

School Law Alert

July 2009

STATE DEPARTMENT OF EDUCATION ENACTS REGULATIONS CONCERNING THE PHYSICAL RESTRAINT AND SECLUSION OF STUDENTS IN PUBLIC SCHOOLS

The Connecticut State Department of Education recently enacted regulations to address the use of physical restraint and seclusion in the public schools of children who are eligible for special education services or who are awaiting an eligibility determination. These regulations were passed in accordance with the requirements of Public Act 07-147, which public act has since been codified in Connecticut General Statutes Sections 46a-150 to 46a-154.

A significant portion of the State's regulations concern the use of seclusion in the public schools. Importantly, given the great concern that many public school personnel had about the broad definition of seclusion, the State, through the regulations, has narrowed the definition of seclusion. Seclusion is now defined as follows: "The confinement of a person in a room, whether alone or with supervision by a provider or assistant, in a manner that prevents the person from leaving that room," ". . . provided seclusion does not include any confinement of a person at risk in which the person is physically able to leave the area of confinement including, but not limited to, in-school suspension and time-out." The regulations also add various requirements to the use of seclusion in the public schools. In summary, these additions include the following:

Except in emergency situations, seclusion may be used only if it is specified in the student's IEP and "if other less restrictive, positive behavior interventions appropriate to the behavior exhibited by the person at risk have been implemented but were ineffective."

- Seclusion may be included in a student's IEP only if the use of this technique is based on the results of a Functional Behavior Assessment, and any other information deemed relevant by the student's PPT.



- If seclusion is included in a student's IEP, the IEP must also specify (1) the location(s) of the seclusion; (2) the maximum length of seclusion; (3) the number of times in one day seclusion is permitted; (4) the frequency of monitoring of the seclusion; and (5) any other relevant information.
- Seclusion may not exceed one hour in length, unless it is extended through the written authorization of a building principal or designee.
- A PPT must be convened if a student is placed in seclusion more than two times in one school quarter.
- The PPT must ask whether the student has any known medical or psychological conditions that would prohibit the use of seclusion. A student may not be placed in seclusion if a licensed health care provider has indicated that the student's condition would be adversely affected by the use of seclusion.
- Any room used for seclusion must meet the specifications outlined in the regulations. In particular, any lock used must be equipped with a device that automatically disengages in the case of an emergency and, by January 1, 2014, any locking mechanism must be a pressure-sensitive plate.

The regulations also include requirements relative to the use of both physical restraint and seclusion. With regard to parental notification, the regulations make clear that the school must attempt to notify the parent on the day of, or within twenty-four hours after, the student has been physically restrained or placed in seclusion. This notification may be done by any reasonable method, including telephone, e-mail or placing a note in the student's bag. Importantly, whether or not the parent is reached, the school must send home a copy of the physical restraint/seclusion incident report within two business days of the incident. However, if seclusion is included in the student's IEP, the PPT and the parents must determine the "timeframe and manner" in which the parents must be notified of the seclusion.

Further, the regulations prohibit an individual from engaging in physical restraint or seclusion unless that individual has been properly trained in physical management, physical restraint and seclusion procedures. The regulations also require these individuals to be trained in, among other things, verbal de-escalation, prevention strategies, types of physical restraint, and monitoring to prevent physical harm to students in physical restraint or seclusion.

The regulations also require the State Department of Education to develop a "plain language notice" for school districts to distribute to parents at PPT meetings that explains the laws and regulations relative to physical restraint and seclusion. This notice must be distributed on and after October 1, 2009 at the first PPT after the student's referral to special education, and at the first PPT on or after October 1, 2009 if the student is already eligible for special education. This notice must also be provided to parents at the first PPT meeting at which the use of seclusion is included in the student's IEP. Districts that

have been providing parents with a notice of their rights since the implementation of this law in 2007 will thus be required to distribute the State's notice in compliance with these new regulations.

Finally, the regulations also require the State Department of Education to develop a standardized incident report form which is required for documentation of all emergency instances of physical restraint and seclusion. The State has developed a draft form and is requiring all districts to use this form effective immediately. The State will notify districts when the form has been finalized. We understand that many of our clients have been using their own forms for some time now and may be concerned with the need to change the reporting form now and then change the form again once the State's form has been finalized. At this time, we recommend that districts complete the State's draft form after each incident, and also continue completing their own forms. Districts should ensure that their forms include the following statutorily required information for each incident of physical restraint and seclusion: (1) in the case of an emergency use, the nature of the emergency and what other steps, including attempts at verbal de-escalation, were taken to prevent the emergency from arising if there were indications that such an emergency was likely to arise; (2) a detailed description of the nature of the physical restraint or seclusion; (3) the duration of the physical restraint or seclusion; (4) the effect of the physical restraint or seclusion on the person's established behavioral support or education plan; and (5) the result each evaluation for signs of physical distress conducted during the physical restraint or seclusion.

The full text of the regulations and the draft incident form can be accessed through the State's May/June 2009 Bureau Bulletin at: <http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Updates/BulletinMayJune2009.pdf>. We encourage you to review the regulations in their entirety, as the above description provides only a summary of the new requirements.

QUESTIONS OR ASSISTANCE?

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