

RESTRAINT AND SECLUSION: WHAT YOU NEED TO KNOW ABOUT INTERPRETING THE REGULATION

The Kentucky Board of Education (KBE) originally approved the proposed restraint and seclusion regulation (704 KAR 7:160) at its August 2012 meeting. The KBE, in compliance with state law (KRS 13A.270), submitted the proposed regulation for public hearing and comments. The public hearing was conducted in September, and written comments were accepted until October 1, 2012. After the comment period and public hearing, the KBE considered all comments received before proceeding.

The Kentucky Department of Education (KDE) received many thoughtful comments on how the proposed regulation could be improved. As a result, KDE made extensive changes to the regulation and submitted it to KBE in October. KBE accepted KDE's proposed changes and approved the regulation on October 3, 2012.

704 KAR 7:160 is not yet final. The Administrative Regulation Review Subcommittee of the legislature will study the regulation, and then it will be reviewed by the legislature's Interim Joint Committee on Education.

The timeline for the proposed regulation depends on the actions taken by the legislature. The earliest that the regulation will go into effect is at the beginning of the 2013-2014 school year.

Misconceptions About the Regulation

Question: I have heard that, if this regulation goes into effect, teachers won't be able to break up fights between students.

Answer: This is not true.

Breaking up a fight is not the same as restraining a student. As defined in the proposed regulation, when a student is physically restrained, the student is **immobilized**. Breaking up a fight is not necessarily a physical restraint of a student. Typically, when teachers or other school personnel break up a fight or pull apart students who are fighting, they are using a less restrictive form of physical contact than "physical restraint" to promote safety.

Under the proposed regulation, school personnel will still have the ability to deal with unexpected emergencies while gaining skills to prevent minor student behaviors from escalating into dangerous ones. Most importantly, the proposed regulation permits school personnel to restrain (immobilize) a student to prevent serious physical injury to self or others, if there is no one close by who is formally trained in safely restraining or secluding the student.

Question: Why does Kentucky need this regulation? My district has not had any student injuries or deaths resulting from physical restraint and seclusion. Physical restraint and seclusion may be a problem in other states, but not in Kentucky.

Answer: Currently, the Office of Civil Rights (OCR) is the only entity that requires the reporting of data on the physical restraint and seclusion of students. Not all Kentucky districts complied with this reporting requirement. For the 2009-10 school year, 104 of 174 Kentucky school districts self-reported over two thousand incidents of physical restraints, nearly 1000 mechanical restraints and over eighteen hundred incidents of seclusion.

Protection and Advocacy (P & A) has documented 80 allegations of the abuse and misuse of physical restraint in more than 45 Kentucky districts in the last five years. P & A has documented cuts, abrasions, bruises, friction burns, sprains, broken bones and fractures, psychological trauma, miscarriage, hemorrhage, and shunt displacement resulting from the improper physical restraint and seclusion of Kentucky students.

These statistics illustrate that Kentucky districts, and students, need this regulation to promote safer and more effective schools.

Question: Will the regulation force teachers to stand by while students fight or destroy property?

What if a student is breaking furniture or windows? I have heard that school personnel won't be able to stop them.

Answer:

As explained above, school personnel may break up fights without violating the proposed regulation, since not all physical contact is a "restraint." School personnel may also re-direct students or use lesser physical contact to keep students from destroying school property or the personal property of others.

When a student's destruction of property puts the student or others at risk of serious physical harm, school personnel are allowed to use physical restraint or seclusion. Evidence has shown that, since physical restraint and seclusion have caused death, serious physical injury, and significant emotional harm, they are never to be used in situations when there is no immediate risk of serious physical harm to self or others and where only property is being damaged. However, lesser physical contact that does not immobilize or limit the student's mobility may be allowable in these situations. Physical restraint does not mean temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a student to move voluntarily to a safe location; does not mean behavioral interventions, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student; does not mean less

restrictive physical contact or redirection to promote student safety; and does not mean physical guidance or prompting when teaching a skill or when redirecting the student's attention.

This regulation is focused on the prevention of inappropriate physical acting out by students. The training required under the regulation provides all school personnel with powerful, evidence-based tools that greatly reduce the inappropriate student behavior, that, if left not constrained, disrupts the learning environment and has the potential to cause significant injury or property damage.

Many teachers have had little or no pre-service training or professional development that prepares them to effectively deal with disruptive or dangerous behavior. Even less prepared are classified staff – bus drivers, classroom assistants, cafeteria workers, and office workers- who are with students during unstructured times of the day and who may be the only adult present when trouble arises.

The preventive training implemented through the regulation is the key to protecting students and school personnel alike. The training will help school personnel replace challenging student behaviors with positive behaviors, and help prevent potentially dangerous behaviors from escalating into serious confrontations.

Questions: I have a student with autism who benefits from therapeutic hugs during the day. Will these be considered physical restraints?

I have a student with autism who often scratches himself. He stops if I gently hold him for a few seconds at a time. This happens each day. Is this a physical restraint, within the definition of the regulation, and must I document each incident?

Answer:

A therapeutic hug is not a physical restraint, since it does not immobilize the student or reduce the student's ability to move the torso, arms, legs or head freely.

Gently holding a student to keep him from scratching himself would not immobilize the student. It is also a less restrictive form of physical contact that promotes student safety. As such, it does not come within the definition of physical restraint.

Question: I have a student who "bolts" unless he is passed from hand to hand. May I grab him to prevent him from running from the school?

Answer: Yes, you may keep the student from running from the school. School personnel may use limited physical contact that does not immobilize the student to keep the student safe. Grabbing a student to prevent that student from endangering himself does not meet the definition of physical restraint in the regulation.

Question: I have found that for small children, a “seated cradle assist” is an effective way of safely restraining a student. The student and I are both on the floor during this assist; is this seated cradle assist prohibited?

Answer: No.

The amended definition of prone restraint clarifies that in a prone restraint, the student is face down on the floor with physical pressure applied to keep the student face down. Prone restraints are prohibited because they are dangerous and can cause the student to asphyxiate.

The seated cradle assist is not a prone restraint. It may be used since physical pressure is not applied to the student’s back to keep the student down.

Question: What if, during a restraint, the student and I fall to the floor. Will I be in trouble for using a prone restraint?

Answer: No. A physical restraint in which the student and teacher fall to the floor is not a prone physical restraint unless pressure is applied to the student’s body to keep her face down.

Question: What about supine restraint? Is it still prohibited?

Answer: The proposed regulation does not permit supine restraints, which have been found to cause death through asphyxiation. There are other effective assists that do not subject students to the risk of death.

Having a student in a face-up position with no pressure applied to the student’s body does not fall within the definition of supine restraint. The definition has been clarified to explain that in a supine restraint, physical pressure is being applied to keep the student in a face up position.

Question: Must a functional behavior assessment be conducted following a first incident of restraint?

Answer: Functional Behavioral Assessments (FBAs) and Behavior Intervention Plans (BIPs) have been removed from the proposed regulation. An FBA is no longer required at the first incident of physical restraint or seclusion. However, FBAs and BIPs are still governed by state and federal statutes and regulations, which must be followed. If a formal FBA is needed, then informed consent from the parent is required.

The informal behavior analyses that teachers make when trying to determine the reasons for a student’s behavior are not a formal evaluation requiring parental consent. They are considered part of the formative assessment that teachers make when evaluating student data.

Question: Teachers need more guidance on what is required by the proposed regulation. Why won’t you define words like “serious” and “imminent?”

Answer: Because the terms “serious” and “imminent” are intended to have their dictionary meaning, there is not a requirement that they be defined in the proposed regulation.

School personnel are to apply “serious” logically, based on the circumstances surrounding student behavior, and thus determine the range of classroom management techniques that are appropriate and necessary.

Restraint and Seclusion in General

Question: I now understand what I can’t do when restraining a child. I’m confused about what I can do.

Answer: As noted above, a seated cradle assist is not a prone restraint, and it is allowed under the proposed regulation. Other assists, such as the hook and carry assist and the kneeling upper torso assist, are also allowed, as neither is a prone restraint.

If you are a member of your school’s core team, you will be trained to use the physical restraints that are allowed in Kentucky.

Question: Will I get in trouble if I use physical restraint or seclusion?

Answer: The proposed regulation was designed to educate school personnel on the dangers of immobilizing a student through physical restraint or placing the student in a seclusion room. These actions should never be taken lightly and must be the last, rather than first, step taken, when a student misbehaves.

The regulation does not take away the teacher’s right to self-defense or to defend other students to the extent necessary to prevent serious physical harm to self or others in clearly unavoidable emergency circumstances where other school personnel intervene and summon trained school personnel or school resource officers or other sworn law enforcement officers as soon as possible.

The training provided to staff will show how to “practice” such an event, just as schools prepare for fires or inclement weather.

The training also enables the school to examine and improve practices.

The proposed regulation requires that physical restraint or seclusion be reserved for critical situations in which the student’s behavior poses an imminent danger of serious physical harm to self or others; less restrictive behavioral interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others, and school personnel implementing the physical restraint are appropriately trained.

A teacher who is not a member of the core team will not be in trouble if the teacher follows the process set out in the proposed regulation, and the district's policies and procedures. This includes:

- Attending annual training;
- Following the training if a student misbehaves;
- Not using physical restraint (immobilization) or seclusion unless an unexpected emergency happens that may cause serious physical injury;
- Using only the amount of force required under the circumstances

Question: I understand that restraint cannot be used to prevent property damage, but what if a student tries to use a piece of property, such as a chair, as a weapon?

Answer: Physical restraint is allowed if a student uses property as a weapon, so long as there is imminent danger of serious physical harm to self or others. Additionally, lesser physical contact that is not a physical restraint may be used to prevent an attack.

Question: I heard that I must look at the student's face during a restraint. What if the student is harming others but has her back to me? If I restrain her, I cannot see her face.

Answer: The purpose of the original language requiring a student's face to be monitored during physical restraint was to ensure that the student was not asphyxiating or under physical duress during restraint.

The regulation was amended to no longer require facial monitoring during a physical restraint. The language has been changed to instead require that the student's physical and psychological well-being be monitored throughout the entire physical restraint.

Through the core team, responsible for physical restraint in a school, there will always be a person present whose role is to observe the student.

Question: Was the requirement that students be visually monitored while in seclusion also removed from the proposed regulation?

Answer: No. The proposed regulation requires that the student be visually monitored for the duration of the seclusion.

Question: I heard that if a student is placed in seclusion, the student's clothing must be removed to keep the student from hurting themselves. Is this true?

Answer: No. The proposed regulation requires that the seclusion setting be free of objects and fixtures with which a student could inflict physical harm to self or others.

Since the requirement for visual monitoring of the student remains in the proposed regulation, school staff will immediately know, and be able to respond, if a secluded student disrobes and attempts to hurt themselves.

Question: Will the proposed regulation allow bullies to take advantage of other students if a teacher cannot intervene?

Answer: No. School personnel may intervene under the proposed regulation. The proposed regulation has no bearing on the duties and authorities established to combat bullying under KRS Chapters 158 and 525. The proposed regulation is a school safety regulation focused on restricting the use of physical restraint and seclusion.

Less restrictive behavioral interventions are the preferred response to prevent the escalation of student misbehavior. Under the proposed regulation, a bully may be physically re-directed or led away from other students so long as the teacher does not immobilize the bully through physical restraint.

To the extent necessary to prevent serious physical harm to self or others in clearly unavoidable emergency circumstances, any school personnel may physically restrain a bully, where other school personnel intervene and summon trained school personnel or school resource officers or other sworn law enforcement officers as soon as possible.

Question: Won't the new regulation make it harder or impossible for teachers to defend themselves from a dangerous student?

Answer: No. The restrictions on physical restraint apply only to situations in which a student is **immobilized** by school staff or where the student's mobility is reduced. School personnel may continue to use less restrictive physical contact to defend themselves and other students.

To the extent necessary to prevent serious physical harm to self or others in clearly unavoidable emergency circumstances, any school personnel may physically restrain a student, where other school personnel intervene and summon trained school personnel or school resource officers or other sworn law enforcement officers as soon as possible.

Question: I have heard that, in other states that have restricted the use of physical restraint and seclusion, they have had an increase in assaults and injuries. Is that true?

Answer: No. In fact, studies have shown that states that have restricted physical restraint and seclusion have had reduced injuries, fewer lost days due to injury, lower employee turnover, higher staff satisfaction, and possibly reduced insurance costs. See [The Business Case for Preventing and Reducing Restraint and Seclusion Use](http://www.behavioral.net/article/reducing-use-seclusion-and-restraint), HHS Publication No. (SMA) 11-4632 found at: <http://www.behavioral.net/article/reducing-use-seclusion-and-restraint>.

Question: I have a deaf child in my class who communicates through sign language. He has significant behavioral issues. The proposed regulation says that children being restrained must be able to communicate, but I would be afraid to let go of his hands if his behavior is violent. Do I have any options?

Answer: The proposed regulation was amended to address this concern. The amended regulation will allow the student to have his hands free for brief periods during the physical restraint to allow for communication, unless the implementer of the physical restraint determines that freedom of the student's hands for brief periods during the restraint appears likely to result in serious physical harm to self or others.

Question: I teach seventh grade. What if a disruptive student refuses to leave my classroom?

Answer: The answer lies in prevention. Not all difficult classroom situations will be avoided by developing positive interactions with students; however, many can be prevented through relationship building, appropriate classroom management techniques, and a developed classroom management plan that includes clearly articulated expectations, rules, procedures, a continuum of opportunities for students to receive feedback, and direction from staff to guide students in stopping and replacing inappropriate or challenging behavior.

Teachers will be provided with de-escalation strategies to keep students from becoming seriously disruptive. Pre-arranged approaches with the student, such as giving him the opportunity to remove himself from the room to cool-down or to seek help from other school personnel, may prove effective.

As part of their training, teachers will learn how to recognize the early warning signs of a possible escalation in challenging student behavior, and steps to take to de-escalate the situation. If preventive strategies do not work, a disruptive student may be escorted from the classroom to the office without the escort being a physical restraint.

Question: Will this create a dangerous situation for the other students?

Answer: A disruptive student is not the same as a dangerous student. Training will help school personnel distinguish between the two.

Again, preventive measures will go far in avoiding situations that create danger for other students.

District Policies and Procedures

Question: Why are you requiring school districts to collect data on restraint and seclusion through Infinite Campus?

Answer: Collecting and analyzing data is the only way to determine if the proposed regulation is effective. Accordingly, when the regulation goes into effect, districts and school personnel will analyze data as part of districts' policies and procedures and revise their policies if a change is needed. The regulation leads the district and school to examine and improve practices.

KDE will also be reviewing district data as part of monitoring and audits conducted at the state level. The data will be used to determine whether a district or school needs additional technical assistance in physical restraint and seclusion.

Question: Why is there a data field in Infinite Campus that collects information on restraints by school resource officers?

Answer: Comments from school personnel and advocates have suggested that school personnel may choose to abdicate their role in dealing with students with difficult behaviors to school resource officers and other law enforcement personnel, rather than adhere to the proposed regulation. Infinite Campus is one of the ways KDE has to monitor physical restraint and seclusion in schools. If data suggests that school resource officers and law enforcement personnel are being inappropriately utilized by schools, KDE will assist districts in taking corrective steps.

Question: The proposed regulation says that students cannot be restrained if restraint is prohibited by a licensed medical professional. What if the school receives a doctor's statement written on a prescription pad that says only that the student should not be restrained due to medical concerns?

Answer: The district's policies and procedures will establish the conditions under which a student will qualify for a medical exemption from physical restraint. Presumably, a doctor's statement on a prescription pad would not provide enough information to establish a *bona fide* medical exemption from physical restraint.

Question: How will a core team member know whether there is a medical prohibition against restraining a particular student?

Answer: Under the regulation, districts are required to establish physical restraint and seclusion policies and procedures. KDE expects districts, as part of the policies and procedures, to establish processes required to make the regulation work effectively.

One process will be the documentation required to establish a student's medical exemption from physical restraint. The type and sufficiency of medical documentation will be established by the policy, as well as the group of people who will make the decision to grant the exemption.

KDE will not require the core team to be part of the team deciding on the medical exemption. However, if district policy requires core team member participation in the decision, the core team

will be aware of the students who are exempt from physical restraint. Other protections must be established by the district's policies, such as notification of the student's teachers and substitute teachers.

The review of medical issues is not unprecedented. Schools currently have health policies in place that alert school personnel when a student has a life-threatening condition. Similar policies will be utilized for students whose health is at risk if the student is physically restrained.

KDE does not anticipate a rash of exemptions. Very few students should qualify, under well-drafted criteria, for exemption from physical restraint.

Written Records and De-briefing Meeting

Question: I have heard that the proposed regulation forces the school to take on a lot of extra work after an incident. Is that true?

Answer: The proposed regulation requires that a written record be made in the event of physical restraint or seclusion. In situations involving lesser physical contact that does not immobilize the student, the written record requirement does not apply.

If a written report is required, it is similar to a typical incident report that describes "who, what, when, where, how and why."

The report must be sent to the student's parent and the school administrator. Without this regulation, there is no requirement that parents be notified of the physical restraint or seclusion of their child.

In addition to giving notice to parents and school administrators, the report also assists in prevention, as the written report helps the school understand the reasons for the student's behavior that resulted in the physical restraint or seclusion. This information will assist the school in keeping the behavior from happening again and cutting down on the time and stress it currently takes teachers and administrators to deal with physical restraint, seclusion and the aftermath of both.

Once in effect, the new regulation will allow a more extensive debriefing upon request of the parent or emancipated student. The debriefing and the written report serve the same purposes; to provide the parent, and student, and district with a greater understanding of the events leading up to, during and after the physical restraint or seclusion. The debriefing requires a more in-depth analysis of the purpose of the behavior, leading to informed plans that will anticipate and prevent the behavior from recurring.

Public Policy Issues

Question: Does the regulation favor the student, instead of the teacher?

Answer: The proposed regulation was written to promote learning in a safe and healthy environment for all children, teachers, and staff; this is the most important part of the regulation. While **restricting** the number of physical restraints and instances of seclusion will keep students and teachers safe from injury, the instructional and preventive training requirements will **reduce** the **need** for physical restraint and seclusion. This reduction helps both teachers and students.

Studies cited by the U.S. Department of Education and other federal and state agencies demonstrate that, when schools use evidenced-based practices such as positive behavioral supports and interventions, schools become safer, with fewer teacher and student injuries. Insurance and workers compensation claims go down, while teacher job satisfaction increases.

Physical restraint and seclusion are not evidenced-based practices. They do not make schools safer. They address the immediate situation, but do nothing to affect the root cause of the student's behavior.

Teachers using positive behavioral supports teach students to replace behaviors that interfere with school success with acceptable behaviors. De-escalation strategies teach students who are "losing control" to regain control. Both strategies are highly effective at keeping less serious behaviors from escalating into dangerous situations.

When teachers possess the tools to instruct students on appropriate behavior, and to de-escalate behaviors that may be disruptive, the learning environment will be safer and will improve learning for all students.

Question: I have seen pictures of classrooms that have been severely damaged by an out-of-control student. By prohibiting restraint, isn't KDE saying that this kind of student behavior is acceptable? What is this teaching our students?

Answer: Pictures of damage to property depict a sad situation. However, property damage alone does not justify the use of physical restraint or seclusion at school.

If, because of age or disability, a student does not understand that pulling files off a desk is not allowed, the student must be instructed in appropriate replacement behavior. Students who have damaged property while in a rage must be provided with support and strategies that help them control their anger, while receiving a consequence for the behavior. The proposed regulation provides for training and guidance to avoid, de-escalate, and otherwise address out of control student behavior.

KDE does not believe that destructive behavior is to be tolerated. KDE believes that school personnel must have training to give them the tools and confidence to address student misbehavior.

Training

Question: From the news, it seems that our schools are getting more dangerous. Is this the right time for this regulation?

Answer: In 2011, over 42,000 Kentucky educators were surveyed through Teaching, Empowering, Leading and Learning (TELL) Kentucky. 93% of teachers reported that their faculty works in a safe environment.

By emphasizing prevention and proper training, the proposed regulation will help schools become even safer for students and teachers. It will give teachers and other school personnel tools to keep student misbehaviors from becoming dangerous.

Question: Won't this burden our teachers even more?

Answer: No. For the vast majority of teachers, the only requirement is participating in an annual training to give them the tools to prevent or de-escalate dangerous behaviors and to safely protect students and themselves.

A small team from each school will receive more intensive training to teach them crisis management and how to safely respond to dangerous situations.

Question: If I have not been trained to properly impose physical restraint, may I intervene to stop a fight?

Answer: Yes. As outlined above, school personnel may intervene to stop a fight without “restraining” a student. Only physical contact that immobilizes or reduces a student’s ability to move is defined as physical restraint.

An untrained person is also permitted to physically restrain a student during a fight if

- *The fight presents an unanticipated emergency*
- *There is an imminent risk of serious physical harm*
- *Trained staff are called as soon as possible*

Question: I hear the training requirements are very expensive. How will my district be able to afford training all school staff?

Answer: The proposed regulation was written with cost in mind. The regulation allows training for all school personnel to be delivered through web-based applications. KDE will take a leading role in developing the training, using the expertise of its own staff and staff in the regional cooperatives.

The requirement for all staff training is different from the training provided to a core team selected from each school. The core team will be trained in the prevention and use of physical restraint that is allowed by the proposed regulation. A district may choose to do this by allowing a certified trainer in its district to train all core team members in its schools.

The core team members will be required to demonstrate proficiency through a written test and a physical demonstration. Each core team member will receive an attendance document that specifies the training received and the skills successfully demonstrated. The certified trainer would also review the district's documentation of physical restraint incidents during the year.

Question: Why are school resource officers and sworn officers of the law exempt from the training requirements in safe crisis management offered to the core team?

Answer: Since school resource officers or other sworn law officers are trained in physical restraint as part of their job responsibilities, requiring them to be trained would be a duplication of effort. They will participate in the annual training that is required for all school personnel.

Lawsuits

Question: Won't more regulation like this lead to more lawsuits and more cost to the schools?

Answer: It should actually result in reduced risk of lawsuits and costs. KDE believes that, without the regulation, behaviors that could be dealt with through de-escalation techniques may erupt into full-blown dangerous or disruptive behaviors that can cause injury to both teachers and students. By being proactive, a school will lessen the number of "events" that could lead to a lawsuit.

If a situation arises in which a student exhibits dangerous behavior, the proposed regulation outlines teachers' options. Preparing teachers and other school personnel about potential emergencies is a key focus of the proposed regulation. The regulation is designed to prevent student behaviors from becoming dangerous, and to provide school personnel with the tools to safely deal with emergencies.

The proposed regulation also makes it clear that physical restraints (prone and supine) that may cause death or serious injury are not allowed. The key purpose of the proposed regulation is safety, and making schools safer will lead to fewer injuries and fewer lawsuits.

Proper staff training and advance preparation are the keys to preventing lawsuits.

Question: Will I be sued if I use restraint or seclusion? Can I be sued if I break up a fight? Can I be sued if I do not break up a fight?

Answer: The system of law in the United States does not prevent the initial filing of a lawsuit by a plaintiff. However, courts can dismiss defendants who are wrongly sued, and the legal system can vindicate defendants who are not legally responsible for the injuries.

While no one wants to be sued, the real question is whether you can be found liable for money damages for using physical restraint or seclusion, or for breaking up a fight or not breaking up a fight.

It is important that teachers act within their roles. The proposed regulation requires that physical restraint or seclusion be reserved for critical situations in which the student's behavior poses an imminent danger of serious physical harm to self or others; less restrictive behavioral interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others, and school personnel implementing the physical restraint are appropriately trained.

To the extent necessary to prevent serious physical harm to self or others in clearly unavoidable emergency circumstances, any school personnel may physically restrain a student, where other school personnel intervene and summon trained school personnel or school resource officers or other sworn law enforcement officers as soon as possible.

The act of breaking up a fight or not breaking up a fight does not come under the purview of 704 KAR 7:160. Pulling students away from each other or intervening between students to stop them from fighting does not come within the definition of "restraint." Other Kentucky statutes and case law also govern the duty of care owed by a teacher to a student who is fighting.