

Workshop on Proposed IDOE Rules: Physical Restraint and Seclusion

Chapter 103 Workshop Agenda

- Background and History of the Initiative
- Framework of the Law, Administrative Rules, and Rulemaking
- Key Components -- Basics, Issues, and Hot Topics
- Dos and Don'ts for Teachers, Schools, Students, Parents
- Step-By-Step Review of Incidents
- Real World Application
- How to Improve the Rules
- Next Steps



Background and History of the Initiative

- 2017:
 - Attorney Mary M. Richard creates advocate workgroup to review use of seclusion and physical restraints in schools and the Iowa rules
 - Workgroup drafts rules and asks Iowa Department of Education to begin rulemaking
 - IDOE convenes stakeholder group of advocates, officials, teachers, special education experts, school boards and administrators, associations, lobbyists, etc.
- 2018:
 - Stakeholder group meets to review drafts, eliminate deal-killers, and reach consensus
 - Advocate workgroup amends Petition and submits new proposed rules
 - IDOE recommends proposed rules and submits to State Board of Education
- 2019
 - State Board of Education gives go-ahead to publish rules and get comments from the public
 - IDOE to review and respond to public comment, meet with stakeholders, create final rule

Stakeholder Group Participants

- Iowa Department of Education
- School Administrators of Iowa
- Urban Education Network of Iowa
- State Fire Marshal
- Area Education Agencies
- ACLU Iowa
- Special Education Teachers
- Private Lawyers
- Rural School Advocates of Iowa
- Iowa State Education Agency
- Iowa Association of School Boards
- Iowa Department of Public Safety
- Disability Rights Iowa
- Iowa School Districts
- Iowa Assn of School Boards
- State Building Code Official
- Law and Policy in Action Clinic

Workgroup Top Priorities

Promote the care, safety, welfare, and security of the school community and the dignity of each child

Encourage the use and development of proactive, effective, research-based strategies and best practices

Ensure that seclusion and physical restraints are used only as a last resort and subject to diligent assessment

Give clear guidance on when specific disciplinary and behavior management techniques are permitted

Chapter 103: Current Rules

- Updated in 2008
- Framed in terms of corporal punishment
- Immunity from civil & criminal liability
- No specific guidance on reasonable and necessary force
- Lack of seclusion room specifications
- Minimal guidance for teachers and administrators
- Confusing terminology: time-out, detention, confinement, seclusion

SAC 103.000 Education(201) Ch 103, p 1

CHAPTER 103 CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION

103.1(2560.200) Purpose. In conjunction with Iowa Code section 280.22, the purpose of this chapter is to define and generally prohibit the limitations placed on employees of public schools, accredited nonpublic schools, and area education agencies in applying physical contact or force to credentialed students, and to require that any such force or contact be reasonable and necessary under the circumstances. These rules also provide requirements for administrators and staff of public schools, accredited nonpublic schools, and area education agencies regarding the use of physical restraints and physical confinement and detention. The applicability of this chapter to physical restraint or physical confinement and detention does not depend on the terminology employed by the organization to describe physical restraint or physical confinement and detention.

103.1(2560.200) Ban on corporal punishment. An employee of a public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. "Corporal punishment" is defined to mean the intentional physical punishment of a student. It includes the use of unreasonable or excessive physical force, or physical contact made with the intent to harm or cause pain.

103.1(2560.200) Exclusions. Corporal punishment does not include the following:

1. Verbal reprimand or chastisement directed toward a student.
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular activities.
3. Actions consistent with and included in an individualized education program developed under the Individuals with Disabilities Education Act, as amended, Iowa Code chapter 280B, and 201--Chapter 81, however, under no circumstances shall an individualized education program violate the provisions of this chapter.
4. Reasonable periods of detention, not in excess of school hours, or brief periods of before- and after-school detention, in a rest, classroom or other part of a school facility, unless the detention is accomplished by the use of material restraints applied to the person. If detention meets the chapter's definition of "physical confinement and detention," the provisions of this chapter on physical confinement and detention must be followed. For purposes of this chapter, material restraints do not

Corporal Punishment

The intentional physical punishment of a student. It includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.



What is Not Corporal Punishment

- Verbal recrimination or chastisement toward a student
- Reasonable requests or requirements associated with Physical Ed.
- Actions consistent with individualized student plans (IEP, BIP, IHP, etc.) that comply with other Chapter 103 provisions
- Reasonable periods of detention
- Actions by an employee toward a non-student

Reasonable and Necessary Force - The Key

- Standard used to evaluate the use of force and physical contact with a student
- Standard used to evaluate seclusion of a student
- Actions must be both reasonable and necessary
- Not intended to cause pain
- Force must not exceed degree or duration needed to stop behavior
- Depends on the circumstances at the time of the incident

Permissible Reasonable and Necessary Force

- Quell a disturbance to prevent physical harm
- Obtain possession of a weapon or dangerous object
- Self defense or defense of others
- Prevent student from self inflicted harm
- Protect the safety of others
- Protect property
- Remove disruptive student from class, school premises, or school sponsored event

Proposed Chapter 103: Key Components

Major Proposed Changes

- Organization and Definitions
- When Physical Restraint and Seclusion are Reasonable and Necessary
- Enhanced Training
- Documentation and Reporting Requirements and Timelines
- Parental Notification Requirements
- Debriefing Requirements
- Seclusion Room Specifications



Reasonable and Necessary Force Definition

Force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposed set forth in rule 103.5.

Physical Restraint and Seclusion Definitions

- Physical Restraint means a personal restriction that immobilizes or reduces the ability of a child to move the child's arms, legs, body, or head freely.
- Seclusion means the involuntary confinement of a child in a room or area from which the child is prevented or prohibited from leaving.
- Seclusion Room means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.



Key Components: Physical Restraint and Seclusion to Protect Students and Others

Only to prevent or terminate an imminent threat of serious physical injury to the student or others.



Key Components: Physical Restraint and Seclusion to Protect Property

Or only to prevent serious damage to property:

- Of significant monetary value or significant non-monetary value or importance
- When the student's actions seriously disrupt the learning environment, and
- When physical restraint or seclusion is necessary to ensure the safety of the student and others.

Key Components: Physical Restraint and Seclusion As the Last Resort

And less restrictive alternatives to seclusion or physical restraint would not be effective



Key Components: Enhanced Training

- For all school employees who have direct contact with students
- Must be offered to non-school employees such as student resource officers, first responders, volunteers, PTO members, etc.
- About research-based alternatives to physical restraint and seclusion
- About the duties, responsibilities, and techniques of school resource officers and emergency responders
- Schools must provide Chapter 103 and related policies, procedures and training materials to non-employees whose duties could require them to participate in or be present when physical restraints or seclusion are used

Key Components: Overview of Process and Timeline

- Student is physically restrained or secluded
- School attempts to notify parent using emergency contact system
- If intervention lasts more than 15 minutes teacher must get administrator to approve continuation and notify parent
- School notifies parent when restraint or seclusion ends
- Teacher prepares written report and school must send report and letter to parent by the end of the next school day
- Debriefing meeting must be held as soon as practicable but within five school days of the date the report and letter is mailed or provided to the parent
- Debriefing meeting and debriefing report prepared by school
- Debriefing report must be provided to parent within three schools days of meeting

Key Components: Report and Documentation

- Schools must document each occurrence of physical restraint and seclusion
- An employee who took part in or observed the physical restraint or seclusion must complete a written report that includes:
 - Name of student
 - Name, job title of employees involved
 - Date of occurrence
 - Start and end times
 - Date employees were last trained
 - Actions of the student before, during and after the incident
 - Actions taken by employee before, during, and after the incident
 - Copies of all written approvals for continuation
 - Description of less restrictive means attempted

Key Components: Documentation, Notification, and Reporting

Report must be completed and sent to the parent by the end of the next school day following the incident

- Report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting
- The letter must include the date, time, and place of the meeting and the name and title of employees and other individuals who will attend the meeting
- Parent may elect to receive the report and letter via e-mail, fax, or by obtaining a copy from the school
- If methods of delivery have not been established, the school must mail the letter and report to the parent by first-class mail by end of the next school day after the occurrence

Key Components: Debriefing

Meetings held as soon as practical after the incident but no more than five school days after the incident

To collaboratively examine and determine:

- What caused the incident resulting in the use of physical restraints or seclusion,
- How it could have been avoided and how future incidents could be avoided, and
- How to plan for and implement positive and preventative supports

Intended to improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion

Not intended for disciplinary or punitive purposes

Key Components: Debriefing Participants

- Parent invited and encouraged to attend
- Student with parent permission
- Employee who physically restrained or secluded the student
- Administrator or employee who was not involved in the occurrence
- Individual or Administrator who approved continuation of the physical restraint or seclusion (if applicable)
- Other personnel designated by the school

Scenarios

Questions and Comments Next Steps

Special thanks to the
ICCSD Mental Health, Special Education and Disability PTO
for hosting and sponsoring the workshop in Iowa City.

Contact Information

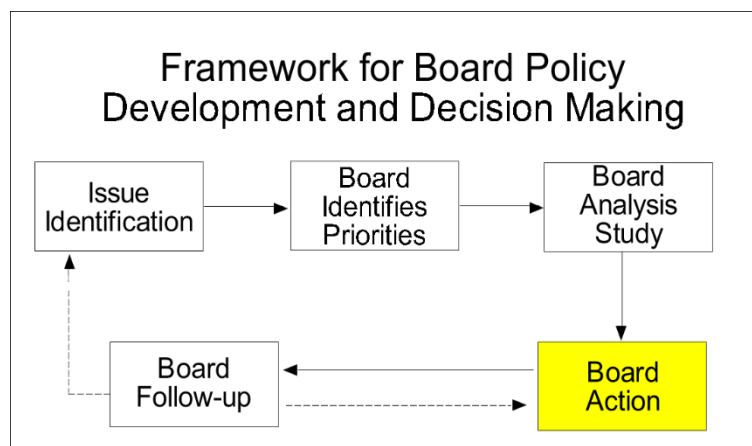
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Iowa State Board of Education

Executive Summary

January 16, 2019



Agenda Item: Rules: 281 IAC Chapter 103 – Corporal Punishment Ban; Restraint; Physical Confinement and Detention (Notice)

State Board Priority: Creating a Safe, Healthy, and Welcoming Learning Environment

State Board Role/Authority: Iowa Code section 256.7(5) gives the State Board of Education the statutory authority to adopt rules under Chapter 17A.

Presenter(s): Nicole Proesch, Legal Counsel and Administrative Rules Coordinator
Office of the Director

Dave Tilly, Deputy Director
Division of Learning and Results

Attachment(s): Two (The first attachment are the proposed rules. The second attachment is the original, strike-through version of the rules.)

Recommendation: It is recommended that the State Board give public notice of its intent to amend Chapter 103.

Background: The Iowa Department of Education (Department) received an Amended Petition for rulemaking, which was submitted on September 18, 2018, and filed pursuant to Iowa Code section 17A.7 (2015). That petition seeks revisions to Iowa Administrative Code (IAC) chapter 281-103, the administrative rules on corporal punishment, physical restraint, and physical confinement and detention, commonly known as the Department’s “seclusion and restraint” rules. The Amended Petition was received after several meetings between the petitioners, other interested parties, and key Department staff regarding the content of the Original Petition. After reviewing the proposed rule, the Department recommended the rule be submitted to the State Board of Education for Notice of Intended Action to amend the current rule to allow all interested parties an opportunity for public comment.

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to Corporal Punishment and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind and replace Chapter 103, “Corporal Punishment, Physical Restraint, Seclusion, And Other Physical Contact with Students,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

These rules are intended to implement Iowa Code sections 256B.3 and 280.21.

Purpose and Summary

The Iowa Department of Education received an Amended Petition for rulemaking, which was submitted on September 18, 2018 and filed pursuant to Iowa Code section 17A.7 (2015). That petition seeks revisions to Iowa Administrative Code chapter 281-103, the Department’s administrative rules on corporal punishment, physical restraint, and physical confinement and detention, commonly known as the Department’s “seclusion and restraint” rules. The Amended Petition was received after several meetings between the petitioners, other interested parties, and key Department staff regarding the content of the Original Petition. After reviewing the proposed rule, the Department recommended the rule be submitted to the State Board of Education for Notice of Intent to amend the current rule to allow all interested parties an opportunity for public comment.

Fiscal Impact

This rule making has no fiscal impact.

Jobs Impact

This rule making has no impact on jobs.

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2019. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 5, 2019 9:00 a.m. to 10:00 a.m.	State Board Room, Second Floor Grimes State Office Building East 14th Street and Grand Avenue Des Moines, Iowa
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Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

Rescind and replace 281, Chapter 103 with the following new rules:

**Chapter 103
Corporal Punishment, Physical Restraint, Seclusion,
And Other Physical Contact with Students**

281–103.1(256B, 280) Purpose and Objectives.

The purpose of this chapter is to provide uniform definitions and policies for public school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited, explain the parameters and protocols for the use of physical restraint and seclusion, and describe other limits on physical contact with students. The applicability of this chapter to physical restraint, seclusion, or behavior management interventions, does not depend on the terminology employed by the organization to describe the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or behavioral management technique is prohibited or may be used.

281–103.2 (256B, 280) Definitions.

For the purposes of this Chapter:

1. "Corporal Punishment" means the intentional physical punishment of a student. It includes the use

of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

2. “Debriefings” are meetings to collaboratively examine and determine what caused the incident resulting in the use of physical restraints or seclusion, how it could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.
3. “Mechanical Restraint” means the use of a device as a means of restricting a student’s freedom of movement. “Mechanical restraint” does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.
4. “Parent” means an individual included in the definition of “Parent” in 281 IAC 41.30, and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for Temporary Delegation of Custody or for making Educational Decisions
5. “Physical Restraint” means a personal restriction that immobilizes or reduces the ability of a child to move the child’s arms, legs, body, or head freely.
6. “Prone Restraint” means any restraint in which the child is held face down on the floor.
7. “Reasonable and Necessary Force” is that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 103.5.
8. “School” includes public school districts, accredited nonpublic schools, and area education agencies.
9. “Seclusion” means the involuntary confinement of a child in a room or area from which the child is prevented or prohibited from leaving.
10. “Seclusion Room” means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281–103.3 (256B, 280) Ban on corporal punishment and Prone and Mechanical Restraints

An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student, or use prone restraints, or mechanical restraints upon a student.

281–103.4 (256B, 280) Activities that are not considered corporal punishment.

Corporal punishment does not include the following:

- Verbal recrimination or chastisement directed toward a student;
- Reasonable requests or requirements of a student engaged in activities associated with physical

education class or extracurricular athletics;

- Actions consistent with and included in an Individualized Education Program developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281–Chapter 41, a Behavior Intervention Plan (BIP), Individual Health Plan (IHP), or safety plan; however, under no circumstance shall an individualized education program, BIP, IHP, or safety plan violate the provisions of this chapter;
- Reasonable periods of detention, not in excess of school hours, or brief periods of detention before or after school, in a seat, classroom, or other part of a school facility,
- Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of a school employing or utilizing the services of the employee.

281–103.5 (256B, 280) Use of Reasonable and Necessary Force.

Notwithstanding the ban on corporal punishment in rule 103.3, no employee subject to these rules is prohibited from:

1. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:

- To quell a disturbance or prevent an act that threatens physical harm to any person.
- To obtain possession of a weapon or other dangerous object within a student’s control.
- For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
- To remove a disruptive student from class or any area of the school’s premises, or from school-sponsored activities off school premises.
- To prevent a student from the self-infliction of harm
- To protect the safety of others.
- To protect property as provided for in Iowa Code section 704.4 or 704.5.

2. Using incidental, minor, or reasonable physical contact to maintain order and control.

An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281–103.6 (256B, 280) Reasonable force.

In determining the reasonableness of the physical force used by a school employee, the following factors shall be applied:

1. The size and physical, mental, and psychological condition of the student;
2. The nature of the student’s behavior or misconduct provoking the use of physical force;
3. The instrumentality used in applying the physical force;
4. The extent and nature of resulting injury to the student, if any, including mental and

psychological injury;

5. The motivation of the school employee using the physical force.

Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281–103.7 (256B, 280) Reasonable and Necessary Force – Use of Physical Restraint or Seclusion

1. Physical restraint or seclusion is reasonable and necessary only:

- a. to prevent or terminate an imminent threat of serious physical injury to the student or others; or
- b. to prevent serious damage to property of significant monetary value or significant non-monetary value or importance, when the student’s actions seriously disrupt the learning environment, and when physical restraint or seclusion is necessary to ensure the safety of the student and others; and
- c. less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and
- d. the physical restraint or seclusion complies with all the rules of this chapter.

2. If seclusion or physical restraint is utilized, the following provisions shall apply:

- a. The seclusion or physical restraint must be imposed by an employee who:
 - i. Is trained in accordance with rule 103.9; or
 - ii. Is otherwise available and a trained employee is not immediately available due to the unforeseeable nature of the occurrence.
- b. A school must attempt to notify the student’s parent using the school’s emergency contact system upon both the commencement and conclusion of the seclusion or physical restraint;
- c. The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student’s behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended.

Unless otherwise provided for in the student’s written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

- i. The student shall be provided with a break to attend to personal and bodily needs.
- ii. An employee shall obtain written approval from an administrator or administrator’s designee to continue the seclusion or physical restraint. An employee must obtain such written approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval must be based on current evidence-based practices and standards, and documented in accordance with rule 103.9.
- iii. The student’s parent must be notified every 30 minutes thereafter for as long as the seclusion or physical restraint continues unless the parent and the school agree to a different notification schedule for that occurrence.

- iv. Schools and employees must document and explain in writing the reasons why it was not possible for them to obtain written approval, notify parents, or take action under subsections 2 (b) and (c) within the prescribed time limits.
- v. Schools and employees who initiate and then end the use of non-approved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This section is not intended to excuse or condone the use of non-approved restraints.
 - d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 103.10, unless the nature of the occurrence makes the use of the designated seclusion room impossible; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.
 - e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint;
 - f. An employee shall not use any physical restraint that obstructs the airway of the student;
 - g. If an employee restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of physical restraint, unless doing so is not feasible in view of the threat posed.
- 3. An employee must document the use of the seclusion or physical restraint in accordance with rule 103.9;
- 4. Nothing in this section shall be construed as limiting or eliminating any immunity conferred by Iowa Code Section 280.21 or any other provision of law.
- 5. An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action.
- 6. If a child's Individualized Education Program (IEP), Behavior Intervention Plan (BIP), Individual Health Plan (IHP) or safety plan includes either or both physical restraint or seclusion measures, those measures must be individualized to the child, described with specificity in the child's IEP, BIP, IHP, or safety plan, and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.
- 7. These rules must be complied with whether or not a parent consents to the use of physical restraint or seclusion for the child.
- 8. If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281-102.2(280), the procedures in 281-Chapter 102 shall be applicable.
- 9. Schools must provide a copy of Chapter 103 and its related policies, procedures and training materials to any individual who is not an employee whose duties could require them to participate in or be present

when physical restraints or seclusion are being used. Schools must invite these individuals to participate in training offered to employees pursuant to this Chapter.

281–103.8 (256B, 280) Training, documentation, debriefing, and reporting requirements.

1. Training. An employee must receive training prior to using any form of physical restraint or seclusion. Training shall cover the following topics:

- The rules of this chapter;
- The school’s specific policies and procedures regarding the rules of this chapter;
- Student and staff debriefing requirements;
- Positive behavior interventions and supports;
- Research-based disciplinary alternatives to physical restraint and seclusion;
- Crisis prevention, crisis intervention, and crisis de-escalation techniques;
- Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and
- Safe and effective use of physical restraint and seclusion.

2. Documentation and Reporting. Schools must maintain documentation for each occurrence of physical restraint and seclusion. An employee who implemented or observed the use of physical restraint or seclusion must complete a written report that must contain at least the following information:

- The name of the student.
- The name and job title of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to rule 103.7.2.c(ii).
- The date of the occurrence;
- The beginning and ending times of the occurrence;
- The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training required by paragraph “1” of this rule;
- A description of the actions of the student before, during, and after the seclusion or physical restraint;
- A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint;
- Copies of all written approval for continuation of the seclusion or physical restraint period generated in accordance with paragraph “2” of rule 103.7.
- A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;

- A description of any injuries, whether to the student or others, and any property damage;
- A description of future approaches to address the student's behavior, including any consequences or disciplinary actions that may be imposed on the student; and
- The time and manner by which the school notified the student's parent of the use of physical restraint or seclusion.

Schools must provide the student's parent with a written copy of the report by the end of the next school day following the occurrence. The report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting to be held within five (5) school days of the day the report and letter is mailed to or provided to the parent.. The letter must include the date, time and place of the meeting, and the name and title of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the next school day after the occurrence.

3. Debriefing: Schools must hold a debriefing meeting as soon as practicable, but within five (5) school days of the day the report and letter is mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent's consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, and other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher). The meeting, and the debriefing report that is to be provided to the parent after the meeting, must include the following information and subjects:

- The date and location of the meeting, and the names and titles of the participants;
- The documentation and report completed in compliance with paragraph "2" of this section;
- A review of the student's Behavior Intervention Plan, Individual Health Plan, safety plan, and Individualized Education Program, as applicable;
- Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
- Determination of possible alternative responses to the incident/less restrictive means, if any;
- Identification of additional resources that could facilitate those alternative responses in the future;
- Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three (3) school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and

methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three (3) schools days after the debriefing meeting.

4. When a student exhibits a pattern of behavior that results in multiple instances of physical restraint or seclusion in the same school year, the school must convene a meeting consisting of employees designated by the school, the student's parent(s), and an expert in behavioral health, mental health, or another appropriate discipline for the purposes of evaluating the causes of the student's behavior, reviewing and revising the student's BIP, IHP, IEP, safety plan, or behavioral plan or developing a plan for the student if none exists, and ensuring the provision of any necessary behavioral supports, in order to improve the student's safety and continued access to education.

5. Schools must comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), Iowa Code Chapter 22 Examination of Public Records (Open Records), and other applicable federal and state laws, when taking action pursuant to this section.

281–103.9 (256B, 280) Seclusion room requirements.

Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

1. The room must meet and comply with all applicable building, fire, safety, and health codes and standards, and with the other requirements of this section.
2. The dimensions of the room shall be of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room must be no less than 70 square feet, and the distance between opposing walls must be no less than 7 feet across.
3. The room must not be isolated from school employees or the facility.
4. Any wall that is part of the room must be part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).
5. The room must provide a means of continuous visual and auditory monitoring of the student.
6. The room must be adequately lighted with switches to control lighting located outside the room.
7. The room must be adequately ventilated with switches to control fans or other ventilation devices located outside the room.
8. The room must maintain a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.
9. The room must be clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects, exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or climb up a wall.
10. The room must contain no free-standing furniture.

11. The room must be constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room shall comply with the state and local building and fire codes and standards.
12. Doors must open outward. The door shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, shall not reduce the required corridor width by more than 7 inches. Doors in any position shall not reduce the required width by more than one-half.
13. The room must be able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.
14. Windows must be transparent and made of unbreakable or shatterproof glass or plastic.
15. Schools must consult with appropriate state and local building, fire, safety, and health official to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry, and exit, fire suppression, etc.) prior to its use.

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to Corporal Punishment and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind and replace Chapter 103, “Corporal Punishment, Physical Restraint, Seclusion, And Other Physical Contact with Students,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

These rules are intended to implement Iowa Code sections 256B.3 and 280.21.

Purpose and Summary

The Iowa Department of Education received an Amended Petition for rulemaking, which was submitted on September 18, 2018 and filed pursuant to Iowa Code section 17A.7 (2015). That petition seeks revisions to Iowa Administrative Code chapter 281-103, the Department’s administrative rules on corporal punishment, physical restraint, and physical confinement and detention, commonly known as the Department’s “seclusion and restraint” rules. The Amended Petition was received after several meetings between the petitioners, other interested parties, and key Department staff regarding the content of the Original Petition. After reviewing the proposed rule, the Department recommended the rule be submitted to the State Board of Education for Notice of Intent to amend the current rule to allow all interested parties an opportunity for public comment.

Fiscal Impact

This rule making has no fiscal impact.

Jobs Impact

This rule making has no impact on jobs.

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2019. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 5, 2019
9:00 a.m. to 10:00 a.m.

State Board Room, Second Floor
Grimes State Office Building
East 14th Street and Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

Item 1. Amend **281–Chapter 103** as follows:

Chapter 103 **Corporal Punishment ~~BAN~~, Physical Restraint, ~~PHYSICAL CONFINEMENT AND~~ ~~DETENTION~~ Seclusion, And Other Physical Contact with Students**

281–103.1(256B, 280) Purpose. ~~In conjunction with Iowa Code section 280.21, the~~ **and Objectives.**

~~The purpose of this chapter is to define and exemplify generally the limitations placed on employees of public schools, accredited nonpublic schools, and area education agencies in applying physical contact or force to enrolled students, and to require that any such force or contact is reasonable and necessary under the circumstances. These rules also provide requirements uniform definitions and policies for administrators and staff of public schools, school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited, explain the parameters and protocols for the use of physical restraints, restraint and seclusion, and describe other limits on physical confinement and detention contact with students. The applicability of this chapter to physical restraint or physical confinement and detention, seclusion, or behavior management interventions, does not depend on the terminology employed by the organization to describe physical restraint, the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or physical confinement and detention behavioral management technique is prohibited or may be used.~~

~~281–103.2(256B, 280) Ban on corporal punishment.~~ An employee of a public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. “Corporal punishment” is defined to mean

281–103.2 (256B, 280) Definitions.

For the purposes of this Chapter:

1. “Corporal Punishment” means the intentional physical punishment of a student. It includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.
2. “Debriefings” are meetings to collaboratively examine and determine what caused the incident resulting in the use of physical restraints or seclusion, how it could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.
3. “Mechanical Restraint” means the use of a device as a means of restricting a student’s freedom of movement. “Mechanical restraint” does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.
4. “Parent” means an individual included in the definition of “Parent” in 281 IAC 41.30, and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for Temporary Delegation of Custody or for making Educational Decisions
5. “Physical Restraint” means a personal restriction that immobilizes or reduces the ability of a child to move the child’s arms, legs, body, or head freely.
6. “Prone Restraint” means any restraint in which the child is held face down on the floor.
7. “Reasonable and Necessary Force” is that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 103.5.
8. “School” includes public school districts, accredited nonpublic schools, and area education agencies.
9. “Seclusion” means the involuntary confinement of a child in a room or area from which the child is prevented or prohibited from leaving.
10. “Seclusion Room” means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281–103.3 (256B, 280) Ban on corporal punishment and Prone and Mechanical Restraints

An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student, or use prone restraints, or mechanical restraints upon a student.

281– ~~Exclusions~~ 103.4 (256B, 280) Activities that are not considered corporal punishment.

Corporal punishment does not include the following:

- ~~1.~~ Verbal recrimination or chastisement directed toward a student;
- ~~2.~~ Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
- ~~3.~~ Actions consistent with and included in an Individualized Education Program developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281–Chapter 41, a Behavior Intervention Plan (BIP), Individual Health Plan (IHP), or safety plan; however, under no circumstance shall an individualized education program, BIP, IHP, or safety plan violate the provisions of this chapter;
- ~~4.~~ Reasonable periods of detention, not in excess of school hours, or brief periods of detention before ~~and/or~~ after school ~~detention~~, in a seat, classroom, or other part of a school facility, ~~unless the detention is accomplished by the use of material restraints applied to the person. If detention meets this chapter’s definition of “physical confinement and detention,” the provisions of this chapter on physical confinement and detention must be followed. For the purposes of this chapter, material restraints do not include devices, objects, or techniques required or ordered for reasons of safety (e.g., safety harnesses on school buses) or for therapeutic or medical treatment (e.g., devices used for physical or occupational therapy), provided those devices, objects, or techniques are so used, and used for no other purpose;~~
- ~~5.~~ Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of an area education agency a school employing or utilizing the services of the employee.

281–103.45 (256B, 280) Exceptions-Use of Reasonable and privileges-Necessary Force.

Notwithstanding the ban on corporal punishment in rule 103.23(256B,280), no employee subject to these rules is prohibited from:

1. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:

- To quell a disturbance or prevent an act that threatens physical harm to any person.
- To obtain possession of a weapon or other dangerous object within a student’s control.
- ~~For the purposes of self defense or defense of others as provided for in Iowa Code section 704.3.~~
- To remove a disruptive ~~pupil~~ student from class or any area of ~~school~~ the school’s premises, or from school-sponsored activities off school premises.
- To prevent a student from the self-infliction of harm

- To protect the safety of others.
- ~~2. To protect property as provided for in Iowa Code section 704.4 or 704.5.~~

2. Using incidental, minor, or reasonable physical contact to maintain order and control.

An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281–103.56 (256B, 280) Reasonable force.

In determining the reasonableness of the physical force used by a school employee, the following factors shall be applied:

1. The size and physical, mental, and psychological condition of the student;
2. The nature of the student’s behavior or misconduct provoking the use of physical force;
3. The instrumentality used in applying the physical force;
4. The extent and nature of resulting injury to the student, if any, including mental and psychological injury;
5. The motivation of the school employee using the physical force.

Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

~~**281— 103.6(256B,280) Physical confinement and detention.** If a student is physically confined and detained in a portion of a school facility, the following conditions shall be observed. For the purposes of this chapter, “physical confinement and detention” means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student’s egress is restricted.~~

- ~~— 1. The area of confinement and detention shall be of reasonable dimensions, and shall be free from hazards and dangerous objects or instruments, considering the age, size, and physical and mental condition of the student subject to confinement and detention;~~
- ~~— 2. There shall be sufficient light and adequate ventilation for human habitation;~~
- ~~— 3. A comfortable temperature shall be maintained, consistent with the facility that includes the confinement and detention area;~~
- ~~— 4. Reasonable break periods shall be afforded the student to attend to bodily needs. However, sleep shall not be considered a “bodily need” for purposes of this subrule;~~
- ~~— 5. The period of detention and confinement is reasonable, considering the age, size, and physical and mental condition of the student subject to confinement and detention, and not in excess of the hours in a school day as defined by local board policy or rule; however, reasonable periods of before and after school detention are permissible. If a period of physical confinement and detention exceeds the shorter of 60 minutes or the school’s typical class period, staff members shall evaluate the continued need for physical confinement and detention, shall obtain administrator (or designee) approval for any continued confinement and detention, and shall comply with any administrator (or designee) directives concerning any continued confinement and detention;~~
- ~~— 6. Adequate and continuous adult supervision is provided;~~
- ~~— 7. Material restraints applied to the person are not used to effect confinement;~~

~~— 8. If a room or enclosure used for physical confinement and detention has a locking mechanism, such room and mechanism shall comply with all applicable building code requirements and the following additional requirements:~~

~~—● If a locking mechanism is used, it shall be constructed so it will engage only when a handle, knob, or other device is held in position by a person, unless the mechanism is electrically or electronically controlled and automatically releases when the building's fire alarm system is activated, the building's severe weather warning system is activated, or electrical power to the mechanism is interrupted.~~

~~—● When the locking mechanism is released, the door must be able to be readily opened from the inside.~~

~~—● If a locking mechanism requires a handle, knob, or other device to be held in position by a person before the mechanism is engaged, no person shall take any action, or cause such action to be taken, or employ any object, device, or instrument, or cause such to be employed, that disables the handle, knob, or other device such that the locking mechanism engages or remains engaged without the handle, knob, or other device being held in position by a person.~~

281–103.7 (256B, 280) Reasonable and Necessary Force – Use of Physical Restraint or Seclusion

~~**281–103.7(256B,280) Additional minimum mandatory procedures.** If a public school, accredited nonpublic school, or area education agency seeks to use physical restraint or physical confinement and detention, or both, it shall do so in compliance with the minimum requirements of this chapter. The board of a public school, accredited nonpublic school, or area education agency may adopt policies and procedures regarding the use of physical restraint or physical confinement and detention, or both, that exceed the minimum requirements contained in this chapter. Additional minimum mandatory procedures are as follows:~~

~~1. Physical restraint and physical confinement and detention shall not be used as discipline for minor infractions and may be used only after other disciplinary techniques have been attempted, if reasonable under the circumstances;~~

~~2. All school employees, before using physical restraint or physical confinement and detention, shall receive adequate and periodic training, which shall be documented and which shall include training on these rules and the employer's policies and procedures; positive behavior interventions and supports; disciplinary alternatives to seclusion and restraint; crisis prevention, crisis intervention, and crisis de-escalation techniques; student and staff debriefing; and the safe and effective use of physical restraint and physical confinement and detention;~~

~~3. Parents and students are notified at least annually of the provisions of this chapter and of any additional policies and procedures of the public school, accredited nonpublic school, or area education agency on physical restraint and physical confinement and detention;~~

~~4. Any physical restraint shall be or seclusion is reasonable and necessary in duration, in light of the provisions of this chapter; only;~~

~~5. If a student is subjected to physical restraint or physical confinement and detention, the public school, accredited nonpublic school, or area education agency shall maintain documentation for each such occurrence, which shall contain at least the following information:~~

~~—● The names of the student and the employees involved in the restraint, confinement, or detention, as well as the administrator who authorizes any additional periods of confinement or detention pursuant to numbered paragraph "5" of rule 103.6(256B,280);~~

~~—● The date, time, and duration of the occurrence;~~

~~—● The actions of the student before, during, and after the occurrence;~~

~~—● The actions of the employees involved in the occurrence before, during, and after the occurrence, including student and staff debriefing;~~

~~—● The alternatives to physical restraint or physical confinement and detention attempted before the occurrence;~~

~~—● A description of any injuries (whether a. to prevent or terminate an imminent threat of serious physical injury to the student or others) and any; or~~

b. to prevent serious damage to property damage; of significant monetary value or significant non-monetary value or importance, when the student's actions seriously disrupt the learning environment, and when physical restraint or seclusion is necessary to ensure the safety of the student and others; and

~~• A description of future approaches to the student's behavior;~~

~~6. The public school, accredited nonpublic school, or area education agency shall attempt to notify a child's parent or guardian on the same day the child is subjected to physical restraint or physical confinement and detention; and~~

~~c. 7. The student's parent or guardian must be provided a written copy of the documentation required by numbered paragraph "5" of this rule, which shall be postmarked within three school days of the occurrence. The student's parent or guardian may elect, in writing, to receive the communication required by this numbered paragraph via electronic mail or facsimile transmission, less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and~~

d. the physical restraint or seclusion complies with all the rules of this chapter. If seclusion or physical restraint is utilized

2. 281 — 103.8(256B,280) Additional provisions concerning physical restraint. If an employee of a public school, accredited nonpublic school, or area education agency employs physical restraint, the following provisions shall apply:

~~a. 1. No~~ The seclusion or physical restraint must be imposed by an employee shall use any prone restraints. For who:

i. Is trained in accordance with rule 103.9; or

ii. Is otherwise available and a trained employee is not immediately available due to the purposes unforeseeable nature of this rule, "prone restraints" means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as occurrence.

b. A school must attempt to notify the students parent using the result of responding to an school's emergency must take immediate steps to end contact system upon both the prone commencement and conclusion of the seclusion or physical restraint;

~~c. 2. No~~ The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student's behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended.

Unless otherwise provided for in the student's written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

i. The student shall be provided with a break to attend to personal and bodily needs.

ii. An employee shall obtain written approval from an administrator or administrator's designee to continue the seclusion or physical restraint. An employee must obtain such written approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval must be based on current evidence-based practices and standards, and documented in accordance with rule 103.9.

iii. The student's parent must be notified every 30 minutes thereafter for as long as the seclusion or physical restraint continues unless the parent and the school agree to a different notification schedule for that occurrence.

- iv. Schools and employees must document and explain in writing the reasons why it was not possible for them to obtain written approval, notify parents, or take action under subsections 2 (b) and (c) within the prescribed time limits.
 - v. Schools and employees who initiate and then end the use of non-approved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This section is not intended to excuse or condone the use of non-approved restraints.
 - d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 103.10, unless the nature of the occurrence makes the use of the designated seclusion room impossible; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.
 - e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint;
 - f. An employee shall not use any physical restraint that obstructs the airway of ~~any child~~ the student;
 - g. ~~3-~~ If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of physical restraint for brief periods, unless an employee determines that such freedom appears likely to result doing so is not feasible in harm to self or others; view of the threat posed.
3. 4. An employee must document the use of the seclusion or physical restraint in accordance with rule 103.9;
4. Nothing in this ~~rules~~ section shall be construed as limiting or eliminating any immunity conferred by Iowa Code ~~section~~ Section 280.21 or any other provision of law.
5. An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more of the provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action.
6. If a child's Individualized Education Program (IEP), Behavior Intervention Plan (BIP), Individual Health Plan (IHP) or safety plan includes either or both physical restraint or seclusion measures, those measures must be individualized to the child, described with specificity in the child's IEP, BIP, IHP, or safety plan, and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.
7. These rules must be complied with whether or not a parent consents to the use of physical restraint or seclusion for the child.
8. If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281-102.2(280), the procedures in 281-Chapter 102 shall be applicable.

9. Schools must provide a copy of Chapter 103 and its related policies, procedures and training materials to any individual who is not an employee whose duties could require them to participate in or be present when physical restraints or seclusion are being used. Schools must invite these individuals to participate in training offered to employees pursuant to this Chapter.

281–103.8 (256B, 280) Training, documentation, debriefing, and reporting requirements.

1. Training. An employee must receive training prior to using any form of physical restraint or seclusion. Training shall cover the following topics:

- The rules of this chapter;
- The school’s specific policies and procedures regarding the rules of this chapter;
- Student and staff debriefing requirements;
- Positive behavior interventions and supports;
- Research-based disciplinary alternatives to physical restraint and seclusion;
- Crisis prevention, crisis intervention, and crisis de-escalation techniques;
- Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and
- Safe and effective use of physical restraint and seclusion.

2. Documentation and Reporting. Schools must maintain documentation for each occurrence of physical restraint and seclusion. An employee who implemented or observed the use of physical restraint or seclusion must complete a written report that must contain at least the following information:

- The name of the student.
- The name and job title of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to rule 103.7.2.c(ii).
- The date of the occurrence;
- The beginning and ending times of the occurrence;
- The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training required by paragraph “1” of this rule;
- A description of the actions of the student before, during, and after the seclusion or physical restraint;
- A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint;
- Copies of all written approval for continuation of the seclusion or physical restraint period generated in accordance with paragraph “2” of rule 103.7.

- A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;
- A description of any injuries, whether to the student or others, and any property damage;
- A description of future approaches to address the student's behavior, including any consequences or disciplinary actions that may be imposed on the student; and
- The time and manner by which the school notified the student's parent of the use of physical restraint or seclusion.

Schools must provide the student's parent with a written copy of the report by the end of the next school day following the occurrence. The report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting to be held within five (5) school days of the day the report and letter is mailed to or provided to the parent.. The letter must include the date, time and place of the meeting, and the name and title of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the next school day after the occurrence.

3. Debriefing: Schools must hold a debriefing meeting as soon as practicable, but within five (5) school days of the day the report and letter is mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent's consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, and other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher). The meeting, and the debriefing report that is to be provided to the parent after the meeting, must include the following information and subjects:

- The date and location of the meeting, and the names and titles of the participants;
- The documentation and report completed in compliance with paragraph "2" of this section;
- A review of the student's Behavior Intervention Plan, Individual Health Plan, safety plan, and Individualized Education Program, as applicable;
- Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
- Determination of possible alternative responses to the incident/less restrictive means, if any;
- Identification of additional resources that could facilitate those alternative responses in the future;
- Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three (3) school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not

provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three (3) schools days after the debriefing meeting.

4. When a student exhibits a pattern of behavior that results in multiple instances of physical restraint or seclusion in the same school year, the school must convene a meeting consisting of employees designated by the school, the student's parent(s), and an expert in behavioral health, mental health, or another appropriate discipline for the purposes of evaluating the causes of the student's behavior, reviewing and revising the student's BIP, IHP, IEP, safety plan, or behavioral plan or developing a plan for the student if none exists, and ensuring the provision of any necessary behavioral supports, in order to improve the student's safety and continued access to education.

5. Schools must comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), Iowa Code Chapter 22 Examination of Public Records (Open Records), and other applicable federal and state laws, when taking action pursuant to this section.

281–103.9 (256B, 280) Seclusion room requirements.

Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

1. The room must meet and comply with all applicable building, fire, safety, and health codes and standards, and with the other requirements of this section.
2. The dimensions of the room shall be of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room must be no less than 70 square feet, and the distance between opposing walls must be no less than 7 feet across.
3. The room must not be isolated from school employees or the facility.
4. Any wall that is part of the room must be part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).
5. The room must provide a means of continuous visual and auditory monitoring of the student.
6. The room must be adequately lighted with switches to control lighting located outside the room.
7. The room must be adequately ventilated with switches to control fans or other ventilation devices located outside the room.
8. The room must maintain a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.
9. The room must be clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects, exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or climb up a wall.
10. The room must contain no free-standing furniture.

11. The room must be constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room shall comply with the state and local building and fire codes and standards.
12. Doors must open outward. The door shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, shall not reduce the required corridor width by more than 7 inches. Doors in any position shall not reduce the required width by more than one-half.
13. The room must be able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.
14. Windows must be transparent and made of unbreakable or shatterproof glass or plastic.
15. Schools must consult with appropriate state and local building, fire, safety, and health official to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry, and exit, fire suppression, etc.) prior to its use.

January 31, 2019

Public Comment Chapter 103: Seclusion and Restraint

ASK Resource Center has served as the state of Iowa's Parent Training and Information Center under The Individuals with Disabilities Education Act (IDEA) for more than 20 years. Helping families to know what laws are impacting their child with a disability is one of our primary roles. Many calls that we receive at ASK are from parents who have a student who has been secluded or restrained at school.

There are several changes we consider improvements that we would be excited to share with families. ASK supports changes that provide increased opportunities for parents to be notified and involved in debriefings. We support changes for increased training for staff and documentation of incidents involving seclusion and restraint. We support the inclusion of standard seclusion room requirements. We support all efforts to analyze and attempt to prevent further instances of seclusion and restraint.

ASK has some concerns and suggestions related to the proposed changes. Please consider each of the suggestions below:

- **103.7(1) Use of restraint. Concern with the definition.** ASK supports raising, not lowering the bar for Chapter 103 by requiring the definition to include the recommended language from the US Department of Education's Seclusion and Restraint Resource Document. The document suggests, "Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated." (U.S. Department of Education Restraint and Seclusion: Resource Document, 2012)

The current proposal includes "103.7b.) to prevent serious damage to property of significant monetary value or significant non-monetary value or importance, when the student's actions seriously disrupt the learning environment" and 103.5(1) "Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following: to remove a disruptive student from class or any area of the school's premises, or from school sponsored activities off school premises". These definitions seem to be a much lower bar than what is considered best practice.

- **103.7(2)(c) Suggestion for increased emphasis on when the use of restraint should end and when it should not be used.**
"The use of physical restraint shall end as soon as:
-The student's behavior no longer poses an imminent danger of physical harm to self or others; or a medical condition occurs putting the student at risk of harm.
Seclusion shall not be used:
-As punishment or discipline;
-To force compliance or to retaliate;
-As a substitute for appropriate educational or behavioral support;

- To prevent property damage in the absence of imminent danger of physical harm to self or others,
- As a routine school safety measure;
- As a convenience for staff;"

- **103.7(5) Although this proposes a requirement for an agency to investigate complaints related to this chapter, there currently is no formal procedural requirements outlined for complaints at the state or district level.** Propose to outline a procedure by which parents may submit a complaint regarding the physical restraint or seclusion of their child, which shall require the district and school to investigate the circumstances surrounding the physical restraint or seclusion, make written findings, and if appropriate, take action. We suggest an additional procedure to make a complaint which would be investigated at the state level.
- **103.7(6) Proposal for seclusion and restraint practices written into the IEP to be individualized.** We would like to suggest that if an IEP contains seclusion and restraint measures it must also include how the school will use positive behavior interventions and supports.
- **103.8(1) Suggestions for training requirements to include:**
 - Simulated experience of administering and receiving physical restraint, and instruction regarding the effect on the person physically restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance.
 - Demonstration by core team members of proficiency in the prevention and use of physical restraint.
 - Instruction regarding documentation and notification requirements and investigation of injuries.
- **103.8(2) Suggestion for additional reporting requirement on the following information:**
 - A description of any events leading up to the use of physical restraint or seclusion including possible factors contributing to the dangerous behavior;
 - A description of the specific techniques used in physically restraining or secluding the student and any other interactions between the student and school personnel during the use of physical restraint or seclusion;
 - A description of techniques used in physically restraining or secluding the student and any other interactions between the student and school personnel during the use of physical restraint or seclusion;
 - A description of any behavioral interventions used immediately prior to the implementation of physical restraint or seclusion;
 - A description as to how the student's behavior posed an imminent danger of physical harm to self or others;
 - A description of the effectiveness of physical restraint or seclusion in de-escalating the situation;
 - A detailed explanation of the legal limits on the use of seclusion, including examples of legally permissible and prohibited use;
 - A description of the planned positive behavioral interventions which shall be used to reduce the future need for physical restraint or seclusion of the student; and
 - For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, documentation of a referral under either law or documentation of the basis for declining to refer the student.
 - Data should be reported to the Iowa Department of Education and analyzed as determined by the IA DE

- **103.8 (2) Recommendation for additional procedural requirements:** ASK supports the proposal for increased training for school resource officers and other law enforcement on Chapter 103 requirements. We propose an addition to the rules that would require all adults who become involved with a behavioral incident in the school setting, including law enforcement officials, to be in compliance with Chapter 103 and the student’s behavior plan.

Schools should be required to outline a procedure to regularly review data on physical restraint and seclusion usage and revise policies as needed including the aggregate number of instances in which a school resource officer or other sworn law enforcement officer is involved in the physical restraint or seclusion of a student.

Due to the disproportionate representation of students with disabilities in the juvenile justice system as a result of the school to prison pipeline, we request that data be collected on the number of students with disabilities who become involved with law enforcement as a result of a behavioral incident at school. This data should also be reported to the Iowa Department of Education.

- **103.8(4) Request for further definition and identification** of who in the school systems would meet the definition of “expert in behavioral health, mental health or another appropriate discipline” under this requirement. The proposed rules include a requirement for a meeting when the student has exhibited a pattern of behavior that has resulted in multiple instances of seclusion or restraint. ASK supports this change but would like further description of what role or qualifications would meet the definition of an “expert in behavioral health, mental health or another appropriate discipline”?
- **103.9(1) Recommendation for a requirement for at least an annual fire/ safety inspection of a seclusion room.**