
Comments - Proposed Regulations - Timeout Areas, Restraints and Aversives

Section 1. In General

1.1 Policy and Purpose

MADSEC - recommends adding "standards for "schools that choose to construct separate, isolated rooms to be used ..."

Response: The Department has declined to adopt this recommendation since schools may not need to construct new rooms. The Department has agreed to use the term "timeout room" throughout these regulations and refer to separate isolated timeout rooms" within this section.

Burrow - Recommends aligning with §2.1 and emphasizing the use of positive behavior practices.

Response: The Department has declined to adopt this recommendation. The use of less intrusive interventions is specified in §3.1.

MSMA - Recommends clarifying the use of timeout for students who do not present a risk of injury, harm or property damage but who "seriously disrupts the educational process."

Response: The Department has adopted this recommendation noting that timeout may not be used for punitive purposes, staff convenience or minor misbehavior and may be used only when less intrusive interventions have failed.

CCI - Opposes standards for restraint - exceeds statutory authority. Recommends prohibiting timeout and restraint. Notes inconsistency between emergency interventions vs. ongoing programs. Notes inconsistency with 34-B MRSA which prohibits seclusionary timeout for individuals with Mental Retardation.

Response: The Department recognizes that the use of restraint may be necessary to escort a student to a timeout room and that restraint is currently used by school administrative units and private schools. The Department is required by statute to develop regulations regarding the use of timeout areas. The Department does not believe any inconsistency exists since the use of timeout rooms and restraint are emergency interventions which may be part of an individual's or school's behavior program and a continuum of interventions. The Department of Education, school administrative units, and approved private schools are not governed by 34-B MRSA.

Varney - DHS and DMR has rules that govern ICF-MRs. Recommends adopting the DHS and DMR regulations.

Response: The Department has reviewed and included portions of the DMHMR & SAS, and DHS regulations. Nothing in these rules would prohibit a approved private school or a school administrative unit from implementing the DHS or DMHMR & SAS regulations. These regulations do not apply to ICF-MRs.

Elan - Concerned that these rules govern public and private schools. Concerned with vague terminology.

Response: The school approval standards apply equally to public and private schools approved for tuition purposes. The Department has elected to permit maximum local control and flexibility, schools will need to define and clarify terms within local policies.

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Lewiston School Department - Concern with ambiguous language. Supports standards that alert parents and involve parents in planning meetings.

Response: The Department has elected to permit maximum local control and flexibility, schools will need to define and clarify terms within local policies. The Department recognizes that parental involvement in planning interventions is critical in assuring successful interventions.

Rumford AMI - Concerned with ambiguous language (risk of harm, significant property damage, dangerous behavior). Concerned with impact upon special education and parent involvement in developing IEP's. Supports standards for regular education and requirement for schools to make referrals for appropriate services.

Response: The Department has elected to permit maximum local control and flexibility, schools will need to define and clarify terms within local policies. Nothing within these rules will change the requirements under special education for the development of IEPs and parent participation.

1.2 Local Policy Required

Herlan - Concerned that 90 days to develop policies is not sufficient time especially given requirement to consult with professionals.

Response: The Department has elected to amend the 90 day period for the development of policies from the effective date rather than the date of adoption.

MADSEC - Recommends changing "area" to "room" throughout the regulations.

Response: The Department has agreed to adopt the term "timeout room" throughout these regulations.

Burrow - Recommends including special education consultants within the list of qualified professionals.

Response: The Department has agreed to add special education to the list of professional from which schools may solicit input.

SAD #17 - Recommends the requirement to develop a local policy be 90 calendar days from the receipt of the rules.

Response: The Department notes that the date of receipt would be prior to the date of adoption, thus limiting the available time to develop local policies. The Department has declined to adopt this recommendation.

MSMA - Recommends that policy development include "input from representatives from related professional disciplines as warranted."

Response: The Department will permit each SAU or approved private school to solicit "input, as needed, from representatives of related disciplines".

MSMA - Recommends that the rules be less prescriptive and that the monthly review of the use of timeout areas may be too frequent.

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Response: The Department has agreed to permit local determination of the frequency of review providing such review occurs at least quarterly.

Rep. Mello - Concerned that procedures are very vague / wants more clarification.

Response: The Department has elected to permit maximum local control and flexibility. Schools will need to define and clarify terms and develop local procedures within local policies.

Shulman - Will recommend Superintendent not adopt policies permitting timeout or restraint. Supports local decision to adopt these rules if using restraint or timeout.

Response: The Department appreciates the support.

1.3 Documentation

Hertan - Concerned that the 24 hour requirement to document restraint is not enough time for overworked teachers and administrators.

Response: The Department is sensitive to the competing demands for limiting paperwork and the need for accountability. The Department believes that 24 hours in which to document an intervention is a reasonable standard.

MADSEC - recommends changing 24 hours to 2 school days.

Response: The Department is sensitive to the competing demands for limiting paperwork and the need for accountability. The Department believes that 24 hours in which to document an intervention is a reasonable standard.

Burrow - Recommends including the student's response to the intervention.

Response: The Department supports student involvement whenever possible. Local policy may elect to include the student's response to the intervention.

Potter - Recommends that the Pupil Evaluation Team should determine the documentation schedule.

Response: The Department is concerned with developing different standards for "regular" and "special education" students. The Department believes that 24 hours in which to document an intervention is a reasonable standard.

Elan - Opposes requirement for 24 hour notification of parents, "immediate notification is impractical considering time and distance."

Response: The requirement for notice to the parent has been amended to "as soon as practical." Methods for providing such notice may include email, telephone calls, voice mail, daily logs, etc.

MSMA - Recommends that the rules be less prescriptive and permit notification "as soon thereafter as practical."

Response: The requirement for notice to the parent has been amended to "as soon as practical."

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Crotched Mountain - Supports documentation within 24 hours but notes contacting the parent is problematic. Recommends inclusion of behavior program within the student's IEP, signed by the parents, which would exempt the school from notifying the parent except when behavior worsens. Recommends notification within a reasonable time frame. Supports 24 hour notification if restraint is not a part of the student's program.

Response: The requirement for notice to the parent has been amended to "as soon as practical." Methods for providing such notice may include email, telephone calls, voice mail, daily logs, etc. The Department believes that parents should be informed whenever a student is placed in a timeout room or a restraint. These standards apply equally for regular education and special education students.

Rep. Mello - Concerned that a private school may not be able to effectively inform the parents of a restraint or timeout when their parents come from all around the world.

Response: The requirement for notice to the parent has been amended to "as soon as practical." Methods for providing such notice may include email, telephone calls, voice mail, daily logs, etc.

Lewiston School Department - Concerned that the notification requirement would be very time consuming for the administrator or designee.

Response: The Department believes that parental notification is a key component of parental involvement.

SECTION 2. DEFINITIONS

2.1 Timeout

Herlan - Concerned that the definition of timeout will lead to litigation; that the definition would include anytime staff break up a fight or remove a yelling student from the class; and that the disciplinary exclusion from the definition of timeout is ambiguous and will result in all interventions being covered as a timeout. Recommends deleting the definition of timeout. Recommends removing language, which prohibits disciplinary sanctions being used to circumvent these rules.

Response: There is no private right of action for a parent to initiate litigation against a school for non-compliance with the school approval regulations. The Department has further clarified the definition of time out as a removal to a specific "timeout room." The Department believes that the exclusionary language regarding disciplinary actions and behavior interventions helps to establish parameters regarding the use of timeout rooms.

MADSEC - recommends adding at line 7 "Removal to a timeout room ..." and at line 9 "The purpose of the use of timeout rooms ..." Recommends striking at line 15 "exclusion, seclusion ... professional literature" and replacing with "a designated timeout room."

Response: The Department supports and has adopted these recommendations.

Burrow - Recommends referring to timeout rooms rather than areas and rewriting section with input from professionals familiar with the day to day realities of educational settings.

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Response: The Department has used a collaborative process with input from public schools, private schools, and parent and professional organizations including superintendents, principals, special education directors, advocates, and psychologists. These regulations represent the best work of this diverse group.

SAD #17 - Recommends clarifying the distinction between the use of a timeout area and a behavioral intervention (e.g. standing in the hallway.)

Response: the inclusion of the term "room" clarifies that these standards are limited to specified timeout rooms and not applicable to "standing in the hallway."

Rumford AMI - Notes contradiction, confusion over emergency vs. program use "... to reduce the frequency and intensity of harmful behaviors..."

Response: The Department notes that local policy will control the use of timeout as a program or emergency intervention or both.

Rumford AMI - Notes that the definition of timeout as a therapeutic intervention is in contradiction to the National Alliance for the Mentally Ill's public policy on restraint and seclusion.

Response: The Department has considered the NAMI public policy recommendations and has declined to adopt them.

CMH&CS - Objects to the definition as too vague, notes that an additional purpose is to limit the risk of injury to students and staff.

Response: The Department has clarified the definition by adding the term "room." Limiting the risk of harm to others is specified within the rule.

DRC - Supports the use of timeout to permit a student to regain composure and to return to the learning environments. Objects to using timeout to reduce the frequency and intensity of behaviors. Objects to timeout "necessitating exclusion from the class or other environment."

Response: The use of timeout rooms is an acceptable method for reducing the frequency and intensity of behaviors. These rules address the use of timeout rooms which require the exclusion from the classroom or the environment.

MSMA - Recommends revision of this section to clarify the definition "as commonly used in the professional literature" and to clarify the distinction between timeout and disciplinary actions.

Response: The Department has clarified the definition of timeout to be limited to the use of timeout rooms.

SAD #42 - Define seclusion / isolation. Questions if this includes special education students who, based on their IEP, are sent to cool down in an area.

Response: The Department has eliminated the reference to seclusion / isolation. These rules apply equally to all students including special education students.

CCI - Noted contradiction between 1.1 "when the behavior presents risk of harm" and 2.1 "timeouts as a therapeutic intervention to reduce frequency and intensity."

Response: The Department does not view this as a contradiction. Timeout rooms may only be used when the behavior presents a risk and for purposes of reducing the behavior.

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2.2 Timeout Area

Herlan - Recommends that definition be narrowed to " a designated space designed for and regularly used to isolate ..." and "areas that are designed and used specifically for the purpose of containing and maintaining a student who currently presents a risk of significant danger to himself or others."

Response: The Department hopes that timeout rooms are not "regularly used" and recognizes that school rooms may be used for a variety of purposes. Furthermore, the definition of timeout limits its use to students who are presenting a risk of harm to self or others.

MADSEC - recommends changing "area" to "room" and adding at line 28 "designed for and regularly used ..."

Response: The Department has adopted the recommendation to change area to room. The Department hopes that these rooms are not used regularly. Any timeout rooms must meet these standards.

Burrow - Recommends comprehensive rewrite and clarification - if separated from an educational activity but not in a designated space is this a timeout? May these designated spaces be used for other activities?

Response: The Department has clarified that the definition as limited to timeout rooms. The use of timeout rooms for other activities is subject to local discretion.

CMH&CS - Objects to the definition as too vague.

Response: The Department is unclear regarding which aspects of the definition are considered too vague by this commenter.

2.3 Restraint

Herlan - Concerned that the definition of restraint will lead to litigation.

Response: There is no private right of action for a parent to initiate litigation against a school for non-compliance with the school approval regulations. Concerns with school approval standards should be first addressed to the principal or superintendent, then to the local school board and lastly to the Department of Education.

Herlan - definition appears to include restraint used in §4009, recommends inclusion of statement "Nothing in these regulations applies to any conduct by a school official that would otherwise be covered by the legal protections of 20-A MRSA §4009."

Response: The Department has adopted this recommendation.

MADSEC - recommends changing "area" to "room" and amending at line 34 "therapeutic physical intervention with to remove a student to a timeout room ..."

Response: The Department has adopted the term "therapeutic" to clarify the term "restraint." The Department has declined to limit restraint to the removal of a student to a timeout room.

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Burrow - Recommends limiting restraint to the more severe forms of restraint (e.g. 4 point restraint). Recommends a functional definition of restraint.

Response: The Department is unwilling to impose an arbitrary standard limiting these rules to the more severe forms of restraint. The Department has modified the term to be limited to therapeutic physical interventions.

SAD #17 - Recommends including the citation to §4009 as found in section 4.1.

Response: The Department has clarified the application of §4009 to this section.

Spurwink - Recommends the term restraint be replaced with the term "therapeutic hold."

Response: The Department has agreed to modify the term "restraint" to "therapeutic restraint."

Rumford AMI - Notes contradiction, confusion over emergency vs. program use "... control emergency situations ..."

Response: The Department notes that local policy will control the use of therapeutic restraint as a program or emergency intervention or both.

CMH&CS - Objects to the definition as too vague.

Response: The Department is unclear regarding which aspects of the definition are considered too vague by this commenter.

CCI - -Is this training in emergency procedures or training to prevent the need of emergencies? Requesting clarification of training requirements. Questions if this is an unfounded mandate. Concerned with ambiguous language. Concerned with the program use of timeout/restraint because of impact of all students in learning environment.

Response: The training requirements for the use of therapeutic restraint are specified in §4.5. The Department does not view this as an unfunded mandates since the use of timeout and restraint is locally determined.

SECTION 3. TIME OUT AREA

CCI - Recommends expressly prohibiting the use of timeout.

Response: The Legislature has directed the Department of Education to develop standards for the use of timeout areas.

3.1 Limitations on the use of timeout area

MADSEC - recommends changing "area" to "room."

Response: The Department has agreed to amend these rules to change area to room.

Burrow - Recommends prohibiting timeout unless part of a planned intervention and not as an emergency procedure.

Response: The Department has declined to adopt this recommendation, deferring to local policy regarding the use of timeout rooms for either planned intervention or emergency

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procedures. The Department has amended this section to clarify that timeout rooms may be used for either an emergency procedure or a planned interventions.

SAD #17 - Recommends the rules specify "they apply to space only when it is used for a timeout as described in the rule."

Response: These rules have been amended to address timeout rooms when used as timeout rooms. These areas may be used for other purposes (study spaces, interview areas, etc.) at the discretion of the school.

Rumford AMI - Notes contradiction, confusion over emergency vs. program use "... to reduce dangerous behaviors ..."

Response: The Department defers to local policy regarding the use of timeout rooms for either planned interventions or emergency procedures.

CMH&CS - Notes section lacks clarity and that use should be as directed by the behavior plan.

Response: The Department defers to local policy regarding the use of timeout rooms for either planned interventions or emergency procedures.

DRC - Recommends that timeout be "used only as part of a comprehensive plan ... developed with the full and equal participation of the parent and that such a plan include a functional behavior analysis and positive behavior supports."

Response: The Department defers to local policy regarding the use of timeout rooms for either planned interventions or emergency procedures. The Department supports parental involvement in the development of any intervention plans.

MSMA - Recommends clarification if timeout may be used without an intervention plan for non special education students and how the intervention team and intervention plan would apply to special education students.

Response: The Department defers to local policy regarding the use of timeout rooms for either planned interventions or emergency procedures for both regular education and special education students. Any intervention plan must be coordinated with and a part of a student I.E.P, student assistance plan or 504 plan.

3.2 Time limitations on the use of timeout areas

Burrow - Opposes the one hour limitation, should be limited to approx. 10 minutes. Use of timeout voluntarily by a student to self-isolate is permissible for 1 hour.

Response: Local policy would specify the maximum time period for the use of a timeout room not to exceed one hour.

NAPPI - Recommends limiting the use of timeout to 5 or 10 minutes.

Response: Local policy would specify the maximum time period for the use of a timeout room not to exceed one hour.

Spurwink - Recommends limiting use of timeout to 30 minutes without approval by the program administrator to provide consistency with standards for Residential Child Care Facilities.

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Additionally recommends that the use of timeout in excess of 2 hours be clinically reauthorized for private special purpose schools that provide treatment within a mental health setting.

Response: Local policy would specify the maximum time period for the use of a timeout room prior to receiving written authorization for continued use. Nothing in these rules would prohibit the use of timeout in excess of 2 hours consistent with the standards for residential child care facilities.

Potter - Recommends that the Pupil Evaluation Team should determine the time limits for the use of timeout.

Response: Students with disabilities would require the involvement of the PET to determine appropriate behavioral interventions including the use of timeout rooms.

Rumford AMI - objects to 1 hour time limit as too long, should require emergency mental health services and not be authorized by an administrator to continue.

Response: Local policy would specify the maximum time period for the use of a timeout room, not to exceed 1 hour. Local policy may require emergency mental health services. The Department believes that school administrators have the ability to determine the need for continued timeout or alternative intervention.

CMH&CS - Recommends the same person who authorizes continued timeout should authorize continued restraint. Notes that one hour is an unusually long timeout.

Response: Local policy and availability of administrative staff would determine who is authorized to permit continued use of a timeout room. Similarly local policy may establish a shorter maximum time period for the use of timeout.

DRC - Objects to the one hour limitation as too long. Recommends limiting the time to that necessary to allow the student to compose him/herself not to exceed one hour.

Response: Local policy may establish a shorter maximum time period for the use of timeout. The Department has amended this section to clarify that the time limitation on the use of timeout rooms is limited to that necessary to allow the student to compose him or herself.

Lewiston School Department - Concerned that some students may need more than 1 hour of timeout or restraint. Time limits should be specified within local policies or student's IEP.

Response: Local policy would specify the maximum time period for the use of a timeout room, not to exceed 1 hour. Use beyond one hour is permitted with written authorization.

3.3 Adult supervision

Elan - Opposes the requirement for adult staff to be "physically next to the student" and notes "timeouts are always supervised by trained staff." Opposes the requirement for "constant staff observation of a student in time out" and notes that staff check every 10 - 15 minutes and that peers are involved with and talking to the student who is "seated comfortably in the corner of a large well-ventilated comfortable room."

Response: The regulations require direct observation. This observation does not require that the adult be "physically next to the student." Since timeouts are "supervised by

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trained staff" the staff need to be able to directly observe the student to ensure safety. A staff check every 10 - 15 minutes is not sufficient to ensure the safety and well being of a student in a timeout room.

3.4 Physical Characteristics

Burrow - Opposes 60 square foot minimum requirement for room, recommends 25 square feet. Recommends prohibiting cement or block walls, recommends wallboard or some resilient surface.

Response: The Department believes that a room 5 foot by 5 foot is not an adequate space. The Department declines to dictate to schools the construction material of the time out room. The use of resilient surfaces would be a matter of local discretion.

CMH&CS - Recommends that the door be permitted to be shut, question purpose of a window if door may not be locked, latched or secured. Recommend that the door be constructed of impact resistant / absorbent material.

Response: These rules do not prohibit the door from being closed. A window is necessary for direct observation of the student. The composition of the door is a matter of local discretion.

Crotched Mountain - Recommends that the door be permitted to be latched with a mechanism that requires continual staff presence.

Response: The Department has declined to accept this recommendation. The door to the timeout room may not be locked, latched or secured in any way that would prevent the student from exiting the room. A student who is intent upon exiting a timeout room prior to being composed and able to return to the classroom would require therapeutic restraint.

SECTION 4. RESTRAINT

Herlan - Objects to inclusion of restraint, exceeds statutory authority.

Response: The Department believes that the use of therapeutic restraint must be addressed in these rules since the use of timeout rooms would in some instances require the use of therapeutic restraint such as transporting to the timeout room and prevention of injury to self or others while in the timeout room.

CCI - Recommends expressly prohibiting the use of restraint.

Response: The Department recognizes that there are instances when restraint is necessary to prevent injury or harm to others or significant property damage.

MSMA - Recommends deleting section since this exceeds the legislative authority.

Response: The Department believes that the use of restraint must be addressed in these rules since the use of timeout rooms would in some instances require the use of restraint such as transporting to the timeout room and prevention of injury to self or others while in the timeout room.

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4.1 Permitted uses of restraint

Herlan - objects to the requirement for 2 adults to be present for all restraints.

Response: The Department recognizes that 2 adults are necessary to ensure the safety for students and staff and is a recognized standard of care for the use of therapeutic restraint.

MADSEC - recommends amending line 31 to read, "... staff may ~~physically intervene~~ use therapeutic restraint ..." and adding "therapeutic" restraint at line 37.

Response: The Department has adopted the term "therapeutic" to clarify the term "restraint" throughout these rules.

Burrow - Supports the presence of 2 adults only in the use of basketholds or 4 point restraints.

Response: The Department recognizes that 2 adults are necessary to ensure the safety for students and staff in any restraint situation and is a recognized standard of care for the use of therapeutic restraint.

Potter - Objects to the requirement for 2 adults to be present during a restraint "due to the nature of school settings, staffing and unpredictable behavior patterns."

Response: The Department recognizes that 2 adults are necessary to ensure the safety for students and staff in any restraint situation and is a recognized standard of care for the use of therapeutic restraint. Section §4009 would permit the emergency intervention of a single adult until such time as a second adult is able to intervene.

Elan - Opposes "totally prohibiting restraints."

Response: These rules do not prohibit the use of therapeutic restraint. Chemical and mechanical restraints are prohibited in §4.4.

Rumford AMI - Notes contradiction, confusion over emergency vs. program use "...except in emergency situations"

Response: The Department has clarified the permitted use of restraint and distinguished planned restraint interventions from the emergency interventions permitted under §4009.

CMH&CS - Requests a definition of "presence of at least two adults." Recommends that 2 adults be required when one person cannot manage the child safely.

Response: The Department recognizes that 2 adults are necessary to ensure the safety for students and staff in any restraint situation and is a recognized standard of care for the use of therapeutic restraint.

DRC - Recommends clarifying the relationship between §4009 and the use of restraint. Recommends the limitation of the broad discretion to use force as permitted under §4009. Objects to the use of restraint as part of a planned intervention, supports the use of restraint only in extreme emergencies.

Response: The Department has clarified the permitted use of restraint and distinguished planned restraint interventions from the emergency interventions permitted under §4009. The Department believes that through planning and training restraints will be administered in a safe and appropriate manner.

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MSMA - Recommends better clarification of the distinction between restraint and the physical intervention permitted under §4009.

Response: The Department has clarified the permitted use of restraint and distinguished planned restraint interventions from the emergency interventions permitted under §4009.

Crotched Mountain - Supports the presence of 2 adults when the student has been the victim of sexual abuse, recommends that a single adult be permitted to use protective holds.

Response: The Department recognizes that the presence of 2 adults are necessary to ensure the safety for students and staff in any restraint situation and is a recognized standard of care for the use of therapeutic restraint.

4.2 Time limits on the use of restraint

MADSEC - recommends using the adjective "therapeutic" to modify "restraint" at lines 42 and 45.

Response: The Department has adopted this recommendation.

Burrow - Opposes 60 minute limitation, recommends restraints be limited to 30 minutes.

Response: Local policy may establish a shorter maximum time period for the use of restraint.

NAPPI - Opposes 60 minute limitation, recommends lesser time period.

Response: Local policy may establish a shorter maximum time period for the use of restraint.

MSMA - Recommends the rule be less prescriptive regarding time limits and that restraint be permitted in the absence of an intervention plan.

Response: Local policy may establish a shorter maximum time period for the use of restraint. The Department has amended this section to permit the use of restraint in either emergency or planned interventions.

Crotched Mountain - Recommends authorization for continued use be provided verbally (via phone if necessary) with written orders to follow.

Response: The Department believes that the individual providing authorization to continue therapeutic restraint can provide written authorization simultaneous with verbal authorization. The written authorization may be maintained in a different location than the location in which restraint is provided.

4.3 Exclusions

Crotched Mountain - Requests clarification regarding what protective devices or equipment prescribed by a physician or psychologist ... are not prohibited by the regulations.

Response: The Department will defer to the decisions of a physician or psychologist regarding appropriate protective devices or equipment. The Department declines to place any limits on the professional determinations of these providers.

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4.4 Mechanical or Chemical Restraints Prohibited

MADSEC - recommends using the adjective "therapeutic" to modify "restraint" at line 11.

Response: The Department has adopted this recommendation.

Burrow - Recommends that chemical restraint be defined "in terms relevant to an educational setting."

Response: The Department has amended this section to clarify the term chemical restraint.

Elan - Opposes the prohibition against the use of mechanical restraints arguing that the use of "small plastic hand restraint(s)" is the safest intervention when a student is in imminent danger of hurting himself, others or property.

Response: The Department does not believe that the use of "small plastic hand restraints" are a safe intervention to be used by approved schools.

CMH&CS - Objects to lack of clarity, recommends that each term be carefully defined.

Response: The Department has agreed to clarify the term "chemical restraint".

Crotched Mountain - Notes that students may have prescriptions for psychotropic medication to be administered as needed (PRN). Provision should be made for such PRN medications to be administered by a nurse.

Response: The Department has amended the rule to permit the administration of prescribed medication by a health care provider.

Crotched Mountain - Recommends the use of mechanical restraints for students who have been sexually abused to reduce the possibility of a "post traumatic stress attack" or to stabilize the spine for a student who has an orthopedic impairment.

Response: The Department declines to adopt this recommendation. Schools need to determine appropriate interventions based upon individual needs. Mechanical restraint is not appropriate within a school environment.

4.5 Training

Herlan - objects to the requirement to train administrators since "principals and assistant principals are likely in the course of the year to have to restrain a student or supervise a restraint. Recommends requiring training only for individuals specifically employed for the purpose of using physical restraint.

Response: The Department defers to local policy regarding the use of restraint and recognizes that training in the appropriate use of restraint would need to involve supervisory staff.

MADSEC - recommends using the adjective "therapeutic" to modify "restraint" at lines 18 and 20.

Response: The Department has adopted this recommendation.

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Burrow - Questions who determines if a training program meets the requirements of this section. Questions if staff should also be required to be trained in positive behavioral supports. Notes the expense of required training.

Response: The Department will defer to local determination regarding appropriate training programs.

NAPPI - Recommends amending section to refer to "Non-Abusive Psychological and Physical Intervention" and that NAPPI be listed first to encourage the use of a Maine business.

Response: The Department has agreed to use the correct title for NAPPI training and to listing NAPPI, as a Maine business, first.

Rumford AMI - Notes a contradiction in training requirement by requiring individuals who supervise restraints to be trained while 2.3 and 4.1 require the person who is administering the restraints to be trained. Concerned with the untrained administrator supervising trained staff.

Response: The Department does not believe a contradiction exists. The Department believes that those individuals who are providing a therapeutic restraint and those who supervise the use of restraint need to receive appropriate training.

CMH&CS - Recommends that supervisors be trained as trainers. Objects to the use of training that involves hyperextension of joints, Recommends that each training method be carefully researched.

Response: The Department concurs with the recommendation that supervisors be trained but not to the level of trainers. The Department will defer to local determination regarding the appropriate training programs.

CCI - Notes that the requirement for MANDT training is inconsistent with the Department's current staff development initiatives.

Response: The Department does not agree with this observation.

MSMA - Recommends that the determination of appropriate training resources should be locally determined. Recommends replacing "recognized" with "appropriate" training programs.

Response: The Department has adopted these recommendations.

CCI - Concerned with specific trademark training that only addresses restraint and not timeout or alternatives. Concerned that trainees will only focus on the restraint and aversive training.

Response: The Department will defer to local determination regarding appropriate training.

SECTION 5. AVERSIVES

MSMA - Recommends deleting section since this exceeds the legislative authority.

Response: The Department believes that this section is necessary to establish that timeout rooms and therapeutic restraints, while aversive, are permitted while other aversive interventions are prohibited.

5.1 Use of Aversive Therapy or Treatment Prohibited

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Burrow - Recommends qualifying exercise as "extreme" and clarifying "humiliating practice".

Response: The department has agreed to qualify exercise as extreme. The Department does not believe that any humiliating practices are appropriate interventions.

CMH&CS - Recommends clarifying definition of aversive therapy or treatment. Recommends the use of water spray and "some contingently applied noises" for seriously self abusive children with autism as prescribed in a behavior plan after review and approval of a multidisciplinary team."

Response: The Department does not believe that the use of water spray or contingently applied noises should be permitted interventions in approved schools in Maine.

CCI - Recommends that timeout and restraint be prohibited as aversive techniques.

Response: The Department recognizes that timeout and restraint are currently used in Maine schools to ensure the safety of students and staff. The Department declines to prohibit the use of timeout or restraint but does seek to control the use of these interventions.

DRC - Supports the prohibition on the use of aversives.

Response: The Department appreciated the support.

MSMA - Notes that "physical exercise" raises questions around physical education classes and sports programs. Notes that "humiliating practices" is open to broad interpretations as to be problematic and potentially litigious."

Response: The Department has agreed to qualify the term exercise as "extreme physical exercise." The Department does not believe that humiliating practices are appropriate interventions in Maine schools. The Department believes that the prohibition of humiliating practices will contribute to a more civil and democratic educational system and create an opportunity for local dialogue regarding practices that may be considered by some as humiliating.

CCI - If the proposed rules prohibit aversives than exclusionary, seclusionary, isolating, timeout or restraint should also be prohibited

Response: The Department recognizes that timeout and restraint are currently used in Maine schools to ensure the safety of students and staff. The Department declines to prohibit the use of timeout or restraint but does seek to control the use of these interventions.

Elan - Concerned that definitions of aversives are ambiguous. Objects to including private schools within public school approval standards. Concerned that these rules will interfere with their program.

Response: The school approval standards apply equally to public and private schools who are receiving public tuition monies. The Department believes that the definition of aversives is sufficiently detailed to provide schools with the parameters of the prohibited interventions without being unduly proscriptive. The Department has not received any evidence from Elan that this prohibition will interfere with the educational program provided by Elan.

Comments - Proposed Regulations - Timeout Areas, Restraints and Aversives

General Comments

Varney - Recommends the Department of Education adopt the rules developed by DHS and DMHMR&SAS to ensure consistency between home and school and to avoid a statement of deficiency against an ICF-MR.

Response: The Department considered the rules developed by DHS and DMHMR &SAS in the development of the proposed rules. The application of these school approval rules to approved schools would not apply to an ICF-MR.

Herlan - Recommends amending "risk of injury" to "students who present an imminent risk of serious bodily injury."

Response: The Department supports the use of restraint and timeout only when there is a significant risk of harm. The Department defers to local policy and the professional judgment of staff to determine the need for restraint and timeout.

SAD #17 - Recommends that the application to general education is confusing and needs clarification.

Response: These school approval standards apply to all schools including general education and special education schools.

Rumford AMI - Objects to overall ambiguous language and questions how these rules will impact the ability of the P.E.T. to create appropriate individual education plans.

Response: These rules establish standards for school approval. The Pupil Evaluation Team is responsible for developing an appropriate Individualized Education Plan within the limits of these standards.

CCI - Recommends that the use of timeout be limited to emergency situations.

Response: The Department believes that timeout rooms may be used for either an emergency intervention or as part of an intervention plan

CCI - Recommends "ongoing collaboration between the Department and CSPD providers..."

Response: The Department recommends ongoing collaboration between all interested parties. These standards apply to general and regular education.

DRC - Objects to rules being perceived as encouraging the use of timeouts and restraints.

Response: The Department supports this concern and recognizes that the Maine Legislature has directed the Department to develop standards for the use of timeout areas.