

DrummondWoodsum webinar

Training Webinar Series for Maine Schools

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Staff Requirements on Restraint and Seclusion Rules

A Training Webinar for the
2013–2014 School Year

Narrated by Attorney Eric R. Herlan

New Rules – Revised Again

- ▶ Maine Legislature has made significant improvements in the Chapter 33 rules since last year!
- ▶ The newest rules loosen up the key definitions to provide schools with more flexibility.

Who is Covered by Chapter 33?

Maine's restraint and seclusion rules apply to all schools in Maine receiving public funding, to all employees, contractors and agents of Maine schools, and to all Maine students during any school activity.

Technical Definition of Physical Restraint

- ▶ 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.
- ▶ A very broad standard – So the exceptions matter a lot!

The “Physical Escort” Exception

- ▶ A “physical escort” is NOT a physical restraint!
- ▶ A “physical escort” is the temporary touching or holding for the purpose of inducing a student to walk to another location, and includes assisting a person to stand in order to be escorted.
- ▶ Careful! An escort could turn into a restraint!
- ▶ This is one of the important changes in 2013.

The “Fight” Exception

- ▶ Physical restraint does NOT include a “brief period of physical contact necessary to break up a fight.”
- ▶ Chapter 33 does not define “brief.”
- ▶ Careful! Breaking up a fight could turn into a restraint.
- ▶ This is one of the important changes in 2013.



Use of Physical Restraint

- ▶ School officials can use physical restraint **ONLY** when there is a *risk of physical injury or harm* to that student or to others, and only if less restrictive interventions are deemed inappropriate.
- ▶ The law used to limit restraint to “imminent” risk of physical harm.
- ▶ This is one of the important changes in 2013.

Use of Physical Restraint (cont'd)

- ▶ There is a risk of physical injury or harm when the student has the means to cause that harm, and a reasonable person would conclude that steps are needed to protect the student or others from that harm.
- ▶ This change likely resolves the dilemma with students leaving the building without permission

Use of Physical Restraint (cont'd)

Physical “injury or harm” does ***NOT*** mean serious injury or harm. Physical restraint can be justified to prevent any physical injury or harm at all, as long as a reasonable person would take steps to prevent that risk. ***The restraint should be at the lowest level that is likely to prevent the injury, however.***

Use of Physical Restraint (cont'd)

- ▶ Physical restraints cannot be used to protect property, or to punish, or for staff convenience, or to educate, or with the intention of causing pain.
- ▶ They can be used only to prevent the risk of physical injury or harm.

Prohibited Types of Physical Restraint

Even when there is an imminent risk of physical injury or harm, schools and school officials can NEVER use the following types of intervention:

Prohibited Types of Physical Restraint (cont'd)

- ▶ Physical restraint that restricts the free movement of the diaphragm, chest, or airway, thereby interrupting normal speech or breathing.
- ▶ Any “aversive procedure,” including interventions likely to cause physical and/or emotional trauma, infliction of bodily pain, use of sprays, fumes, extreme exercise, costumes or signs.

Definition of Seclusion

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.

Definition of Seclusion (cont'd)

- ▶ The student has to be in the room or clearly defined area alone for there to be a seclusion.
- ▶ The student has to be physically prevented from leaving for there to be a seclusion.
- ▶ When the seclusion is in a room, the door to that room cannot be locked.
- ▶ School staff must continuously monitor a student in seclusion.

Use of Seclusion

- ▶ School officials can use seclusion ONLY when there is a risk of physical injury or harm to that student or to others.
- ▶ This is the same standard as discussed for physical restraints.

Length of Physical Restraints and/or Seclusions

Physical restraints/seclusions must be continuously monitored by those involved in them and must be stopped when the student no longer presents a risk of physical injury. If a physical restraint/seclusion extends more than 10 minutes, an administrator or designee must determine whether continuing that intervention is warranted, and if the intervention continues, must make that determination every subsequent 10 minutes.

Staff Involved in Physical Restraints and/or Seclusions

There must be at least two staff present for a *physical restraint*, unless for safety reasons you cannot wait for a second adult. There must be at least one staff involved in every *seclusion*. Physical restraint/seclusion must be implemented by staff certified in a state-approved training program unless untrained staff have to intervene because of an emergency, and trained staff are summoned.

Reporting and Follow-Up Duties for Physical Restraints and/or Seclusions

- ▶ By the *end of the school day* of the incident, notify the parents and notify the administrator or designee of the physical restraint or seclusion.
- ▶ Within *2 school days*, fill out an incident report on the proper school form, and provide that written report to the administrator or designee.

Reporting and Follow-Up Duties for Physical Restraints and/or Seclusions (cont'd)

- ▶ Within *2 school days*, hold a debriefing meeting with involved staff to review the incident. This should occur the next school if there is serious bodily injury or death.
- ▶ Within *2 school days*, hold debriefing meeting with the student to review the incident.

Reporting and Follow-Up Duties for Physical Restraints and/or Seclusions (cont'd)

- ▶ Within *7 calendar days*, provide the parents with the written incident report that staff prepared.
- ▶ *After the debriefing*, staff must develop and implement a written plan for response and de-escalation of the student in future incidents.

Team Meeting Duty

- ▶ After the first three incidents of physical restraint or seclusion in the school year, the school must hold a team meeting within *10 school days* to discuss the incident.
- ▶ If the student is in special education or 504, the meeting must involve the student's disability team. If the student is not in special education or 504, the team meeting must include the parent, a teacher, the person involved in the restraint, and an administrator or designee.

Team Meeting Duty (cont'd)

- ▶ Review the student's IEP or 504 plan if applicable, and in any event consider the need to conduct an FBA or/or develop a BIP or amend an existing one.
- ▶ If the student is not in special education or 504, the team must consider whether a referral to special education is warranted.

Local Complaint Process

- ▶ Schools must maintain a local complaint process for parents to submit complaints about compliance with this rule. Parents unhappy with that process can file a complaint with the Maine Department of Education.
- ▶ Schools must report on aggregate numbers of physical restraint and seclusion.

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Questions?

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