

February 3, 2020

Via E-Mail

Azita Kakvand

Illinois State Board of Education

100 North First Street

Springfield, IL 62777-0001

rules@isbe.net

**Re: Comments to the Illinois State Board of Education’s Proposed Amendments to Title 23 of the Illinois Administrative Code 1, Sections 1.280 and 1.285 on the**

**Use of Isolated Time Out, Non-Isolated Time, Out and Restraint in Schools**

Ms. Kakvand:

Access Living appreciates the opportunity to provide comments to the Illinois State Board of Education’s (ISBE) proposed rules on the use of seclusion and restraint practices in schools. By way of background, founded in 1980, Access Living is one of the nation’s leading disability rights organizations governed and staffed by people with disabilities. As a Center for Independent Living, Access Living’s mission includes advocacy to ensure the independence, integration, and full social inclusion of people with disabilities. Our education policy work aims to ensure that students with disabilities achieve meaningful education outcomes on an equal and inclusive basis. Access Living and our colleagues in the disability movement have consistently advocated against the abusive use of seclusion and restraint in schools.

The recent Chicago Tribune and ProPublica investigation on the widespread misuse of seclusion and restraint in IL schools informed the public what the disability community has known well about: schools often use these practices to punish students with disabilities rather than providing necessary support, including positive intervention and behavior-challenge preventive classroom environments. Access Living commends the swift action by Governor Pritzker and ISBE banning isolated time out and investigating previous practices in schools. We also would like to reiterate that comprehensive reforms, including the cultural shift in schools with vigorous monitoring on compliance and adequate training of staff, are crucial to protect our students from the harmful use of time out and restraint practices in schools.

We hope that our feedback is helpful and would be happy to continue to work collaboratively with ISBE as you move forward with the rulemaking and legislative processes on this matter.

**Comments:**

**Support of Restrictions on Use of Isolated Time Out and Restraint**

Access Living strongly supports ISBE’s proposed rules to:

* Prohibit the use of isolated time out;
* Prohibit the use of chemical, mechanical, and prone restraint;
* Prohibit the use of time out and physical restraint for the purposes, such as discipline or punishment, set forth in Section 1.285 (d)(5);
* Require written documentation, as prescribed by ISBE, to be completed for each incident of time out and physical restraint, which must be maintained in the student’s record and by a designated school official;
* Require the same written documentation to be sent to parents within 24 hours of any incident;
* Require the same written documentation to be submitted to the State Superintendent no later than 2 school days after each incident; and
* Require board policies that allow use of time out or physical restraint to include the information specified in Section 1.285 (j) of the proposed rules.

**Additional Protections Required**

Reducing and eliminating punitive time out and physical restraint practices in schools requires comprehensive reform to promote cultural shift in schools. In addition to our endorsement of Equip for Equality’s comments, we respectfully recommend that ISBE further amends the proposed rules as follows:

Time Out Room Size

1.285 (a)(1)(B) Requiring a time out room to be “large enough” to accommodate a student and any other trained individual is too vague to provide meaningful guidance to schools. For your reference, Illinois Department of Children and Family Services (DCFS) requires a time out room to be “at least 40 square feet with the shortest wall at least 6 foot with an 8 foot ceiling which is heated, lighted, and ventilated as the other rooms of the facility.” Ill. Adm. Code 1, Section 384.70. We recommend that ISBE specifies the minimum size of a time out room in accordance with the DSFS’s guidance.

Role and Qualification of an Adult in a Time Out Room

1.285 (a)(3) It is unclear what the role of a trained adult under subsection (i) is. Section 1.285(i)(1) states that the accompanying person is a supervising adult who received at least 8 hours of relevant training. The proposed rule is silent on whether the adult accompanying the student in a time out room should affirmatively attempt to de-escalate the student’s distress, or simply observe the student and determine if the student’s mental and physical state is de-escalated as time goes by. We recommend ISBE to clarify the role of an adult/adults in a time out room as a staff person qualified in therapeutic practices (such as a nurse, social worker, behavior analyst or mental health professional) to assist the student in calming and de-escalating his behavior and learning skills to prevent future occurrences of time out. Without such a person, the student’s ability to calm or de-escalate will be significantly impaired.

Potential Misuse of Momentary Restriction

1.285 (c) Although the current IL School Code (105 ILCS 5/10-20.33) defines that restraint does not include momentary physical restriction to prevent property damage, allowing “momentary restriction” to prevent property damage with the proposed rules will likely provide leeway to schools to continue illegal restraint practices for punitive purposes because “momentary” is too vague to be an objective standard. We recommend that a momentary restriction should not be allowed to prevent damage to property and ISBE provide such feedback to the IL legislature so the ongoing legislation on seclusion and restraint would address this issue thoroughly.

Standard for Use of Time out and Physical Restraint

The standard for use of time out and physical restraint should be strictly limited to emergencies when:

* The student’s behavior presents an imminent danger of serious physical harm to the student or others;
* Less restrictive and intrusive measures have been tried and proven ineffective;
* There is no medical, emotional, psychological or other contraindication to its use as verified by a qualified professional (the proposed rules only refer to “medical” contraindication and do not include a verification requirement); and
* The school personnel imposing the time out or physical restraint must be trained as specified in Section 1.285 (i) (The required training should not be limited to the “safe application” of these practices as stated in the proposed rules).

1.285 (d)(1) “Imminent danger of causing physical harm to the student or others” should be the consistent standard for the use of physical restraint, equal to the standard for the use of time out. We recommend that ISBE uses this stronger standard throughout Section 1.285.

1.285 (d)(2) There should be an age appropriate requirement of maximum time period on restraint. With subsection (C), the proposed rule allows that restraint can continue as long as the student is in severe distress and ending the restraint would cause serious physical harm. Rather, there should be a requirement of calling medical personnel or any other qualified individuals to attend and end the restraint once the maximum duration of physical restraint is up.

Prohibition of Supine Restraint

1.285 (d)(7) The references to “supine” in Section 1.285 (d)(7) should be deleted and the criteria set forth in subsection (d)(7) should apply to all permissible forms of physical restraint. Like prone restraint, supine restraint is an inherently dangerous method because it is the forcible taking down and holding of a student on the floor while on his back which may prevent him from breathing or communication by pressuring on the student’s chest, lungs, back, neck, or throat. ISBE initially prohibited both prone and supine restraints with emergency rules and amended the emergency rules by temporarily allowing prone and supine restraints while the Board “[still expects schools to start phasing out the use of prone and supine restraints](https://www.chicagotribune.com/investigations/ct-illinois-seclusion-restraint-rules-met-20191205-u6nsye7tczhxjjazsoeevedbca-story.html).” Allowing supine restraint will not encourage schools to phase out the use of supine restraint. We recommend that ISBE amend its rules to prohibit supine restraint in schools and any other manual restraints should only be permitted in a true emergency when the student’s behavior presents an imminent danger of serious physical harm to the student or others.

Prohibition of Time out and Physical Restraint as a Component of an Individualized Education Program (IEP), Behavior Intervention Plan (BIP) or Section 504 Plan

1.285 (d)(7)(G) We reiterate the underlying principle that a student’s challenging behavior is not a disability, but a resulting symptom when his educational environment fails to appropriately accommodate his disability needs. Therefore, IEP, BIP, or Section 504 plan should be developed to provide positive and preventive classroom environments by utilizing empirically proven behavior supports. Doing so also requires preparing and supporting educators and other service providers with adequate training so they can build the capacity to support students appropriately.

Meanwhile, allowing time out and physical restraint to be included in an IEP, BIP or Section 504 does not provide any educational benefit to students. It merely serves for schools to justify such practice without holistically shifting the school environment. Research has shown that time out and physical restraint are not therapeutic and do not further education. In fact, they may exacerbate the behaviors they are intended to address—while at the same time decreasing a student’s ability to learn. Use of time out and physical restraint represents a systemic failure that will require a significant shift in school culture to remedy. We strongly recommend that ISBE amends this subsection and prohibits these dangerous practices to become a component of an IEP, BIP or Section 504 Plan. Allowing them to be included in an IEP, BIP or Section 504 Plan will only serve to legitimize and perpetuate use of these high risk interventions, rather than promote a shift in school culture aimed at reducing their use.

Need of Threat Assessment

1.285 (d)(8) Please add “immediately” before “carry out the threat.” In addition, there should be a threat assessment requirement even if the student is deemed to demonstrate an intent to carry out the threat. The recently enacted Public Act 101-0455 requires school districts to set a procedure and form a threat assessment team with qualified individuals.

Time Limits on Time Out

1.285 (e)(1) Access Living supports ISBE’s requirement that no less than every 15 minutes, a trained adult must assess whether the student has ceased presenting the behavior for which time out was imposed. There should be an ultimate time limit on time out duration based on a student’s age, in light of her medical, emotional, psychological, developmental status. The current language in the proposed rules, “reasonably necessary,” does not provide any specific standards to end time out. We also endorse Equip for Equality’s recommendation that a student should not be kept in time out for longer than 30 minutes, given the significant emotional trauma that may result.

Time Out Review Process

Access Living endorses Equip for Equality’s comments as follows:

The Review process required for use of physical restraint as specified in Section 1.285 (d)(7)(G) of the proposed rules should also be required if a student is placed in time out on at least two separate instances within a 30-day school period. In addition, to ensure that all appropriate steps are taken as part of the review, the following words should be deleted: “or, if applicable,” in Section 1.285 (d)(7)(G)(i) and “if applicable” and “as appropriate” in Section 1.285 (d)(7)(G)(ii).

Reporting Requirement

1.285 (f) Please add the following items to the reporting requirement:

* Number of times in that school year time out and/or restraint has been used with the student;
* Information regarding why less restrictive and intrusive measures failed or were determined by staff to be inappropriate or impractical;
* Whether the student is being evaluated for a disability and, if not, whether the relevant personnel has considered evaluating the student and its determination; and
* ISBE developed procedural safeguards describing the complaint process under subsection (k) and contact information of legal aid/advocacy organizations.

Evaluation

1.285 (f)(4) This evaluation and review should be a collaborative process with the student who experienced time out and/or restraint. A unilateral approach objectifying the student would not be as effective as a collaborative review with the student because the student’s perspective and input on what was needed and what events, or lack of supports, lead him/her to be in distress is critical to prevent time out and restraint in the future. Access Living also endorses Equip for Equality’s comments as follows:

[T]he review process set forth in Section 1.285 (f)(4) of the proposed rules should include a review of the events leading up to the use of time out or physical restraint, whether other less restrictive and intrusive interventions were utilized before using time out or physical restraint and, if so, why those alternative interventions were not successful and what types of supports and services are needed to prevent future use of time out and physical restraint. Because there is no therapeutic or educational value of time out and physical restraint, the provision in Section 1.285 (f)(4) requiring preparation of an individual behavior plan for the student that provides for continued use of these or other interventions should be stricken. Instead, the proposed rules should require that an individual behavior plan be prepared or modified to ensure that use of these restrictive interventions will not occur in the future.

Notification to Parents or Guardians

1.285 (g) Access Living endorses Equip for Equality’s comments as follows:

To ensure timely notification, the rules should require schools to notify the parent/guardian on the same day that time out or physical restraint is used (rather than make a “reasonable attempt” to do so) by any school personnel, school resource officer or law enforcement officer. The same-day notification requirement should be deemed satisfied if the school attempts to contact the parent/guardian using at least two methods of contact and documents those attempts in writing. The parent/guardian may designate a preferred method of contact to receive the same-day notification required.

The rules should also require schools to provide parents/guardians with the following information, to be developed by ISBE, after each incident in which time out or physical restraint is used during the school year in printed form or, upon the written request of the parent/guardian, by email:

* A copy of the standards for when time out and physical restraint can be used;
* Information about the rights of parents/guardians and students;
* Information about the parent’s/guardian’s right to file a complaint with the State Superintendent, the complaint process and other information to assist the parent/guardian in navigating the complaint process; and
* Contact information for the Governor-designated, federally mandated Protection & Advocacy System for Illinois, Equip for Equality

Training

1.285 (i) The proposed requirement of a minimum of 8 hours of annual training is inadequate to prepare school personnel for exercising best practices on the use of time out or physical restraint. For example, in the summer of 2019, Chicago Police Department school resource officers received 40 hours of initial training on crisis de-escalation, youth development, relationship building, implicit racial bias, and restorative justice provided by the National Association of School Resource Officers. To effectuate the cultural shift needed to reduce and eventually eliminate the use of time out and physical restraint in Illinois schools, ISBE must thoroughly investigate and identify the scope and content of training programs that will meet this need and develop an approved list of programs from which staff must be trained and certified. As part of this process, ISBE should determine and specify in the permanent rules which type and level of training should be required for all staff and whether the type and level of training should be different for staff involved in imposing time out and physical restraint. We recommend ISBE to increase the initial training hours and provide a list of approved programs and vendors.

Complaint Procedures

1.285 (k) Access Living supports the establishment of a complaint procedure. In addition, we endorse Equip for Equality’s below comments of recommending ISBE to further amend the proposed rules as follows:

[T]he rules should make clear that filing a complaint pursuant to this Section will not impact the ability of students and parents/guardians to pursue other remedies, such as due process. In addition, many parents/guardians fear retaliation if they file a complaint, such as schools refusing to continue to serve the student or calling law enforcement as the first response to a student’s behavior. To alleviate these fears and ensure that parents/guardians are able to enforce their rights, the proposed rules should permit the filing of anonymous complaints.

Further, the one-year limitation period for filing a complaint with the State Superintendent should be tolled/extended if the parent/guardian does not receive timely notification of any incident of time out or physical restraint as required by the proposed rules. In that event, the parent/guardian should be allowed to file a complaint within one year of receiving proper notification.

**Recommendations for Comprehensive Reform**

Access Living endorses Equip for Equality’s recommendations on (1) data collection and monitoring of usage, (2) oversight, (3) enforcement, (4) ISBE goals and plans to reduce the use of time out and physical restraint, (5) standardized policy for school districts as follows:

Data Collection and Monitoring of Usage

The rules should be amended to require ISBE to develop and maintain a centralized database for the information reported pursuant to Section 1.285 (h)(1) and (2) so that aggregate data can be analyzed and trends and practices identified. ISBE should compile the reports from schools on the use of time out and restraint and provide the results based on aggregate data on ISBE’s website, and to the Governor and the Committees on Education in the Senate and the House of Representatives of the Illinois General Assembly on an annual basis. A review of the critical components required by other states includes:

1. The number of incidents in which time out or physical restraint was used on students who have an individualized education program;
2. The number of incidents in which time out or physical restraint was used on students who have a Section 504 plan;
3. The number of incidents in which time out or physical restraint was used on students who do not have an individualized education program or a Section 504 plan;
4. The total number of incidents in which time out or physical restraint was used on students;
5. The total number of students with behavior intervention plans subjected to time out or physical restraint;
6. The number of students physically restrained;
7. The number of students placed in time out;
8. The maximum and median number of minutes a student was placed in time out or physical restraint;
9. The maximum number of incidents in which time out or physical restraint was used on a student;
10. The number of deaths that occur when students are in time out or physical restraint or where it is reasonable to assume that death was proximately related to use of time out or physical restraint;
11. The number of serious injuries sustained while students are in time out or physical restraint;
12. The number of serious injuries sustained by staff that occur during use of time out or physical restraint;
13. The number of incidents of time out and physical restraint;
14. The type of physical restraint procedure used;
15. The duration of time spent per incident of time out and physical restraint;
16. The number of times and type of less restrictive and intrusive measures used before imposing time out or restraint and why they were not successful;
17. The information reported under subsections (1) through (3) by the school to the extent possible;
18. The information reported under subsections (1)) through (17) aggregated by age, ethnicity, gender and eligibility for free and reduced lunch of the students on a statewide basis.

The current form prescribed by ISBE to report all incidents of time out and physical restraint captures most of this information. However, it does not include whether the student who was placed in time our or physically restrained has a behavior intervention plan. This information should be added to the required reporting form. Further, to ensure that the data required to be reported is collected, the rules should mandate all the information that must be provided.

Oversight

Given the widespread misuse of isolated time out and physical restraint, an effective system of oversight is critical. The rules should require ISBE to establish a process for ongoing review, monitoring and auditing of the use of time out and physical restraint to ensure that misuse of these practices is identified and stopped, including independent monitoring.

Enforcement

The rules should require ISBE to establish enforcement methods and procedures to ensure that schools fully comply with the reporting requirements for incidents of time out and physical restraint, which must include meaningful and appropriate consequences for failure to comply, such as the failure to report, the failure to timely report and the failure to provide detailed documentation.

Goals and Plans to Reduce the Use of Time Out and Physical Restraint

The rules should require the State Board to establish improvement goals, with specific benchmarks, for schools to reduce and eventually eliminate the use of time out and physical restraint. Schools should be required to develop a plan for reducing the use of time out and physical restraint in accordance with those goals and benchmarks and a plan for implementation. All such plans should be submitted to ISBE for review, analysis and ongoing monitoring for compliance.

Standardized Policy on Use of Time Out and Physical Restraint

To ensure consistent application across the state, the rules should require ISBE to develop a standardized policy on the use of time out and physical restraint that contains core language and principles to be included in the policy of any local board that permits the use of time out or physical restraint. The standardized policy must include, but not be limited to, the information specified in Section 1.285 (j) of the proposed rules.

Access Living appreciates ISBE’s consideration of our recommendations. We look forward to working with ISBE on reducing and eventually eliminating the harmful use of time out and restraint practices against students with disabilities.

Best Regards,

Chris Yun

Education Policy Analyst

Access Living

115 West Chicago Avenue | Chicago, IL 60654

Ph: (312) 640-2134 | Fax: (312) 640-2139

E-mail: cyun@accessliving.org