

Best Laid Plans: Where to Start, What to Do, and How to Implement Plans for Restraint and Time Out Reduction

April 22 and 27, 2022

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Best Laid Plans: Where to Start, What to Do, and How to Implement Plans for Restraint and Time Out Reduction

By: Caroline A. Roselli, Zaria N. Udeh, & Michelle L. Weber

April 22, 2022 & April 27, 2022

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Agenda

- 1) Legal Framework and Status of ISBE Rules
- 2) Review of Restraint & Time Out (RTO) Procedural Changes
- 3) Role of Oversight Team
- 4) Reduction Plans
- 5) What's Next?

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Legal Framework & Status of ISBE Rules



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Background on Restraint and Time Out Rules

- Following the Chicago Tribune and ProPublica's November 2019 article on use of isolated time out, ISBE published Emergency Rules in late 2019 eliminating use of isolated time out and placing significant restrictions on use of physical restraint.
- Permanent rules were adopted in April 2020 and revised in June 2021 allowing for time out, isolated time out, and restraint in specific circumstances.

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Public Act 102-0339

- Public Act 102-0339 was enacted on August 13, 2021
- Amended the School Code to:
 1. Explicitly address the use of isolated time out, time out and physical restraint;
 2. Add new requirements regarding use of these interventions in schools.

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Status of ISBE Rules

- Further revision of ISBE rules were adopted on January 19, 2022 to bring them in line with Public Act 102-0339.
- Revisions are awaiting final approval from the Joint Commission on Administrative Rules ("JCAR").

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Changes to Restraint and Timeout (RTO) Procedures



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Public Act 102- 0339 Declaration

- 105 ILCS 5/10-20.33 & 5/34-18.20
- Declaration:
 - Use of these interventions carries risks to the health and safety of students and staff;
 - The goal is to reduce and eventually eliminate the use of those interventions;
 - ISBE must take affirmative action to lead/support schools to reduce and eliminate over time.

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Statutory Definitions

- 105 ILCS 5/10-20.33 & 5/34-18.20
- New Statutory versus previous regulatory definitions
 - Isolated Time Out, Time Out, and Restraint definitions remain the same at the core
 - Supplemental additions were made for when they can be applied
 - There is a slight change in the restraint exception



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Statutory Definitions

- Supplemental Additions:
 - Isolated time out or time out
 - Adds prohibition on using a room "in which the door is obstructed, prohibiting it from opening"
 - Deprivation of necessities prohibited
 - Includes denial or unreasonable delay of food or liquid at customarily served times, medication, or use of a restroom

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Statutory Definitions



- Change in the exception for physical restraint:
 - "Restraint" does not include **momentary** periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished **with limited force** and designed to:
 - Previously:
 1. Prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or
 2. Remove a disruptive student who is unwilling to leave the area voluntarily.
 - Change (Currently):
 1. Prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property.

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Statutory Definitions

- Mechanical and chemical restraints are still prohibited.
 - Okay to use student's regular medical regimen to manage symptoms.
- Prone (face-down) restraint only allowed (in a non-public special education facility) if:
 - ISBE rules updated June 2021.
 - The student's behavior intervention plan was in place before 2020, approved by the IEP team, and specifically allows prone restraint.
 - Staff using prone restraint have been trained.
 - The school can document other de-escalation techniques in BIP were ineffective.
 - It occurs within the 2021-2022 school year.

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Notice

- Updated Notice Requirements:
 - For any isolated time out, time out or physical restraint, an administrator must notify the parent/guardian **within two school days** after incident of the option to request a meeting.
 - But note, the current regulatory timeframes for notice of the incident still exist (attempt same day notice, send form within 1 business day).
 - A student may not be excluded from school solely because a meeting has not occurred.

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Notice

- Updated Notice Requirements:

Notify Parent of Incident	<ul style="list-style-type: none">• Attempt same day notice• By phone, email, etc.
Notify Designated School Official of Incident	<ul style="list-style-type: none">• As soon as possible• No later than the end of the school day
Provide ISBE Form to Parent	<ul style="list-style-type: none">• Within 1 Business Day• Send completed form to parent

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Notice

- Updated Notice Requirements:

Notify Parent of
Option to Request
Meeting

- Within 2 School Days
- Hold Meeting Upon Request

Hold Meeting Upon
Parent Request

- Within 2 School Days of Request
- Parent may request more time

Report to ISBE

- Within 2 School Days

Notice of Review of 3
incidents within a 30-
day period,

- Provide 10 days' notice of the date, time and location

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Meeting with School Personnel

- Parent/Guardian meeting with appropriate school personnel
 - Shall be held separate and apart from IEP and 504 meetings
 - Upon parent request, shall be held within 2 school days after the request
 - This timeframe shall be extended upon parent request
 - Parent may request a telephonic or video conference

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Meeting with School Personnel

- Meeting Participants



- At least one appropriate school staff member involved in the incident
- At least one appropriate school staff member not involved in the incident
 - Such as a social worker, psychologist, nurse, or behavioral specialist
- Parent or guardian
- Student, if appropriate

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Meeting with School Personnel

- Meeting Content

Participants must have the opportunity to discuss the following:

- (i) events that occurred prior and any actions taken by school personnel or the student leading up to the incident
- (ii) the incident
- (iii) events that occurred or actions that were taken following the incident and whether the student returned to regular school activities and, if not, how the student spent the remainder of the school day
- (iv) what, if anything, school personnel could have done differently to avoid the incident
- (v) what alternative courses of action, if any, the school can take to support the student and to avoid the future use of isolated time out, time out, or physical restraint.

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Meeting with School Personnel

- Documentation of Meeting

The following elements of the meeting must be documented:

- Meeting summary
- Any agreements or conclusions reached during the meeting
- If a parent or guardian does not request a meeting within 10 school days after the school has provided the documents to the parent or guardian or if a parent or guardian fails to attend a requested meeting, that fact shall be documented as part of the student's school record.

Student Record

- The meeting documentation will be part of the student's school record.
- A copy of the documents shall be provided to the student's parent or guardian.

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Mandatory Reporting

- Mandatory reporting to ISBE

- What alternative measures that are less restrictive and intrusive were used prior to the use of isolated time out, time out, or physical restraint
- Why those measures were ineffective or deemed inappropriate
- ISBE RTO Form was updated on 2/2022



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Standards and Parent Rights

- ISBE must develop standards and parents' rights information
 - (1) a copy of the standards for when isolated time out, time out, and physical restraint can be used;
 - (2) information about the rights of parents, guardians, and students; and
 - (3) information about the parent's or guardian's right to file a complaint with the State Superintendent
- ISBE form to be provided to parent/guardian with copy of restraint/time out standards and information about rights and complaint process
- To be provided after each incident
- To be provided in printed form or, upon the written request of the parent or guardian, by email

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RTO Requirement FAQs

1. How should we provide a parent with notice of their right to request a meeting with school personnel?
2. How do we document whether they requested the meeting and if we held a meeting?
3. Has ISBE developed RTO standards and parents' rights yet? What do we do in the interim?

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Role of Oversight Team



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Oversight Team

- 105 ILCS 5/2-3.130 (e)
 - District boards must create an Oversight Team to develop:
 - (i) a plan for reducing and eliminating isolated time out, time out, and physical restraint in accordance with ISBE goals; and
 - (ii) procedures to implement the plan.
 - Specific elements for the oversight team and plans are set by statute.
 - Yearly progress reports to ISBE are required for 3 years after the law becomes effective. First plan is due July 1, 2022, annual progress reports will be due July 1 of each year thereafter.
 - Districts can be exempt if they demonstrate (i) no use of these interventions in the past 3 years and (ii) an adopted policy prohibiting them with enforcement.

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Oversight Team



- Specific elements for the oversight team and plans:

Composition of the team:

- The restraint and time out oversight team must include, but is not limited to, teachers, paraprofessionals, school service personnel, and administrators.

Nature of the plan:

- (i) a school-specific **plan for reducing and eventually eliminating the use of isolated time out, time out, and physical restraint** in accordance with the goals and benchmarks established by the State Board, and
- (ii) **procedures** to implement the plan developed by the team including the specific actions that are to be taken.

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RTO Oversight Team FAQs

1. How should I select staff to serve on the oversight team?
2. How does the administration engage input from all members of the oversight team?
3. My district has not had any incidents of time out or restraint in the last 3 years. Can/should we pass a policy prohibiting use of these interventions and request an exemption from the oversight team/reduction plan requirements?

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Reduction Plans



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Reduction Plans

Plan must include, but need not be limited to:

1. Reduce and eventually eliminate a reliance on isolated time out, time out, and physical restraint for behavioral interventions and develop noncoercive environments;
2. Develop individualized student plans that are oriented toward prevention of the use of isolated time out, time out, and physical restraint with the intent that a plan be separate and apart from a student's IEP or Section 504 Plan;
3. Ensure that appropriate school personnel are fully informed of the student's history, including any history of physical or sexual abuse, and other relevant medical and mental health information, except that any disclosure of student information must be consistent requirements for student confidentiality and privacy rights; and

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Reduction Plans



Plan must include, but need not be limited to:

4. Support a vision for cultural change that reinforces the following:
 - a. positive behavioral interventions and support rather than isolated time out, time out, and physical restraint;
 - b. effective ways to de-escalate situations to avoid isolated time out, time out, and physical restraint;
 - c. crisis intervention techniques that use alternatives to isolated time out, time out, and physical restraint; and
 - d. use of debriefing meetings to reassess what occurred and why it occurred and to think through ways to prevent use of the intervention the next time.

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ISBE Goals

- In accordance with P.A. 102-0399, ISBE required to establish goals with specific benchmarks to reduce the use of physical restraint, time out and isolated time out over the next three years.
- ISBE posted their goals in benchmarks in November 2021

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ISBE Goal 1: Reduction Goal

- Over a 12-month period, a 25% reduction in the use of physical restraint/time out/isolated time out for students experiencing over 5+ incidents in a 30-day period.
- Completion date: June 30, 2022

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ISBE Goal #2: Training Goal

- Develop annual training focusing on:
 - Crisis de-escalation, restorative practices, identifying signs of distress, trauma-informed best practices, behavior management practices
 - Embed implicit bias training in schools/districts/cooperatives with instances of restrain, time out and isolated time out.
 - Completion date: July 1, 2022



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ISBE Goal #3: Resource Development

- Create an “Alternatives to Time Out and Restraint Recognition Program” to share best practices that work with students based on age, IEP and placement.
- Completion date: July 1, 2022

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Student Specific Plans

- Oriented toward prevention of the use of isolated time out, time out, and physical restraint;
- With the intent that the plan be separate and apart from a student’s IEP or Section 504 Plan.



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Student Specific Plans

- Districts must ensure that appropriate school personnel are fully informed of the student's history, including any history of physical or sexual abuse, and other relevant medical and mental health information.
- Any disclosure of student information must be consistent with federal and State laws and rules governing student confidentiality and privacy rights.

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FAQ



1. Can our school district develop a benchmark that is more ambitious than ISBE's 25% reduction for students experiencing 5+ incidents in a 12-month period?
2. Should we develop a reduction plan for each school in the district or a district-wide plan?
3. How do we communicate with school staff regarding implementation of school-specific plans?
4. How do we communicate with parents regarding school-specific plans?
5. How do we select student-specific plans?
6. What if we want to request a plan waiver?

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Tips for Reduction Plans

- Start with reviewing and analyzing current data. Progress is measured by reduction in overall incidents of these interventions and total number of students subjected to the interventions.
- Use data to drive student-specific plans, as well. Reduction goal should be based on current baseline data.
- Use ISBE as a resource to build and implement reduction plans. ISBE has a CARES team who is overseeing ISBE's compliance with PA 102-0339.
- Set a schedule for the oversight team to meet periodically and check on progress towards meeting reduction goals.

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Tips for Reduction Plans

Required Component	Tips for Actions/Steps
Use of Positive Behavioral Interventions	Consider ways to build out existing PBIS and MTSS structures. Consider how this will be communicated, trained, and monitored.
Effective ways to de-escalate situations and avoid use of restraint and time out	Consider existing framework in CPI or TCI (or other program) and how to improve and enhance de-escalation toolkit.
Use of Crisis Intervention Techniques as alternatives to time out and restraint	Also consider existing CPI or TCI framework, and how to improve and enhance existing crisis protocols and procedures. Consider how this will be communicated, trained, and monitored.
Plan to utilize debriefing meetings to reassess what occurred and why it occurred.	Develop a schedule, by school team, of debriefing meetings. Frequency of meetings may vary depending on overall reduction goal.

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Tips for Reduction Plans

Required Component	Tips for Action/Steps
Informing appropriate staff of student's history, in accordance with confidentiality and privacy laws.	Identify which staff need to receive the student-specific information. Keep in mind that ISSRA/FERPA allows the district to share student record information with school personnel who have a legitimate educational or administrative interest in knowing the information.
Identify steps to develop individualized student plans, separate from IEP/504 plans.	Review and analyze existing student-specific behavioral data as a starting point. Consider interventions and supports provided thus far.
Making information available to parents	Districts required to notify parents and guardians that the reduction plans and annual reports (submitted to ISBE) are available for review.

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What's Next?

- JCAR to approve permanent rules.
- ISBE to release parent information materials.
- School districts to conduct a review of procedures and policies, if they have not already done so.
- Remind school staff to pay careful attention to updated documentation, notice, and meeting requirements.

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What's Next?



- Oversight Teams to start/continue RTO work:
 1. Reduction Plans – due July 1, 2022
 2. Procedures for implementation of reduction plans and any needed training

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RS Tools

Robbins Schwartz RTO Toolkit

1. RTO Procedures
2. Parent Notice Letter of Right to Request RTO Review
3. Template for RTO Review Meeting
4. Template for Student-Specific Plan
5. Sample RTO Plan Language

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Questions?



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Caroline Roselli practices in the areas of special education law and student rights. She counsels school districts and colleges concerning student discipline, student records, policy development, students' rights and other student-related matters. She assists school districts in responding to complaints from the Illinois State Board of Education and Office of Civil Rights and she regularly represents public school districts at IEP meetings, due process hearings, mediations, student expulsion and suspension hearings and residency hearings. Caroline has successfully defended school district decisions and prevailed at due process hearings on issues regarding eligibility, requests for residential placements and denial of FAPE claims.

Caroline has presented at annual conferences for both the Illinois Association for School Boards and for the Illinois Alliance of Administrators of Special Education. She is a co-author of the "Special Education" chapter of the Illinois Institute of Continuing Legal Education's School Law treatise. Caroline also regularly conducts workshops and in-service programs on a variety of special education related topics, including IEP compliance, response to intervention and child find, evaluation procedures, eligibility determinations, autism litigation and discipline of special education students.

AWARDS

Illinois Emerging Lawyer, School Law (2017-2018)

Illinois "Rising Star," Super Lawyers Magazine, Schools and Education Law (2012-2017)

RECENT PUBLICATIONS

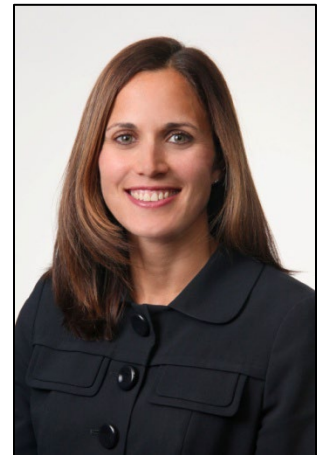
"Students Should Know the Consequences of Sexting," *Chicago Daily Law Bulletin* (2015)

"What Does State Law Say about Measles Prevention and Control in Schools?" *Chicago Daily Law Bulletin* (2015)

Contributing author, "Special Education," *Illinois School Law*, IICLE (2010, 2012 and 2015)

RECENT PRESENTATIONS

Due Process: To Go or Not to Go? Special Education Update, Illinois Council of School Attorneys, 33rd Annual Seminar on School Law (November 2019)



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Chicago Bar Association

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National Council of School
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Seclusion, Restraint, and Time Out 2020, Illinois Alliance of Administrators of Special Education Region 1 Roundtable (November 2019)

Risk Assessment, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)

Legal Issues Related to School Safety and Security: Addressing the Complex Challenges Facing Schools, Large Unit District Association, (May 2019)

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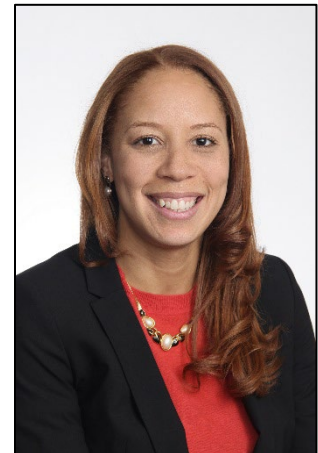
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Zaria practices in the area of education law focusing in the areas of special education and students issues. Zaria counsels school districts with respect to IEP meetings, 504 accommodations, OCR, ISBE, and IDHR complaints, due process hearings, residency and homeless dispute hearings, student discipline matters, board policy and student handbook review, FOIA requests, student record compliance and contract review. Zaria also counsels community colleges on student related issues.

Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

RECENT PUBLICATIONS

"Medical Cannabis at School Wins Legislative OK," Chicago Daily Law Bulletin (2018)



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Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Risk Assessments, Threat Assessments and the Impact on Students with Disabilities, Illinois Alliance of Administrators of Special Education Fall Conference (October 2019)

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