\_ Beginning time of incident \_\_\_\_\_  
Ending time of incident \_\_\_\_\_ Total time of incident \_\_\_\_\_

Location of the incident (be specific) \_\_\_\_\_  
\_\_\_\_\_

Description of the incident, including the resolution and process of return of  
student to program (if appropriate)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of prior events and circumstances \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Less restrictive interventions tried prior to the use of physical restraint/seclusion  
(if none used, explain why)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Student behavior that justified the use of physical restraint/ seclusion

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Description of Restraint or Seclusion; Staff Involved**

Detailed description of the physical restraint/seclusion used \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Staff person(s) involved, their role in the use of physical restraint/ seclusion, and their certification, if any, in an approved training program

\_\_\_\_\_  
\_\_\_\_\_

**Bodily Injury of Student or Staff**

Did student or a staff member sustain bodily injury? Yes \_\_\_ No \_\_\_  
If yes, name of person(s) sustaining injury \_\_\_\_\_

Describe injury(ies) sustained \_\_\_\_\_  
\_\_\_\_\_

Date and time of nurse or response personnel notification and treatment administered (if any) \_\_\_\_\_

Did student sustain serious bodily injury or death? Yes \_\_\_ No \_\_\_

If yes, date and time of notification to the DOE \_\_\_\_\_

**Notification; Debriefing;**

Date, time, and method of parent notification \_\_\_\_\_

Date and time of staff debriefing \_\_\_\_\_

Date and time of student debriefing \_\_\_\_\_

Has student been involved in 2 or more prior incidents during the current school year? Yes \_\_\_ No \_\_\_

If yes, date and time of required team meeting \_\_\_\_\_

## Maine Department of Education

Home → School Safety → Restraints and Seclusion → Questions & Answers

# Questions & Answers

The following information is provided by the Maine Department of Education as guidance and further clarification of Rule Chapter 33. This document is the Maine DOE staff's current interpretation of the Rule. This document is not part of the Rule and is not binding. Every incident subject to review must be assessed, at the local level or at the Maine DOE, in light of all facts and circumstances relating to the specific incident.

- General
- Risk of Injury or Harm
- Seclusion
- Physical Restraint
- Incident Notification
- Incident Report
- Response
- Training

## General

### **G-1. Does the Rule apply to Maine students when placed in out-of-state settings?**

Out-of-state entities are not directly covered, but Section 3.2 of the Rule requires that the entity in Maine placing the student include in its contract with the out-of-state entity language that requires compliance with the Rule while the student is engaged in his or her educational program.

### **G-2. Who may be considered an administrator's designee?**

The school administrative unit (SAU) administrator will determine who is a designee for the purposes of the rule. This designee should be versed in Rule Chapter 33 and have the ability to make administrative decisions.

### **G-3. What if an incident occurs before staff has been trained under an approved training program?**

Compliance with the training requirement will be explored in the event of a complaint to DOE. DOE will consider whether the SAU at issue demonstrated awareness of the Chapter 33 training requirement and acted diligently to secure the necessary training.

### **G-4. When a student is enrolled in a program outside of the home district,**

**who is responsible under Section 4.2 for providing notice of Rule Chapter 33 and related local policies to parents?**

All entities where a student is enrolled are responsible for providing annual notice of local policy to parents.

**G-5. Is contact with a student “aversive” under the Rule if the contact would not ordinarily be experienced as aversive and the staff member is unaware that such contact would be aversive to that particular student?**

No. Section 2.1 defines “aversive procedure” to require that the person administering it “knows or should know” that the procedure is likely to cause trauma to the student.

**G-6. May programs develop written plans (IEPs, BIPs, etc.) that expressly provide for physical restraint and/or seclusion?**

The Rule neither requires nor prohibits this, however, any reference to such interventions in written plans may not call for their use in situations or by methods that would contravene the Rule’s requirements.

**G-7. Does Chapter 33 apply to afterschool activities such as clubs, sports or after school tutoring programs?**

Section 3.1 provides that the rule applies “during the conduct of the covered entity’s educational program.” The activities described in this question, assuming they were all conducted by the school, would be considered to be part of the school’s educational program.

**G-8. In the annual reporting to the DOE, are SAUs required to provide the total number of “incidents” or the total number of "restraints" and "seclusions," as there may be more than one restraint in an incident until a child returns to baseline?**

Section 10.2 specifies reporting the total number of restraints and uses of seclusion, rather than total number of incidents.

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## **Risk of Injury or Harm**

(Rule Section 2(9); 5 and 6)

**RIH-1. Would spitting be considered to pose a risk of harm?**

Students who use spitting as a mechanism for attention or control may pose such a risk if the spitting is aimed at the face. Staff should be made aware of any student's history of such behavior, and appropriate precautions should be taken to protect staff and students from the potential risk.

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**Seclusion**

(Rule Section 2(19); 5)

**S-1. What is the difference between “time out” and seclusion?**

Section 2.23 states that “time out” is an intervention where a student requests, or complies with an adult request for, a break. Seclusion is defined (Section 2.19) as the involuntary confinement of a student alone in a room or clearly defined area from which the student is physically prevented from leaving.

**S-2. Can the same physical space be used for both time out and seclusion?**

Yes, however, a space used for seclusion must meet the requirements in Chapter 33 Section 5.5.

**S-3. Is a student who is sent to the principal's office in seclusion?**

Providing that there is at least one other person present in the office, this would not constitute seclusion. As stated in Section 2.19, seclusion requires that the student be alone in a room or clearly defined area and be prevented from leaving.

**S-4. Does sending all students other than the disruptive student out of the classroom put the disruptive student in seclusion?**

Not if at least one adult remains in the classroom with the student. As stated in Section 2.19, seclusion requires that the student be alone in a room or clearly defined area and be prevented from leaving.

**S-5. If a student is asked to go to a room to take a break, and the student goes but slams the door behind, does that become seclusion?**



No, because the student has still complied with a request to go to the room, so it is a timeout. The student doesn't have to be happy about it.

**S-6. How does one move a student into seclusion without utilizing physical restraint (given that the movement is most likely involuntary, one would have to restrain the child to put them into seclusion)?**

Chapter 33 does not preclude the use of physical restraint in order to move a student into seclusion, providing that the situation presents risk of harm and that lesser intrusive interventions (such as an attempt to use physical escort to move the student) have been unsuccessful or are deemed inappropriate. Although this would constitute only one incident, the incident report would describe both the restraint and the seclusion. It is possible for seclusion to occur without use of restraint where, for example, a room was emptied, leaving the student alone in seclusion.

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## **Physical Restraint**

(Rule Section 2(16); Section 6)

**PR-1. A training program teaches the use of a restraint technique that involves a student being placed against a wall. Would this technique violate Section 6.2.D, which limits the use of physical structures (e.g a wall) in connection with physical restraint?**

Use of structures such as walls in connection with physical restraints is permitted by that Section provided that the restraint does not rely on pain for control.

**PR-2. Are seat belts and harnesses prohibited by the Rule's restrictions on the use of physical restraints?**

No. Sections 2.16.E and F provide that seat belts, safety belts and medically prescribed harnesses are not considered to be physical restraints when used as intended.

**PR-3. Is "prone restraint" prohibited under the Rule?**

Not as such, however, any restraint that "restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech" is prohibited (Section 6.2.C). Such restrictions are the

reason why prone restraints can be dangerous.

**PR-4. May a student who is causing significant property damage be restrained?**

The fact of property damage alone is not sufficient justification for use of physical restraint. However, such behavior will very often carry with it risk of injury to the student or others, as when the student is smashing or throwing objects.

**PR-5. If a student is about to step off a curb, may the student be restrained?**

First and foremost, if there is any reasonable likelihood that the student's safety is at risk, staff must take appropriate action to protect the student's safety. It may be possible to prevent the student from leaving the curb by deflecting the student's movement (such as putting out an arm to block the student's movement), and this would not be considered to be a restraint under Section 2.16.D. If more than deflection is required, then restraint may be used providing that the student's stepping into the street poses a risk of harm and other less intrusive interventions (such as verbal directions) would be inappropriate. If there is traffic on the street, this would clearly constitute a risk of harm, and waiting to see whether the student responded to verbal directions would be inappropriate.

**PR-6. If a student is about to run out of the building, may the student be restrained?**

First and foremost, if there is any reasonable likelihood that the student's safety is at risk, staff must take appropriate action to protect the student's safety. If it is possible to prevent the student from leaving the building by deflecting the student's movement (such as putting out an arm to block the student's movement), this would not be considered to be a restraint under Section 2.16.D. If more than deflection is required, then restraint may be used providing that the student's running out of the building poses a risk of harm and other less intrusive interventions (such as verbal directions) would be inappropriate. This assessment would take into account such considerations as the age of the student, past experience with such behavior by that student, the student's state of mind at the time (suicidal, aggressively hostile), etc.

**PR-7. If a student is behaving defiantly, without being escalated, and climbs up on a file cabinet while ignoring verbal requests to come down, may that student be restrained?**

First and foremost, if there is any reasonable likelihood that the student's safety is at risk, staff must take appropriate action to protect the student's

safety. If, as seems likely, the student's presence on the file cabinet presents a safety risk, then restraint may be used to bring the student down.

**PR-8. If student A grabs student B in a sexually assaultive manner, may a staff member use force to remove Student A's hand from student B even though student A is not physically harming student B?**

The staff member may take student A's hand (or otherwise touch or hold the student) in an attempt to induce student A to walk to another location, which would constitute physical escort and would therefore not be physical restraint. Otherwise, the staff member's action in removing student's A's hand constitutes physical restraint. The staff member may take that action only if the staff member reasonably believes that student A's behavior presents a risk of physical harm to student B, and attempts to verbally direct student A have failed or are deemed inappropriate. For example, if Student B is struggling with Student A as a result of the grabbing, or the grabbing is causing pain, staff may be justified in using restraint to move Student A away from Student B. Assuming this was not the first incident involving student A, staff should have developed a plan for responding to such offensive conduct by that student.

**PR-9. Is it physical restraint if a coach directs a student to run laps as a consequence for being late to practice?**

No. Physical restraint requires physical contact with the student. It is never physical restraint when a student complies with a verbal request or directive.

**PR-10. Does it constitute physical restraint if you contain a child in an area without touching his or her body?**

No. Physical restraint requires physical contact with the student. In this example, the student is free to move his/her body, and is only restricted as to where he/she can move. Also, making contact with a child attempting to leave an area by, for example, placing an arm across the doorway may constitute deflection, exempted under Section 2.16.D. If, however, the containment leaves the student alone in an area from which he/she cannot exit, this is likely to constitute "seclusion."

**PR-11. If a student flops on the ground and the staff is not able to get the student up using behavioral techniques (verbal prompts, reinforcers, etc.), is it a physical prompt or a restraint if the teacher lifts the child off the floor?**

Physical prompt is defined at Section 2.15 as a teaching technique that models a movement one wishes the student to learn. Only if lifting the student was truly for the purpose of teaching the student how to get up off

the ground would it qualify as physical prompt, and thus not restraint. A staff member could, however, assist the student to his/her feet in an effort to induce the student to walk to another location, which would constitute physical escort and would therefore not be physical escort. Otherwise, lifting the student would be a restraint and permissible only if the student's being allowed to remain on the floor presented a risk of harm.

**PR-12. Does the use of Rifton chairs with a buckle or tray table constitute restraint? What about gloves or a helmet?**

If the use of such devices is medically prescribed, it is not a restraint under Sections 2.16.F and 6.2.G. In addition, protective equipment or devices that are part of a treatment plan as prescribed by a licensed health care provider are permitted under Section 6.1.D.

**PR-13. If a child's program includes instruction in self-care activities such as toileting, hair brushing, etc. and the child resists these activities, will continuing the instruction be considered a restraint?**

A distinction must be made between a token gesture of objection or complaint which is easily re-directed to the activity and a genuine struggle against engaging in the activity. In the latter instance, forcing the child to engage by putting hands on the child will constitute restraint.

**PR-14. Can you sit behind a student in a chair to ensure that he or she remains seated until he or she is calm?**

Sitting behind a student, by itself, does not involve physical contact, so does not constitute physical restraint. Preventing the student from leaving the chair by holding him/her would constitute physical restraint, and could only be done if allowing the student to leave in his/her present state would present a risk of harm.

**PR-15. If you are guiding a child to a particular location and the child is voluntarily moving his/her feet, but is whining/crying and pulling away, is this a restraint?**

Physical escort, defined as the "temporary touching or holding for the purpose of inducing a student to walk to another location," (Section 2.14) is not restraint (Section 2.16.A). The fact that the student was whining and crying while walking with the staff member would not convert the movement to restraint, but when pulling away becomes more than merely a token gesture – when it becomes a struggle against the movement – the activity crosses the line to become restraint.

**PR-16. Can a child be cleaned and diapered against his/her will when failure to do so would likely lead to a breakdown in hygiene and result in damage to**

**skin, infection or other negative health or safety outcomes?**

Providing that other less restrictive interventions are first tried and are unsuccessful, the health and safety issues (to both students and staff) posed by fecal contamination, such as the possibility of rash or infection, can constitute a risk of harm. In response to this use of restraint, a written plan would need to be developed or reviewed (Section 9.1.C) with the goal of reducing the need to restrain the child in order to accomplish the cleaning and diapering.

**PR-17. May a child who refuses to leave with the driver at the end of the day be physically forced into the vehicle?**

The staff member may take the child's hand in an attempt to induce the child to enter the vehicle, which would constitute physical escort and would therefore not be physical restraint. If the child actively refused to do so by struggling against that movement, however, then the physical moving of the student would constitute physical restraint, and would be permissible only if by failing to enter the vehicle the child was exposed to a risk of harm. Where it appears reasonably possible that such a situation could occur (based on the nature of the student's disability or a history of non-compliant behavior, for example) the school and its personnel should be prepared by developing a plan addressing this contingency. That plan may be progressive, possibly starting with a learning module for the whole building on what getting on the bus at the end of the day looks like, and ending with a detailed plan involving staff, time allotments ("how long do I stay with the child before I request my supervisor to take over so I can go to my next class?") and backup plans ("if transportation must leave without the child, the parent is ready to come pick up the child").

**PR-18. A child at a paint easel paints his hands and arms and starts to go at other children to smear them with paint, as well as the walls and furniture. Teacher verbally asks the child to go to the sink and wash his hands. The child refuses and continues to threaten other children. Teacher leads the child by his shoulders to the sink and holds his hands under water. The child resists at first by pushing, then relaxes and lets teacher help him. Is this a physical restraint?**

It depends on the degree and duration of the child's resistance. In this scenario, the teacher touched or held the child for the purposes of inducing the child to walk to another location, and therefore the teacher's actions constituted physical escort and not restraint. Only if the child had continued to actively struggle against the teacher's efforts to move him, had not allowed the teacher to help him, and the teacher continued to force the issue, would the intervention have become physical restraint. If the child had been smearing paint on or near the other children's faces (so that it might get in their eyes), then this might constitute risk of harm which would allow the use of physical restraint.

**PR-19. Teacher and Ed Tech are outside with a group of 16 pre-school children walking on a sidewalk next to a road. One child stops on the**

**sidewalk, sits down and goes limp. The child does not respond to verbal cues. May teacher take the child's hand and lead the child? If the child won't respond to teacher's hand, may teacher pick up the child until they are back at school?**

It is always permissible to touch or hold the child for the purpose of inducing the child to walk, including assisting the child to his/her feet in order to walk (this is "physical escort" and is not restraint), as long as the child does not actively struggle against the movement. More than that constitutes physical restraint, but is permitted as long as allowing the child to remain on the sidewalk puts either the child or the other children at risk of harm (i.e., leaving the child on the sidewalk alone would put the child at risk, and leaving only one adult to continue walking on the sidewalk with the other 15 children puts those other children at risk).

**PR-20. A child is roaring in the faces of other children. Other children are scared and are physically backing away. The roaring child does not respond to verbal cues from teachers. Does this situation put other children at risk of harm? Can a teacher pick the roaring child up and remove him if he resists a hand to guide him away?**

The harm which permits the use of physical restraint is physical harm only. This situation does not appear to present a risk of physical harm that would permit a teacher to pick up the child and move him. The teacher may touch or hold the child in an attempt to induce the child to walk to another location (this is physical escort and not restraint), but otherwise it may be necessary to remove the other children from the area containing the roaring child while a staff member implements behavioral strategies to calm/distract the roaring child.

**PR-21. A child puts her fist in the face of another child without actually touching that other child. The child is given a verbal cue by teacher. The child then pretends to bite another child's nose. Is this considered physical intimidation that puts another child at risk of harm?**

Intimidation, by itself, does not constitute risk of physical harm. If, however, in the judgment of a teacher, the child is escalated such that she is likely to go from threats to action, then physical restraint is permitted. Note that it is always permitted to touch or hold the child in an effort to induce her to walk to another location (physical escort).

**PR-22. May a teacher put hands on a child's shoulders in order to get eye contact while giving a verbal cue?**

Whether or not this touching constitutes physical restraint depends on the degree and duration of the child's resistance to that touching. This touching will not constitute physical restraint providing that the child either doesn't resist, or offers only a token resistance.

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## **Incident Notification**

(Rule Section 7)

### **IN-1. When students are placed in a SPPS program, who receives notice of an incident at the SPPS?**

The administrator for the SAU that placed the student in the SPPS receives the notice. When the student is a state agency client, the report goes to the SAU in which the SPPS is located.

### **IN-2. Does the SPPS have to report to the SAU and to the state?**

Yes, each incident at an SPPS must be reported to the sending SAU. In addition, the SPPS as a covered entity must prepare a cumulative report annually and submit it to the DOE.

### **IN-3. Under what circumstances are SAUs required to notify the school nurse after an incident of physical restraint and/or seclusion?**

The Rule does not require notification of the school nurse after each incident of physical restraint and/or seclusion. In the case of injury or suspected injury to a student during restraint or seclusion, the Rule requires that local policies regarding student injury be followed (Sections 6.3.C and 5.3.B). If local policy requires notification of the school nurse in cases of injury or suspected injury, then the nurse must be notified if restraint and/or seclusion result in injury or suspected injury. Notification of the nurse or response personnel, and a description of treatment administered in such cases, must be included in the incident report covering the restraint and/or seclusion that caused the injury. (Section 8.1.P). Also note that, if serious bodily injury or death of a student occurs during implementation of a restraint or seclusion, the covered entity must follow the provisions of Section 7.3.

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## **Incident Report**

(Rule Section 8)

**IR-1. Will the written plan for response and de-escalation described in Section 9.1.C be part of the incident report?**

No. They are separate documents. If such a plan existed at the time of the incident, the report must reflect whether and to what extent the plan was followed.

**IR-2. Does the incident report become part of the student's cumulative file?**

What goes into the cumulative file is a matter of local policy, however, given that these reports involve severe behavioral incidents, they typically go into the file.

**IR-3. If an incident involves several separate restraints and/or seclusions, must a separate report be prepared for each one?**

No. Section 8.3 explains that an incident “consists of all actions between the time a student begins to create a risk of harm and the time the student ceases to pose a risk of harm and returns to his or her regular programming.” Only one report need be prepared for the entire incident, even though there may have been several interventions. Each of the interventions, however, should be described in the incident report.

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## **Response**

(Rule Section 9)

**R-1. When do multiple incidents trigger the requirement for a team meeting under Section 9.2?**

The team meeting must take place after the third incident in a school year.

**R-2. When does the school year begin for the purposes of Section 9.2?**

July 1.

**R-3. How will schools know whether a student has had three incidents if the student has transferred into the SAU during the school year?**



Incident reports are required to be prepared whenever there is an incident and these typically go into the cumulative file. A review of the file should therefore inform the new school as to how many incidents have occurred previously.

**R-4. Must a student's written plan for response and de-escalation be revised after each incident?**

No. Section 9.1.C requires that the plan be reviewed after each incident, but revised only if it is deemed appropriate to do so.

**R-5. If a school decides to convene an IEP or 504 Team meeting for a student after the student's first or second incident of restraint or seclusion in a school year to discuss the incident(s) as described in Section 9.2.A, will there need to be another meeting if there is a third incident?**

No. As long as the meeting is convened no later than after the third incident, the requirement of this section of the Rule is satisfied. There may, however, be a need to convene other meetings under requirements of IDEA/MUSER or Section 504 if the student's behavior substantially interferes with the student's ability to access his/her educational program.

**R-6. Does a team meeting need to be called after each instance of three incidents or only after the first three incidents?**

Section 9.2 requires a team meeting only after the "third incident in a school year." Although no further team meetings are required by Chapter 33 during that same school year, there may be a need to convene other meetings under requirements of IDEA/MUSER or Section 504 if the student's behavior substantially interferes with the student's ability to access his/her educational program.

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## **Training**

(Rule Section 12)

**T-1. How many staff members are required to receive certification in an approved training program, and how often are those staff members required to renew their certifications?**

Section 12.6 requires that each covered entity ensure that a "sufficient number" of staff maintain certification in an approved training program.

What number of staff members are sufficient will vary from program to program, and is left to the discretion of program administrators. The training programs themselves determine what is required in order to maintain certification.

**T-2. What if there is a safety issue to which a principal, who has not been certified in a training program, responds and implements a physical restraint?**

Section 6.1.B provides that if, due to the nature of the emergency, untrained staff have initiated a physical restraint and the need for restraint continues, then trained personnel must be summoned to the scene to assume control of the situation as rapidly as possible.

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**ATTACHMENT F**

**SCHOOL YEAR 2012-2013 DATA ON THE USE OF  
RESTRAINT AND SECLUSION**



## Report Pursuant to DOE Rule Chapter 33 for School Year 2012-2013

### Physical Restraints, Seclusion and Serious Bodily Injury

Covered Entity (SAU, charter schools, state-funded schools)	Number of Uses of Physical Restraint	Number of Students Restrained	Number of Uses of Seclusion	Number of Students Secluded	Serious Bodily Injury to Students	Serious Bodily Injury to Staff
Acton						
AOS43	5	<10	0	0	0	0
AOS47	12	<10	0	0	0	0
AOS81	11	11	0	0	0	0
AOS91	6	<10	0	0	0	0
AOS94	32	15	9	<10	0	0
AOS98	0	0	0	0	0	0
Appleton						
Auburn	122	27	82	11	0	0
Augusta	52	52	0	0	0	4
Baileyville	0	0	0	0	0	0
Bangor	241	29	10	<10	0	0
Beals						
Biddeford						
Blue Hill						
Brewer	4	<10	1	<10	0	0
Bristol	0	0	0	0	0	0
Brooklin						
Brooksville						
Brunswick						
Calais	75	18	11	<10	0	0
Cape Elizabeth	8	<10	7	<10		
Castine						
Caswell						
Charlotte						
Chebeague Island						
Cornville Regional Charter School	6	<10	0	0	0	0
Cutler						
Deer Isle-Stonington CSD						
East Machias	0	0	0	0	0	0
East Millinocket	58	<10	0	0	0	4
East Range CSD	1	<10	0	0	0	0
Easton						
Eastport						
Education in the Unorganized Territory	1	<10	1	<10	0	0
Falmouth	12	<10	6	<10	<10	2
Fayette	0	0	0	0	0	0
Five Town CSD	0	0	0	0	0	0
Gorham	58	<10	58	<10	0	0

Great Salt Bay CSD	18	18	0	0	0	0
Greenbush						
Greenville	4	<10	0	0	0	0
Hermon	18	<10	22	<10	0	0
Hope	0	0	0	0	0	0
Indian Island	0	0	0	0	0	0
Indian Township						
Isle Au Haut						
Islesboro						
Jefferson	0	0	0	0	0	0
Jonesboro						
Jonesport						
Kittery	6	<10	0	0	0	0
Lewiston (see note 1)	449	122	98	40	0	4
Lincolnton	0	0	0	0	0	0
Lisbon						
Long Island	0	0	0	0	0	0
Machias	0	0	0	0	0	0
Machiasport						
Madawaska	0	0	0	0	0	0
Maine Academy of Natural Sciences	0	0	0	0	0	0
Maine Center for the Deaf and Hard of Hearing	5	<10	0	0	0	0
Maine School for Science and Mathematics						
Medway	0	0	0	0	0	0
Milford						
Millinocket						
Monhegan Plt						
Moosabec CSD						
MSAD 27						
New Sweden						
Nobleboro	0	0	0	0	0	0
Otis						
Pembroke						
Penobscot						
Perry						
Pleasant Point						
Portland	77	24	79	17	0	0
Princeton	14	<10	0	0	0	0
Robbinston						
RSU 01 - LKRSU						
RSU 02	8	<10	1	<10	0	0
RSU 03/MSAD 03	15	<10	10	<10	0	0
RSU 04	5	<10	0	0	0	0

RSU 05	71	10	167	10	0	0
RSU 06/MSAD 06						
RSU 07/MSAD 07	0	0	0	0	0	0
RSU 08/MSAD 08						
RSU 09	123	22	63	<10	0	10
RSU 10						
RSU 11/MSAD 11	5	<10	12	<10	0	0
RSU 12	61	19	2	<10		
RSU 13						
RSU 14						
RSU 15/MSAD 15	154	21	27	13	0	0
RSU 16	38	<10	0	0	0	0
RSU 17/MSAD 17	86	25	49	13	0	1
RSU 18						
RSU 19	56	18	0	0	0	0
RSU 20						
RSU 21	139	17	0	0	0	0
RSU 22/MSAD 22	36	16	0	0	0	3
RSU 23	249	40	114	16	<10	2
RSU 24	74	18	9	<10	0	0
RSU 25	21	<10	0	0	0	2
RSU 26						
RSU 28/MSAD 28	3	<10	0	0	0	0
RSU 29/MSAD 29	8	<10	5	<10	0	0
RSU 30/MSAD 30	3	<10	0	0	0	0
RSU 31/MSAD 31	43	<10	0	0	0	0
RSU 32/MSAD 32	0	0	0	0	0	0
RSU 33/MSAD 33	1	0	0	0	0	0
RSU 34	2	<10	0	0	0	0
RSU 35/MSAD 35	3	<10	0	0	0	0
RSU 37/MSAD 37						
RSU 38	7	<10	0	0	0	1
RSU 39	59	20	0	0	0	0
RSU 40/MSAD 40	100	18	10	<10	<10	2
RSU 42/MSAD 42	0	0	0	0	0	0
RSU 44/MSAD 44	11	11	4	<10	0	0
RSU 45/MSAD 45						
RSU 49/MSAD 49						
RSU 50	3	<10	0	0	0	0
RSU 51/MSAD 51	103	12	14	<10	0	0
RSU 52/MSAD 52	211	78	46	36	<10	10
RSU 53/MSAD 53						
RSU 54/MSAD 54						
RSU 55/MSAD 55	15	11	8	<10	0	0
RSU 57/MSAD 57	47	<10	6	<10	0	1
RSU 58/MSAD 58						
RSU 59/MSAD 59	0	0	0	0	0	0



RSU 60/MSAD 60	64	39	45	27	0	0
RSU 61/MSAD 61						
RSU 63/MSAD 63						
RSU 64/MSAD 64	18	<10	0	0	0	0
RSU 65/MSAD 65						
RSU 67	2	<10	0	0	0	0
RSU 68/MSAD 68	18	<10	7	<10	0	0
RSU 70/MSAD 70	8	<10	10	<10	0	0
RSU 72/MSAD 72						
RSU 73	2	<10	0	0	0	0
RSU 74/MSAD 74						
RSU 75/MSAD 75	55	26	57	19	0	1
RSU 78	0	0	0	0	0	0
RSU 79/MSAD 01	1	<10	0	0	0	0
RSU 80/MSAD 04	102	<10	48	<10	0	0
RSU 82/MSAD 12	6	<10	2	<10	0	0
RSU 83/MSAD 13	0	0	0	0	0	0
RSU 84/MSAD 14	0	0	0	0	0	0
RSU 85/MSAD 19						
RSU 86/MSAD 20	11	<10	3	<10	0	0
RSU 87/MSAD 23	56	<10	10	<10	0	0
RSU 88/MSAD 24						
Sanford	82	27	101	25	0	0
Scarborough	8	<10	1	<10	0	0
Sedgwick						
South Bristol	0	0	0	0	0	0
South Portland	193	34	144	18	0	0
Surry						
Vanceboro						
Vassalboro						
Waterville						
Wells-Ogunquit CSD	9	<10	1	<10	<10	0
Wesley	0	0	1	<10	0	0
Westbrook						
Whiting	0	0	0	0	0	0
Winslow						
Winthrop	9	<10	0	0	0	0
Woodland						
Yarmouth	44	17	17	<10	0	0
York	9	<10	27	<10	0	0
<b>Other Covered Educational Programs</b>						
Margaret Murphy Center for Children	648	45	618	27	0	0
Acadia Education at Acadia Hospital	6	<10	0	0	0	0

Becket Family -- Androscoggin Learning and Transition Center	87	17	3	<10	0	0
Becket Family of Services - - Central Maine Learning Center	251	31	221	28	0	0
Circle of Learning	4	<10	0	0	0	0
Glen Stratton Learning Center	17	<10	22	<10	0	0
KidsPeace New England	299	34	0	0	0	0
Learning Center for the Deaf/Walden School	108	16	0	0	<10	0
ME Spec Ed/MH Collaborative	670	28	0	0	0	2
Morrison Center	0	0	93	<10	0	0
NFI-Buxton Beacon Home	0	0	0	0	0	0
NFI-Dodge House Day School	49	<10	0	0	0	0
NFI-Sidney Riverbend School	0	0	0	0	0	0
NFI-Stetson Ranch	0	0	0	0	0	0
Opportunity Training Center	63	13	0	0	0	0
Providence's Merrymeeting Center	53	12	0	0	0	0
Renaissance School	78	10	137	17	0	0
Southern Penobscot Regional Program	1076	31	261	28	0	0
Spaulding Youth Center	78	<10	116	<10	0	1
Spring Harbor (see note 2)	1456	88	6	<10	<10	33
Spurwink School Inc	2343	128	0	0	0	0
Stillwater Academy	382	<10	0	0	0	6
Sweetser	255	64	0	0	0	0

**NOTES ON THE CHART**

**General information.** This list does not include (1) school administrative units that do not operate schools or (2) towns and school administrative units that are part of an AOS, if a report was filed by the AOS itself.

To comply with the purpose of the Family Educational Rights and Privacy Act (FERPA) to protect student privacy, the number of students restrained, secluded or seriously injured is not reported if the number of less than 10. This is consistent with general DOE policy relating to