



TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson Dingle *Angelique Johnson-Dingle*

SUBJECT: Proposed Amendment of Section 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education Relating to the Prohibition of Corporal Punishment, Aversive Interventions, Prone Restraint and Seclusion; Permitted Use of Timeout and Restraint; and Data Collection

DATE: July 13, 2023

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of sections 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education relating to the prohibition of corporal punishment, aversive interventions, prone restraint, and seclusion; permitted use of timeout and restraint; and data collection?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption at its July 2023 meeting. A copy of the proposed amendment is included (Attachment A).

Procedural History

A Notice of Proposed Rule Making was published in the State Register on May 3, 2023, in accordance with the State Administrative Procedure Act and public hearings were held as required by the Individuals with Disabilities Education Act. Following publication in the State Register and public hearings, the Department received several comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). The Department proposes non-substantial revisions

to the proposed rule as outlined below. A Notice of Adoption will be published in the State Register on August 2, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

In February 1985, the New York State Board of Regents adopted Section 19.5 of the Rules of the Board of Regents banning corporal punishment in public schools while permitting school employees to use reasonable force to protect themselves, other students, and school property, as well as to restrain or remove a disruptive student.

In July 1985, the New York State Education Department (Department) began collecting reported incidents of complaints regarding the use of corporal punishment from school districts and boards of cooperative educational services (BOCES). This biannual reporting required school districts, charter schools, and BOCES to report their name, date of incident, substance of complaint, result of investigation, and action taken by school authorities, if any.

In January 2007, the Board of Regents adopted amendments to section 19.5 of the Rules of the Board of Regents and Part 200 of the Regulations of the Commissioner of Education that:

- established general standards for behavioral interventions, including assessments of student behavior, behavioral intervention plans, the use of time out rooms and emergency interventions;
- generally prohibited the use of aversive interventions (intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors); and
- established standards for programs that utilize aversive interventions as approved on a child-specific basis.

These regulations provided standards for appropriate assessment and planning to address behaviors that impede the learning of a student with a disability or of others and to protect the health and safety of all New York State students. The regulations strengthened the Department's authority to ensure that behavioral interventions are used in accordance with the highest standards of oversight and monitoring and in accordance with research-based practices. Prior to the adoption of these regulations, neither the Education Law nor State regulations prohibited the use of aversive behavioral interventions in school programs. Similarly, no State standards or policies limited or provided oversight of the administration of such interventions in school programs.

In August 2012, the Office of Special Education (OSE) issued a field memorandum sharing guidance released by the United States Department of Education (USDE) entitled [*Restraint and Seclusion: Resource Document*](#). This document included 15 guiding principles to help ensure that schools are safe and healthy learning environments for all

students. These principles make clear that restraint and seclusion should never be used except in situations of imminent danger of physical harm to self or others, and indicate that policies restricting the use of restraint and seclusion should apply to all children, not just to children with disabilities. The Department also informed the field that its regulations and guidance governing behavioral interventions in schools were consistent with the federal guidance and, further, that all schools should review their policies and procedures to ensure they were consistent with federal and State standards. Several recent developments have confirmed the need to align the Commissioner’s regulations to USDE’s 15 guiding principles.

First, on August 17, 2022, the Governor signed Chapter 516 of the Laws of 2022 (“Chapter 516”), which, effective immediately, amended the Education Law to require boards of education or trustees of each school district to notify the parents of students on the same day that a physical or mechanical restraint is used on the student, or the student is placed in a timeout room. In a memorandum dated December 2022, the Department informed the field of the requirements of Chapter 516 and encouraged school districts to review their policies, procedures, and practices for notification of a parent where physical restraints and time out room are used to ensure compliance with the requirements of Chapter 516 and the Commissioner’s regulations.

Second, in the fall of 2022, the Albany Times Union reported the results of a years’ long investigation into the use of timeout, seclusion, and restraint in NYS schools. The ensuing article highlighted extensive use of restraint and seclusion, sometimes more than a thousand times per year, especially as applied to elementary students and students with disabilities. In addition, the article noted many violations of the Commissioner’s regulations for reporting, safety, documentation, length of time spent in seclusion, and communication with parents. The report also relayed numerous stories from parents whose children were traumatized by these practices.

On March 24, 2023, USDE issued a [Dear Colleague Letter](#) urging Governors, Chief State School Officers, and School District and School Leaders to end corporal punishment in schools. The letter from Secretary Cardona reinforces USDE’s position that any use of corporal punishment in schools should be replaced with evidence-based strategies (such as multi-tiered systems of supports and positive behavioral interventions and supports) and other research-backed educational practices that are designed to meet students’ social, emotional, and mental health needs, and improve school climate and safety. In addition, USDE released guiding principles on how to maintain safe, inclusive, supportive, and fair learning environments for students and school staff, including specific recommendations for evidence-based practices to give students what they need to learn and grow.

Proposed Amendments

The Board of Regents’ diversity, equity, and inclusion policy, which includes all schools and all students, rests upon a foundation of ensuring informed and sufficient protections; culturally responsive, strength-based, and multi-tiered supports; and services and instruction that meet students’ social, emotional, behavioral, and academic needs. Doing so will lead to a safe and positive educational experience for all school communities.

Based on the above reports and guidance, the Department determined that it was necessary to review its existing regulations to ensure student health and safety. As such, the Department proposes to clarify, streamline, and update requirements of section 19.5 of the Regents Rules and sections 100.2, 200.1, 200.7, 200.15 and 200.22 of the Commissioner's regulations as follows:

- Section 19.5 is expanded beyond the prohibition of corporal punishment and aversive interventions to also prohibit seclusion and prone restraint. The Department further recommends new protections and requirements authorizing the limited use of timeout and physical restraint.
- Subdivision (b) is amended to improve clarity and align the terms used in such section with the definitions used by the USDE, Health and Human Services, and Office for Civil Rights. For example,
 - The proposed definition of “school” covers the same entities currently covered in section 19.5.¹ The proposed rule clarifies that State-administered prekindergarten programs are also included therein.
 - The proposed definitions include practices that are prohibited by many other agencies, including corporal punishment, aversive interventions, seclusion, and prone restraint and define limited authorized use of restraint, timeout, physical escort, multi-tiered system of supports, and de-escalation.
- Subdivision (c) prohibits the use of corporal punishment, aversive interventions, and seclusion on students. As noted above, the proposed inclusion of seclusion is an expansion of current section 19.5.
- Subdivision (d) indicates when and how timeout and physical restraint may be utilized. As noted above, prone restraints are prohibited. So, too, is the use of physical restraint in response to the destruction of property unless the property damage would result in imminent harm to the student or others. Additionally, this provision requires that:
 - same day notification be provided to parents/persons in parental relation following the use of timeout and/or physical restraint;
 - schools maintain documentation of each incident involving the use of timeout and/or physical restraint;
 - school administrators or designees debrief after each incident in which timeout and/or physical restraint is used;

¹ The regulations currently apply to school districts, boards of cooperative educational services (BOCES), charter schools, State-operated or State-supported schools, approved preschool special education programs, approved in-state and out-of-state private schools serving students with disabilities, or registered nonpublic nursery, kindergarten, elementary or secondary schools in New York State.

- school administrators or designees regularly review documentation on the use of timeout and physical restraint;
 - all staff receive annual training on the school's policies and procedures related to the use of timeout and physical restraint;
 - any staff member who may be called upon to implement timeout or physical restraint must receive annual evidence-based training in safe and effective timeout and physical restraint procedures; and
 - each school adopt a written policy that establishes administrative practices and procedures regarding the use of timeout and physical restraint and prescribes certain provisions that must be included in the written policy. The written policy must be made public and posted on the school's website, if one exists.
- Subdivision (e) includes an annual reporting requirement.
 - Reporting requirements, which will take effect for the 2024-2025 school year, align state reporting to the federal Civil Rights Data Collection report and reduce the frequency and number of reports currently required of public schools by utilizing SED's Student Information Repository System (SIRS) to submit student-level data related to corporal punishment, aversive interventions, seclusion, timeout, and physical restraint.
 - Beginning with the 2024-2025 school year, public schools will no longer be required to submit multiple office-specific reports created in the IRS Data Exchange and NYSED Application Business Portal's Monitoring and Vendor Performance System, such as the "Incidents of Complaints Regarding the use of Corporal Punishment biannual report" and "Emergency Intervention Survey of Approved Special Education Programs."
- Section 100.2 of the Commissioner's regulations is amended to:
 - remove the definition of corporal punishment and add a cross reference to the definition of such term in section 19.5;
 - beginning with the 2024-2025 school year, replace semi-annual reporting on the use of corporal punishment with the new annual reporting requirement under section 19.5 which requires reporting on the use of physical restraint and timeout; substantiated and unsubstantiated allegations of use of corporal punishment, mechanical restraint, and other aversive interventions; prone physical restraint; and seclusion; and
 - require that school districts submit electronic records on the use of corporal punishment for each student who was placed out of the district for educational services by the district committee on preschool special education.

- Section 200.1 of the Commissioner’s regulations is amended to revise the definition of “aversive intervention” consistent with the definition in section 19.5.
- Section 200.7 of the Commissioner’s regulations is amended to:
 - remove the requirement for approved private schools to submit procedures for the use of aversive interventions to the Department as part of the approval process;
 - add the use of corporal punishment and seclusion to the list of unauthorized behavioral interventions that, if used by an approved private school, can result in denial of approval or reimbursement of public funds;
 - remove references to child-specific exceptions for the use of aversive interventions by approved private schools serving school age students with disabilities, State-operated schools, or State-supported schools;
 - add corporal punishment and seclusion to the list of prohibited behavioral techniques that approved preschool programs, approved private schools serving school age students with disabilities, State-operated schools, or State-supported schools may use to reduce or eliminate behaviors of students; and
 - remove the expired requirement for private schools to submit their written policies and procedures on behavioral interventions to the Department no later than August 15, 2006, if they are proposing to use, or continue to use, aversive interventions in a program for students with a child-specific exception.
- Section 200.15 of the Commissioner’s regulations is amended to:
 - replace the term “emergency intervention” with “physical restraint” as defined in section 19.5; and
 - replace the phrase “time out room” with “timeout” and add a cross citation to the definition of timeout in section 19.5.
- Section 200.22 of the Commissioner’s regulations is amended to:
 - remove references to the child specific exceptions for the use of aversive intervention and add corporal punishment, seclusion, and physical restraints to the list of interventions that cannot be included in a behavioral intervention plan (BIP);

- add the requirement that timeout must be used in conjunction with a BIP except for situations that create an immediate concern for the physical safety of a student or others;
- eliminate the specific requirements for a school's policy and procedures regarding the use of timeout and clarify that the use of timeout must meet the requirements of section 19.5;
- replace the term “emergency intervention” with “physical restraint;”
- indicate that physical restraint must only be used in situations in which immediate intervention involving the use of reasonable physical force is necessary to prevent imminent danger of serious physical harm to the student or others and it must be used consistent with the requirements in section 19.5;
- require that staff who may be called upon to implement physical restraint to be provided with appropriate, evidence-based training in safe and effective physical restraint procedures consistent with the new requirements in section 19.5;
- add that physical restraint cannot be used as a planned intervention on a student's individualized education program or BIP;
- remove any child-specific exception to use aversive interventions to reduce or modify student behaviors; and
- remove program standards for the use of aversive interventions.

Non-Substantial Revisions to the Proposed Amendment

Following the 60-day public comment period, the Department proposes to make the following non-substantial revisions to the proposed amendment as follows:

- the definition of school in section 19.5(b)(9) has been revised to clarify that such definition includes registered nonpublic nursery schools, kindergartens, and high schools;
- a technical amendment was made to section 19.5(b)(11) to hyphenate “de-escalating” consistent with the term “de-escalation” in section 19.5(b)(3);
- the definition of timeout in section 19.5(b)(11) has been revised to clarify that using coping skills and other calming strategies are not considered timeout and to include a citation to subdivision (d) of such section, which prescribes the authorized use of timeout;

- a technical amendment was made to section 19.5(c) to insert the word “of”, regarding the prohibition of the use **of** corporal punishment, aversive interventions, and seclusion (emphasis added);
- section 19.5(c) was also amended to clarify that the term “agent” includes, but is not limited to, school resource officers;
- duplicative subparagraph numbering was corrected in section 19.5(d)(2);
- technical amendments were made to section 19.5(d)(2)(vii) to: (1) require that a student only be evaluated after a restraint when an injury has been sustained or believed to have been sustained by a school nurse or other medical personnel; (2) clarify that “school nurse” means a school nurse pursuant to section 902(2)(b) of the Education Law; and (3) clarify that other medical personnel includes, physician, physician assistant, or nurse practitioner; and
- a technical amendment was made to remove the term “maladaptive” from section 200.7(a)(3) to be consistent with terminology used throughout the proposed rule.

Related Regents Items

April 2023: [Proposed Amendment of Section 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education Relating to the Prohibition of Corporal Punishment, Aversive Interventions, Prone Restraint and Seclusion; Permitted Use of Timeout and Restraint; and Data Collection](https://www.regents.nysed.gov/sites/regents/files/423p12d1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/423p12d1.pdf>)

January 2007: [Proposed Amendment to the Regulations of the Commissioner of Education Relating to Behavioral Interventions, Including the Use of Aversive Interventions](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2007Meetings/January2007/0107emscvesida1.htm)

(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2007Meetings/January2007/0107emscvesida1.htm>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Section 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 2, 2023.

Timetable for Implementation

If adopted at the July 2023 meeting, the proposed amendment will become effective as a permanent rule on August 2, 2023.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS AND THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 215, 305, 4401, 4402, 4403, and
4410.

1. Section 19.5 of the Rules of the Board of Regents is REPEALED, and a new
section 19.5 is added as follows:

19.5 Prohibition of corporal punishment, aversive interventions, and seclusion
and the authorized limited use of timeout and physical restraint.

(a) Purpose of section. The purpose of this section is to establish uniform
guidelines that prohibit the use of corporal punishment, aversive interventions and
seclusion and authorize the limited use of timeout and physical restraint in schools to
address student behaviors.

(b) Definitions. As used in this section, the following terms shall have the
following meanings:

(1) Aversive intervention means an intervention that is intended to induce pain or
discomfort for the purpose of eliminating or reducing student behavior, including such
interventions as:

(i) contingent application of noxious, painful, intrusive stimuli or activities;
strangling, shoving, deep muscle squeezes or other similar stimuli;

(ii) any form of noxious, painful or intrusive spray, inhalant or tastes;

(iii) contingent food programs that include the denial or delay of the provision of
meals or intentionally altering staple food or drink in order to make it distasteful;

(iv) movement limitation used as a punishment, including but not limited to helmets and mechanical restraints as defined in paragraph (4) of this subdivision; or

(v) other stimuli or actions similar to the interventions described in this paragraph.

The term shall not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; interventions medically necessary for the treatment or protection of the student; or other similar interventions.

(2) Corporal punishment means any act of physical force upon a student for the purpose of punishing that student. The term does not include the use of physical restraints, as defined in paragraph (7) of this subdivision, to protect the student, another student, teacher or any other person from physical injury when alternative procedures and methods not involving the use physical restraint cannot reasonably be employed to achieve these purposes.

(3) De-escalation means the use of a behavior management technique that helps a student increase control over their emotions and behavior and results in a reduction of a present or potential level of danger to the student or others.

(4) Mechanical restraint means the use of any device or equipment to restrict a student's freedom of movement. Mechanical restraint does not include devices implemented by trained school personnel, or utilized by a student, that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

(i) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;

(ii) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

(iii) restraints for medical immobilization; or

(iv) orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

(5) Multi-tiered system of supports means a proactive and preventative framework that utilizes data to inform instruction and the allocation of services to maximize achievement for all students and support students' social, emotional and behavioral needs from a culturally responsive and strength-based perspective.

(6) Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.

(7) Physical restraint means a personal restriction that immobilizes or reduces the ability of a student to move their arms, legs, body, or head freely. Physical restraint does not include a physical escort or brief physical contact and/or redirection to promote student safety, calm or comfort a student, prompt or guide a student when teaching a skill or assisting a student in completing a task, or for other similar purposes.

(8) Prone restraint means physical or mechanical restraint while the student is in the face down position.

(9) School means a public school district, board of cooperative educational services, charter school, State-operated and State-supported school pursuant to articles 85, 87 and 88 of the Education Law, in-state and out-of-state private residential or non-residential school for the education of students with disabilities approved pursuant to Article 89 of the Education Law or operating under Article 81 of the Education Law, State-administered Prekindergarten (PreK) program directly operated by a school district, board of cooperative educational services, or an eligible agency, as defined in section 151-1.2(b) of this Title, or operated by a school district in collaboration with an eligible agency, preschool special education program approved pursuant to Education Law section 4410, and registered nonpublic nursery school, kindergarten, and high school, and a nonpublic school serving grades 1 through 8 that has a registered high school, in this State.

(10) Seclusion means the involuntary confinement of a student alone in a room or space that they are physically prevented from leaving or they may perceive that they cannot leave at will. Seclusion does not include timeout as defined in paragraph (11) of this subdivision.

(11) Timeout means a behavior management technique that involves the monitored separation of a student in a non-locked setting and is implemented for the purpose of de-escalating, regaining control, and preparing the student to meet expectations to return to their education program in accordance with subdivision (d) of this section. The term timeout shall not include:

(i) a student-initiated or student-requested break to utilize coping skills, sensory input, or self-regulation strategies;

(ii) use of a room or space containing coping tools or activities to assist a student to calm and self-regulate, or the use of such intervention strategies consistent with a student with a disability's behavioral intervention plan as defined in section 200.1(mmm) of this Title; or

(iii) a teacher removal, in-school suspension; or any other appropriate disciplinary action.

(c) Prohibition of the use of corporal punishment, aversive interventions, and seclusion. (1) No teacher, administrator, officer, employee or agent of a school shall use the following against a student:

(i) corporal punishment;

(ii) aversive interventions; or

(iii) seclusion.

(2) For purposes of this subdivision the term "agent" shall include, but not be limited to, school resource officers, except when a student is under arrest and handcuffs are necessary for the safety of the student and others.

(d) Authorized limited use of timeout and physical restraint. Positive, proactive, evidence- and research-based strategies through a multi-tiered system of supports shall be used to reduce the occurrence of challenging behaviors, eliminate the need for the use of timeout and physical restraint, and improve school climate and the safety of all students. Timeout and physical restraint may be used only when: other less restrictive and intrusive interventions and de-escalation techniques would not prevent imminent danger of serious physical harm to the student or others; there is no known medical contraindication to its use on the student; and school staff using such interventions have

been trained in its safe and appropriate application in accordance with the requirements of paragraph (7) of this subdivision. Timeout and physical restraints shall not be used as discipline or punishment, retaliation, or as a substitute for positive, proactive intervention strategies that are designed to change, replace, modify, or eliminate a targeted behavior.

(1) Use of timeout. Except as provided in section 200.22(c) of this Title, timeout shall only be used in a situation that poses an immediate concern for the physical safety of the student or others. Staff shall return the student to their educational program as soon as the student has safely de-escalated, regained control and is prepared to meet expectations.

(i) A room or physical space used for purposes of timeout may be located within a classroom or outside of the classroom and shall comply with the following requirements:

(a) The room or physical space shall:

(1) be unlocked, and any door must be able to be opened from the inside. The use of locked rooms or physical spaces is prohibited.

(2) provide a means for continuous visual and auditory monitoring of the student;

(3) be of adequate width, length and height to allow the student to move about and recline comfortably;

(4) be clean and free of objects and fixtures that could be potentially dangerous to a student; and

(5) meet all local fire and safety codes.

(b) Wall and floor coverings shall, to the extent practicable, be designed to prevent injury to the student and there shall be adequate lighting and ventilation.

(c) The temperature of the room or physical space shall be within the normal comfort range and consistent with the rest of the building.

(ii) Staff shall continuously monitor the student in a timeout room or space.

(iii) Staff functioning as timeout monitors shall be trained in accordance with paragraph (7) of this subdivision.

(2) Use of physical restraint. Physical restraint shall only be used in a situation in which immediate intervention involving the use of reasonable physical force is necessary to prevent imminent danger of serious physical harm to the student or others.

(i) The type of physical restraint used shall be the least restrictive technique necessary and be discontinued as soon as the imminent danger of serious physical harm has resolved.

(ii) Physical restraint shall never be used in a manner that restricts the student's ability to breathe or communicate or harms the student.

(iii) The use of prone restraint is prohibited.

(iv) Physical restraint shall not be used as a planned intervention on a student's individualized education program, Section 504 accommodation plan, behavioral intervention plan, or other plan developed for a student by the school.

(v) Physical restraint shall not be used to prevent property damage except in situations where there is imminent danger of serious physical harm to the student or others and the student has not responded to positive, proactive intervention strategies.

(vi) Physical restraints shall be administered only by staff who have received training in accordance with paragraph (7) of this subdivision.

(vii) Following a physical restraint, if an injury has been sustained or believed to have been sustained, the school nurse, pursuant to section 902(2)(b) of the Education Law or other medical personnel (i.e., physician, physician assistant, or a nurse practitioner) shall evaluate the student to determine and document if any injuries were sustained during the incident.

(3) Parental notification. Each school shall develop a procedure to:

(i) ensure same day notification to a parent or person in parental relation to the student following the use of timeout, including timeout used in conjunction with a student's behavioral intervention plan consistent with section 200.22(c) of this Title, or use of a physical restraint. When the student's parent or person in parental relation cannot be contacted, after reasonable attempts are made, the school principal or building administrator shall record such attempts. For students with disabilities, the school principal or building administrator shall report such attempts to the student's committee on preschool special education or committee on special education. Such notification shall offer the parent the opportunity to meet regarding the incident; and

(ii) provide the parent or person in parental relation to the student a copy of the documentation of the incident within three school days of the use of timeout or a physical restraint.

(4) Documentation. (i) The school shall maintain documentation of each incident involving the use of timeout, including timeout used in conjunction with a student's

behavioral intervention plan consistent with section 200.22(c) of this Title, and/or physical restraint on each student, which shall include:

(a) the name and date of birth of the student;

(b) the setting and location of the incident;

(c) the name of the staff who participated in the implementation, monitoring and supervision of the use of timeout and/or physical restraint and any other persons involved;

(d) a description of the incident including duration, and for physical restraint, the type of restraint used;

(e) whether the student has an individualized education program, Section 504 accommodation plan, behavioral intervention plan, or other plan developed for the student by the school;

(f) a list of all positive, proactive intervention strategies utilized prior to the use of timeout and/or physical restraint; and for students with disabilities, whether those strategies were consistent with a student's behavioral intervention plan, if applicable;

(g) the details of any injuries sustained by the student or staff during the incident and whether the student was evaluated by the school nurse or other medical personnel;

(h) the date and method of notification to the parent or person in parental relation pursuant to paragraph (3) of this subdivision and whether a meeting was held; and

(i) the date of the debriefing held consistent with the requirements of paragraph (5) of this subdivision.

(ii) Documentation of the incident shall be reviewed by supervisory personnel and, as necessary, the school nurse or other medical personnel.

(iii) Documentation of each incident shall be maintained by the school and made available for review by the department upon request.

(5) Debriefing. As soon as practicable, and after every incident in which timeout and/or a physical restraint is used on a student, a school administrator or designee shall:

(i) meet with the school staff who participated in the use of timeout and/or physical restraint to discuss:

(a) the circumstances leading to the use of timeout and/or physical restraint;

(b) the positive, proactive intervention strategies that were utilized prior to the use of timeout and/or physical restraint; and

(c) planning for the prevention and reduction of the future need for timeout and/or physical restraint with the student including, if applicable, whether a referral should be made for special education programs and/or other support services or, for a student with a disability, whether a referral for review of the student's individualized education program and/or behavioral intervention plan is needed; and

(ii) direct a school staff member to debrief the incident with the student in a manner appropriate to the student's age and developmental ability and to discuss the behavior(s), if any, that precipitated the use of timeout and/or physical restraint.

(6) Review of documentation. The school administrator or designee shall regularly review documentation on the use of timeout and physical restraint to ensure compliance with school's policy and procedures. When there are multiple incidents within the same classroom or involving the same staff, the school administrator or designee shall take appropriate steps to address the frequency and pattern of use.

(7) Staff training.

(i) All staff shall receive annual training on the school's policies and procedures related to the use of timeout and physical restraint; evidence-based positive, proactive strategies; crisis intervention and prevention procedures and de-escalation techniques.

(ii) In addition to the training requirements for all staff in subparagraph (i), any staff who may be called upon to implement timeout or physical restraint, shall receive annual, evidence-based training in safe and effective developmentally appropriate timeout and physical restraint procedures.

(8) Written policy. (i) Each school shall adopt a written policy that establishes administrative practices and procedures regarding the use of timeout and physical restraint consistent with this subdivision. Such policy and procedures shall at a minimum include:

(a) factors which may precipitate the use of the timeout or physical restraint;

(b) developmentally appropriate time limitations for the use of timeout and physical restraint;

(c) prohibiting placing a student in a locked room or space or in a room where the student cannot be continuously observed and supervised;

(d) prohibiting the use of prone restraint;

(e) the requirements in section 200.22(c) of this Title relating to students with disabilities whose behavioral intervention plan includes the use of timeout as a behavioral consequence;

(f) staff training provided in accordance with the requirements of paragraph (7) of this subdivision;

(g) information to be provided to the parent or person in parental relation, including a copy of the timeout and physical restraint policy; and

(h) notifying the parent or person in parental relation on the same day when a student is placed in a timeout or a physical restraint is used in accordance with the requirements of paragraph (3) of this subdivision; and

(i) data collection to monitor patterns of use of timeout and physical restraint.

(ii) The written policy shall be made publicly available for review at the district or school administrative office(s) and each school building, and posted on the school's website, if one exists.

(e) Annual reporting. Beginning with the 2024-2025 school year, each public school district, board of cooperative educational services, charter school, State-operated school pursuant to Articles 87 and 88 of the Education Law, and private residential school operated pursuant to Article 81 of the Education Law, shall submit an annual report on the use of physical restraint and timeout and substantiated and unsubstantiated allegations of use of corporal punishment, mechanical restraint and other aversive interventions, prone physical restraint, and seclusion to the department, on a form and at a time prescribed by the commissioner in accordance with the requirements of section 100.2(bb)(2). In addition, public school districts shall report such data for students for whom they are the district of residence, and who are otherwise not reported, including students attending a State-supported school pursuant to Article 85 of the Education Law, in-state and out-of-state private residential or non-residential school for the education of students with disabilities approved pursuant to Article 89 of the

Education Law, or preschool special education program approved pursuant to section 4410 of the Education Law.

2. Paragraph (3) of subdivision (l) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) Corporal punishment.

(i) The term corporal punishment, as used in this section, shall [mean any act of physical force upon a pupil for the purpose of punishing that pupil. Such term, as used in this section, shall not mean the use of reasonable physical force for any of the following purposes:

(a) to protect oneself from physical injury;

(b) to protect another pupil or teacher or any other person from physical injury;

(c) to protect the property of the school or of others; or

(d) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts;

provided that alternative procedures and methods not involving the use of physical force cannot reasonably be employed to achieve the purposes set forth in clauses (a) through (d) of this subparagraph] have the same meaning as such term is defined in section 19.5(b)(2) of this Title.

(ii) In every school district and supervisory district, the trustee, trustees, board of education or board of cooperative educational services, shall submit a written semiannual report to the Commissioner of Education, by January 15th and July 15th of each year, commencing July 1, 1985 through the 2023-2024 school year, setting forth

the substance of each complaint about the use of corporal punishment received by the local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case. Beginning with the 2024-2025 school year, the reporting provisions of section 19.5(e) of this Title and paragraph (2) of subdivision (bb) of this section shall apply.

3. Paragraph (2) of subdivision (bb) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Each school district shall submit, at a time and in a format specified by the commissioner, electronic records for each student who was enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education, committee on preschool special education or a district official and who meets one or more of the criteria listed in subparagraph (ii), (iii) or (iv) of this paragraph.

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) ...

(vii) ...

(viii) ...

4. Subdivision (III) of section 200.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(III) Aversive intervention means the same as such term is defined in section [19.5(b)(2)]19.5(b)(1) of this Title.

5. Clause (f) of subparagraph (i) of paragraph (2) of subdivision (a) section 200.7 of the Regulations of the Commissioner of Education are amended to read as follows:

(f) submission for approval of the school's procedures regarding behavioral interventions[, including, if applicable, procedures for the use of aversive interventions].

6. Paragraph (3) of subdivision (a) of section 200.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) Denial or termination of private school approval. Private schools may be denied approval or removed from New York's list of private schools approved for reimbursement with public funds, or such approval may be terminated according to the following procedure:

(i) . . .

(ii) . . .

(iii) . . .

(iv) Schools may be removed from the approved list five business days after written notice by the commissioner indicating that there is a clear and present danger to the health or safety of students attending the school, and listing the dangerous conditions at the school, including, but not limited to, evidence that an approved private school is using corporal punishment, aversive interventions, and/or seclusion as defined in section 19.5 of this Title, to reduce or eliminate [maladaptive] behaviors of students [without a child-specific exception provided pursuant to section 200.22(e) of this Part or

that an approved private school is using aversive interventions in a manner inconsistent with the standards as established in section 200.22(f) of this Part].

7. Paragraph (8) of subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(8) [Aversive interventions prohibited.

(i) Except as provided in section 200.22(e) of this Part, an] Pursuant to section 19.5 of this Title, an approved preschool program, approved private school serving school age students with disabilities, a State-operated school, or a State-supported school is prohibited from using corporal punishment, aversive interventions and seclusion to reduce or eliminate [maladaptive] behaviors of students

[(ii) An approved preschool program is prohibited from using aversive interventions with preschool students with disabilities without exception].

8. Paragraph (6) of subdivision (c) of section 200.7 of the Regulations of the Commissioner of Education is REPEALED.

9. Paragraph (3) of subdivision (b) of section 200.15 of the Regulations of the Commissioner of Education is amended as follows:

(3) Reportable incident means the following conduct that a mandated reporter is required to report to the Vulnerable Persons' Central Register:

(i) Abuse means physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, unauthorized use of aversive interventions, obstruction of reports of reportable incidents, and unlawful use or administration of a controlled substance.

(a) Physical abuse means conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable [emergency interventions] physical restraints, as defined in section 19.5(b)(7) of this Title, necessary to protect the safety of any person.

(b) . . .

(c) . . .

(d) Deliberate inappropriate use of restraints means the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a student's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable Federal or State laws, regulations or policies including but not limited to the prohibition of the use of corporal punishment and aversive interventions in section 19.5 of this Title, except when the restraint is used as a reasonable [emergency intervention] physical restraint, as defined in section 19.5(b)(7) of this Title, to prevent imminent risk of harm to a person receiving services or to any other person. Restraint includes the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a student to freely move his or her arms, legs or body.

(e) Use of aversive interventions, as such term is defined in section 19.5(b)(1) of this Title, means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing [maladaptive] student behaviors.

(f) . . .

(g) . . .

(ii) . . .

(iii) Significant incident means an incident, other than an incident of abuse or neglect that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a student and shall include but not be limited to:

(a) . . .

(b) conduct on the part of the custodian, which is inconsistent with a student's individual treatment plan or IEP, generally accepted treatment practices and/or applicable Federal or State laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a student, including but not limited to:

(1) ...

(2) unauthorized use of [time out] timeout, which means the use of a procedure in which a student is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of [a time-out as an emergency intervention] timeout, as defined in section 19.5(b)(11) of this Title, to protect the health or safety of the individual or other persons

or the use of [a time out room] timeout used in conjunction with a student's IEP or behavioral intervention plan pursuant to section 200.22(c) of this Part;

(3) . . .

(4) ...

10. Paragraph (3) of subdivision (b) of section 200.22 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) [Except as provided in subdivision (e) of this section, a] A behavioral intervention plan shall not include the use of corporal punishment, aversive interventions, seclusion, or physical restraints as such terms are defined in section 19.5 of this Title.

11. Subdivisions (c) and (d) of section 200.22 of the Regulations of the Commissioner of Education are amended as follows:

(c) Use of [time out rooms] timeout.

[A time out room is an area for a student to safely deescalate, regain control and prepare to meet expectations to return to his or her education program. Time out rooms are to] Except for situations that pose an immediate concern for the physical safety of a student or others as provided for in section 19.5(d)(1) of this Title, the use of timeout shall be used in conjunction with a behavioral intervention plan [in which a student is removed to a supervised area in order to facilitate self-control or to remove a student from a potentially dangerous situation and as provided in paragraph (3) of this subdivision] that is designed to teach and reinforce alternative appropriate behaviors.

(1) Each school [which uses a time out room as part of its behavior management approach] shall ensure that [the school's policy and procedures on the use of the time

out room timeout are developed and implemented consistent with this subdivision including the physical and monitoring requirements, parental rights and IEP requirements for students with disabilities. The school's policy and procedures shall minimally include:

(i) prohibiting placing a student in a locked room or space or in a room where the student cannot be continuously observed and supervised;

(ii) factors which may precipitate the use of the time out room;

(iii) time limitations for the use of the time out room;

(iv) staff training on the policies and procedures related to the use of time out room;

(v) data collection to monitor the effectiveness of the use of time out rooms; and

(vi) information to be provided to parents] timeout is used consistent with the requirements of section 19.5(d)(1) of this Title.

(2) A student's IEP shall specify when a behavioral intervention plan includes the use of [a time out room for a student with a disability] timeout, including the maximum amount of time a student will need to be in [a time out room] timeout as a behavioral consequence as determined on an individual basis in consideration of the student's age and individual needs.

(3) [Except for unanticipated situations that pose an immediate concern for the physical safety of a student or others, the use of a time out room shall be used only in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors.

(4) The school district shall inform the student's parents prior to the initiation of a behavioral intervention plan that will incorporate the use of [a time out room for a student] timeout and shall give the parent the opportunity to see the room or physical space that will be used [as a time out room] and provide the parent with a copy of the school's policy on the use of [time out rooms] timeout.

[(5) The physical space used as a time out room shall provide a means for continuous visual and auditory monitoring of the student. The room shall be of adequate width, length and height to allow the student to move about and recline comfortably. Wall and floor coverings should be designed to prevent injury to the student and there shall be adequate lighting and ventilation. The temperature of the room shall be within the normal comfort range and consistent with the rest of the building. The room shall be clean and free of objects and fixtures that could be potentially dangerous to a student and shall meet all local fire and safety codes.

(6) The time out room shall be unlocked and the door must be able to be opened from the inside. The use of locked rooms or spaces for purposes of time out is prohibited.

(7) Staff shall continuously monitor the student in a time out room. The staff must be able to see and hear the student at all times.

(8) The school shall establish and implement procedures to document the use of the time out room, including information to monitor the effectiveness of the use of the time out room to decrease specified behaviors.

(9) For an education program operated pursuant to section 112 of the Education Law and Part 116 of this Title, if a provision of this section relating to use of time out

rooms conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provisions of this section shall not apply.]

12. Subdivisions (d) of section 200.22 of the Regulations of the Commissioner of Education is amended as follows:

(d) [Emergency/interventions.

(1) For purposes of this subdivision, emergency means a situation in which immediate intervention involving the use of reasonable physical force pursuant to section 19.5(a)(3) of this Title is necessary.

(2) Use of emergency interventions

(i) Emergency interventions.]

Use of physical restraint. Physical restraint, as such term is defined in section 19.5(b)(7) of this Title shall be used only in situations in which immediate intervention involving the use of reasonable physical force is necessary to prevent imminent danger of serious physical harm to the student or others. Each school shall ensure that physical restraint is used consistent with the requirements of section 19.5(d)(2) of this Title.

[(ii) Emergency interventions] (1) Physical restraint shall not be used as a punishment or as a substitute for systematic behavioral interventions that are designed to change, replace, modify or eliminate a targeted behavior.

(2) Physical restraint shall not be used as a planned intervention on a student's individualized education program or behavioral intervention plan.

(3) Staff training. Staff who may be called upon to implement [emergency interventions] physical restraint shall be provided with appropriate [training in] evidence-

based training in safe and effective physical restraint procedures in accordance with [sections 100.2(l)(1)(i)(g)] sections 19.5(d)(8) of this Title and 200.15(h)(1) of this Part, as applicable.

[(4) Documentation. The school must maintain documentation on the use of emergency interventions for each student, which shall include the name and date of birth of the student; the setting and the location of the incident; the name of the staff or other persons involved; a description of the incident and the emergency intervention used, including duration; a statement as to whether the student has a current behavioral intervention plan; and details of any injuries sustained by the student or others, including staff, as a result of the incident. The parent of the student shall be notified and documentation of emergency interventions shall be reviewed by school supervisory personnel and, as necessary, the school nurse or other medical personnel.

(5) Applicability. For an education program operated pursuant to section 112 of the Education Law and Part 116 of this Title, if a provision of this section relating to emergency interventions conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provision of this section shall not apply]

13. Subdivisions (e) and (f) of section 200.22 of the Regulations of the Commissioner of Education are REPEALED.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Proposed Rule Making in the State Register on May 3, 2023, the State Education Department (SED) received the following comments on the proposed amendment:

In General

COMMENT: Most commenters supported all or specific components of the proposed amendment relating to the prohibition of corporal punishment, aversive interventions, prone restraint and seclusion; the limited authorized use of timeout and restraint; and data collection. They stated that the changes are welcome and long overdue, designed to further ensure the health and safety of all students, including students with disabilities, and likely to ensure that educational organizations use the most up to date, proactive, and effective interventions for students and their social/emotional/behavioral well-being.

DEPARTMENT RESPONSE: These comments are supportive in nature; therefore, no response is necessary.

COMMENT: A group of commenters asked what kind of formal communication will be provided to superintendents of schools and building principals regarding their roles and responsibilities in implementing the proposed amendments. The commenters further inquire as to whether districts will receive additional funds to respond to the proposed new mandates (i.e., training, oversight and reporting requirements). Other commenters requested additional guidance, including lists of positive intervention strategies and what information needs to be shared with parents.

DEPARTMENT RESPONSE: Information regarding the proposed rule will be distributed through SED's weekly email announcement to all school districts and boards of cooperative educational services via SED's communication channels. SED will consider issuing guidance to assist schools with the implementation of the new requirements.

SED cannot create or allocate funding in conjunction with a rulemaking; therefore, districts are expected to use local funds to implement the requirements of the proposed rule. SED believes that the importance of ensuring student health and safety outweighs any attendant costs. Additionally, as noted in the Regulatory Impact Statement published with the proposed rule, the Department anticipates that school districts will be able to utilize existing staff to offset costs of implementing the reporting, documentation, and debriefing requirements.

COMMENT: A commenter requested clarification as to whether the new regulations apply to school resource officers (SRO)/special patrol officers (SPO), who operate under law enforcement. Another commenter suggested there be an allowance for the use of mechanical restraint, (i.e., handcuffs) when used by an SRO for emergency purposes only. Another commenter recommended explicitly naming SRO and police officers so that there is no ambiguity that they fall under sections 19.5(c) and (d) and to acknowledge that SROs are likely to engage in physically restraining students and using force in some instances.

DEPARTMENT RESPONSE: The proposed rule applies to any teacher, administrator, officer, employee, or agent of a school, as defined in proposed section

19.5(b)(9). A non-substantial revision has been made to the proposed rule to clarify that “agent” includes, but is not limited to, school resource officers.²

COMMENT: Multiple commenters suggested that the regulations should include effective enforcement and accountability measures for schools that do not follow the rules and regulations, including the withholding of funding, reporting to authorities, and audits by SED.

DEPARTMENT RESPONSE: The entities included in the definition of school in proposed section 19.5(b)(9) are subject to oversight by SED. Violations of SED regulations may result in adverse findings in a regulatory proceeding or lawsuit. Moreover, a willful violation of a regulation may result in the consequences described in Education Law section 306 (2): removal of school officers or withholding of State aid.

COMMENT: Several commenters asked SED to consider how the proposed regulations affect approved preschool 4410 programs that are required to obtain day care center licensure. The conflict in the proposed regulations and those established by the Office of Children and Family Services’ (OCFS) (e.g., sections 418-1.9(g) and 418-1.9(h) of the Day Care Regulations) will create conflicts and confusion and a different standard of care for preschoolers in these programs. The commenters recommend amending the proposed regulations to include a stipulation that, for any conflict in these regulations by a dual-licensed program, the requirements of the regulations adopted by SED shall prevail.

² Although not defined in statute, the New York Civil Liberties Union has defined SROs as “law enforcement officers assigned to schools including school security guards, private security guards, sheriff’s deputies, or any uniformed employees of a Law Enforcement Agency who are assigned on a full or part-time basis to work in a District school or program.” (see [NYCLU MOU Recommendations for Schools and Police](#) see Section III.16. [last accessed July 10, 2023])

DEPARTMENT RESPONSE: SED will coordinate with OCFS concerning implementation of the proposed regulations. To the extent that any provision of these regulations conflict, the higher standard that offers more protection to students will prevail. No changes to the proposed rule are necessary.

Definitions

COMMENT: One commenter recommended clarifying that “aversive interventions” do not include deep muscle squeeze or other sensory input prescribed by an occupational or physical therapist as part of a treatment plan/individualized education program (IEP). Some commenters recommended that the definition of aversive intervention be revised to include other interventions (i.e., electric shock, hitting, pinching, and the use of chemical restraint). A commenter also recommended that the reference to “brief physical prompts” be removed and addressed in training. Alternatively, the commenter suggests that a formal definition be added as this phrase could be interpreted to mean that an action could be permissible if “brief”, even if violent or forceful.

DEPARTMENT RESPONSE: SED declines to provide further clarification as the proposed definition of “aversive interventions” excludes interventions medically necessary for the treatment or protection of the student and prohibits the use of any intervention intended to induce pain or discomfort for the purpose of eliminating or reducing student behavior. The proposed definition of corporal punishment includes any act of physical force upon a student for the purpose of punishing that student, regardless of how brief. No changes to the proposed rule are necessary.

COMMENT: A commenter argued that the proposed definition of “physical escort” is too permissive and best characterized as a physical prompt. The commenter recommended clarifying the difference between students moving under their own power/locomotion and staff immobilizing them. This commenter recommended revising the proposed rule to define “physical prompt” using the proposed definition of “physical escort” and define “physical escort,” in turn, to mean any technique used to immobilize the legs or torso of a student to transport a physically resistant student to a safe location. Another commenter stated that Cornell's Therapeutic Crisis Intervention in Schools (TCIS), used by most New York districts, does not allow the use of "physical escort" and requested clarification of the term "acting out" used within the definition of physical escort. Another commenter expressed concern that “physical restraint” involves students walking with no hands on them and asked if a two-person walk/assist would be a physical escort or physical restraint.

DEPARTMENT RESPONSE: SED’s definition of “physical escort” is consistent with the term’s definition in USDE’s [Office of Civil Rights Data Collection \(CRDC\)](#). If the technique used to transport a physically resistant student involves immobilization, it would constitute physical restraint. The proposed rule does not require schools to use a specific training program or specific techniques, such as a physical escort. Whether a student’s behavior is considered “acting out” would be case-by-case decision. No changes to the proposed rule are necessary.

COMMENT: A commenter recommends defining restraint (within the context of emergency interventions) to be consistent with federal law. The commenter also requests that restraint include physical escorts, if a student is forcibly moved without

free agency of their own body. In addition, another commenter recommends that New York State (NYS) conform the regulation to federal guidance by allowing seclusion in emergency situations only.

DEPARTMENT RESPONSE: SED's definition of "physical restraint" is consistent with the definition in USDE's [CRDC](#). SED agrees that the technique used to transport a student constitutes physical restraint if it involves forcibly moving the student and immobilizing or reducing the ability of the student to move their arms, legs, body, or head freely.

COMMENT: One commenter suggested clarifying the definition of "seclusion," as the proposed rule could be interpreted as preventing a student from leaving any room, even if staff are present. Another commenter indicated that in certain situations, a timeout room door may need to be blocked to ensure student safety. Multiple commenters expressed that seclusion is a necessary emergency intervention in schools that serve non-verbal, students with profound autism, with significant behavioral needs. The commenters stressed that by not allowing staff to hold doors shut when a student has escalated to a dangerous level, more restraints will occur, which risks student and staff safety. In addition, the commenter expressed concerns that by removing this intervention from the highest need students, staff will more frequently resort to contacting the police, which may lead to increased emergency room visits and the use of medical restraints. The commenter also expressed concerns that if not allowed in NYS, schools or the agencies may be compelled to discharge or decline those students requiring this level of intervention. Another commenter recommended that the prohibition of seclusion include use of "time out rooms" as there is no quantitative or

qualitative difference between timeout and seclusion and any time a student is involuntarily to a room or area by him or herself (conference rooms, hallways, and any other space), it is seclusion.

DEPARTMENT RESPONSE: The proposed rule defines “seclusion” as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving or they may perceive that they cannot leave at will. Timeout, by contrast, involves the monitored separation of a student in a non-locked setting for the purpose of de-escalation, regaining control, and preparing the student to meet expectations to return to their education program. Blocking a timeout room door would constitute seclusion and is prohibited. No changes to the proposed rule are necessary.

COMMENT: A commenter recommended expanding the definition of “timeout” and “timeout room” and differentiating between use of timeout, based on the principle of punishment, and a “calm down area” or “de-escalation room,” as these terms are more impactful and represent adult behaviors that should be occurring. Another commenter requested clarification as to whether same-day notification pertains only to use of a timeout room, or if it includes any “time out” imposed in connection with a student’s instructional program. The commenter recommends clarifying that timeout does not include “exclusionary time-out” (i.e., removing a student from an activity but not from the room or area of activity). Several commenters expressed concern that student-utilized de-escalation strategies such as sensory breaks, taking a walk or working in a quieter location should not be included in the definition of “timeout” or require parent notification or development of a BIP.

DEPARTMENT RESPONSE: The definition of timeout in section 19.5(b)(11) has been revised to clarify that using coping skills and other calming strategies are not considered timeout and that timeout must be used in the manner authorized in section 19.5(d). If “timeout” or removing a student away from an activity involves the monitored separation of such student in a non-locked setting and is implemented for the purpose of de-escalating, regaining control, and preparing the student to meet expectations to return to their education program, it would constitute timeout and require same day notification consistent with the proposed rule’s parental notification requirements. No changes to the proposed rule are necessary.

COMMENT: One commenter suggested that the prevention of property damage should be covered in training and not explicitly permitted to use physical restraint in the rule. Several other commenters expressed concern that the proposed regulations will serve to preclude school staff from intervening in a scenario in which a student is destroying school property, interrupting instruction, and provoking fear and anxiety in fellow students and staff and they would have no recourse other than calling law enforcement which could potentially escalate the situation to a criminal matter.

DEPARTMENT RESPONSE: The proposed amendment limits the use of physical restraint in response to the destruction of property only in those situations where the property damage would result in imminent harm to the student or others and when the student has not responded to positive, proactive intervention strategies. No changes to the proposed rule are necessary.

COMMENT: A commenter notes that timeout sometimes appears as two separate words ("time out") and sometimes with a hyphen ("time-out") in guidance and current section 200.15.

DEPARTMENT RESPONSE: The proposed rule defines the term "timeout" and replaces "time out room" with "timeout" or "the use of timeout" throughout. "Timeout" will be used in future guidance issued by SED. No changes to the proposed rule are necessary.

Prohibition of the Use Corporal Punishment, Aversive Interventions and Seclusion

COMMENT: One commenter suggested that the regulations allow agency- or student-specific allowances for the use of seclusion as an emergency intervention when other less restrictive interventions have been unsuccessful, and the student would require other emergency interventions beyond restraint. Another commenter described the "emergency intervention" language in section 200.22 as discriminatory and inappropriate as applied to students with disabilities. Another commenter recommended explicitly updating 200.22(c) and (d) with the provisions of proposed section 19.5, verbatim, as to avoid confusion.

DEPARTMENT RESPONSE: The proposed amendment revises section 200.22 to align with the requirements of proposed section 19.5 that apply to all students and replaces the term "emergency interventions" in section 200.22(d) with "physical restraint." Seclusion was not permitted as an emergency intervention under the current regulations and continues to be prohibited under the proposed amendment, without exception.

Authorized Limited Use of Timeout and Physical Restraint.

COMMENT: A commenter questioned how provisions of the proposed rule precluding staff from restricting a student's ability to communicate apply to students who use sign language or an assistive communication device.

DEPARTMENT RESPONSE: Any physical restraint techniques used with students who use sign language, or a communication device, must still allow the student the ability to communicate with staff, including the ability to communicate distress. No changes to the proposed rule are necessary.

COMMENT: A commenter disagrees with the rule's prohibition on using physical restraint as a planned intervention on a student's IEP, Section 504 accommodation plan, behavioral intervention plan (BIP), or other plan developed for a student by the school. The commenter questions how staff will know under what circumstances how and when to use restraints and the restraints that can and should not be used with an individual for each student. The commenter asserts that TCIS requires that the criteria for using physical restraint must be included in a student's individual crisis management/safety plan. A lack of guidance, the commenter argues, prescribes it and that without such documentation, lack of guidance will lead to miscommunication, promote reactive versus proactive measures interventions, and possible cause harm to students. Another commenter indicated that it would not be feasible to monitor hundreds of BIPs in order to use timeout or restraint. Another commenter recommended noting on a BIP that physical intervention may only be considered in cases of severe and continuous aggression, self-injury, or property destruction. Another commenter indicated that the Office for People with Developmental Disabilities' (OPWDD) regulations require that all use of interventions, including use of physical restraint, be

prescribed in a behavioral intervention plan (BIP) and recommended that for those programs that are regulated by OPWDD, SED's regulations pertaining to BIPS should align.

DEPARTMENT RESPONSE: Consistent with existing requirements relating to the use of emergency interventions, physical restraint cannot be used as a planned intervention. An individual student plan could describe how staff should interact with a particular student based on their individual behavioral and physical needs (e.g., types of restraints that are contraindicated for the student) if a situation arises that warrants the use of physical restraint. Such descriptions must unambiguously indicate that physical restraint is only to be used in situations in which immediate intervention involving the use of reasonable physical force is necessary to prevent imminent danger of serious physical harm to the student or others. SED believes that adequate staff training in proactive measures and de-escalation techniques will assist staff in the decision as to when the use of physical restraint is necessary. The proposed rule provides an exception to the use of timeout as part of a BIP for situations that pose an immediate concern for the physical safety of the student or others.

Approved private schools whose residential facilities are licensed by OPWDD must comply with SED's proposed requirements relating to the use of physical restraints.

No changes to the proposed rule are necessary.

COMMENT: One commenter indicated that requiring a nurse to examine a student after restraint would create a need for additional funds.

DEPARTMENT RESPONSE:) A non-substantial revision has been made to the proposed rule to require that a student be assessed by either a school nurse or other medical personnel, only when an injury has been sustained or believed to have been sustained. The revision also clarifies which licensed healthcare professionals are considered medical professionals. The decision to hire a school nurse is a budgetary decision made by a school. While the requirement to have a student suspected of injury assessed medically may create added costs, the Department believes that ensuring the health and safety of students is of paramount importance.

COMMENT: One commenter requested that SED define “reasonable attempts” to contact the parent for same day notification. Another commenter indicated that they were encouraged by the updates to increase guidance around same day notification to parents and recommended that parents: (1) receive notification of updates to school policy and procedures; and (2) receive a point of contact in the school or at SED for any questions. A couple of commenters indicated that parent communication must not only be timely but accessible and be provided in the family’s native language or preferred mode of communication. The commenter also recommended that guidance be provided on how to address hard to reach families. Another commenter suggested that parents be offered a meeting when interventions occur, within a specific timeframe articulated by statute or regulation, to ensure schools are using these interventions as a last resort.

DEPARTMENT RESPONSE: The definition of “reasonable attempts” can only be determined on a case-by-case basis. The proposed regulations require schools to post their policies and procedures. It is expected that schools notify parents of revisions

to their policies and procedures to comply with the proposed rules. SED will consider issuing guidance to schools, parents, and other stakeholders about the new requirements, including contact information for questions. Schools are responsible for ensuring the notification of the use of timeout and physical restraint is accessible to parents. The specific procedures used to comply with the proposed parent notification requirements is best determined at the local level. No changes to the proposed rule are necessary.

COMMENT: A commenter stated that the record-keeping burden created by the requirement is substantial and onerous. Another commenter asked if a specific form will be required for documenting use of timeout and physical restraint. A group of commenters expressed concern that providing parents with a copy of restraint and timeout forms could cause confusion, misinterpretation, and the unwarranted dissemination of personal or protected information.

DEPARTMENT RESPONSE: SED has determined that it is educationally sound for schools to document the positive, proactive intervention strategies used prior to using timeout or physical restraint to support informed data-driven decision-making and prevent or reduce the future need for the use of timeout or physical restraint with a student. SED is not requiring a specific form for schools to use to maintain the required documentation for incidents involving the use of timeout and/or physical restraint at this time. No changes to the proposed rule are necessary.

COMMENT: A group of commenters indicated that it is unrealistic to expect a school administrator/designee to debrief with staff after every incident of timeout. Another commenter suggested making the requirements for debriefing more specific to

ensure positive results. Several commenters requested model forms and checklists for debriefing. Another commenter suggested adding a trauma-informed training component for staff who conduct post-restraint debriefing. Another commenter suggested that in addition to staff and student debriefing sessions, the proposed amendment include a parent debriefing on the day the incident occurred.

DEPARTMENT RESPONSE: SED is committed to ensuring safe learning environments for all students and believes that debriefing after every incident in which timeout and physical restraint is used on a student is an important evidence-based technique to prevent or reduce future instances of the use of timeout, help identify areas for improvement, and support staff and students. School administrator designees may be used to meet the reporting and debriefing requirements under the proposed rule. SED does not believe that additional requirements for debriefing are required at this time. SED will explore issuing guidance to assist schools in implementing the new debriefing requirements. The proposed rule requires that same day notification be provided to parents following the use of timeout and/or physical restraint, including an offer to meet regarding the incident. It would not be feasible in most cases for notification and a meeting to occur on the same day as the incident. No changes to the proposed rule are necessary.

COMMENT: A group of commenters requested additional details as to who is required to receive annual training on timeout and physical restraint procedures, including clarification as to whether it includes all principals, bus drivers, general education teachers and substitutes. These commenters asked if SED will be issuing a list of trainings that meet the “evidence-based” criteria referenced in the proposed

amendments. One commenter recommended requiring annual training for "All staff involved in student management" instead of "all staff." Another commenter recommended increasing the availability of crisis intervention and trauma-informed training for teachers. Another commenter asked what the all-staff training will include. Multiple commenters requested that SED phase in the training requirements to allow schools to plan for expenses and staffing. One commenter suggested that all staff be trained on SED regulations regarding seclusion and restraint, principles of behavior, classroom and behavior management, and de-escalation techniques. Another commenter suggested that all schools require Licensed Behavior Analysts (LBAs) or Board Certified Behavior Analysts (BCBAs) to be involved in all behavioral interventions. Another commenter recommended that staff conducting physical restraint have certification as required in the Keeping All Students Safe Act (H.R. 3470). Another commenter suggested requiring staff be trained on de-escalation techniques specifically for students with disabilities

DEPARTMENT RESPONSE: Local schools and school districts are allowed to decide which staff members require annual, evidence-based training in safe and effective developmentally appropriate timeout and physical restraint procedures. SED does not maintain a list of training programs, nor can it endorse specific training programs or the certification that staff must have. Such decisions are best made locally, taking into consideration the student population served. SED has determined that it is important that all staff be trained on a school's policies and procedures related to the use of timeout and physical restraint; evidence-based positive, proactive strategies; crisis intervention and prevention procedures and de-escalation techniques, not just

staff involved in student management. SED has also determined that it is necessary for the training requirements to be implemented upon adoption of the proposed rule to ensure student health and safety. Schools are not required to employ LBAs or BCBAs. No changes to the proposed rule are necessary.

COMMENT: A group of commenters requested clarification as to whether districts that do not use physical restraint need to develop a policy regarding physical restraint procedures.

DEPARTMENT RESPONSE: SED recommends that all schools develop a policy describing such prohibition to ensure staff are aware of the policy and know what to do in situations that pose an imminent danger of serious physical harm to the student or others. Schools cannot ensure that they will never encounter a situation that warrants physical restraint. No changes to the proposed rule are necessary.

Annual Reporting/Data Reporting Requirements

COMMENT: A group of commenters requested clarification regarding the responsibility of districts of residence for the oversight of implementation and reporting data for State approved private school and preschool programs. These commenters indicated that it is not feasible for districts to be charged with this responsibility if the regulations require this. Another group of commenters expressed concern about the high level of reporting required (many characterizing it as an unfunded mandate) and asked whether SED will be working with data management resources to assist the field with these increased requirements and their implementation. Another commenter indicated that they do not support replacing semi-annual reporting with annual reporting. Another commenter suggested that additional data points be collected for every incident

of restraint and seclusion. One commenter suggested that NYSED develop a state registry of all schools that use timeout, restraint, and seclusion.

DEPARTMENT RESPONSE: The proposed rule requires districts to report data for all students for whom they have committee on special education (CSE) responsibility, including students placed by the CSE in educational programs outside the district. SED will be working with districts and will consider issuing guidance to assist schools with the new reporting requirements. The proposed amendment to require annual reporting beginning with the 2024-2025 school year, in the Department's view, balances the need for student-level data related to corporal punishment, aversive interventions, seclusion, timeout, and physical restraint while aligning state reporting to the federal CRDC and reducing the burden of multiple SED office-specific reports. The proposed new reporting requirements will include disaggregated data. No changes to the proposed rule are necessary.

Requirements Relating to Students with Disabilities

COMMENT: A commenter states that the definition of deliberate inappropriate use of restraints in section 200.15 contemplates physical restraints being placed on an individual treatment plan or BIP, which is inconsistent with the rule's prohibition on placing restraints in such plans.

DEPARTMENT RESPONSE: The language referenced by the commenter is not new and is consistent with the Justice Center's definition of deliberate inappropriate use of restraints. The proposed rule codifies, in sections 19.5 and 200.22(d), SED's longstanding position that physical restraint cannot be used as a planned intervention. No changes to the proposed rule are necessary.

COMMENT: One commenter described the “emergency intervention” language in section 200.22 as discriminatory and inappropriate towards students with disabilities.

DEPARTMENT RESPONSE: Section 200.22 has been revised to align with the requirements of proposed section 19.5 that apply to all students and replace the term “emergency interventions” in section 200.22(d) with “physical restraint.” No other changes to the proposed rule are necessary.

Miscellaneous

COMMENT: One commenter suggested that any time a student is restrained, school officials must conduct a functional behavioral assessment (FBA) and develop a BIP within 20 school days. The commenter further recommends that such restraints be documented with fidelity and that data be collected regularly.

DEPARTMENT RESPONSE: These comments are outside the scope of the proposed rule; no changes are necessary. The proposed rule must be read in conjunction with other requirements in Commissioner’s regulations that require the development of an FBA and BIP in certain circumstances, including when a student exhibits persistent behaviors that impede his or her learning or that of others if consistently implemented general school-wide or classroom-wide interventions have been unsuccessful and when the student's behavior places the student or others at risk of harm or injury. While an FBA and BIP can be used for students without disabilities, there are no laws requiring a school to develop an FBA or BIP for such students. For students with disabilities, the Commissioner’s regulations already require that the implementation of the student’s BIP include regular progress monitoring of the

frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the BIP and on the student's IEP.

COMMENT: A commenter noted corrections needed to proposed sections 19.5(c), 19.5(d)(2) and 100.2(bb)(2) relating to numbering and a missing preposition.

DEPARTMENT RESPONSE: SED has made the technical amendments suggested by the commenter as non-substantial revisions, as described above.

COMMENT: One commenter urged SED to support funding in the 2024 Budget to support the behavioral health needs of children and families and the Solutions Not Suspensions Act (S1040). Two commenters supported Assembly bill A3311 to end restraint and seclusion. Another commenter recommended that SED adopt language from Assembly bill A3311 bill in the proposed regulations.

DEPARTMENT RESPONSE: These comments are outside the scope of the proposed rule; no changes are necessary.

COMMENT: One commenter suggested eliminating the practice of “informal school removals” and requiring schools and districts to suspend students for a violation any time they want to send a student home following a restraint incident. Another commenter suggested that all students should have a crisis intervention team. A third commenter made recommendations regarding training and resources for early childhood education.

DEPARTMENT RESPONSE: These comments offer recommendations for issues outside the scope of the proposed rule; no changes are necessary.