

Chapter 33 Side-by-Side: Rationale for Changes

Please note: The Department made every effort to maintain the conceptual integrity of the CBR draft. Any modifications that were believed necessary were made only after the Department carefully considered the CBR position. The Department believes that in its essential aspects, the DOE draft maintains the spirit and intent of the CBR document. *The rationale for changes that were made are in italics.*

CBR Final Draft

DOE Final Draft

<p>1. General</p> <p>1.1 <u>Policy and Purpose</u></p> <p>These regulations establish standards for the emergency use of physical restraint and seclusion to ensure the safety of all individuals. Physical restraint and seclusion may only be used as an emergency intervention when the behavior of a student presents an imminent risk of injury or harm to the student or others. It is the expectation of these regulations that less intrusive interventions will be tried first, recognizing that in extreme circumstances such interventions are not always possible.</p>	<p>General</p> <p>Policy and Purpose</p> <p>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 an imminent risk of injury or harm to the student or others.</p> <p><i>The last sentence in the CBR version was moved to the Permitted Uses sections, where it was strengthened by the removal of the phrase, “It is the expectation...”</i></p>
<p>1.2 <u>Local Policy Required</u></p> <p>School administrative units (SAU) and other covered entities are required to have local policies regarding the emergency use of physical restraint and seclusion. Covered entities will revise existing policies or develop policies consistent with these rules in their entirety within 90 calendar days of the effective date of these rules.</p>	<p>Local Policy</p> <p>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.</p>

	<p>Covered entities shall revise existing policies or develop policies consistent with this rule within 90 calendar days of the effective date of this rule.</p> <p><i>Because covered entities are not currently required to have local complaint policies, this rule had to mandate a complaint procedure for restraint and seclusion.</i></p>
<p><u>1.3 Required Documentation</u></p> <p>Each emergency use of a physical restraint and seclusion will be documented. This documentation will be written as soon as practical after the incident and provided to an administrator or designee but no later than the end of the next school day. At a minimum, the documentation will include:</p> <ol style="list-style-type: none"> 1. Student name; 2. Age, gender, grade; 3. Location of the incident; 4. Date of incident; 5. Date of report; 6. Person filling out form; 7. Beginning and ending time of each physical restraint and seclusion; 8. Total time of incident; 9. Description of prior events and circumstances; 10. Less restrictive interventions tried prior to the use of physical restraint and seclusion. If none used, explain why; 11. The actions that justified the use of physical restraint and seclusion; 12. A description of the physical restraint and seclusion used; 13. The staff person(s) involved, their role in the use of physical restraint and seclusion and their certification 	<p>Documentation</p> <p>1. Incident Report.</p> <p>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:</p> <ol style="list-style-type: none"> 1. Student name; 2. Age, gender, grade; 3. Location of the incident; 4. Date of incident; 5. Date of report; 6. Person completing the report; 7. Beginning and ending time of each physical restraint and seclusion; 8. Total time of incident;

<p>in approved training program;</p> <p>14. Description of the incident, including the resolution and process of return to program, if appropriate;</p> <p>15. Student has: a. IEP; b. 504 plan; c. behavior plan; d. RTI plan; e. IHP; f. other plan; g. not applicable;</p> <p>16. If, in the event a student or staff is bodily injured, the date and time of nurse or response personnel notification and the treatment administered;</p> <p>Consensus not reached</p> <p>17. Date, time, and method of parent notification;</p> <p>18. Date, time of staff debriefing.</p>	<p>9. Description of prior events and circumstances;</p> <p>10. Less restrictive interventions tried prior to the use of physical restraint or seclusion. If none used, explain why;</p> <p>11. The student behavior that justified the use of physical restraint or seclusion;</p> <p>12. A detailed description of the physical restraint or seclusion used;</p> <p>13. The staff person(s) involved, their role in the use of physical restraint or seclusion and their certification in an approved training program;</p> <p>14. Description of the incident, including the resolution and process of return to program, if appropriate;</p> <p>15. Whether the Student has an: a. IEP; b. 504 plan; c. behavior plan; d. IHP; or e. other plan;</p> <p>16. If a student or staff sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;</p> <p>17. Date, time, and method of parent notification; and</p> <p>18. Date, time of staff debriefing.</p>
<p>2. Definitions</p> <p>2.1 Aversive describes a procedure or stimulus intended to modify behavior that would cause physical and/or emotional trauma to a student, even when the</p>	<p>Definitions</p> <p>1. Aversive procedure means the use of a substance or stimulus, intended to modify behavior, that would cause physical and/or</p>

stimulus appears to be pleasant or neutral to others. Such substances, stimuli, and procedures 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. See section 4.2 (g).

2.2 Behavior Intervention Plan is a comprehensive plan for managing behavior by changing or removing contextual factors that trigger or maintain it, and by strengthening replacement skills.

2.3 Chemical Restraint is the use of medication including those administered PRN (as needed) , given involuntarily to control student behavior. (Consensus not reached)

2.4 Covered Entity is a learning environment receiving public funds including but not limited to: private schools, charter schools, special purpose private schools, out of state placements, public regional programs, CTEs, LEA, SAU, public PreKindergarten and HeadStart, CDS and contractees, publicly supported private schools, educational programs within hospital settings and educational programs offered to non-adjudicated students administered by the juvenile justice system.

2.5 A Crisis Plan describes the response to situations and behavior, in observable and concrete terms when imminent risk of injury or harm to a student or others exists. See Section 10.4 (a) and (b). (Consensus not reached)

2.6 De-escalation is to cause a situation to become more controlled, calm and less dangerous, thus reducing the risk for injury or harm.

2.7 Dangerous Behavior is a behavior which presents an imminent risk of injury or harm to a student or others.

2.8 Emergency is a sudden, urgent and sometimes unexpected occurrence that requires immediate action.

2.9 Emergency Interventions are the use of physical restraint and seclusion, as defined by the training programs that meet state requirements, in times of emergencies.

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** is any educational setting receiving public funds from the Maine Department of Education including, but not limited to: public schools, public regional programs, charter schools, private schools, special purpose private schools, Career and Technical Education schools, public pre-kindergarten, and Child Development Services (CDS).

The Department determined that it does not have jurisdiction over out-of-state entities, Headstart, contractees, hospital settings, or the juvenile justice system.

Crisis Plan. *The Department's rule does not include a provision for the inclusion of restraint or seclusion in a crisis plan. The definition was therefore eliminated.*

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.

Emergency Interventions. *Having defined "emergency," the Department saw no need to define emergency interventions.*

<p>2.10 Functional Behavioral Assessment is a school-based process which 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.</p> <p>2.11 Imminent risk of injury or harm is dangerous behavior by a student that has the means to cause harm or injury to self or others and is likely to occur at any moment; such that a reasonable and prudent person would take steps instantly to protect the student and others against the risk</p> <p>2.12 Individualized Education Plan (IEP) is a special education term used by IDEIA to define the written document that states goals, objectives and services for students receiving special education.</p> <p>2.13 Individual Health Plan (IHP) is a plan of action for the student with special health care needs, actual and potential. It is an adaptation of the nursing care plans commonly used in health care institutions.</p> <p>2.14 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. See section 4.2 (f).</p> <p>2.15 Parent (A). A biological or adoptive parent of a child; (B) A foster parent; (C). A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);(D). An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or(E). A surrogate parent who has been appointed in</p>	<p>6. Dangerous Behavior is behavior that presents an imminent risk of injury or harm to a student or others.</p> <p>7. Emergency is a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.</p> <p>8. Functional Behavioral Assessment (FBA) is a school-based process which 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.</p> <p>9. Imminent risk of injury or harm describes a situation in which a student has the means to cause harm or injury to self or others and such injury or harm is likely to occur at any moment; such that a reasonable and prudent person would take steps instantly to protect the student and others against the risk of such injury or harm.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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accordance with Sec. 300.519 or section 639(a)(5) of the Act. Except as provided in the paragraph below, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraphs A-E of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons under paragraphs A through D of this section to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this section. [34 CFR 300.30]

2.16 Escort is the temporary touching or holding of the hand, wrist, arm, shoulder, hip or back for the purpose of moving a student voluntarily.

2.17 Physical Restraint is an intervention that restricts a student's freedom of movement or normal access to his or her body, and includes moving a student who has not moved voluntarily. See section 4.

2.18 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.

2.19 Prevention and Conflict De-escalation Training is training which meet state and local standards provided to selected staff on how to prevent, defuse, and de-escalate potential emergencies.

2.20 Response to Intervention (RtI) is a general education system of strategies and interventions implemented to meet the needs of students who are not meeting academic and/or functional grade level expectations.

2.21 School Day is a day in which school is in operation as an instructional day and/or a teacher in-service day. (DOE to review)

2.22 Seclusion is an intervention that involuntarily isolates a student from other students. Seclusion is not Time Out. See Section 3.

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).

For clarity and consistency, the Department is using the definitions of parent found in the cited statutes.

14. Physical Restraint is an intervention that restricts a student's freedom of movement or normal access to his or her body, and includes the forcible moving of a student against the student's will. Physical restraint does not include the temporary touching or holding of the hand, wrist, arm, shoulder, hip or back for the purpose of moving a student voluntarily.

The Department wanted to make a clear distinction between the forced movement of a student (which is a form of physical restraint) and the voluntary movement that is characteristic of escort (which is not a form of physical restraint). It was not necessary to use the word "escort" in order to do this, and the definition was therefore eliminated.

15. 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.

Prevention and Conflict De-escalation Training. This phrase is not used in the rule, so the definition was eliminated.

Response to Intervention. The use of this term in the Multiple Restraints section was determined to be redundant and the term and its definition were removed. Any plan developed by an RTI team would be a behavior plan, or would be covered under "other."

16. School Day is a day in which a school or program is in operation as

2.23 Section 504 Plan refers to a written plan of modifications and accommodations allowed under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

2.24 Serious bodily injury is bodily injury which 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;
- and the term “**bodily injury**” means—
- a) a cut, abrasion, bruise, burn, or disfigurement;
 - b) physical pain;
 - c) illness;
 - d) impairment of the function of a bodily member, organ, or mental faculty; or
 - e) any other injury to the body, no matter how temporary

2.25 Student is a student enrolled in a school that is a covered entity as defined in this section (DOE to review)

2.26 Time-Out is an intervention where a student complies with an adult request for a break and is not covered by these rules. Seclusion is not Time Out.

an instructional day and/or a teacher in-service day.

17. Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion is not timeout.

After careful consideration, the Department determined that the definition of seclusion was too broad in scope. It would include, for example, a student brought to the principal’s office. Because the student would be “isolated from other students,” he would be in seclusion. The Department believes that in order for seclusion to occur, the student must be separated from both students and adults. Even with a monitoring adult in the area, the characteristic of “aloneness,” of having been denied the possibility of interaction with students and adults, must be an essential component of any definition of seclusion.

In addition, although the CBR group discussed the possibility that the secluded student could be allowed to leave the area or room voluntarily, no decision was made either for or against this proposition. The Department felt that the definition needed to be unambiguous on this point: the student is placed in seclusion involuntarily and remains there until adults determine that he is able to leave safely. Note that this does not include the locking of the door to a room used for seclusion, which is prohibited by Section 3.2.D

The definition the Department chose was recommended by the Council for Children with Behavioral Disorders, a division of the Council for Exceptional Children.

18. 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.

19. Serious bodily injury is any bodily injury which involves—

- A. A substantial risk of death;
- B. Extreme physical pain;

	<p>C. Protracted and obvious disfigurement; or</p> <p>D. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.</p> <p><i>The Department determined that the effort to further define bodily injury within the definition of serious bodily injury was unnecessary, redundant, and confusing.</i></p> <p>20. Student is a child or adult aged 3 to 20 enrolled in a school or a program that is a covered entity as defined in this section</p> <p>21. 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.</p>
<p>3. Seclusion</p> <p>3.1 Permitted Uses of Seclusion</p> <p>a) Seclusion shall be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to the student or others.</p>	<p>Seclusion</p> <p>Permitted Uses of Seclusion</p> <p>A. Seclusion may be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.</p> <p>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.</p> <p><i>Paragraph B was added here and also under the Permitted Uses of Restraint because the CBR draft does not explicitly</i></p>

	<i>state that staff who conduct these interventions must be trained and certified.</i>
<p>3.2 <u>Prohibitive Uses of Seclusion</u></p> <ul style="list-style-type: none"> a) Seclusion shall not be used for punitive purposes, staff convenience or to control challenging behavior. b) Seclusion shall not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury or harm. c) Seclusion shall not be used as a therapeutic or educational intervention. d) Seclusion shall not take place in a locked room. 	<p>Prohibited Uses of Seclusion</p> <ul style="list-style-type: none"> 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 imminent 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.
<p>3.3 <u>Monitoring of a Student in Seclusion</u></p> <ul style="list-style-type: none"> a) Seclusion shall require that at least one adult be physically present to monitor the student at all times. Students shall be continuously monitored until the student no longer presents imminent 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 shall be initiated. 	<p>Monitoring of a Student in Seclusion</p> <ul style="list-style-type: none"> A. At least one adult must be physically present to monitor a student in seclusion at all times. Students must be continuously monitored until the student no longer presents imminent 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.
<p>3.4 <u>Termination of Seclusion</u></p> <ul style="list-style-type: none"> a) The staff involved in the use of seclusion shall continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others and then the emergency intervention shall be discontinued as soon as possible. 	<p>Termination of Seclusion</p> <ul style="list-style-type: none"> A. The staff involved in the use of seclusion shall continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention must be discontinued as soon as

<ul style="list-style-type: none"> b) Time shall be recorded consistent with the requirements of the documentation section of these rules 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 an imminent risk of injury or harm to self or others, then the covered entity may request assistance from parents, and/or staff (e.g., caregivers, case managers, crisis intervention teams, local EMS, or other community resources). e) In the event that seclusion continues 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. 	<p>possible.</p> <ul style="list-style-type: none"> 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 an imminent 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.
<p>3.5 <u>Location of Seclusion</u></p> <p>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, without hazardous material. In no case shall the room be locked (a school wide lockdown would be an exception).</p>	<p>Location of Seclusion</p> <p>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, and be free of hazardous material and objects with which a student could self-inflict bodily injury.</p>
<p>4. Physical Restraint</p> <p>4.1 <u>Permitted uses of Physical Restraint</u></p>	<p>Physical Restraint</p> <p>Permitted uses of Physical Restraint</p>

<ul style="list-style-type: none"> a) Physical restraint shall be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to that student or others. b) The emergency use of physical restraint shall be used to move a student only if the emergency outweighs the risks involved. It is not recommended to move a student who is struggling. c) Protective equipment or devices that are part of a treatment plan as prescribed by a licensed health care provider are not prohibited by these regulations. 	<ul style="list-style-type: none"> A. Physical restraint may be used only as an emergency intervention when the behavior of a student presents imminent 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, trained personnel must be summoned to the scene and 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.
<p><u>4.2 Prohibited Forms and Uses of Physical Restraint</u></p> <ul style="list-style-type: none"> a) Physical restraint shall not be used for punitive purposes, staff convenience or to control challenging behavior. b) Physical restraint shall not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury or harm to that student or others. c) Any physical restraint 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 is prohibited. 	<p>Prohibited Forms and Uses of Physical Restraint</p> <ul style="list-style-type: none"> 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 imminent risk of injury. 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.

<ul style="list-style-type: none"> d) The use of prone restraint is prohibited. (No consensus reached) e) Restraints that rely 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 are prohibited. f) Physical restraint shall not be used as a therapeutic or educational intervention. g) Mechanical and chemical restraints shall not be used when their purpose is to manage or address a student’s behavior. h) Aversive procedures shall not be used under any circumstances. i) Prescribed assistive devices are not considered mechanical restraints when used as prescribed. Their use shall be supervised by qualified and trained individuals in accord with professional standards. j) Prescribed medications administered by a health care provider consistent with a student’s health care plan are permitted. 	<ul style="list-style-type: none"> 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 administered by a health care provider consistent with a student’s health care plan are permitted.
<p>4.3 <u>Monitoring of a Student in Physical Restraint</u></p> <ul style="list-style-type: none"> a) The emergency use of physical restraint shall require the presence of at least two adults at all times except when, for safety reasons, waiting for a second adult is precluded. b) Students shall be continuously monitored until the student no longer presents imminent risk of injury or harm to self or others. c) In the event of an injury the local policy shall be followed. 	<p>Monitoring of a Student in Physical Restraint</p> <ul style="list-style-type: none"> 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 imminent risk of injury or harm to self or others. C. In the event of an injury, local policy must be followed.

<p>4.4 <u>Termination of Physical Restraint</u></p> <ul style="list-style-type: none"> a) The staff involved in the use of physical restraint shall continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others and then the emergency intervention shall be discontinued as soon as possible. b) Time shall be recorded consistent with the requirements of the documentation section of these rules and local policy. c) The covered entity may request assistance from parents at any time during the incident. d) If attempts to release from physical restraint have been unsuccessful and a student is still presenting behaviors that create an imminent risk of injury or harm to self or others, then the covered entity may request assistance from parents, and/or staff (e.g., caregivers, case managers, crisis intervention teams, local EMS, or other community resources). <ul style="list-style-type: none"> e) In the event that physical restraint continues 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. 	<p>Termination of Physical Restraint</p> <ul style="list-style-type: none"> A. The staff involved in the use of physical restraint must continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention 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 physical restraint have been unsuccessful and a student is still presenting behaviors that create an imminent 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 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.
<p>4.5 <u>Exclusions of Physical Restraint</u></p> <p>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 these regulations.</p>	<p>Exclusions of Physical Restraint</p> <p>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.</p>

<p>5. Notification</p> <p><u>5.1 Notification to Parents of an Incident of Physical Restraint and Seclusion</u></p> <p>a) An administrator or designee will notify the parent that physical restraint or seclusion and any related first aid has 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 will be left for the parent to contact the school as soon as possible. If a parent does not have access to a phone, the district will use whatever contact information is available for emergencies. The parent will be informed that written documentation will be provided to them within 7 calendar days.</p> <p>b) If a restraint or seclusion has occurred outside the school day, notification of the restraint or seclusion and any related first aid will occur as soon as possible in compliance with the district’s procedures for emergency situations.</p>	<p>Notification</p> <p>Notification to Parents of an Incident of Physical Restraint or Seclusion</p> <p>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.</p> <p>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</p>
<p><u>5.2 Annual Notification of State Regulations and Local Policies</u></p> <p>Annually each covered entity shall provide overview and awareness information to all staff, including contracted providers, regarding the content of these state regulations and any local policies or procedures related to the use of physical restraint and seclusion to students.</p> <p>Each covered entity shall provide an annual notice informing parents of students enrolled at the covered entity of these state regulations and any local policies or procedures related to the use of physical restraint and seclusion to</p>	<p>Annual Notification of Rule and Local Policies</p> <p>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.</p> <p>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.</p>

<p>students, including any local complaint process.</p>	
<p>6. Reporting</p> <p><u>6.1 Reporting of Incidents of Physical Restraint and Seclusion to an Administrator or Designee</u></p> <p>a) After each incident, the staff member involved shall:</p> <ol style="list-style-type: none"> 1. Report to the administrator or designee by verbal notification as soon as possible after each incident, but in no later than the end of the school day of its use, and 2. Provide copies of the incident report to the administrator or designee within two school days as required by these rules (Section 1.3). 3. If the student is receiving his/her education in an out of district placement through a tuition or other agreement, the district responsible for the student's education will be notified by phone within 24 hours and provided a copy of the incident report within 7 calendar days. 4. If multiple incidents occur, a team shall meet to determine the appropriate response (Section 8 and 10) 	<p>Reporting</p> <p>Reporting to an Administrator or Designee, others</p> <p>After each incident of physical restraint or seclusion, a staff member involved shall:</p> <ol style="list-style-type: none"> 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, by phone, within 24 hours. <p><i>Sections 2 and 4 were determined to be redundant.</i></p>
<p><u>6.2 Reporting of Incidents of Physical Restraint and Seclusion to the Superintendent</u></p> <p>a) A cumulative report by building shall be made to the superintendent on a quarterly and annual basis to include:</p>	<p>CUMULATIVE REPORTING</p> <ol style="list-style-type: none"> 1. Building-level reporting, analysis <p>A cumulative report by building must be made to the superintendent</p>

<ol style="list-style-type: none"> 1. Aggregate number of physical restraint incidents; 2. Aggregate number of students placed in physical restraint; 3. Aggregate number of seclusion incidents; 4. Aggregate number of students placed in seclusion; 5. Aggregate number of serious bodily injuries related to the use of restraint and seclusions to students. 6. Aggregate number of serious bodily injuries related to physical restraint and seclusion to staff <p>b) The superintendent shall review reports received as set forth in this section of the rule 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.</p>	<p>or chief administrator on a quarterly and annual basis to include:</p> <ol style="list-style-type: none"> A. Aggregate number of physical restraint incidents; B. Aggregate number of students placed in physical restraint; C. Aggregate number of seclusion incidents; 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. <p>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.</p>
<p>6.3 <u>Reporting Incidents of Physical Restraint or Seclusion to a Parent</u></p> <p>A copy of the incident report will be provided to the parent within 7 calendar days.</p>	<p>Incident Report Provided to Parent, others</p> <p>A copy of the incident report must be provided, within 7 calendar days of the incident to</p> <ol style="list-style-type: none"> 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.
<p>6.4 <u>Reporting of Serious Bodily Injury or Death</u></p>	<p>Reporting of Serious Bodily Injury or Death</p>

<p>a) If serious bodily injury or death of a student occurs during the implementation of restraint or seclusion, verbal notification of the incident shall follow local health and safety procedures as outlined by the District policies and procedures.</p> <p>b) If serious bodily injury or death to a student or staff during the implementation of physical restraint or seclusion, notification to the Department of Education should occur within 24 hours or the next business day.</p>	<p>If serious bodily injury or death of a student occurs during the implementation of restraint or seclusion:</p> <p>A. Oral notification of the incident must follow local health and safety procedures as outlined by the covered entity’s policies and procedures; and</p> <p>B. The administrator or designee shall notify the Department of Education within 24 hours or the next business day.</p>
<p>6.5 <u>Reporting Data to the Department of Education</u></p> <p>Each covered entity shall submit an annual report of incidents of the use of physical restraint and seclusion that shall include:</p> <ol style="list-style-type: none"> 1. Aggregate number of physical restraint incidents; 2. Aggregate number of students placed in physical restraint; 3. Aggregate number of seclusion incidents; 4. Aggregate number of students in placed in seclusion; 5. Aggregate number of serious bodily injuries related to physical restraint and seclusion to students; 6. Aggregate number of serious bodily injuries related to physical restraint and seclusion to staff. 	<p>Reporting Data to the Department of Education</p> <p>Each covered entity shall submit to the Department of Education an annual report of the incidence of physical restraint and seclusion that must include:</p> <ol style="list-style-type: none"> A. Aggregate number of physical restraint incidents; B. Aggregate number of students placed in physical restraint; C. Aggregate number of seclusion incidents; 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.
<p>7. Concerns and Complaints Process</p> <p>7.1 <u>Parental Concerns and Local Complaint Process</u></p> <p>Reports of concerns and complaints related to restraint and seclusion will</p>	<p>Complaint Process</p> <p>Local Complaint Process</p> <p>Parent complaints related to restraint and seclusion must be submitted</p>

<p>follow the local SAU policies and procedures.</p>	<p>to the covered entity in accordance with local policy and procedure.</p>
<p>7.2 <u>Parental Complaint Process to the Department of Education</u></p> <p>A Department of Education complaint is independent of the local SAU complaint process and is not considered an appeal of that process. The Department shall investigate the complaint, and issue a written report with specific findings within 30 days of receiving the complaint. A copy of this report shall be provided to the complainant within 30 days of the filing of the complaint. If a violation is found, the Department shall require the covered entity to correct the violation through the use of a written corrective action plan with timelines for implementation.</p>	<p>Department of Education Complaint Process</p> <p>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.</p>
<p>8. Training and Instruction</p> <p>The Department of Education shall maintain a directory of approved training programs on their website at http://maine.gov/education/. These training programs shall include instruction in at least the following core components:</p> <ol style="list-style-type: none"> 1. Appropriate procedures for responding to an emergency 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 if these emergency interventions are warranted; 3. Simulated experience in administering and in receiving examples of safe physical restraint techniques across a range of increasingly restrictive interventions, as well as examples of safely moving a student by physical escort or physical restraint, and examples of high-risk positions for restraint- 	<p>Staff Training; Approved Programs</p> <p>The Department of Education shall maintain a directory of approved training programs on its website at http://maine.gov/education/. These training programs must require participants to demonstrate competency to achieve certification, and must include instruction in at least the following core components:</p> <ol style="list-style-type: none"> 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

<p>related positional asphyxia (restricting a student’s ability to breathe);</p> <ol style="list-style-type: none"> 4. The effects of physical restraint and seclusion on the student, including monitoring physical and psychological signs of distress and when to obtain medical assistance in compliance with the local district’s procedures for emergency interventions; 5. The risks and realities of physical restraint and seclusion; 6. A review of the process of student and staff debriefing; 7. All approved training programs must require participants to demonstrate competency to achieve certification. <p>Training shall also include a review of state regulations, local policy and required documentation and the process for the investigation of injuries and complaints as a result of physical restraint or seclusion.</p> <p>At minimum, a sufficient number of administrators or designees, general and special education staff shall maintain certification in an approved training program.</p> <p>A list of designated staff with the required approved training in the emergency use of physical restraint and seclusion shall be made available in each building office as well as the central office with other school wide emergency procedures and updated at least annually.</p>	<p>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);</p> <ol style="list-style-type: none"> 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. <p>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.</p>
<p>9. Response to the Use of Physical Restraint and Seclusion</p> <p>9.1 <u>Debriefing after an Incident of Physical Restraint and Seclusion</u></p> <p>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 with all staff persons who implemented the use of physical restraint or seclusion to discuss:</p> <ol style="list-style-type: none"> a) Whether the use of restraint or seclusion was implemented in compliance 	<p>Response to the Use of Physical Restraint and Seclusion</p> <p>Debriefing</p> <ol style="list-style-type: none"> 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 with all staff persons who implemented the use of physical restraint or seclusion to discuss: <ol style="list-style-type: none"> (1) Whether the use of restraint or seclusion was

<p>with these regulations, and local policies, and,</p> <p>b) How to prevent or reduce the future need for physical restraint and/or seclusion</p> <p>c) When physical restraint or seclusion has resulted in serious bodily injury to a student requiring emergency medical treatment, an administrator or designee shall have an emergency debriefing with the staff member(s) or contract provider(s) involved in the incident, along with other appropriate staff immediately but no later than the next school day.</p> <p>d) A written plan for response and de-escalation shall be developed and implemented for the student.</p>	<p>implemented in compliance with this rule and local policies, and</p> <p>(2) How to prevent or reduce the future need for physical restraint and/or seclusion.</p> <p>B. When physical restraint or seclusion has resulted in serious bodily injury to a student requiring emergency medical treatment, the debriefing must take place as soon as possible but no later than the next school day.</p> <p>C. Following the debriefing, a written plan for response and de-escalation must be developed (or, if a plan already exists, must be revised) and implemented for the student.</p>
<p>9.2 <u>Multiple Incidents of Physical Restraint and Seclusion</u></p> <p>(a) <u>Special Education Students after 2nd Incident</u> :</p> <p>After the 2nd physical restraint or incident of seclusion in a school year of a student who is eligible for special education or has a Section 504 plan, the student's IEP or 504 team shall:</p> <p>Meet within 10 school days to discuss the incident and consider the need to develop a written plan to prevent or reduce the future need for physical restraint or seclusion, request an FBA or amend an existing BIP. If an IEP/504 meeting has occurred within the last month, no meeting may be necessary. If created, this plan shall include consideration of the development of a Behavior Intervention Plan (BIP) as described below.</p>	<p>Multiple Incidents of Physical Restraint and Seclusion</p> <p>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.</p> <p>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 to discuss the incidents.</p> <p>(1) The team shall consist of the parent, an administrator or designee, a teacher for the</p>

(b) For all other students after 2nd Incident :

- 1) A team shall meet within ten school days of the second incident to discuss the incidents. A team may 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) When the needs dictate, a written plan to prevent or reduce the future need for physical restraint and seclusion is developed. This plan shall include consideration of the appropriateness of a referral to special education, and the development of a Behavior Intervention Plan (BIP) as described below.

(c) For all students after 3rd Incident

After the 3rd physical restraint or incident of seclusion in a school year, the team shall meet within five school days of the 3rd incident and shall:

- 1) Consider the completion of a preliminary functional behavioral assessment (FBA) as defined in M.U.S.E.R.(II)(15) (with the exception that it is used by the team described in this section and not the IEP team), and a written behavioral intervention plan (BIP).
- 3) If a determination for an FBA is made, a preliminary report shall be completed within 10 school days and later updated as new information becomes available.
- 4) A BIP shall be completed within 10 school days following the completion the FBA, but shall be modified if and when additional information becomes available from an ongoing functional assessment.
- 5) If a written BIP already exists, it shall be updated at this meeting to

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.

The Department determined that it was neither necessary nor appropriate for a multiple restraints or seclusions team to meet after the second incident, given that a debriefing would be held as required and the original plan revisited and modified as the team deemed appropriate. If the revised plan failed and a third incident occurred, the higher level of review would than be appropriate.

<p>address the behaviors that lead to the use of restraint or seclusion, and shall be updated by the team each time restraint and seclusion are used thereafter.</p> <p>6) Nothing in this section is meant to prevent the completion of a FBA or BIP for any student who might benefit from these measures but whose behavior has not reached an unsafe level.</p> <p>7) A district may not seek written permission from a parent to provide restraint and seclusion to a student.</p> <p>If, in the event the child has changed districts and the receiving district has not yet received records.... (DOE to review)</p> <p>d) In either case, physical restraint and seclusion are considered emergency interventions which are intended solely to prevent injury or harm to persons. They are options districts may use only in the manner set forth in this Chapter. Physical restraint and seclusion are not considered therapeutic or educational interventions and shall not be included in a student’s program or written plans, including in a student’s IEP, BIP, SAT plan, RTI plan, or health plan. (But may be included in a individual student crisis plan). (Consensus not reached)</p>	
<p>10.3 Parent Participation</p> <p>The covered entity must invite parents to participate in all meetings about their children at which physical restraint and seclusion are discussed. The covered entity must make reasonable, documented efforts to encourage parent participation in these meetings and to schedule them at times convenient for parents to attend.</p>	<p>Parent Participation</p> <p>The covered entity shall make reasonable, documented efforts to encourage parent participation in the meetings required in section 9.2 and to schedule them at times convenient for parents to attend.</p> <p>A covered entity may not seek written permission from a parent to provide restraint and seclusion to a student.</p>
	<p>RULE OF CONSTRUCTION</p> <p>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</p>

restrictions of this rule.

The Department believe this section accurately describes the relationship between Chapter 33 and §4009.

END OF DOE DRAFT

10.4 Crisis Plan Development (Consensus not reached)

a) The emergency use of physical restraint or seclusion may be included only in an individualized written plan for a student (hereafter referred to as a “crisis plan”) only as specified below. A crisis plan defines situations and behavior, in observable and concrete terms, that constitute imminent risk of injury or harm to a student or others; the plan specifies, with reference to the school’s training program [e.g., Safety Care, TCI, etc.] the trained procedures that are to be used to manage such a situation and behavior .

b) A crisis plan is distinct from other student plans such as a BIP, IEP, 504 plan, or health plan in that it is limited to use in situations involving imminent risk of harm to a student or others. Physical restraint and seclusion may only be included in a crisis plan, and only under the following circumstances:

1. The plan is developed by a BCBA or other similarly qualified individual, with at least a Master’s degree in a relevant field;
2. The plan is individualized for a specific named student for a specific period of not more than one year. (c) A FBA and BIP as described above in 2(a) and (b) have already been completed and are used to develop the plan;
3. The criteria for use are clearly identified;
4. Any medical or mental health contraindications for use are also clearly identified;
5. The named student’s parents have provided written informed consent for the plan, including the use of restraint and/or seclusion. Parents shall never be required to sign a

crisis plan or agree in advance to the use of restraint or seclusion as a condition of their child's attendance in a particular school or school program;

6. The ongoing need for a crisis plan is reviewed and revised as often as necessary, and in no event less than annually;

7. The justification for the need for a crisis plan is clearly specified in writing in the plan; the occurrence of 3 incidents involving physical restraint or seclusion are not in and of themselves sufficient justification for including physical restraint or seclusion in a crisis plan;

8. Physical restraint or seclusion as provided for in the crisis plan shall only be used in the emergency circumstances permitted by these regulations as set forth in sections 3 and 4;

9. The named student shall be advised of such plans before their implementation.