Adopting the Restraint and Seclusion Regulation to Ensure the Safety of Teachers, Staff and Students in Kentucky Schools

An informational report on
704 KAR 7:160, Use of Physical Restraint and Seclusion in Public Schools
(as amended after public comments)
Kentucky Department of Education
Terry Holliday, Ph.D.
Commissioner

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(as amended after public comments)

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"Our members have witnessed numerous instances of inappropriate seclusion and restraint in Kentucky over the years."

–Kentucky Council for
Children with Behavioral Disorders

"The passage of this much-needed regulation will help to protect children until the goal that all children must be safe at school is realized."

–Autism Society of the Bluegrass

Fact Sheet

Restraint and Seclusion FACT Sheet
Proposed Regulation 704 KAR 7:160: Use of Restraint and Seclusion in Public Schools

Government and agency reports document abuse, injuries, and even deaths of children due to the misuse and abuse of restraint and seclusion in public schools. These same reports document that children with disabilities are disproportionately restrained and secluded and that children who cannot speak are at the highest risk. The U.S. Department of Education has issued 15 principles for states to consider as the framework for regulating the use of restraint and seclusion. KDE's proposed regulation fits perfectly within this framework. Nevertheless, some organizations continue to object to efforts to limit the use of restraint and seclusion in schools. The evidence is clear—restraint and seclusion are ineffective behavior modification techniques that have potentially deadly consequences. The evidence is equally clear that reducing or eliminating restraint and seclusion produces positive outcomes for students, staff, and schools.

Restraint and seclusion are largely preventable.

The argument that restraint and seclusion are necessary is based on a failure to recognize that—for good or bad—adults' interactions with children drive their behaviors and that there is a direct connection between students' behavior and classroom practices. When those practices change, outcomes will change. For example, at the Centennial School in Bethlehem, PA, an alternative school for public school children aged 6 to 20 with the top 1% of chronic behavioral problems, restraints were reduced by 69% and seclusion time by 77% in the first year of implementing a program of positive interventions and supports. Fourteen years later, there were only three standing restraints—each less than one minute—during the entire 2011-12 school year. While eliminating restraints entirely may not be possible, implementing alternate interventions can reduce restraints to negligible numbers.

Restraint and seclusion are not effective methods of changing behavior.

Restraint and seclusion are aversive techniques that are useful only in the very limited context of immediately stopping dangerous behavior. They are not evidence based practices and there is no data to suggest that either of these techniques reduce violent or uncontrolled behavior. To the contrary, behavioral research indicates that restraint and seclusion actually cause, reinforce, and maintain aggression and violence! In contrast, there is over 30 years of data supporting the efficacy of positive behavioral interventions and supports for reducing incidents of problem behaviors. Not only are these alternate interventions better at effecting behavioral changes, but as teachers reduce the amount of time spent managing behavior, there is a corresponding increase in instructional time—and a corresponding increase in academic outcomes for all students.

Reducing restraint and seclusion decreases staff and student injuries.

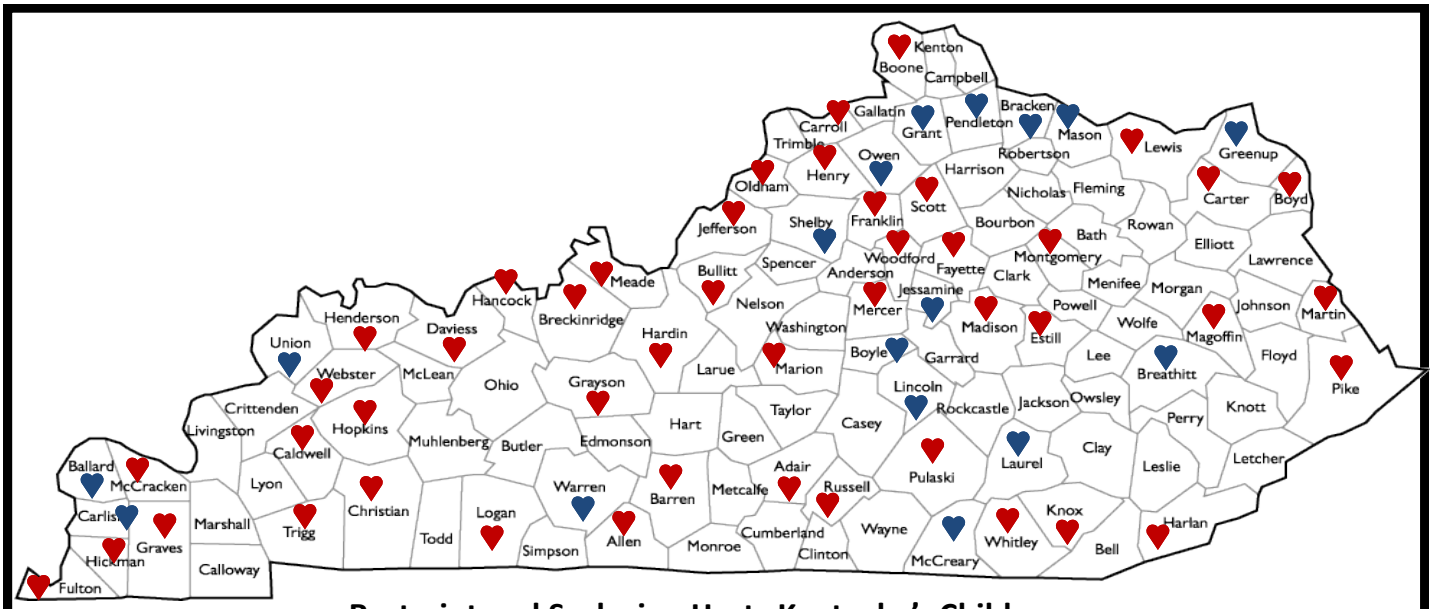
Contrary to fears that reducing restraint and seclusion in schools will place staff and students at a higher risk of injury, studies of schools that have reduced or eliminated the use of restraint and seclusion show a significant reduction in injury rates to staff and students. Staff injuries at the Centennial School were reduced by 50% during the first year of restraint and seclusion reduction efforts. The Grafton School, in Massachusetts, reduced restraint use by 99.8% and reduced staff injuries by 41.2%. One study of a Florida psychiatric hospital found that the use of restraint and seclusion actually increased the risk of injury to staff and patients by 60%! Contrary to assertions that restraint and seclusion are necessary to ensure school safety, the data shows that these practices actually compromise school safety.

Reducing restraint and seclusion saves money.

The use of restraint and seclusion comes at a high cost. Not only in terms of physical injuries and trauma these techniques can impose on staff and students, but restraint and seclusion have real costs associated with staff time, replacement staff, staff training, workers' compensation, healthcare utilization, insurance premiums, property destruction, and legal expenses. The Grafton School has seen reductions in: staff turnover by 10% (estimated annual savings of $500,000); employee lost time and lost time expenses by 94%; workers' comp claims by 50%; and reduced liability premiums by 21% . This totals a cumulative savings in excess of $1.2 million directly attributable to the virtual elimination of restraints.

The regulation doesn't tie teachers' hands!

The proposed regulation limits the use of restraint and seclusion and prohibits potentially deadly restraints. The regulation does not prevent teachers from breaking up fights or prohibit teachers from intervening and addressing negative or challenging behaviors. It does not require teachers to just sit back and watch when students destroy property. It does not even prohibit the use of restraint and seclusion entirely. The proposed regulation does recognize restraint and seclusion as largely preventable and potentially injurious emergency interventions that are appropriate only in those instances where the risk of psychological and/or physical harm presented by restraint and seclusion is outweighed by the risk of physical injury posed by the child's behavior .



Restraint and Seclusion Hurts Kentucky's Children

We know that, nationally, thousands of children have been hurt and even died as a result of restraint and seclusion practices. Still, one frequent objection to regulation of the use of restraint and seclusion is that these dangerous practices don't occur in Kentucky or they aren't misused in Kentucky. Kentucky does not have a statutory or regulatory reporting or notice requirement and we do not know how often restraint and seclusion are used in Kentucky schools. Further, P&A has received calls from parents and teachers expressing concerns about the use of restraint and seclusion who are unwilling to pursue a complaint with our agency because they are concerned that there will be repercussions for the child, other children (i.e. siblings) or their jobs. We do know that in the last five years, P&A has received over 100 complaints regarding the misuse or abuse of restraint and seclusion in 63 Kentucky counties.

♥ Marks those counties were Protection & Advocacy has investigated allegations of the misuse and/or abuse of restraint and seclusion. Reported injuries have included : scratches, bruises, fractures, friction burns, broken bones, miscarriage, and petechial hemorrhage (a hallmark of asphyxiation).

♥ Marks those counties where Protection and Advocacy has received a complaint regarding the use of restraint and seclusion.

The Commonwealth Council on Developmental Disabilities and Kentucky Protection & Advocacy jointly developed this fact sheet about the currently proposed regulation regarding the use of restraint and seclusion in public schools in Kentucky. Indicators of counties in Kentucky where children and youth have been restrained or secluded at school are also included on the fact sheet.

If you have questions about this information you may contact Kentucky Protection & Advocacy at 502-564-2967 or 1-800-372-2988.

"A lot of the times that he was restrained, it was to comply; he was not being a threat."

"[Even though] he had a full leg cast on at the time, he was deemed a flight risk … he was restrained and carried through the school."

"[It] taught him to be afraid."

–Janet Board, grandparent of a
Kentucky public school kindergarten student
who was repeatedly restrained by school personnel

RESTRAINT & SECLUSION

The Reality in Kentucky's Schools.

Kentucky Protection & Advocacy and
The Commonwealth Council on Developmental Disabilities

"Physical Restraint" is defined in the proposed regulation as "a **personal restriction** that **immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely** but 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 less restrictive physical contact or redirection to promote student safety…"

"Seclusion" is defined in the proposed regulation as "the **involuntary confinement of a student alone in a room or area from which the student is prevented from leaving** but does not include classroom timeouts, supervised in-school detentions, or out-of-school suspensions."

Lilly is a Kentucky child who received these injuries as the result of restraints done at her public school.

Why Are We So Concerned?

Restraint and seclusion can have terrible consequences. At worst, restraint and seclusion can cause serious injuries and even result in death. In May 2009, the Government Accountability Office reported on its investigation of the use of restraint & seclusion on children across the country. The GAO found "hundreds" of injuries attributed to the misuse of restraint and seclusion, and **documented at least 20 child deaths from the improper use of restraint and seclusion**. The Child Welfare League reported six to eight children die **every year** from restraint and seclusion related injuries.

Children are being harmed by restraint and seclusion practices in Kentucky schools. While there are no known deaths of children in Kentucky due to restraint or seclusion, these practices are hurting Kentucky's children. Over the past 5 years, Kentucky Protection & Advocacy has received over 100 complaints regarding the use of restraint and seclusion in public schools in 63 Kentucky counties. P&A has investigated more than 80 cases of injuries allegedly caused by restraints performed on children in our public schools.

Angellika died during a restraint in Wisconsin in 2006. The 7-year-old was being restrained for blowing bubbles in her milk and not following time-out rules.

The data show that restraint & seclusion are not effective ways of changing behavior. While restraint & seclusion may be effective at stopping someone from getting hurt when a child's behavior raises a real risk of physical harm, a growing body of research shows that they do not change future behavior. **Data show that positive behavior supports are highly effective at changing behavior.**

Currently, Kentucky has NO statewide regulations dealing with the use of restraint & seclusion in our public schools, NO reporting or parent notification requirement, and NO staff training requirements. The lack of regulation of restraint and seclusion leaves Kentucky children vulnerable to the misuse and abuse of these interventions and at risk for continued injuries and even death.

No Voice

Inside this magazine, we introduce you to children in Kentucky who have been hurt as a result of restraint and seclusion. According to The Child Welfare League, 69% of children restrained and secluded have an identified disability. Even more alarming is the fact that an estimated 60% of those children cannot speak. We have also received reports from parents and teachers who are afraid to speak out about their experience with restraint and seclusion because they are afraid of the consequences for their children or their jobs. **Kentucky does not have any notice or reporting requirements, so we cannot know how many children continue to struggle in silence.** These few stories represent the many who have no voice.

Kentucky kids: Jenna*, Scott County

Jenna began scratching herself during the spring of 2011, when her restrains were at their peak.

When Jenna's mom dropped by her daughter's school in the fall of 2012, she learned that her 9 year old daughter was in the seclusion room. "I asked, What happened? What did she do?" says her mom. "And they told me, 'Oh, she didn't do anything. We were going to make some cookies and normally she doesn't do well with that type of activity.'"

Jenna's mom doesn't know how often her daughter is sent to seclusion. She gets reports whenever Jenna is restrained, but she is not notified about seclusion. Staff told her they refer to the padded seclusion room as "Jenna's Room".

Reports documenting restraints on Jenna over a 4-month period.

Things are better for Jenna than they were back in the spring of 2011. That's when she **was being restrained as often as three times a week. Jenna's mom went to the school staff and gave them ideas on how to prevent the need for restraint.** "I suggested they give her two appropriate choices and they were amazed – they said it works like magic." **During the first two months of school in 2012, Jenna was only restrained once.**

Unfortunately, Jenna's troubles aren't over. Since she started being restrained and secluded in first grade, her mother has noticed that Jenna's self-injurious behaviors have gotten much worse – behaviors like biting her own arm or scratching her skin until it bleeds.

Reflecting on Jenna's story, her mother says, "I understand what teachers go through and I want to support them...but my thing is, they took the easy route. It seemed to be easier to restrain her than it was to learn her actions and her needs, because a lot of this could have been avoided."

Kentucky kids: Adam, Pulaski County

Bruising on Adam's face, documented after restraint.

Adam, who is known as "a big old teddy bear", is very limited in his verbal communication. Adam has been restrained 4 times in his life. The 4th and final time, something went very wrong.

That afternoon, the school called Adam's mother to tell her he had been restrained. When Adam's mother arrived, she reports, **"The teacher said, we held his arms. I said, then why does his face look like that? She said, I don't know."** The school nurse diagnosed the injuries on Adam's face as petechia due to hemorrhaging. Adam's behavior therapist disagreed, and described it as deep tissue bruising.

As Adam's family pieced together the day's events, they learned that school documentation shows that **Adam displayed signs of agitation all day. He was stomping his feet, making a strange sound and being rough with classroom objects. Despite Adam's signs of distress, teachers and aides did not intervene or address his behavior.**

An aide took Adam from the self-contained classroom where he spent most of the day into a regular classroom for his elective, where Adam began biting his own hand. As soon as Adam and the aide returned to the self-contained classroom, Adam headed for the back of the room and began hitting his head against the wall and biting himself while flailing, screaming and crying. Sometime during Adam's meltdown, staff restrained him. While his parents believe the worst of his injuries were self-inflicted prior to the restraint, this was unclear based on staff accounts.

The use of restraint is not what upsets Adam's parents. They are upset that his distressed behavior went unaddressed for so long, and that it resulted in their son getting hurt. Adam has not been restrained again since that day.

"**Five men** took him to the floor **multiple times. He learned that brute force was the way to deal with problems.**"---Mother of Zachary*, former Oldham County student

While Will was a student in public preschool, his punishments included restraint & seclusion.

Kentucky kids: Will, Kenton County

Will's first experience with school was with a teacher who later told his parents she was trying to "fix" their son. **Will was secluded in a closet in the preschool room when he was unable to put his things away fast enough.** While Will was never physically aggressive, at various times school staff attempted to modify Will's behavior by **denying him food, pinching his fingers, pulling his hair, and restraining him to keep him still.** These behavior modifications were never authorized by Will's parents, and because Will had not yet begun to speak, he could not tell anyone what was happening.

Nobody told his parents that their son was being restrained or secluded during this two-and-a-half-year period, until Will began to talk and told them himself. Once his parents started asking questions, various school staff members confirmed Will's accounts.

Will's parents strongly believe that some of the behavioral changes they noticed in their son during this time – hours of crying, withdrawal, nightmares and severe anxiety – are due to those restraints, seclusions and aversive punishments.

Kentucky kids: Eddie**

Fourteen-year-old Eddie was a favorite target of bullies and often struggled to get through the school day. While he reported the bullying to his teachers and his mother repeatedly asked the school for help, the bullying continued. Eddie was never physically aggressive, but he began to lash out verbally, threatening his peers.

In response to Eddie's verbal outbursts, school staff secluded him in a converted broom closet with the door shut. At one point, the closet was his "classroom". **Except for lunch and other non-class periods, he spent all day in the closet.** Eddie's mother repeatedly asked the school to evaluate Eddie for Special Education Services, but the school denied her requests.

Eddie began to have anxiety attacks, particularly when he was shut in the closet. He began to vomit in the closet. School staff did agree to leave the door cracked, but also put a video camera in the closet because they believed that Eddie was forcing himself to vomit to get out of his closet.

P&A became involved and the district agreed that an evaluation was appropriate. The school psychologist started her evaluation that same day. Several weeks later, however, the district called to inform P&A that Eddie's mother had changed her mind and no longer wanted additional services for Eddie. P&A tried to contact Eddie's mother to see what had happened, but was unable to get in touch with his mother for an explanation or for further updates.

Kentucky kids: Lily, Pike County

In May 2011, Lily's mother was giving her 6-year-old daughter a bath when she discovered bruising on Lily's back. Lily, who is unable to speak, could not tell her mother what happened. **Lily's mother discovered that her daughter was being restrained at school by being strapped into a chair. Before she found the injuries, Lily's mother didn't know Lily was being restrained at school.**

May 2011

Lily was injured during a restraint in a Rifton chair—an orthopedic device that is supposed to be used for therapeutic reasons, not for restraints or behavioral intervention. **After an investigation by Kentucky Protection & Advocacy, the school staff member who was using the chair to restrain Lily was fired.**

January 2012

In January 2012, Lily's mother discovered even more extensive bruising on Lily's back. School staff denied that she had been restrained and gave no explanation for Lilys new injuries. While Lily's mother believes that restraint did, again, injure her daughter, she decided to not pursue an investigation because she was concerned that an investigation would have negative consequences for her daughter.

**child's name has been changed to protect his or her identify; **child's name has been changed & county withheld to protect his identity*

Positive Behavior Interventions and Supports (PBIS)

PBIS is not a specific curriculum, intervention, or practice, but is a framework for selecting and implementing evidence-based academic and behavioral practices. **The PBIS approach is to use pro-active, research-based strategies to teach clearly defined behavioral expectations.** The goal of PBIS is to create a more positive, safe, and supportive learning environment for both staff and students.

Over 30 years of research on PBIS shows that a positive and predictable school environment **reduces discipline problems and improves academic performance among all students.** Schools that implement PBIS with fidelity show a gain in instructional time, reduction in out of school suspensions and discipline referrals, and a decrease in referrals to Special Education.

Since 2001, the Kentucky Center for Instructional Discipline (KCID) has been training schools and districts how to implement PBS with fidelity. **KCID's trainings are offered at no cost to the districts** beyond substitute teachers and mileage costs.

The Centennial School: A Success Story

A staff member works with Centennial Students. Centennial has dramatically reduced restraints & seclusions, from over a thousand in 1997-98 to just 3 last year.

The Centennial School, located in Bethlehem, Pennsylvania, is an alternative school for children age 6 to 21. **Its approximately 100 students are referred from the surrounding 40 public school districts—including residential facilities and hospitals.** Students have a wide range of learning difficulties, but have in common the fact that they are within the top 1% of chronic and severe behavioral problems.

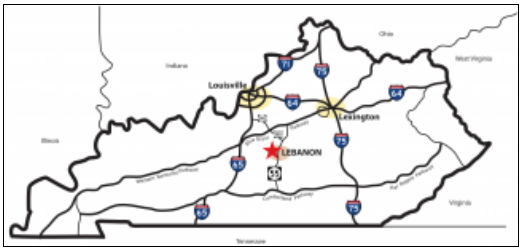
During the 1997-98 school year, the Centennial School's 76 students were restrained 1,064 times. Seclusion rooms were occupied continually during the school day. There were high rates of police involvement, suspensions, and emergency hospitalizations. Vandalism and property damage were common occurrences. There were 31 assaults against teachers. Restraint and seclusion were accepted as necessary and inevitable.

Then, **new leadership led an initiative to replace restraint and seclusion with positive behavioral interventions. In the first year of implementation, restraints were reduced by 69% and seclusion time by 77%.** One seclusion room was converted to a supply closet at mid-year and the second was converted to a school store at year's end. By the second year of efforts, there were virtually no restraints.

In the last 13 years, the Centennial School has changed its school culture and its expectations of its students and teachers. Students are no longer viewed as problem students incapable or unwilling to change their behavior. Interventions are implemented on a school-wide and individual basis. **Last year, there were 3 restraints—all brief standing holds lasting less than one minute. The seclusion rooms have remained closed.** Most significantly, academic outcomes for students have improved.

The Centennial School stands as evidence that restraint and seclusion can be virtually eliminated in schools—even for kids considered to be the "worst of the worst." It is our attitudes, as adults, that drive our interactions and our interventions. While the institutional culture promotes the use of restraint and seclusion, they will continue to be seen as necessary. When the culture changes, outcomes, behaviors, and lives change.

Kentucky Success Story: Marion County



In the fall of 2011, schools in Marion County, Kentucky officially began operating under a policy that's very similar to 704 KAR 7:160. **Under the Marion County policy, restraints are to be used only when a student's behavior "poses an imminent, serious physical harm" to themselves or others.** Restraint cannot be used as a punishment or in response to the destruction of property, the disruption of order, or a student's refusal to comply. Staff are trained in multiple restraint techniques, but no prone or supine restraints are taught.

Is the policy working? **"It works for us,"** says Debbie Spalding, who just retired in September 2012 after twelve years as the county's Director of Special Education. During its first year on the books, staff did not report any difficulties in handling student behavior due to the new policy, and Spalding says she's not aware of any negative reactions to the policy on the part of staff, students or parents.

Principal Benji Mattingly, who is the district's head restraint & seclusion trainer, agrees that the policy is working well for Marion County Schools and says the key is being pro-active: "A lot of it is good classroom management and de-escalation skills cutting back the number of restraints." Both Mattingly and Spalding note it is possible to train staff for a reasonable cost. **In Marion County, 20 staff were trained in restraint and seclusion techniques for a total of $5,000.**

Summing it up, Spalding says, "We have to be looking at what's the purpose behind behavior, so that we can address that and not just react. **Up front it's a time investment. But if we nip it in the bud, we're not spending the whole school year dealing with this.** Once you address behavior it's less of a problem…over that year and the coming school years. **If we address behavior we have a much more independent, happy child who requires much less staff time.**"

> If restraint & seclusion continue to be used in school settings, **schools could benefit from the lessons learned** from the mental health and child welfare systems' experience ...Those lessons learned include **recognizing that restraint & seclusion are high-risk procedures that have the potential to cause severe physical injury, death, and emotional trauma; have little to no therapeutic effect ; can be counter-therapeutic when children are removed from a therapeutic or learning environment; and can be greatly reduced, if not eliminated, in other child-serving settings**.
>
> *- Dr. Janice LeBel et al, American Journal of Orthopsychiatry, 2012*

The State of Restraint and Seclusion Laws Nationally

Federal law protects children from the abusive use of restraint and seclusion in mental health facilities, but currently there is no similar federal law protecting children from the same abuses in public schools. With no federal law to protect America's 55 million school children, regulation of the use of these dangerous—and potentially deadly—interventions has been left to the states with varying results.

⇒ In 2009, only 22 states regulated the use of restraint or seclusion in public schools by statue, regulation, or Executive Order. Today, 30 states limit the use of restraint and seclusion in public schools.

⇒ Kentucky is one of 12 states with guidelines regarding the use of restraint and seclusion. These guidelines lack the force of law and may be disregarded.

⇒ Use of restraint and seclusion is limited to those emergencies involving an immediate risk of physical harm or serious physical harm in 16 states.

⇒ Seclusion is defined by 33 states as a room a child cannot exit (i.e. door is either locked or blocked). All seclusion is banned in four states. Eight states allow seclusion only to prevent immediate threat of physical harm.

⇒ In 18 states, less intrusive methods must be tried and fail or be deemed ineffective before restraint or seclusion can be used.

Today, 30 states regulate the use of restraint or seclusion in public schools by statute, regulation, or Executive Order.

⇒ Restraint or seclusion must be immediately stopped as soon as the emergency ends in 17 states.

⇒ Restraints the impair breathing are prohibited in 18 states; mechanical restraints are banned in 16 states; and chemical restraints are banned in 11 states.

⇒ Parents must be notified of restraint or seclusion on the same day or within 24 hours in 20 states.

⇒ 26 states have no legal requirement to tell parents a child was restrained/secluded.

Butler, Jessica, *How Safe is the Schoolhouse?* , April 15, 2012, Jessica@jnba.net

"As education leaders, our first responsibility must be to ensure that schools **foster learning in a safe and healthy environment for all our children, teachers, and staff.** To support schools in fulfilling that responsibility, the U.S. Department of Education has developed . . . 15 principles for States, school districts, schools, parents, and other stakeholders to consider when developing or revising policies and procedures on the use of restraint and seclusion. These principles stress that **every effort should be made to prevent the need for the use of restraint and seclusion** and that any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse. The principles make clear that **restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff.** The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults."

U.S. Department of Education Secretary Arne Duncan, May 15, 2012

704 KAR 7:160: What Will it Do?

Kentucky Protection & Advocacy and the Commonwealth Council on Developmental Disabilities believe **704 KAR 7:160 will enhance school safety for both students and staff** by **limiting the use of restraint and seclusion, educating teachers on how to safely conduct restraints when absolutely necessary**, and **educating teachers on more effective ways to improve student behavior**.

Highlights from 704 KAR 7:160:

- **"Physical Restraint"** defined as "a personal restriction that immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely, but **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."
- The regulation does not prevent teachers from breaking up fights or prohibit teachers from intervening and addressing negative or challenging behaviors. It does not require teachers to sit back and watch when students destroy property.
- School personnel cannot use at any time: mechanical restraint, chemical restraint, aversive behavioral interventions, physical restraint that is life-threatening, prone or supine restraint, or physical restraint that is prohibited by licensed medical professional.
- **Standing, sitting and kneeling restraints are permitted.**
- **Physical restraint may ONLY be used if student's behavior poses imminent danger of serious physical harm to self or others.**
- Each use of restraint or seclusion will be documented via written record and parents shall be notified.
- All school personnel shall be trained to use an array of positive behavior supports and interventions to increase appropriate student behavior, decrease inappropriate & dangerous behavior, and respond to dangerous behavior. This training may be web-based.
- In each district, a core team of personnel shall be designated to respond to dangerous behavior & implement restraint. Members of this core team will receive annual training.
- School personnel who perform restraints should be trained members of the core team, except in cases of clear emergency.
- The regulation recognizes restraint and seclusion as largely preventable and potentially injurious emergency interventions that are appropriate only in those instances where the risk of psychological and/or physical harm presented by restraint or seclusion is outweighed by the risk of physical injury posed by the child's behavior.

EDITORIAL
Courier-Journal 9/28/12

Keep new student restraint policy . . .

If school officials in Kentucky want to lock a child in a closet for misbehaving — and that does happen — there's nothing in state regulations to stop them.

That would change under regulations from the Kentucky Board of Education, which has devised sensible guidelines that for the first time would govern the practice of secluding or restraining unruly or uncooperative students.

So it was disheartening to see educators and school officials lining up Tuesday to complain about the regulations at a meeting of the state board, which in August approved the new rules that would take effect in the 2013-14 school year. They say the regulations are too "vague" and would hamper their ability to keep schools safe and orderly. Besides, the regulations are just not needed, insisted some who spoke in opposition.

"I've been in the school business for 45 years and I have never seen a teacher hurt a child," Murray Independent School Superintendent Bob Rogers told the board.

Mr. Rogers apparently leads a sheltered life if he believes his experience holds true throughout the state.

Ask the mother of a nine-year- old boy with severe autism who was locked repeatedly in a closet — Oldham County school system officials call it a timeout room — where her child suffered until she removed him from school for his own safety in 2008.

Ask the parents of the Mercer County autistic boy who was allegedly confined in a duffel bag last year whether he was unscathed.

Or ask those who filed more than 80 complaints with Kentucky Protection and Advocacy, including accounts of children who suffered scrapes, cuts, bruises and broken bones, whether anyone got hurt.

Lucy Heskins, a lawyer for the independent watchdog agency, said her organization has documented such injuries. Children have been physically restrained multiple times a day or repeatedly locked in closets or storage rooms, she told the board.

Many have disabilities or learning difficulties and tend to be secluded or restrained more often than other school children, according to advocates.

Ms. Heskins also argued that restraint and seclusion are ineffective, a view shared by U.S. Education Secretary Arne Duncan, who has urged school officials to develop other ways to intervene in behavior or de-escalate volatile situations.

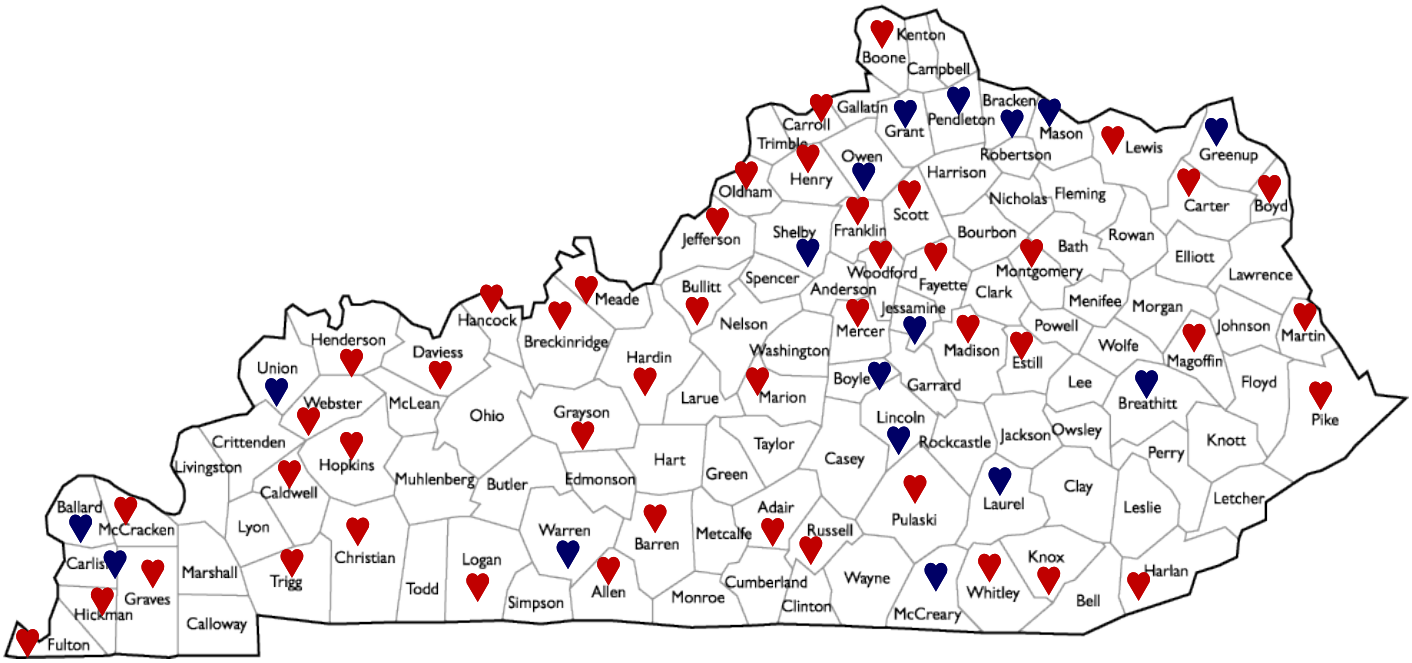
That's just what the Kentucky board has done. It has devised simple, common-sense regulations that bar restraint or seclusion for punishment, coercion or convenience.

The rules forbid mechanical restraints, such as straps, or chemical restraints, or any physical restraint that could be life-threatening.

And they require school officials to receive training in alternatives to seclusion and restraint and document all instances where restraint or seclusion is used. "Restraint and seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others," the regulation says.

The rules offer basic guidelines but don't tie hands of school officials who need to break up a fight or restrain child who is out of control. They are strongly supported by advocates for children with disabilities as well as Kentucky Youth Advocates.

(continued)



Restraint and Seclusion Hurts Kentucky's Children

Restraint and seclusion were first brought to national attention in January 2009, when P&A's parent organization, the National Disability Rights Network, released a report on the abuse and misuse of restraint and seclusion in national schools entitled "School Is Not Supposed To Hurt." The Government Accountability Office released its own report, which also **documented hundreds of allegations of injury and at least 20 deaths due to restraint and seclusion techniques currently permitted in Kentucky schools.**

Kentucky has not had a reported death of a child in a school due to the use of restraint or seclusion, but **this is very much a Kentucky problem. In the last five years, P&A has investigated more than 80 allegations of the abuse or misuse of restraint and seclusion in over 45 Kentucky counties.**

On the map above, the **red hearts** represent those counties **where P&A has investigated allegations of the abuse or misuse of restraint or seclusion**. The **blue hearts** represent **counties in which a parent or teacher has reported an allegation of the abuse or misuse of restraint and seclusion, but where P&A has not investigated** those allegations. **In many instances, we have received multiple allegations arising out of single counties.**

During the course of those investigations, districts have responded to concerns about the appropriateness of those restraints by noting that Kentucky has no regulation regarding the use of restraint and seclusion. 704 KAR 7:160 would ensure a best-practices-based standard of safety for Kentucky children and teachers when it comes to restraint and seclusion.

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"The regulation is designed to reduce and prevent restraint and seclusion when it is not necessary."

"… what the regulation is saying is that if the student's behavior rises to that level, then you are justified in using a technique that has higher risks associated with it …"

–Kevin Brown, General Counsel
Kentucky Department of Education

"The least-restrictive method should always be the target method to use. Physical restraint is only used when a student is at risk of causing injury to self or others."

–Beverly Thomas, Special Education Teacher
Lebanon Elementary School
Marion County School District

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 nec-

essary 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, 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.

"As with any policy or set of procedures, when you're dealing with unknowns – and in a lot of cases, explosive behaviors by students are unanticipated – you have to rely on professional judgment."

"Our belief is that for our staff to make professional judgments, they do a much better job of that when they have procedures that have been adopted and training on how to work with something that's unanticipated."

–Chuck Hamilton, Superintendent
Marion County School District

Media Coverage

On November 29, 2012, ABC News aired a video on Nightline that shows the issue of physical restraint and seclusion of school children is a concern nationally as well as in Kentucky. Among other interviews, the story includes first person accounts from children who have been restrained or secluded at school.

WARNING: video contains what may be disturbing images

You may access the story at the links below:

You Tube: http://www.youtube.com/watch?v=-aCRFfTdQsc

OR

ABC News:

http://abcnews.go.com/Blotter/death-school-parents-protest-dangerous-discipline-autistic-disabled/story?id=17702216

for a written version of the story, additional video clips and photographs

EDITORIAL
Courier-Journal 9/28/12

Keep new student restraint policy . . .

If school officials in Kentucky want to lock a child in a closet for misbehaving — and that does happen — there's nothing in state regulations to stop them.

That would change under regulations from the Kentucky Board of Education, which has devised sensible guidelines that for the first time would govern the practice of secluding or restraining unruly or uncooperative students.

So it was disheartening to see educators and school officials lining up Tuesday to complain about the regulations at a meeting of the state board, which in August approved the new rules that would take effect in the 2013-14 school year. They say the regulations are too "vague" and would hamper their ability to keep schools safe and orderly. Besides, the regulations are just not needed, insisted some who spoke in opposition.

"I've been in the school business for 45 years and I have never seen a teacher hurt a child," Murray Independent School Superintendent Bob Rogers told the board.

Mr. Rogers apparently leads a sheltered life if he believes his experience holds true throughout the state.

Ask the mother of a nine-year- old boy with severe autism who was locked repeatedly in a closet — Oldham County school system officials call it a timeout room — where her child suffered until she removed him from school for his own safety in 2008.

Ask the parents of the Mercer County autistic boy who was allegedly confined in a duffel bag last year whether he was unscathed.

Or ask those who filed more than 80 complaints with Kentucky Protection and Advocacy, including accounts of children who suffered scrapes, cuts, bruises and broken bones, whether anyone got hurt.

Lucy Heskins, a lawyer for the independent watchdog agency, said her organization has documented such injuries. Children have been physically restrained multiple times a day or repeatedly locked in closets or storage rooms, she told the board.

Many have disabilities or learning difficulties and tend to be secluded or restrained more often than other school children, according to advocates.

Ms. Heskins also argued that restraint and seclusion are ineffective, a view shared by U.S. Education Secretary Arne Duncan, who has urged school officials to develop other ways to intervene in behavior or de-escalate volatile situations.

That's just what the Kentucky board has done. It has devised simple, common-sense regulations that bar restraint or seclusion for punishment, coercion or convenience.

The rules forbid mechanical restraints, such as straps, or chemical restraints, or any physical restraint that could be life-threatening.

And they require school officials to receive training in alternatives to seclusion and restraint and document all instances where restraint or seclusion is used. "Restraint and seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others," the regulation says.

The rules offer basic guidelines but don't tie hands of school officials who need to break up a fight or restrain child who is out of control. They are strongly supported by advocates for children with disabilities as well as Kentucky Youth Advocates.

(continued)

EDITORIAL
Courier-Journal 9/28/12

Terry Brooks, executive director of Kentucky Youth Advocates and a former school principal and assistant superintendent, said he sees absolutely nothing in the regulations that would limit school officials' ability to keep schools safe and orderly.

"I get the fact that administrators need to control a kid who's out of control," Mr. Brooks said. "There's nothing in these regulations that precludes the discretionary use of restraint."

Instead, the regulations are a long-overdue effort to limit abuses that too often affect the most vulnerable and helpless children in the school system.

Education board chairman David Karem said he believes the board supports the regulations, which could be changed once the board considers public comments.

We urge the board to stay the course and stick with the new rules. Educators who question them should give them a chance.

... and put an end to corporal punishment

And for future reference, the board might want to delve into another controversial area: Corporal punishment.

In an era where child abuse prevention experts widely condemn the practice of striking or spanking a child, Kentucky is one of about 20 states that still allow it in public schools.

Kentucky Youth Advocates found in a 2011 study that more than 1,500 children in 42 school districts received corporal punishment for offenses including disruptive behavior, dress code violations and tardiness. In some instances, student were hit — usually with a paddle — for hitting someone else.

And, as with seclusion and restraint, those more likely to endure corporal punishment are children with low incomes or learning disabilities.

Really? Is this the best educators can do in the 21st century? Kentucky officials need to deal with restraint and seclusion, then move on to end corporal punishment in public schools.

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News for the Nation's Most Innovative Educators

Proposed state regulation similar to successful Marion County policy on restraint, seclusion

By Matthew Tungate
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Special education instructional assistant Alice Young and special education teacher Beverly Thomas play a word game with 3rd-grade students Gavin Bardin and Kenny Hillman at Lebanon Elementary School (Marion County). Thomas said having an understanding support team is very important. Photo by Amy Wallot, Oct. 12, 2012

When the Kentucky Board of Education passed a regulation last month outlining the appropriate uses of physical restraint and seclusion, it marked the state's first formal list of rules on how school staff should use the two behavioral-intervention methods with students.

The regulation requires districts to adopt policies and procedures that encourage positive behavioral supports for students while restricting the use of restraint and seclusion to student actions that would pose a threat to themselves or others.

While the regulation is the first of its kind covering the whole state, other districts have already enacted their own policies. One in particular, the Marion County school district, has become a leader with its restraint and seclusion policy. District administrators spoke to the board in August about the benefits of the policy and their lessons learned.

Kevin Brown, general counsel of the Kentucky Department of Education, said Marion County's policy agrees with the state regulation in its major concepts.

"What we are adopting is basically best practice, and Marion County has gone ahead and adopted best practice," he said. "We brought them in to show that a district is already doing this, and they're having great results with it."

Deborah Spalding, who retired this year as director of special education in Marion County, said district administrators began discussing how to handle student restraint and seclusion more than 10 years ago.

"We, as a district, would talk about what our procedures were, we knew what the procedures were, but we hadn't actually put them in writing," Spalding said. "We just wanted to put what we were currently doing in writing."

She also began researching policies and procedures, but found only the Council for Exceptional Children's position paper. So Spalding and a team began writing down what they were already doing, she said.

"If I'm going to train a staff, I want in writing what their responsibilities are," Spalding said.

The first approved procedures were in 2010, and they were finalized in August 2011. They were revised again this July, and Spalding said she thinks they will continue to be revised as teachers and administrators receive more training and see what works and what doesn't.

One thing that Spalding said definitely works is the policy's emphasis on de-escalation. Every teacher in the district receives ways to try to keep students from becoming violent as embedded professional development.

"The procedures lay out our blueprint of how we are looking for our crisis management and de-escalation across the district. So that's our foundation," she said. "It isn't all about just the crisis piece of it. It's about de-escalating the situation before it ever happens."

Tammy Parman, a 5th-grade teacher at Calvary Elementary School, said teachers receive "mini" trainings from the guidance counselor occasionally during faculty meetings.

"She took this matter seriously and made sure the staff at our school was educated," Parman said.

The policy also emphasizes communication with parents and school and district administrators, Spalding said.

Any teacher who participates in or observes a situation where a student is restrained or secluded must file a report with Spalding's office and the district trainer. Any parent whose child is restrained or secluded will be contacted and given a full description of what happened. Parents also will work with teachers and school administrators on how to keep such incidents from happening again, she said.

Teachers at her school look for warning signs in students and communicate their concerns with parents early when they see possibilities for potential problems, Parman said.

"After an incident it is critical that staff and parents communicate to either get a plan in place, or to modify the current plan, for the child. Regular, ongoing communication is a must," she said.

Like the state regulation, Marion's policy limits the use of restraint and seclusion to protecting children from harming themselves or others. Each school has a "core team" of teachers who are trained in the proper used of seclusion and restraint techniques, Spalding said. Initially those core teachers received three days of intensive training over the summer. That has been revised to two days over the summer and one day during the school year, she said.

Special education teachers Holly Cox of Marion County High School and Beverly Thomas of Lebanon Elementary School are core team members. Both said the district emphasizes using restraint or seclusion only after other techniques have failed.

Having a parent talk to an agitated child on the phone or in person, taking the child to a different room, allowing the child to initiate a "self time out" and asking other students to go to a different room were techniques the two mentioned to de-escalate an incident.

"The least-restrictive method should always be the target method to use," Thomas said. "Physical restraint is only used when a student is at risk of causing injury to self or others."

Brown said the state regulation strives to do the same thing.

"The regulation is designed to reduce and prevent restraint and seclusion when it is not necessary," he said. "So what the regulation is saying is that if the student's behavior rises to that level, then you are justified in using a technique that has higher risks associated with it, because the risk of restraint is that you will asphyxiate a child."

Superintendent Chuck Hamilton said he understands why some districts fear the state regulation may cause staff to refrain from acting in a time of need. He said Marion County has seen just the opposite, as teachers are clearer on their responsibilities and more informed in their actions.

"We don't want people looking through a flip chart and trying to figure out, 'What do I do next?" he said. "As with any policy or set of procedures, when you're dealing with unknowns – and in a lot of cases, explosive behaviors by students are unanticipated – you have to rely on professional judgment. Our belief is that for our staff to make professional judgments, they do a much better job of that when they have procedures that have been adopted and training on how to work with something that's unanticipated."

The public expects schools to maintain a safe and secure environment, and that may require seclusion and restraint sometimes, Hamilton said.

"We're just trying to be proactive in training our staff, giving them some guidelines to follow, so that when they do have to make a professional judgment as to how to intervene and when to intervene, that they have something to fall back on other than 'I thought that was a good idea,'" he said.

Spalding said she and other Marion administrators have children, and they know how they would want their children treated in a crisis. She thinks the policy carries out that idea.

"We're doing more de-escalating and doing things more proactively than we are reacting," she said. "We're now in a comfortable position to say, 'Yes, it is working for us.'"

Brown said the state regulation must receive legislative approval if it is to go into effect for the 2013-14 school year.

"Districts that are serious about using positive behavioral supports and reducing these incidents will follow Marion County's lead," he said.

MORE INFORMATION…
Regulation 704 KAR 7:160 Use of Physical Restraint and Seclusion in Public Schools
Marion County Seclusion and Restraint Policy
Kevin Brown, kevin.brown@education.ky.gov, (502) 564-4474
Chuck Hamilton, chuck.hamilton@marion.kyschools.us, (270) 692-3721

"Reducing the use of restraint and seclusion in Kentucky's schools will keep all children safe in school but will also have significant positive outcomes for teachers, schools, and districts."

–Kentucky Protection and Advocacy

Education and Workforce Development Cabinet

Kentucky Board of Education

Department of Education

(Amended After Comments)

704 KAR 7:160. Use of Physical Restraint and Seclusion in Public Schools.

RELATES TO: KRS 156.160 (1) (~~g~~ **h**), 158.444 (1)

STATUTORY AUTHORITY: KRS 156.160 (1) (~~g~~ **h**), 156.070, 158.444 (1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1) (~~g~~ **h**) and 158.444 (1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children.

The first responsibility of Kentucky schools is to promote learning in a safe and healthy environment for all children, teachers, and staff. The improper use of **physical** restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological harm, physical harm, or death of students. Because there is no evidence that **physical** restraint **or** [~~and~~] seclusion is effective in reducing the occurrence of inappropriate behaviors, **physical** restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others. **Physical** restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and **school personnel** [~~staff~~]. This administrative regulation establishes the

requirements for the use of **physical** restraint and seclusion in districts and the notification and data reporting requirements for the use of **physical** restraint and seclusion in districts.

Section 1. Definitions. (1) "Aversive behavioral interventions" means a physical or sensory intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others and may include hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities.

(2) "**Behavioral** [~~Behavior~~] intervention" means the implementation of strategies to address behavior that is dangerous, inappropriate, or otherwise impedes the learning of the students [~~or others~~].

(3) [~~"Behavioral Intervention Plan" means a comprehensive plan for managing inappropriate or dangerous behavior by changing or removing contextual factors, antecedents, and consequences that trigger, maintain, or escalate inappropriate or dangerous behavior, and for teaching alternative appropriate behaviors to replace the inappropriate or dangerous behaviors.~~

~~(4)~~] "Chemical restraint" means the use of medication to control behavior or restrict a student's freedom of movement that includes over-the-counter medications used for purposes not specified on the label but does not include medication prescribed by a licensed medical professional and supervised by qualified and trained individuals in accordance with professional standards.

(4) [~~(5)~~] "Dangerous behavior" means behavior that presents an imminent danger of serious physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out of seat behaviors.

1 **(5)** [~~(6)~~] "De-escalation" means the use of behavior management techniques intended to mitigate
2 and defuse dangerous behavior of a student, that reduces the imminent danger of serious physical
3 harm to self or others.
4 **(6) "Emancipated youth" means a student under the age of eighteen (18) who is or has been**
5 **married or has by court order or otherwise been freed from the care, custody, and control**
6 **of the student's parents.**
7 (7) "Emergency" means a sudden, urgent occurrence, usually unexpected but sometimes
8 anticipated, that requires immediate action.
9 (8) [~~"Functional Behavioral Assessment" means a process to analyze environmental factors such~~
10 ~~as any history of trauma, the combination of antecedent factors (factors that immediately precede~~
11 ~~behavior) and consequences (factors that immediately follow behavior) that are associated with~~
12 ~~the occurrence of inappropriate or dangerous behavior and includes the collection of information~~
13 ~~through direct observations, interviews, and record reviews to identify the function of the~~
14 ~~dangerous behavior and guide the development of behavioral intervention plans.~~
15 ~~(9)~~] "Mechanical restraint" means the use of any device or equipment to restrict a student's
16 freedom of movement, but does not **mean:** **[**~~include~~]
17 **(a) Devices** **[**~~**devices**~~**]** implemented by trained school personnel~~,~~ or utilized by a student that have
18 been prescribed by an appropriate medical or related services professional that are used for the
19 specific and approved purposes for which such devices were designed**;**
20 **(b) Does not mean Adaptive** [~~and that may include adaptive~~] devices or mechanical supports
21 used to achieve proper body position, balance, or alignment to allow greater freedom of mobility
22 than would be possible without the use of such devices or mechanical supports;

(c) Does not mean Vehicle **[~~vehicle~~]** safety restraints when used as intended during the transport of a student in a moving vehicle;

(d) Does not mean restraint for medical immobilization; **and**

(e) Does not mean Orthopedically **[~~orthopedically~~]** prescribed devices that permit a student to participate in activities **without** [~~with~~] risk of harm.

(9) [~~(10)~~] "Parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian **of a student**.

(10) [~~(11)~~] "Physical Restraint" means a personal restriction that immobilizes or reduces the ability of a student to move **the student's** [~~his or her~~] torso, arms, legs, or head freely**,** but does not **mean:** **[**~~include~~]

(a) 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**;**

(b) does not mean behavioral interventions, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;

(c) does not mean less restrictive physical contact or redirection to promote student safety; and

(d) does not mean physical guidance or prompting when teaching a skill or when redirecting the student's attention.

(11) [~~(12)~~] "Positive behavioral supports" means a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to improve school climate and culture in order to achieve improved academic and social outcomes, to increase learning for all students, including those with the most complex and intensive behavior needs; and to encompass a range of systemic and individualized positive strategies to reinforce desired behaviors, to diminish

reoccurrence of inappropriate or dangerous behaviors, and to teach appropriate behaviors to students.

(12) [~~(13)~~] "Prone restraint" means the student is restrained in a face down position **on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the prone position**.

(13) [~~(14)~~] "School personnel" means teachers, principals, administrators, counselors, social workers, psychologists, paraprofessionals, nurses, librarians, **school resource officers, other sworn law enforcement officers,** and other support staff who are employed in a school or who perform services in the school on a contractual basis [~~but does not include school resource officers defined in KRS 158.441 (2)~~].

(14) "School resource officer" is defined in KRS 158.441 (2).

(15) "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving but does not **mean** [~~include~~] classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

(16) "Student" means any person enrolled in a preschool, school level as defined in 704 KAR 5:240 Section 5, or other educational program offered by a local public school district.

(17) "Supine restraint" means **the** [~~a~~] student is restrained in a face up position on **the student's** [~~his or her~~] back **on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the supine position**.

(18) "Timeout" means a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Section 2. (1) Local **school** districts shall establish [~~local~~] policies and procedures that:

(a) Ensure school personnel are aware of and parents are notified how to access **the** [~~its~~] policies and procedures regarding **physical** restraint and seclusion;

(b) Are designed to ensure the safety of all students [~~, including students with the most complex and intensive behavioral needs~~], school personnel, and visitors;

(c) Require school personnel to be trained in accordance with the requirements outlined in Section **6** **[**~~7~~] of this administrative regulation;

(d) Outline procedures to be followed during and after each **use** **[**~~incident involving the imposition~~] of physical restraint or seclusion [~~upon a student~~], including notice to parents, documentation of the event in the student information system, and a process for the parent or emancipated youth to request a debriefing session;

(e) Require notification, within twenty-four (24) hours, **to** **[**~~of~~] the Kentucky Department of Education and local law enforcement in the event of death, substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty resulting from the use of physical restraint or seclusion;

(f) Outline a procedure by which parents may submit a complaint regarding the physical restraint or seclusion of their child, which requires the district and school to investigate the circumstances surrounding the **physical** restraint or seclusion, make written findings, and where appropriate, take corrective action; and

(g) Outline a procedure to regularly review data on **physical** restraint and seclusion usage and revise policies as needed.

1 (2) Local districts shall revise existing policies or develop policies consistent with this
2 administrative regulation within ninety (90) calendar days of the effective date of this
3 administrative regulation.
4 Section 3. (1) Physical restraint shall not be used **in public schools or educational programs**:
5 (a) As punishment **or discipline**;
6 (b) [~~As a means of coercion~~] To force compliance or **to retaliate** **[**~~retaliation~~];
7 (c) As a substitute for appropriate educational or behavioral support;
8 (d) To prevent property damage in the absence of imminent danger of serious physical harm to
9 self or others;
10 (e) As a routine school safety measure; or
11 (f) As a convenience for staff.
12 (2) School personnel are prohibited from imposing the following on any student at any time:
13 (a) Mechanical restraint;
14 (b) Chemical restraint;
15 (c) Aversive behavioral interventions [~~that compromise health and safety~~];
16 (d) Physical restraint that is life-threatening;
17 (e) Prone or supine restraint; and
18 (f) Physical restraint that is prohibited by a licensed medical professional.
19 (3) Physical restraint may only be implemented **in public schools or educational programs** if:
20 (a) The student's behavior poses an imminent danger of serious physical harm to self or others;
21 (b) The physical restraint does not interfere with the student's ability to communicate in the
22 student's primary language or mode of communication, **unless the student uses sign language**
23 **or an augmentative mode of communication as the student's primary mode of**

communication and the implementer 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;

(c) The student's **physical and psychological well-being shall be monitored** for the duration of the physical restraint **[**~~The student's face is monitored for the duration of the physical restraint~~];

(d) Less restrictive **behavioral** interventions have been ineffective in stopping the imminent danger of serious physical harm to self or others, except in the case of a clearly unavoidable emergency situation posing imminent danger of serious physical harm to self or others; and

(e) **School personnel implementing the physical restraint** **[**~~Assigned staff~~] are appropriately trained **as required in Section 6 (3) of this administrative regulation** [~~to use physical restraint~~]**, except 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**.

(4) When implementing a physical restraint, **school personnel** **[**~~staff~~] shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of serious physical harm.

(5) The use of physical restraint shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.

[~~(6) School personnel imposing physical restraint in accordance with this regulation shall:~~

1 ~~(a) Be trained by an individual or individuals who have been certified by a crisis intervention~~
2 ~~training program that meets the established criteria in Section 6 of this administrative regulation ,~~
3 ~~except in the case of clearly unavoidable emergency circumstances when trained school~~
4 ~~personnel are not immediately available due to the unforeseeable nature of the emergency~~
5 ~~circumstance; and~~
6 ~~(b) Be trained in state regulations and school district policies and procedures regarding~~ **~~physical~~**
7 ~~restraint and seclusion.~~
8 ~~(7) A functional behavioral assessment shall be conducted following the first incident of~~
9 ~~restraint, unless one has been previously conducted for the behavior at issue.~~]
10 Section 4. (1) Seclusion shall not be used **in public schools or educational programs**:
11 (a) As punishment **or discipline**;
12 (b) [~~As a means of coercion~~] To force compliance or **to retaliate** **[**~~retaliation~~];
13 (c) As a substitute for appropriate educational or behavioral support;
14 (d) To prevent property damage in the absence of imminent danger of serious physical harm to
15 self or others;
16 (e) As a routine school safety measure;
17 (f) As a convenience for staff; or
18 (g) As a substitute for timeout.
19 (2) Seclusion may only be implemented **in public schools or educational programs if** [~~when~~]:
20 (a) The student's behavior poses an imminent danger of serious physical harm to self or others;
21 (b) The student is visually monitored for the duration of the seclusion;
22 (c) Less restrictive interventions have been ineffective in stopping the imminent danger of
23 serious physical harm to self or others; and

(d) **School personnel implementing the seclusion** [~~Assigned staff~~] are appropriately trained to use seclusion.

(3) The use of seclusion shall end as soon as:

(a) The student's behavior no longer poses an imminent danger of serious physical harm to self or others; or

(b) A medical condition occurs putting the student at risk of harm.

(4) A setting used for seclusion shall:

(a) Be free of objects and fixtures with which a student could inflict physical harm to self or others;

(b) Provide school personnel a view of the student at all times;

(c) Provide adequate lighting and ventilation;

(d) Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use;

(e) Have an unlocked and unobstructed door; and

(f) Have at least an annual fire and safety inspection.

Section 5. (1) All **physical restraints and seclusions** [~~incidents of the use of restraint and seclusion~~] shall be documented by a written record of each **use** [~~episode~~] of seclusion or physical restraint and be maintained in the student's education record. Each [~~incident~~] record **of a use of physical restraint or seclusion** shall be informed by an interview with the student and shall include:

(a) The student's name;

(b) A description of the **use of physical restraint or seclusion** [~~incident~~] and the student behavior that resulted in the **physical** restraint or seclusion;

(c) The date of the **physical restraint or seclusion** [~~incident~~] and **school personnel** **[**~~staff members~~] involved;

(d) The beginning and ending times of the **physical restraint or seclusion** [~~incident~~];

(e) A description of any events leading up to the use of **physical** restraint or seclusion including possible factors contributing to the dangerous behavior;

(f) A description of the student's behavior **during physical** [~~in~~] restraint or seclusion;

(g) A description of techniques used in **physically** restraining or secluding the student and any other interactions between the student and **school personnel** **[**~~staff~~] during the use of **physical** restraint or seclusion;

(h) A description of any **behavioral** interventions used immediately prior to the implementation of **physical** restraint or seclusion;

(i) A description of any injuries [~~whether~~] to students, **school personnel** [~~staff~~], or others;

(j) **A description as to how the student's** **[**~~An explanation as to why this~~] behavior posed an imminent danger of serious physical harm to self or others;

(k) The date the parent was notified;

(l) A description of the effectiveness of **physical** restraint or seclusion in de-escalating the situation; [~~and~~]

(m) A description of **school personnel** [~~staff~~] response to the dangerous behavior**;**

(n) 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

(o) 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.

(2) The parent of the student shall be notified of the **physical** restraint and seclusion verbally or through electronic communication, if available to the parent, as soon as possible within twenty-four (24) hours of the incident. If the parent cannot be reached within twenty-four (24) hours, a written communication shall be sent.

(3) The principal of the school shall be notified of the seclusion or physical restraint as soon as possible, but no later than the end of the school day on which it occurred.

(4) The **physical restraint or seclusion** [~~incident~~] record as outlined in Section 5 (1) of this administrative regulation shall be completed **by the end of the next school day** [~~within twenty-four (24) hours~~] following the **use** [~~incident~~] of seclusion or physical restraint.

(5) If the parent or emancipated youth requests a debriefing session under Section 2 of this regulation, a debriefing session shall be held after the imposition of **physical** restraint **or** [~~and~~] seclusion upon a student.

(6) **The following persons** [~~All school personnel who were in the proximity of the student immediately before and during the time of the incident, the parent, the student, if the parent requests or if the student is an emancipated youth, appropriate supervisory and administrative staff, that may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members~~] shall participate in the debriefing session**:**

(a) The implementer of the physical restraint or seclusion;

(b) At least two (2) of any other school personnel who were in the proximity of the student immediately before or during the physical restraint or seclusion;

(c) the parent;

(d) the student, if the parent requests or if the student is an emancipated youth; and

(e) appropriate supervisory and administrative school personnel, that may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members.

(7) The debriefing session shall occur as soon as practicable, but not later than five (5) school days following the request of the parent or the emancipated youth, unless delayed by written mutual agreement of the parent or emancipated youth and the school.

(8) The debriefing session shall include:

(a) Identification of the events leading up to the seclusion or physical restraint;

(b) Consideration of relevant information in the student's records and information from teachers, parents, other school district professionals, and the student;

(c) Planning for the prevention and reduction of the need for seclusion or physical restraint, with consideration of **recommended appropriate positive behavioral supports and interventions to assist school personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable, and** [~~the results of functional behavioral assessments,~~] **consideration of** whether **positive behavioral supports and interventions** [~~positive behavior plans~~] were implemented with fidelity [~~, recommended appropriate positive behavioral interventions, and supports to assist personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable~~]; and

(d) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, **consideration** [~~evidence~~] of a referral under either law **and** [~~, or~~] documentation of the **referral or documentation of the** basis for declining to refer the student.

(9) All documentation utilized in the debriefing session shall become part of the student's education record.

Section 6. (1) **All school personnel shall be trained in state regulations and school district policies and procedures regarding physical restraint and seclusion. All school** [~~School~~] personnel shall be trained **annually** to use an array of positive **behavioral supports and** [~~behavior~~] interventions [~~, strategies, and supports~~] to increase appropriate student behaviors**, to** [~~and~~] decrease inappropriate or dangerous student behaviors **and to respond** [~~(2) All school personnel in local districts shall have annual basic training in responding~~] to **dangerous behavior** [~~students in a behavioral crisis and shall receive communication from the district identifying core team staff in the school setting that have been trained to engage in physical restraint or seclusion procedures~~]. **This** [~~The~~] training may be delivered utilizing web-based applications. **This** [~~The~~] training shall include:

(a) Appropriate procedures for preventing the need for physical restraint and **seclusion** [~~crisis intervention~~], including positive **behavioral** [~~behavior~~] **supports and interventions** [~~management strategies~~];

~~(a)~~ **(b) State regulations and school district policies and procedures regarding physical restraint and seclusion**

~~(b)~~ **(c)** Proper use of positive reinforcement;

~~(c)~~ **(d)** The continuum of use for alternative behavioral interventions;

~~(d)~~ **(e)** Crisis prevention;

~~(e)~~ **(f)** De-escalation strategies **for responding to inappropriate or dangerous** [~~of problematic~~] behavior, including verbal de-escalation, and relationship building; and

(g) Proper use of seclusion as outlined in Section 4 of this administrative regulation, including instruction on monitoring physical signs of distress and obtaining medical assistance when necessary.

(2) [~~(f)~~] **All school personnel shall receive annual written or electronic communication from the district identifying core team members** [~~Identification of~~] in the school setting **who** [~~staff that~~] have been trained to **implement** [~~engage in~~] physical restraint [~~or seclusion procedures~~].

(3) A core team of selected school personnel shall be designated to respond to **dangerous behavior and to implement** [~~emergency situations, including the~~] physical restraint [~~or seclusion~~] of students. The core team**, except school resource officers and other sworn law enforcement officers,** shall receive **additional** yearly training in the following areas:

(a) Appropriate procedures for preventing the **use of** [~~need for~~] physical restraint **except as permitted by this administrative regulation** [~~or crisis intervention, that shall include the de-escalation of problematic behavior, relationship building, and the use of alternatives to restraints~~];

(b) A description and identification of dangerous behaviors [~~on the part of students~~] that may indicate the need for physical restraint [~~or crisis intervention~~] and methods for evaluating the risk of harm in individual situations, in order to determine whether the use of physical restraint [~~or crisis intervention~~] is safe and warranted;

(c) Simulated experience of administering and receiving physical restraint [~~and crisis intervention~~], and instruction regarding the **effect** [~~effect(s)~~] on the person **physically** restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

(d) Instruction regarding documentation **and notification** [~~reporting~~] requirements and investigation of injuries; and

(e) Demonstration by **core team members** [~~participants~~] of proficiency in **the prevention and use of** [~~administering~~] physical restraint [~~and crisis intervention~~].

Section 7. The following data shall be reported **by the district** in the student information system related to incidents of **physical** restraint and seclusion:

(1) Aggregate number of uses of physical restraint;

(2) Aggregate number of students placed in physical restraint;

(3) Aggregate number of uses of seclusion;

(4) Aggregate number of students placed in seclusion;

(5) Aggregate number of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to students related to physical restraint and seclusion;

(6) Aggregate number of instances of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty to **school personnel** [~~staff~~] related to physical restraint and seclusion; and

(7) 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.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

_____	_____
(Date)	Terry Holliday, Ph.D. Commissioner of Education
_____	_____
(Date)	David Karem, Chairperson Kentucky Board of Education

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 704 KAR 7:160

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for appropriate use of physical restraint and seclusion in districts and the notification and data reporting requirements for the use of physical restraint and seclusion in districts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the concerns about the increasing number of injuries and deaths across the nation related to the use of physical restraint and seclusion and the increase in complaints in Kentucky in recent years related to physical restraint and seclusion in Kentucky public schools.

(c) How this administrative regulation conforms to the content of the authorizing statute:

KRS 156.160 (1) (h) and KRS 158.444 (1) gives the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the physical welfare and safety of the public school children. The first responsibility of Kentucky schools is to ensure that schools promote learning in a safe and healthy environment for all children, and school personnel. The improper use of physical restraint and seclusion by districts directly affects the psychological and physical welfare of students and may result in psychological or physical harm or even death of students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ~~will~~ outline**s** requirements for the use of physical restraint and seclusion so that the safety of children and school personnel will not be compromised.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky will be impacted by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact schools and districts by providing the detail necessary to carry out their roles and responsibilities related to physical restraint and seclusion in public schools. The training requirement within the

regulation may be additional for some districts but other schools and districts have indicated that they already train their school personnel in de-escalation techniques and provide more intensive training for a core team that may physically restrain students. School districts will need to revise policies and procedures that do not align with the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will need to train school personnel and collect data as outlined by the regulation and will need to revise policies and procedures to align with the regulation's requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the school district is not currently training a core team of school personnel in physical restraint, the estimated cost will be $1000 per person for initial training and $300 per follow up training. The district may train the entire core team at a school if they choose or they may implement a train-the-trainer model and have directly trained and certified school personnel train other school personnel in order to reduce the financial burden on the district.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Research shows that when best practices such as the ones outlined in the regulation are implemented, the number of incidents of physical restraint and seclusion decrease due to the change in culture of the school and a reduction in the number of escalated and dangerous situations. Also, the number of incidents of injury for students and school personnel decrease when implementing these best practices.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The proposed regulation will cost the Department in increased staff time to prepare online de-escalation training that can be accessed free of charge by all districts to supplement their onsite training.

(b) On a continuing basis: The proposed regulation will cost the Department in increased staff time to provide technical assistance regarding the requirements of the regulation. The majority of the technical assistance can be provided by the regional special education cooperative infrastructure already in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and IDEA funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 7:160
Contact Person: Kevin C. Brown
Phone number: 564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 (1) (h) and KRS 158.444 (1) and federal law, The Individuals with Disabilities Education Act (IDEA), which requires students to be placed in the "least restrictive environment."

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If school districts have not already been training a core team to implement physical restraint, they will need to identify that core team in each school and, using the train-the-trainer model, train those school personnel. Also, they will need to revise policies and procedures regarding physical restraint and seclusion. Therefore, an increase in expenditure the first year could result.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? If the school district is not currently training a core team of staff in physical restraint, the estimated cost will be $1,000 per staff member for initial training. The district may train the entire core team at a school if they choose or they may implement a train-the-trainer model and have directly trained staff and certified staff train other staff in order to reduce the financial burden on the district.

(d) How much will it cost to administer this program for subsequent years? If the school district is not currently training a core team of staff in physical restraint, the estimated cost will be $300 per staff member for follow up training.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: If school districts have not already been training a core team to implement physical restraint, they will need to identify that core team in each school and, using the train-the-trainer model, train those school personnel. Also, they will need to revise policies and procedures regarding physical restraint and seclusion. Therefore, an increase in expenditure the first year could result.

STATEMENT OF CONSIDERATION

RELATING TO 704 KAR 7:160

Use of Physical Restraint and Seclusion in Public Schools

Kentucky Department of Education

Amended After Comments

(1) A public hearing was held on the above regulation on September 25, 2012 at 10:00 a.m. in the State Board Room, Kentucky Department of Education, 500 Mero Street, 1st Floor, Frankfort, Kentucky.

(2) The following people attended this public hearing or submitted written comments:

Name and Title	Agency/Organization/Entity/Other
Bill Adams, Principal	Meade County Schools
Casey Allen, Superintendent	Ballard County Schools
Michelle Antle, School Psychologist	Simpson County Schools
Shelia Baugh, Director of Special Education	Simpson County Schools
Holly Bloodworth, Teacher	Murray Elementary School
Janet Board, Grandparent	Self
Carrell Boyd, Superintendent	Caldwell County Schools
Angela Bray, Director of Special Education	Pulaski County Schools
Bruce Chapman, President	Handle with Care (HWC)
Mark Cleveland, Director	Southeast/South Central Education Cooperative (SESC)
Susan Clifton, Director	West Kentucky Special Education Cooperative (WKSEC)
Teresa Combs, Director	Kentucky School Boards Association (KSBA)
Patty Dempsey	The Arc of Kentucky (The Arc)
Beth Edmonson, President	Kentucky Association for Psychology in the Schools (KAPS)
Lori Franklin, Safe Crisis Management Trainer	Menifee County Schools
Curtis Hall, Director	Northern Kentucky Cooperative for Educational Services (NKCES)
Dawn Hardeman, Director of Special Education	Menifee County Schools
Beth Harrison	Kentucky TASH
Lucy Heskins, Staff Attorney Supervisor	Kentucky Protection and Advocacy (P&A)
Eric L. Huffaker, SCM/ESPI Educator	Wayne County Schools
Kim Johnson, Director of Special Education	Owensboro Independent Schools
Audrey Lane Jones, Parent	Self
Natalie Kelly	Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID)
Donna Klingman, Crisis Trainer	Self

Ronald G. Livingood, Superintendent	Grant County Schools
Leon Mooneyhan, Director	Ohio Valley Educational Cooperative (OVEC)
Betty Muntz, Executive Secretary	Kentucky Council for Exceptional Children (KCEC)
Martha M. Newman, Executive Director	Mental Health America of Kentucky (MHAKY)
Michael A. Owsley, Attorney	English Lucas Priest & Owsley, L.L.P. (ELPO)
D'Arcy Robb	Commonwealth Council on Developmental Disabilities (CCDD)
Annessa Roberts, Guidance Counselor	Sharpe Elementary School, Marshall County Schools
Bob Rogers, Superintendent	Murray Independent Schools
Mary Ruble, Assistant Executive Director	Kentucky Education Association (KEA)
Raphael Schweri	Former Substitute Teacher's Assistant
William Scott, Executive Director	KSBA
Tres Settle, Superintendent	McLean County Schools
Traci Sharpe, President	Kentucky Council for Children with Behavioral Disorders (KCCBD)
Greta C. Stanfield, Government Relations	Kentucky Council of Administrators of Special Education (KYCASE)
Kendra L. Stea, Director	Crisis Prevention Institute (CPI)
Sarah Thompson, School Psychologist	Simpson County Schools
Mike Waford, Director	Kentucky Center for Instructional Discipline (KCID)
Lora Wallace, Parent	Self
Wendy Wheeler-Mullins, Secretary	Autism Society of the Bluegrass
Tiffany Williams, Assistant Principal	Murray Middle School
Rachel Yarbrough, Superintendent	Crittenden County Schools
V. Wayne Young, Executive Director	Kentucky Association of School Administrators (KASA)

(3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

Name and Title

Kevin C. Brown, Associate Commissioner and General Counsel, Office of Guiding Support Services
Amy Peabody, Assistant General Counsel, Office of Guiding Support Services
Johnny Collett, Director, Division of Learning Services
Robin Chandler, Policy Advisor, Office of Next Generation Learners
David Wickersham, Assistant General Counsel, Office of Guiding Support Services
Sammie Lambert, Assistant Director, Division of Learning Services
Tracy Herman, Policy Advisor, Office of Guiding Support Services
Toyah Robey, Director, Division of Student Success
Lorrie Devers, Program Consultant, Division of Next Generation Professionals

Summary of Comments and Responses

(1) Subject Matter: Safe environment for all students and school personnel

(a) Comment: Commenters stated this administrative regulation protects students who act out more than it protects the other students and does not allow school personnel to keep all students safe.

Several commenters stated that they have never seen a teacher hurt a student but gave examples of teachers being hurt by students.

Commenters stated that physical restraint and seclusion may be necessary in some situations but that the safety of all students is paramount.

Commenters stated that classroom teachers are expected to make snap decisions to protect all students and that teachers need to be protected, as well.

Commenters stated that there should be a reasonable approach to physical restraint and seclusion that allows the use of physical restraint and seclusion to protect the educational environment from significant disruptions and to protect all students and school personnel from physical harm and to protect the school district, school personnel and other students from suffering significant property damage.

Commenters stated that this administrative regulation will allow bullies to take advantage of other students if the bully cannot be touched to redirect or remove them from the situation.

Commenters stated that this administrative regulation will increase the likelihood of more injuries and that this could cause a loss of teachers and students in public schools.

Commenters stated that studies show that, when restraint and seclusion decrease, teacher satisfaction and safety increase.

Commenters stated that school administrators must be held more accountable for appropriately implementing each school's disciplinary process and should support school teachers and their efforts at discipline.

Commenters stated that a teacher's fingers had been broken in three places by a violent student and the teacher's fingers had to be fused together and will no longer have mobility.

Commenters stated that this administrative regulation's restrictions on people in charge of children's safety are not good.

Commenters stated that a teacher had a student throwing desks and had to restrain and did it safely; and that the teacher has to make a split second decision in an emergency situation and does not want to have to worry about the restrictions in the administrative regulation.

A commenter stated that her grandchild was constantly physically restrained by school personnel during his kindergarten year; that he was restrained to comply, not because he was a threat; that he was physically restrained through his 3rd grade year; that he was put in a cleaned-out utility closet which was used by school personnel as a time out room; and that she had stacks of documents regarding the physical restraining and locking of her grandson in the closet by school personnel. The commenter

stated that the physical restraint and seclusion of her grandson have been detrimental to his mental and emotional health; that restraint and seclusion have taught him to be afraid and that he now reacts with fight or flight when he is afraid; that he cannot tolerate a locked door, even at home; that these were awful experiences; and that her grandson, when he was a 7th grader, encountered school personnel who had physically restrained him previously and her grandson's hands started shaking and he said his heart started pounding just at the sight of the school personnel who had physically restrained him.

A commenter stated that her eleven-year-old son was secluded from a classroom by school personnel and that the seclusion made him angry.

Commenters stated that they understood the position the school districts were in, related to disruption of the learning environment that may be caused by some students; however, they thought parents had a right to know about physical restraint of their children and they didn't want the physical restraint or seclusion to cause long-term harm to children.

Commenters stated that the administrative regulation will leave adults at the mercy of the students.

Those speaking or offering written comments on the importance of a safe environment for all students and school personnel were: Bob Rogers (Murray Independent Schools), Carrell Boyd (Caldwell County Schools), Rachel Yarbrough (Crittenden County Schools), Bill Adams (Meade County Schools), Michael A. Owsley (ELPO), Sheila Baugh (Simpson County Schools), Kim Johnson (Owensboro Independent Schools), Lori Franklin (Menifee County Schools), Dawn Hardeman (Menifee County Schools), Sarah Thompson (Simpson County Schools), Michelle Antle (Simpson County Schools), Teresa Combs (KSBA), Tiffany Williams (Murray Middle School), Lucy Heskins (P&A), Mary Ruble (KEA), Holly Bloodworth (Murray Elementary School), Audrey Lane Jones (Parent), Janet Board (Grandparent), William Scott (KSBA), Eric L. Huffaker (Wayne County Schools), Tres Settle (McLean County Schools), and Mark Cleveland (SESC).

(b) Response: Changes have been made to the administrative regulation to clarify issues regarding student and school personnel safety. The changes to the definitions section and to the sections on the physical restraint training requirements make plain that school personnel are not required or expected to allow physical harm to students or school personnel but rather are to only utilize physical restraint or seclusion as responses to student behavior in lieu of other options, where necessary and allowable, as described in the administrative regulation.

By permitting physical restraint or seclusion in situations in which a student's behavior poses an imminent danger of serious physical harm to self or others, the administrative regulation clearly states that physical restraint and seclusion are preventive measures to be taken when necessary to avoid serious injury. The administrative regulation states that positive behavioral supports and interventions are to be used to reduce the number of situations in which a student's behavior escalates to the point of presenting an imminent danger of serious physical harm to self or others and that less restrictive responses may be used to respond to situations in which a student's behavior does not meet this threshold requirement, but still requires response to ensure the safety of all.

The psychological and physical well-being of students, including those students whose behavior is problematic, will be better protected by this administrative regulation as the restrictions on the use of physical restraints and seclusion and the systematic use of positive behavioral supports and interventions will reduce the number of physical restraints and seclusions and increase the safety of all.

The agency has reviewed reports from schools and medical facilities that have prohibited physical restraint and seclusion and determined that cost savings have been realized as a result of: fewer instances of physical restraint and seclusion that in turn consume less staff time; fewer staff injuries resulting from the use of physical restraint and seclusion; reduced staff absences for recovery from injury; and increased job satisfaction and staff and employee retention.

(2) Subject Matter: Due process and equal protection

(a) Comment: Commenters stated that the administrative regulation violates the fifth and fourteenth amendment rights to due process and equal protection.

Those speaking or offering written comments on due process and equal protection were: Bruce Chapman (HWC).

(b) Response: No change has been made. The agency has determined that the regulation does not violate the fifth or the fourteen amendment rights to due process or equal protection. The agency does not believe that the requirements of the administrative regulation are inconsistent with existing constitutional, statutory, or case law. The agency has been unable to identify any state or federal law violated by the administrative regulation. In the event of conflict between a statute and an administrative regulation, the statute controls. Accordingly, the administrative regulation does not impinge or infringe upon the constitutional or statutory rights of students or school personnel. KRS 156.160 (1) (h) and 158.444 (1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education, and other regulations necessary or advisable for the physical welfare and safety of the public school children.

School personnel may ensure the safety of all with less onerous responses than physical restraint and seclusion where a student's behavior does not pose an imminent danger of serious physical harm to self or others, and may utilize positive behavioral supports and interventions to prevent the escalation of student behavior.

(3) Subject Matter: Right to self-defense and defense of others

(a) Comment: Commenters stated that the administrative regulation violates school personnel's legal right to self-defense and their right to come to the defense of others, referencing the Kentucky Constitution, KRS 503.050, KRS 503.070, KRS 503.080, and KRS 503.110.

Those speaking or offering written comments on the right to self-defense and defense of others were: Bruce Chapman (HWC), Donna Klingman (Self), and William Scott (KSBA).

(b) Response: No change has been made. The regulation does not violate school personnel's legal right to self-defense and their right to come to the defense of others. The agency does not believe that the requirements of the administrative regulation are inconsistent with existing constitutional, statutory and case law. The agency has been unable to identify any state or federal law violated by the administrative regulation. In the event of conflict between a constitutional provision or statute and an administrative regulation, the constitutional provision or the statute controls. Accordingly, the administrative regulation does not impinge or infringe upon the constitutional or statutory rights of students or school personnel. KRS 156.160 (1) (h) and 158.444 (1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to

medical inspection, physical and health education, and other regulations necessary or advisable for the physical welfare and safety of the public school children.

School personnel may ensure the safety of all with less onerous responses than physical restraint and seclusion where a student's behavior does not pose an imminent danger of serious physical harm to self or others and may utilize positive behavioral supports and interventions to prevent the escalation of student behavior.

(4) Subject Matter: Definitions

(a) Comment: Commenters stated that some definitions are too restrictive, not clear and need to be modified, especially "imminent danger of serious harm to self or others", "mechanical restraint", and "functional behavioral assessment."

Commenters stated that the use of modifiers such as "serious", "imminent", and "voluntary" restricts the use of physical restraint and seclusion too much and, as a result, more students and school personnel will be harmed.

Commenters stated that the definitions in the administrative regulation should be amended so they do not allow others to suffer physical injury before school personnel can intervene.

Commenters stated that the administrative regulation addresses the extremes, is not balanced, and is very restrictive on day-to-day functions.

Commenters stated that the administrative regulation's language is too vague, lacks clarity, and leaves room for too many judgment calls.

Commenters stated that the administrative regulation's definition of "physical restraint" is too narrow and does not take into consideration the usual and customary ways in which teachers interact with students, such as appropriately touching a student to focus their attention to task or to encourage compliance with a reasonable request.

Commenters stated that the administrative regulation's definition of "aversive behavioral interventions" needs to be amended to clarify whether the definition allows loud auditory stimuli such as yelling at students from a close proximity, an intervention which lacks evidentiary support.

Commenters stated that the administrative regulation should include the addition of the word "inappropriate" on page 3, lines 10 and 11, which would amend the administrative regulation to read as follows: "through direct observations, interviews, and record reviews to identify the function of the inappropriate or dangerous behavior and guide the development of behavioral intervention plans."

Commenters stated that the administrative regulation's definition of "positive behavioral supports" should add the statement "to encompass a range of systemic and individualized positive strategies to…."

Commenters stated that the administrative regulation should include a definition for the phrase "implemented with fidelity."

Commenters stated that the administrative regulation's definition of "parent" should align with the definition of "parent" in the Family Education Rights and Privacy Act (FERPA).

Commenters stated that the administrative regulation's definitions should include additional information regarding "safe crisis management."

Commenters stated that the administrative regulation's description of an appropriate seclusion setting is too vague.

Commenters stated that a functional behavioral assessment can be implemented at different levels; the definition of functional behavioral assessment is, therefore, unclear.

Commenters stated that the definition of "school personnel" should include school resource officers.

Commenters stated that the use of "serious" in the definition sets the threshold for the use of physical restraint and seclusion too high; "Serious" is not defined; and the administrative regulation proposes the most restrictive standard possible for the use of physical restraint and seclusion.

Commenters stated that courts interpreting the criminal code have determined that the standard for serious physical injury is very high, and that the Kentucky Supreme Court has interpreted "serious" to mean an injury from which the victim can recover; that this interpretation may lead to district liability when school personnel act to protect students.

Commenters stated that there is no indication that courts would apply the criminal code's definition of "serious."

Commenters stated that the definitions of "physical restraint" and "seclusion" were welcome and appropriate.

Commenters stated that the definition of "dangerous behavior" is lacking.

Commenters stated that the administrative regulation's definition of "physical restraint" is insufficient.

Commenters stated that the administrative regulation's definition of "physical restraint" should be amended to include more permissible circumstances for its use.

Commenters stated that the administrative regulation should define "medical professional".

Commenters stated that "physical escort" should be included in the definitions.

Commenters stated that "SCM" and "ESPI" should be included in the definitions.

Those speaking or offering written comments on the definitions were: Bob Rogers (Murray Independent Schools), Carrell Boyd (Caldwell County Schools), Rachel Yarbrough (Crittenden County Schools), Bill Adams (Meade County Schools), Michael Owsley (ELPO), Sheila Baugh (Simpson County Schools), Kim Johnson (Owensboro Independent Schools), Lori Franklin (Menifee County Schools), Dawn Hardeman (Menifee County Schools), Sarah Thompson (Simpson County Schools), Michelle Antle (Simpson County Schools), Teresa Combs (KSBA), Tiffany Williams (Murray Middle School), Lucy Heskins (P & A), Mary Ruble (KEA), Holly Bloodworth (Murray

Elementary School), Audrey Lane Jones (Parent), Janet Board (Grandparent), William Scott (KSBA), Eric L. Huffaker (Wayne County Schools), Traci Sharpe (KCCBD), Greta Stanfield (KYCASE), Beth Edmonson (KAPS), Betty Muntz (KCEC), Patty Dempsey (The Arc), V. Wayne Young (KASA), Ronald G. Livingood (Grant County Schools), Mike Waford (KCID), and Angela Bray (Pulaski County Schools).

(b) Response: Changes have been made to several definitions based upon the comments received.

The administrative regulation has been amended to delete "functional behavioral assessment" and "behavioral intervention plan" in the definitions section and elsewhere. The definition and requirements for a "Functional Behavior Assessment" and for a "Behavioral Intervention Plan" have been removed from the regulation due to their special education connotations.

The administrative regulation's definition of "physical restraint" has been amended to provide more clarification about the conduct that is included in the definition and that is being regulated. In its present form, the administrative regulation clarifies that some types of physical contact between students and school personnel are not prohibited by this administrative regulation. A definition for "imminent danger of serious physical harm" is inappropriate under KRS 13A.222 (4) (e)'s restriction and prohibition on the definitions of terms which are intended to have their dictionary meaning. "[I]mminent danger of serious physical harm" the words in the term are intended to have their dictionary meanings and, therefore, are inappropriate for separate definition.

The phrases "implemented with fidelity," "crisis prevention," and "medical professional" are intended to have their dictionary meanings, and, therefore, separate definition of these phrases is inappropriate under KRS 13A.222 (4) (e.)

The administrative regulation's definitions for "mechanical restraint," "prone restraint," and "supine restraint" have been amended for clarity.

The administrative regulation's definition for "positive behavioral support" already includes the language suggested by the commenter. The administrative regulation's definition for "parent" is taken from the FERPA definition for this term, found in 34 C.F.R. 99.3, and therefore does not require change.

Definitions for "emancipated youth" and "school resource officer" were added to the administrative regulation to provide additional clarity regarding these terms.

Because the administrative regulation does not include the term "physical escort," that term will not be defined.

Because "SCM" is a trademarked phrase that does not appear in the administrative regulation, that term will not be defined.

Because "ESPI" is an acronym for a phrase employed by a specific training corporation, and because neither the acronym or phrase appear in the administrative regulation, that acronym will not be defined.

The changes made to the definitions in the administrative regulation, in addition to the required use of positive behavioral support and intervention, and the use of less restrictive responses to student

behavior, are responsive to the comments that the administrative regulation restricts school personnel from preventing physical injury, only addresses the extremes, is not balanced and is very restrictive on day-to-day functions.

The Office for Civil Rights (OCR) has collected data from schools and districts around the country, including Kentucky schools and districts, which demonstrate that physical restraint and seclusion are not rare or "extreme" as stated by the commenter. Although not all Kentucky school districts reported physical restraint and seclusion data to OCR, the Kentucky districts that reported data to OCR documented 2,543 physical restraints (2,204 of which involved students **with** disabilities); 926 mechanical restraints (906 of which involved students **with** disabilities); and 1,833 instances of seclusion (1,443 of which involved students **with** disabilities and 21 of which involved students with Section 504 Plans).

(5) Subject Matter: Local school district policies and procedures

(a) Comment: Commenters stated that a procedure should be outlined by which parents may submit a complaint regarding the physical restraint or seclusion of their student, which requires the district and school to investigate, make written findings, and where appropriate, take corrective action.

Commenters stated that the administrative regulation is contrary to KRS 158.148 (4).

Those speaking or offering written comments on local district policies and procedures were: William Scott (KSBA) and Lucy Heskins (P&A).

(b)Response: No change has been made in response to the comment regarding parent complaints, as the administrative regulation already contains these requirements in Section 2 (1) (f).

Regarding KRS 158.148 (4), the agency has determined that while the statute states that each local board of education shall be responsible for formulating a code of acceptable behavior and discipline, but also compels the agency to develop statewide student discipline guidelines; accordingly this administrative regulation does not contravene KRS 158.148, with which it is congruent and consistent. KRS 156.160 (1) (h) and 158.444 (1) give the Kentucky Board of Education the authority to promulgate administrative regulations related to medical inspection, physical and health education, and other regulations necessary or advisable for the physical welfare and safety of the public school children.

(6) Subject Matter: Requirement for notification to the Kentucky Department of Education and local law enforcement

(a) Comment: Commenters stated that Protection and Advocacy should be added to the list of public agencies in Section 2 (1) (e) that are notified when physical restraint or seclusion result in death, substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Commenters stated that the deadline for notification to those public agencies in Section 2 (1) (e) should be amended to require immediate notification of a death resulting from physical restraint or seclusion, rather than within twenty-four (24) hours; that twenty-four (24) hours is excessive.

Commenters stated that local school districts should have longer than twenty-four (24) hours to report the results of physical restraints or seclusions which occur during school events but not necessarily on a school day.

Those speaking or offering written comments on the requirement for notification to the Kentucky Department of Education and local law enforcement were: Lucy Heskins (P & A), Patty Dempsey (The Arc), and Teresa Combs (KSBA).

(b) Response: No changes have been made. The agency has received conflicting comments regarding the time permitted for notification to the public agencies for the outcomes of physical restraint and seclusion. The agency regards such notification as critical, and the administrative regulation sets a reasonable time within which this may occur.

While federal regulations charge P & A with the investigation of institutional abuse and neglect of individuals with disabilities, these regulations do not require public schools to give P & A notice of injury or death resulting from physical restraint and seclusion. However, the agency will continue its open dialogue with P & A to promote the safety of all public school students.

Notification of death within twenty-four hours takes into consideration the fact that districts and schools will be dealing with the aftermath of the event and provides time to address the immediate needs of the school and district community. Twenty-four hours is reasonable.

(7) Subject Matter: Restraint and seclusion as punishment

(a) Comment: Commenters stated that physical restraint or seclusion should not be used as a punishment.

Those speaking or offering written comments on the use of physical restraint and seclusion as punishment were: Teresa Combs (KSBA).

(b) Response: No changes have been made. The agency agrees that physical restraint and seclusion should not be used as punishment and the regulation prohibits their use as punishment.

(8) Subject Matter: Property damage

(a) Comment: Commenters stated that districts and schools need to be able to protect the personal property of those in the classroom.

Commenters submitted photographs of damage to property in the classroom. Commenters stated that silence is approval of this behavior and that, when school personnel do not physically restrain or seclude a student to prevent property damage, student are taught that it is okay to destroy property.

Commenters stated that students should not be permitted to destroy property.

Commenters stated that the standard for physical restraint and seclusion should include imminent risk of significant property damage.

Commenters stated that a result of this administrative regulation's language on property damage may be that a student's parents would be charged by districts for property damage.

Commenters submitted a photograph of a classroom that a student had purportedly single-handedly dismantled. The commenters stated that it was not clear from the administrative regulation's language whether school personnel could physically restrain the student for this behavior, had the administrative regulation been in place.

Commenters stated that physical restraint and seclusion should be permitted to address the destruction of property.

Those speaking or offering written comments on property damage were: Tres Settle (McLean County Schools), Rachel Yarbrough (Crittenden County Schools), Teresa Combs (KSBA), Raphael Schweri (self), Greta C. Stanfield (KYCASE), Betty Muntz (KCEC), Angela Bray (Pulaski County Schools), Michael A. Owsley (ELPO), V. Wayne Young (KASA), Casey Allen (Ballard County Schools), and William Scott (KSBA).

(b) Response: No change has been made. While the agency understands concerns about the destruction of property, this administrative regulation has been promulgated to emphasize the primacy of student and school personnel safety, including the risks associated with the use of physical restraint and seclusion. Property damage that does not present an imminent danger of serious physical harm does not override these safety concerns. Property damage involving the throwing or overturning of furniture could present an imminent danger of serious physical harm, and then would permit physical intervention by school personnel.

The agency, after reviewing the laws of other states, determined that, of the forty-two (42) states that address physical restraint and seclusion, only sixteen (16) permit physical restraint as a response to the destruction of property. This administrative regulation has been promulgated to emphasize the primacy of student and school personnel safety.

The comment that teachers are unsure of what to do in cases where a student is dismantling a classroom and endangering the other students and school personnel in the classroom illustrates the extent to which school personnel need quality training in positive behavior supports and interventions. Presently, there is no training requirement for all school personnel in de-escalation strategies. In the event that positive behavioral supports and interventions do not de-escalate the student's behavior, the proposed training will provide school personnel with the tools to effectively and safely deal with the behavior, including the use of physical restraint and seclusion when there is an imminent danger of serious physical harm to self or others.

While understanding and agreeing with comments that students should not be permitted to destroy property, the agency has determined that a disciplinary response to the destruction of property is necessary and appropriate, but that physical restraint and seclusion are not appropriate disciplinary tools, in the absence of an imminent danger of serious physical harm to self or others.

(9) Subject Matter: Mechanical restraints and calming restraint techniques

(a) Comment: Commenters stated that a student who recently left a psychiatric facility that used calming restraints will continue to need them, but that school personnel are not trained to implement these restraints.

Commenters stated that the administrative regulation needs to allow for restraining therapies as recommended by qualified professionals.

Commenters stated that when a district used a safety cradle appropriately after trying to work with a student the whole day to calm the student, social services investigated the school district; the social services investigation concluded that the school district acted appropriately, but the district had to undergo the social services investigation, even after doing everything school personnel could to avoid the safety cradle.

Those speaking or offering comments on allowing the use of mechanical restraints and calming restraint techniques were: Rachel Yarbrough (Crittenden County Schools), Carrell Boyd (Caldwell County Schools), and Angela Bray (Pulaski County Schools).

(b) Response: No change has been made. The agency has carefully reviewed these comments, and the laws of the eighteen (18) other states that forbid mechanical restraints. While the agency understands the concerns raised by the commenters, the agency has concluded that the administrative regulation, as written, promotes the safety of all students and school personnel. The social services investigation reported by commenters illustrates the risks undertaken when school personnel use physical restraint, which are risks the administrative regulation is designed to alleviate.

(10) Subject Matter: Prohibition of prone restraint

(a) Comment: Commenters stated that a student fight broke out and one student was bleeding; it took three full grown men to restrain the aggressive student and the student still hit, kicked and bit; without prone restraint, more students would have been hurt; in such a situation, a standing restraint may not be effective; depending on the situation, prone restraint may be necessary.

Commenters stated that prone and supine restraints have caused the deaths of students across the country; physical restraint and seclusion have been banned by Medicaid in psychiatric hospitals, nursing homes and other mental health facilities; however, no law prohibits the use of physical restraint and seclusion in Kentucky schools.

Commenters stated that in 2009 the Government Accounting Office investigated face-down or prone restraints and discovered twenty uses of restraints that resulted in death.

Commenters stated that Owensboro no longer trains in prone and supine restraints, but needs the flexibility to use these restraints in some situations.

Commenters stated that prone restraint is a necessary tool that can be safely done with training.

Commenters stated that the Department needs to be clear about the holds that are allowed; whether sitting and kneeling holds are allowed under the administrative regulation; students will pull teachers to the floor and trained staff can take a child to the floor safely.

Commenters stated that banning prone/floor restraint is illegal; that Congress did not pass restraint and seclusion legislation; one of the first parts dropped from the proposed federal legislation was the ban on prone/floor restraint; currently 90% of states do not ban prone restraints in schools; not all prone restraint restricts breathing.

Commenters stated that, pursuant to the authority of Canton v. Harris, 489 U.S. 378 (1989) if it is foreseeable that a teacher may need to contain a student on the floor, the school has an obligation to train them to do so; that in the case of St. Catherine's Care Center of Findlay v. Centers for Medicare and Medicaid Services, Docket No. C-01-721; Decision No Cr1190 (June 14, 2004), the agency was found to not have trained sufficiently when they only trained on standing restraints.

Commenters stated that if only standing restraints are allowed, students will inevitably be injured when school personnel follow the administrative regulation; that it is inevitable that the teacher and student will go to the floor and will suffer injury; that this administrative regulation puts trainers at risk of having their employment threatened.

Commenters stated that the administrative regulation should ban prone restraint.

Commenters stated that it is unlikely that school personnel will be able to restrain a large student in a standing position.

Commenters stated that they agreed with the prohibition against prone restraint due to its dangerous nature.

Commenters stated an objection to the banning of restraints that interfere with breathing and communication because the language of the administrative regulation implies that all prone restraints interfere with breathing and communication.

Commenters stated that properly engineered prone and supine floor holds and especially holds with established records of safety, are considered entirely reasonable and are used safely and appropriately in every jurisdiction throughout the United States.

Commenters stated that without prone and supine restraint, school personnel will not be able to break up a fight between large students.

Commenters stated that physical restraint, when done well, can be an important, effective and therapeutic intervention to address the violent or aggressive behavior of children.

Commenters stated that false and incomplete information has been disseminated regarding the risks of restraint.

Commenters stated that the administrative regulation will lead to the more widespread use of chemical restraints.

Those speaking or offering written comments on the prohibition of prone restraint were: Bob Rogers (Murray Independent Schools), Carrell Boyd (Caldwell County Schools), Casey Allen (Ballard County Schools), Sheila Baugh (Simpson County Schools), Kim Johnson (Owensboro Independent Schools), Lori Franklin (Menifee County Schools), Teresa Combs (KSBA), Tiffany Williams (Murray Middle School), Lucy Heskins (P & A), Mary Ruble (KEA), William Scott (KSBA), Eric L. Huffaker (Wayne County Schools), Greta Stanfield (KYCASE), Angela Bray (Pulaski County Schools), Donna Klingman (self), Bruce Chapman (HWC), Michael A. Owsley (ELPO), and Kendra Stea (CPI).

(b) Response: In response to comments, the agency has amended the definition of prone physical restraint for clarity. No change has been made regarding the prohibition of prone physical restraint. While acknowledging the intent of the commenters, the agency notes that safety concerns regarding prone restraint are well documented, and have not been refuted by information presented during the comment period.

Prone restraints are banned in twenty-three states (Alabama, Colorado, Connecticut, DC (guidelines), Florida, Iowa, Louisiana, Maryland, Minnesota, Missouri, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, West Virginia, Wyoming.)

The prohibition against prone physical restraints does not preclude other holds, such as the seated cradle assist in which the student is cradled on the floor, or other holds/assists that have been proven safe and yet would not violate the administrative regulation.

Other technical assistance will be provided through training to the core team, and guidance, issued by the agency, regarding the use of safer methods of physical restraint.

The agency has determined that information regarding the risks of physical restraint and seclusion is neither false nor incomplete.

The agency has determined that the administrative regulation will not lead to more chemical restraints, as chemical restraints are banned outright.

The agency has determined that Canton v. Harris, 489 U.S. 378 (1989) has no application to this administrative regulation. The holding of Canton v. Harris was that the inadequacy of police training may only serve as the basis of a federal civil rights lawsuit where the failure to train amounts to deliberate indifference to the constitutional rights of persons with whom the police come in contact. As that case does not regard school personnel, students, schools, physical restraint or seclusion, the agency has made no change in response to this comment.

The agency has determined that St. Catherine's Care Center of Findlay v. Centers for Medicare and Medicaid Services, Docket No. C-01-721; Decision No Cr1190 (June 14, 2004) has no application to this administrative regulation. The cited case involved a skilled nursing facility, and was remanded on appeal. As that case does not regard school personnel, students, schools, physical restraint or seclusion, the agency has made no change in response to this comment.

(11) Subject Matter: Supine restraint techniques that do not impair breathing should be allowed

(a) Comment: Commenters stated that the administrative regulation should allow supine restraint, which can be implemented safely with proper training and guidance.

Commenters stated that without prone and supine restraint, school personnel will not be able to break up a fight between large students.

Commenters stated that properly engineered prone and supine floor holds and especially holds with established records of safety, are considered entirely reasonable and are used safely and appropriately in every jurisdiction throughout the United States.

Those speaking or offering written comments on supine restraint were: Eric L. Huffaker (Wayne County Schools), Casey Allen (Ballard County Schools), and Bruce Chapman (HWC).

(b) Response: In response to comments, the definition of supine restraint has been amended. No change has been made regarding the prohibition of supine physical restraint. While acknowledging the intent of the commenters, the agency notes that safety concerns regarding supine restraint are well documented, and have not been refuted by information presented during the comment period.

The prohibition against supine physical restraints does not preclude other holds, such as the seated cradle assist in which the student is cradled on the floor, or other holds/assists that have been proven safe and yet not in violation of the administrative regulation.

Other technical assistance will be provided through training to the core team and guidance issued by the agency regarding the use of other safer holds.

(12) Subject Matter: Medical exemption from physical restraint and seclusion

(a) Comment: Commenters stated concern about what students will do to others if a medical professional prohibits the physical restraint or seclusion of that student.

Commenters stated that while not all medical professionals are guilty of this, some will write a prohibition against the physical restraint or seclusion of a student, at the urging of a parent, when it is truly not needed.

Commenters stated that the administrative regulation should clarify that the medical professional limiting the use of physical restraint or seclusion is doing so within their area of specialty.

Commenters stated that a medical exemption provided for a student should be reviewed by a committee to determine the validity of the claimed medical exemption from physical restraint and seclusion.

Commenters stated that districts should consider a written recommendation from a licensed medical professional as advisory.

Commenters stated that under the administrative regulation, a student who has received a prohibition against physical restraint from a licensed medical professional could literally kill another student and the school district would be powerless to act.

Commenters stated that the administrative regulation is not clear about whether a teacher, in an emergency, may restrain a student with a medical exemption, if that student is beating another student senseless.

Those speaking or offering written comments on medical exemption from physical restraint and seclusion were: Rachel Yarbrough (Crittenden County Schools), Michael Owsley (ELPO), Shelia Baugh (Simpson County Schools), Kim Johnson (Owensboro Independent Schools), Teresa Combs (KSBA), Casey Allen (Ballard County Schools), Ronald Livingood (Grant County Schools), Angela Bray (Pulaski County Schools), William Scott (KSBA) Eric L. Huffaker (Wayne County Schools).

Response: No change has been made. The agency acknowledges the possibility that a party may attempt to circumvent the intent of the administrative regulation, but has determined that districts should determine the sufficiency of documentation from a licensed medical professional that prohibits physical restraint and seclusion. The agency assumes that licensed medical professionals are

competent, and that, by clearly defining the information sufficient to justify the prohibition against physical restraint and seclusion, districts will educate those professionals about the district's safety policies and the district's interest in protecting the health and safety of all students. Regarding the comment that the administrative regulation would render a district powerless to act to prevent the killing of one student by another, the agency notes that the legislature has enacted an array or statutes regarding responsibility for, and defense of, others, and, that in the event of a conflict between an administrative regulation and a statute, the statute controls. By explicitly permitting physical restraint or seclusion in situations in which a student's behavior poses an imminent danger of serious physical harm to self or others, the administrative regulation clearly states that physical restraint and seclusion are preventive measures to be taken when necessary to avoid serious physical harm.

(13) Subject Matter: Standard for the use of restraint and seclusion in public schools

(a) Comment: Commenters stated that physical restraint and seclusion should be permitted as responses to the imminent threat of any physical harm and verbal threats that do not stop.

Commenters stated that the proposed administrative regulation is more restrictive of physical restraint and seclusion than the administrative regulations that the Cabinet for Health and Family Services applies to child-care centers.

Commenters stated that the administrative regulation's standard that permits physical restraint and seclusion for an imminent danger of serious physical harm is the appropriate standard.

Commenters stated that investigations by P & A have revealed that physical restraints and seclusion have been used in situations that were not serious (e.g., to force compliance or for staff convenience); behavior plans were not implemented in many of these cases.

Commenters stated that the use of crisis management techniques should not be limited to situations presenting imminent danger to a student or to other persons because this restriction allows crises to escalate to a point of imminent physical harm before school personnel can physically intervene.

Commenters stated that no significant injuries to students have occurred due to restraint and seclusion because Kentucky educators have effectively implemented restraint and seclusion.

Commenters stated that it is important to have more than one person present for the use of physical restraint or seclusion to avoid injury to school personnel; could not remember any student being injured during the use of physical restraint or seclusion.

Commenters stated that they have documented cuts, abrasions, bruises, friction burns, sprains, broken bones and fractures, psychological trauma, miscarriage, hemorrhage, and shunt displacement resulting from improper physical restraint and seclusion.

Commenters stated that restraint should be allowed with proper training.

Commenters stated that clarification is needed as to when school personnel may respond to an emergency situation with physical restraint or seclusion.

Commenters stated that there are already constitutional protections that allow the use of force to maintain safety.

Commenters stated that they agree with the standard set by the administrative regulation and that it is necessary.

Those speaking or offering written comments on the standard for the use of physical restraint and seclusion were: Michael Owsley (ELPO), Teresa Combs (KSBA), Sheila Baugh (Simpson County), Sarah Thompson (Simpson County, Michelle Antle (Simpson County), Mary Ruble (KEA), V. Wayne Young (KASA), Greta C. Stanfield (KYCASE), Bruce Chapman (HWC), Lucy Heskins (P&A), Eric L. Huffaker (Wayne County Schools), Angela Bray (Pulaski County), William Scott (KSBA), and Annessa Roberts (Sharpe Elementary/Marshall County).

(b) Response: No change has been made. The agency, after reviewing the regulations implemented in other states, does not regard "imminent danger of serious physical harm to self or others" as the most restrictive standard possible. For example, the state of Georgia has an outright ban on the use of seclusion in public schools. Restraint is permitted only in response to the "imminent threat of serious physical harm" in Florida, New Hampshire, and Oregon. Physical restraint is permitted only in response to the "imminent threat of serious/substantial physical harm" in Oklahoma and Rhode Island. The agency has determined that the standards for the use of physical restraint and seclusion are appropriate and necessary to promote student safety. The regulation is designed to improve safety for both students and school personnel.

The agency has determined that there are approximately 145,484 child care spaces in Kentucky. By contrast, in the 2010-2011 school year, there were 647,827 students in Kentucky's public schools. The agency believes that it is appropriate that school personnel adhere to higher standards of classroom management and safety than those provided for child care centers, which serve a fraction of the number of children. The lack of clear guidance regarding physical restraint and seclusion is unconscionable in light of the student management burden assumed by Kentucky teachers. The administrative regulation provides clarity on vital school safety issues, while emphasizing a progressive approach that improves the educational atmosphere for all students by emphasizing positive behavioral supports.

Changes have been made to the administrative regulation to clarify issues regarding student and school personnel safety. The changes to the definitions section, and elsewhere, make plain that school personnel are not required or expected to allow physical harm to students or school personnel but rather are to only utilize physical restraint or seclusion as responses to student behavior in lieu of other options, where necessary and allowable, as described in the administrative regulation.

By explicitly permitting physical restraint or seclusion in situations in which a student's behavior poses an imminent danger of serious physical harm to self or others, the administrative regulation clearly states that physical restraint and seclusion are preventive measures to be taken when necessary to avoid serious physical harm.

The administrative regulation states that positive behavioral supports and interventions are to be used to reduce the number of situations in which a student's behavior escalates to the point of posing an imminent danger of serious physical harm to self or others, and that less restrictive responses may be used to answer situations in which a student's behavior does not meet this threshold requirement, but still requires response to ensure the safety of all. The psychological and physical well-being of students, including those students whose behavior is to be addressed, will be better protected by this administrative regulation as the restrictions on the use of physical restraints and seclusion and the

systematic use of positive behavioral supports and interventions will reduce the number of physical restraints and seclusions and increase the safety of all.

This regulation does not violate school personnel's legal right to use force to maintain safety. The agency does not believe that the requirements of the administrative regulation are inconsistent with existing constitutional rights. In the event of conflict between a constitutional provision and an administrative regulation, the constitutional provision controls. Accordingly, the administrative regulation does not impinge or infringe upon the constitutional rights of students or school personnel.

Changes have been made to several definitions based upon the comments received. The administrative regulation's definition for "physical restraint" has been amended to provide more clarification as to the conduct that is included in the definition and that is being regulated.

(14) Subject Matter: Ban on restraint that interferes with a student's ability to communicate using their primary mode of communication

(a) Comment: Commenters stated that it is not possible to restrain a student safely if not controlling their hands; if a student uses sign language to communicate, this administrative regulation will prohibit the physical restraint of their hands, which may be used as weapons.

Commenters stated that the agency should consider deleting the administrative regulation's statement that restraint and seclusion may not interfere with communication.

Those speaking or offering written comments on the ban on restraint that interferes with a student's ability to communicate using their primary mode of communication were: Michelle Antle (Simpson County), Michael Owsley (ELPO), and Angela Bray (Pulaski County Schools).

(b) Response: The commenters provided valuable input, and the agency has added language to the administrative regulation that clarifies circumstances in which staff may physically restrain a student who relies upon sign language or an augmentative mode of communication.

(15) Subject Matter: Involvement of School Resource Officers

(a) Comments: Commenters stated that teachers may not feel safe intervening; law enforcement may be summoned more often; and that school resource officers may be called in more frequently.

Commenters stated that the administrative regulation does not clearly carve out exceptions that permit physical restraint by sworn law enforcement officers and school resource officers.

Commenters stated that school resource officers should be included in the definition of school personnel.

Commenters stated that the administrative regulation should have an explicit exemption for all sworn law enforcement officers, and not just for school resource officers.

Those speaking or offering written comments on the involvement of school resource officers were: Bruce Chapman (HWC), Angela Bray (Pulaski County Schools), and Lucy Heskins (P&A).

(b) Response: In response to comments, the agency has modified the definition of school personnel and school resource officers to clarify the role and duties of school resource officers, sworn law enforcement officers, and school personnel.

The agency has determined that schools that have restricted physical restraint and seclusion have not encountered an increase in interventions by school resource officers or police.

(16) Subject Matter: Seclusion Setting

(a) Comment: Commenters stated that the language in the administrative regulation that addresses these seclusion settings is vague; a seclusion setting should have an appropriate ceiling height, heating, cooling, ventilation, and lighting systems comparable to operating classrooms in the school and be of a size appropriate for a student's size, behavior, and chronological and developmental age.

Commenters stated that the agency should modify the administrative regulation to clarify restrictions on objects and fixtures permitted in a seclusion room and whether student clothing is included in these restrictions.

Commenters stated that they support the ban on locked seclusion.

Those speaking or offering written comments on seclusion and seclusion settings were: Lucy Heskins (P&A), Greta C. Stanfield (KYCASE), and Teresa Combs (KSBA).

(b) Response: No change has been made. Section Four of the administrative regulation delineates the circumstances under which seclusion may be implemented. Section Four describes the characteristics of an acceptable setting used for seclusion, and addresses lighting, ventilation, objects and fixtures, the requirement of an unlocked and unobstructed door, and at least annual fire and safety inspections. The agency did not more explicitly address the physical requirements of an acceptable setting for seclusion because school facilities regulations and building and fire code regulations address these issues to the agency's satisfaction. Because the administrative regulation addresses the physical setting for seclusion, no change has been made in response to the comments about student clothing.

(17) Subject Matter: Debriefing requirements

(a) Comment: Commenters stated that the administrative regulation overburdens districts by requiring all personnel in close proximity to an incident of restraint or seclusion to participate in debriefing; this could be many people.

Commenters stated that the administrative regulation appears to require that parents who witnessed a restraint would have to participate in debriefing.

Commenters stated that the administrative regulation should not require everyone in the proximity of a use of physical restraint or seclusion to attend debriefing, but should permit witnesses to submit a written report regarding the incident.

Commenters stated that for students restrained multiple times in a single day, the debriefing should occur as soon as practicable and may occur after a cluster of related incidents.

Commenters stated that the debriefing requirement should be non-negotiable and apply to every use of physical restraint and seclusion.

Commenters stated that even though planning for the prevention and reduction of the need for restraint and seclusion are appropriate for the debriefing meeting, proactive measures should be taken to make sure that school personnel are using a school-wide screening process to plan an intervention for students whose behavior appears to be escalating.

Commenters stated that debriefing should be required for every use of physical restraint or seclusion, and not only if a parent requests a debriefing.

Commenters stated that districts should keep a debriefing summary that should be placed in the student's education record and a copy provided to the parent or emancipated youth.

Commenters stated that debriefing is the proper tool to evaluate the use and effectiveness of physical restraint and seclusion.

Those speaking or offering written comments on debriefing requirements were: Teresa Combs (KSBA), Michelle Antle (Simpson County Schools), Greta C. Stanfield (KYCASE), Betty Muntz (KCEC), Traci Sharpe (KCCBD), Mike Waford (KCID), Ronald Livingood (Grant County Schools), Angela Bray (Pulaski County Schools), Lucy Heskins (P & A), William Scott (KSBA), and Kendra Stea (CPI).

(b) Response: Comments concerning the debriefing process led the agency to modify the debriefing requirement to permit the participation of fewer than all staff in the proximity of a use of physical restraint or seclusion.

The modification made to Section Five of the administrative regulation, which clarify that school personnel participate in debriefing, addresses the comment that parent-witnesses might have to participate in debriefing.

The agency has determined that the present debriefing requirements are adequate to inform decision making that promotes student and school safety, as well as student learning.

(18) Subject Matter: Parental notification

(a) Comment: Commenters stated that parents have not been notified of the use of restraint and seclusion.

Commenters stated that twenty four hours is too long to wait for a parent to be notified when physical restraint or seclusion are used; parents should be notified of the use of physical restraint or seclusion by the end of the school day during which they occur.

Commenters stated that the regulation's notice to parent requirement might violate the confidentiality provisions of FERPA.

Commenters stated that the administrative regulation should be amended to provide that the parent of the student shall be notified as soon as possible but no later than 24 hours after the use of physical restraint or seclusion, and that if notification cannot be achieved verbally or through e-mail by the end of the school day, written notice should be sent home with the student with a carbon copy mailed to parent's address.

Those speaking or offering comments on parental notification were: Lucy Heskins (P & A), Audrey Lane Jones (Parent), Traci Sharpe (KCCBD), Teresa Combs (KSBA), and Angela Bray (Pulaski County Schools).

(b) Response: No change has been made. The agency has received conflicting comments regarding the time permitted for parent notification. The agency regards parental notification as critical, and the administrative regulation dictates a reasonable time in which this may be accomplished.

No change has been made in response to the comment regarding confidentiality. The agency has determined that FERPA is not violated by the administrative regulation's definition of parent, which mirrors that contained in 34 C.F.R. 99.3.

The agency has determined that the present requirement for written communication to the parent if the parent cannot otherwise be contacted within twenty-four hours adequately addresses the request for written notice to the parent.

(19) Subject Matter: Training

(a) Comment: Commenters stated that this administrative regulation will add to the costs for districts, but that the administrative regulation's requirements are good.

Commenters stated that training requirements are not clear; there are two levels of training and it is not clear who should be trained at which level or the purpose of the core team; it is unclear whether every special education teacher would be a member of the core team if the teacher had a student whose IEP indicated the use of physical restraint or seclusion.

Commenters stated that additional training would require more expense and time, but that school personnel would be taught to be aware of and to address the emotional components of violent behavior, and would be taught ways to physically control violent student while keeping others safe.

Commenters stated that the administrative regulation should ensure that the requirement to have training in an array of positive behavior interventions, strategies, and supports aligns with the definition of positive behavioral supports.

Commenters stated that training in positive behavioral supports is not the same as the school committing to and implementing the positive behavioral interventions and supports framework with fidelity.

Commenters stated that they support the training requirements contained in the administrative regulation.

Commenters stated that the Kentucky Department of Education should provide training materials for implementation of training, or else develop less time-consuming requirements.

Commenters stated that the administrative regulation should allow districts to choose which school personnel are trained to be on core teams.

Commenters stated that the administrative regulation should not require that all school personnel who engage in the physical restraint of students, even in emergencies, must be trained.

Commenters stated that the number of school personnel assigned pursuant to the administrative regulation is insufficient.

Commenters stated that clarification is needed regarding the level of training required to consider a person "trained" to use physical restraint and seclusion; the administrative regulation refers to two levels of certification.

Commenters stated that the underlined statement needs to be added to the administrative regulation for clarity: "School personnel imposing physical restraint in accordance with this regulation shall: (a) be trained by an individual or individuals who have been <u>certified to train others</u> by a crisis intervention program".

Commenters stated that the training provided to all teachers should include the dangers of the use of physical restraint and seclusion.

Commenters stated that core team training should include CPR and recognizing the signs of medical distress.

Commenters stated that, in addition to training, school personnel and core team members need to demonstrate competence.

Commenters stated that participation on the core team should be voluntary, and not mandatory.

Commenters stated that the purpose of the core team is not clear.

Those speaking or offering written comments on training were: Tiffany Williams (Murray Middle School), Mary Ruble (KEA), Raphael Schweri, Mike Waford (KCID), Angela Bray (Pulaski County Schools) Lucy Heskins (P&A), Ronald Livingood (Grant County Schools), William Scott (KSBA), and Kendra Stea (CPI).

(b) Response: As a result of the comments received, the training requirements in the regulation have been clarified. All school personnel must have trained to use an array of positive behavior supports to increase appropriate student behaviors and decrease inappropriate or dangerous behaviors; all school personnel must have annual basic training in responding to dangerous behavior, and appropriate procedures to prevent the need for physical restraint and seclusion, including positive behavioral support and interventions. Training in the proper use of seclusion, including instruction in monitoring the physical signs of distress and obtaining medical assistance, has been added to the requirements.

The regulation requires additional training for core team members who may use physical restraint and seclusion. Core team members will be trained in the physical restraint and seclusion techniques that are allowed by this regulation. Also, core team members will be required to demonstrate proficiency in the prevention and use of physical restraint.

The agency has decided not to prescribe the training curriculum beyond the requirements outlined in the regulation. Presumably the training would be comprehensive enough to prepare members of the core team to recognize the signs of medical distress and respond appropriately.

Guidance will be provided to suggest how districts may make decisions about core team membership; however, this regulation allows districts and schools flexibility in those decisions. Also, guidance will be provided to help districts be knowledgeable consumers of available training.

The regulation requires that all school personnel who may use physical restraint and seclusion be trained "except 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 agency has determined that the administrative regulation does not require participation on the core team, but dictates, instead, that each school shall have a core team.

(20) Subject Matter: Data collection and reporting

(a) Comment: Commenters stated that the administrative regulation requires an onerous reporting and review process; different reporting standards should apply to physical restraints that result in injury to student or school personnel versus those that don't.

Commenters stated that when schools do not use a data based approach, such as reviewing office referrals, it is harder to be proactive.

Commenters stated that reporting should be limited to what is already required in Infinite Campus; the administrative regulation should clarify whether data has to be collected at the school or district level.

Commenters stated that the administrative regulation should require only one investigation per use of physical restraint or seclusion, if a parent so requests.

Commenters stated that the administrative regulation should modify the time that districts have to report the use of physical restraint or seclusion, because such uses may occur after school hours.

Commenters stated that data entered into Infinite Campus should include the name of the student physically restrained or secluded and the date of the incident.

Those speaking or offering written comments on data collection, data analysis and reporting were: Mary Ruble (KEA), Mike Waford (KCID), Ronald Livingood (Grant County Schools), Angela Bray (Pulaski County Schools), and William Scott (KSBA).

(b) Response: Currently, the Office of Civil Rights is the only entity that requires the reporting of data on physical restraint and seclusion. Not all Kentucky districts complied with this requirement in the baseline year. OCR data collected from Kentucky school districts for the 2009-10 school year indicate that restraint, seclusion and mechanical restraint are not uncommon. 104 of 174 Kentucky school districts self-reported over two thousand incidents of physical restraints, nearly one thousand mechanical restraints and over eighteen hundred incidents of seclusion. The data reporting requirements in this administrative regulation will allow Kentucky to have data to examine and improve practice. Data collected at the local level should inform local policies and practices as required in Section 2 (1) (g).

The changes made to this regulation over time, as a result of the feedback received, have streamlined the state reporting requirements significantly. In previous versions of this regulation, districts were required to report to the state the data collected on each incident. However, the current version of the regulation requires the district to report in aggregate the following: number of uses of physical restraint, number of students placed in physical restraint, number of uses of seclusion, number of students placed in seclusion, number of student injuries (substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) related to physical restraint and seclusion, number of school personnel injuries (substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) related to physical restraint and seclusion, and number of incidents in which a school resource officer or other sworn law enforcement officer is involved in the physical restraint or seclusion of a student.

(21) Subject Matter: Functional Behavior Assessments (FBA) and Behavior Intervention Plans (BIP)

(a) Comment: Commenters stated that there should not be an FBA requirement after the first occurrence of a physical restraint and that extensive paperwork would result from the administrative regulation.

Commenters stated that parental consent would have to be obtained prior to conducting an FBA. Commenters stated that this would then require more training for the FBA and BIP, as well as result in potential additional district expense if parents also requested an Independent Educational Evaluation.

Commenters stated that the FBA is not a process that is easily or quickly completed; that there will be a time lag between the physical restraint or seclusion happens and when the FBA is completed the first time; and that the debriefing needs to occur prior to the completion of the FBA to determine immediate next steps for the safety of the student and others.

Commenters stated that the section of the administrative regulation about conducting an FBA should be moved to Section 5 so that school personnel can understand that administrative regulation more easily.

Commenters stated that an FBA can be implemented at different levels, informal and formal; that as the levels increase, other factors come into play, such as the skills of the professionals involved, the amount of data collected, the number of observations, and the complexity of the interventions used; and that if a proactive informal FBA process is used, future inappropriate or dangerous behaviors may be prevented.

Commenters stated that language related to FBA should be, "A functional behavioral assessment shall be conducted following the use of restraint and seclusion at the request of the parent or emancipated youth or if identified as a need during the debriefing session."

Commenters stated that the functional behavioral assessment is not a proper tool to evaluate the use and effectiveness of physical restraint and seclusion.

Those speaking or offering written comments on functional behavioral assessments were: Susan Clifton (WKSEC), Michelle Antle (Simpson County Schools), Traci Sharpe (KCCBD), Mike Waford (KCID), Ronald Livingood (Grant County Schools), Lucy Heskins (P&A), Ronald Livingood (Grant County Schools), and Sheila Baugh (Simpson County Schools).

(b) Response: The definition and requirements for "Functional Behavior Assessment" and "Behavioral Intervention Plan" have been removed from the regulation due to their special education connotations. The paperwork involved, the length of time required to complete the FBA and a BIP and the impracticality of requiring an FBA and possibly a BIP upon the first incident of a physical restraint or seclusion led to the agency's decision to remove the requirement of a formal FBA and a BIP. This change was in response to the comments received, as well as in light of a conclusion by the agency that the functions and goals of the FBA and BIP requirements are preserved in the administrative regulation's Section 5, as amended after comments.

(22) Subject Matter: Ending disruption of the educational environment

(a) Comment: Commenters stated that the language of the administrative regulation should be amended to allow physical restraint or seclusion if a student is causing significant disruption of the learning environment.

Commenters stated that this administrative regulation would preclude school personnel from preventing or responding with physical contact to situations in which a student disrobes or commences sexual self-stimulation activity.

Commenters stated that physical restraint and seclusion should be permitted to address serious and purposeful disruption of the educational environment.

Those speaking or offering written comments on ending disruption of the educational environment were: Bob Rogers (Murray Independent Schools), Teresa Combs (KSBA), V. Wayne Young (KASA), Carrell Boyd (Caldwell County Schools), and William Scott (KSBA).

(b) Response: No change has been made. The commenters and the agency are united in a desire to see this administrative regulation promote and support a safe and orderly school environment for all. The focus of the administrative regulation is on school-wide systems of strategies and support to preclude the need for physical restraint and seclusion.

The agency, after reviewing the regulations implemented in other states, determined that, of the forty-two (42) states that address physical restraint and seclusion, only five (5) permit such physical restraint for disruption of the educational environment. Because disrobing and sexual activity are unlikely to arise during supervised educational activities and because these student behaviors are most likely only inappropriate and not dangerous behaviors, school personnel are required to utilize less restrictive responses than physical restraint and seclusion, unless the student's behavior presents an imminent danger of serious physical harm to self or others. Additionally, positive behavioral supports and interventions should be utilized to prevent students from commencing these behaviors.

(23) Subject Matter: Positive behavioral interventions

(a) Comment: Commenters stated that positive behavioral interventions are important and that they have already been implemented in some school districts; that some teachers have been trained in de-escalation techniques; that a few teachers in some districts have been trained to use physical restraint properly; and that some school districts have used JKM and SCM as vendors to provide this training .

Commenters stated that a far more effective way to modify student behavior is to use evidence-based positive behavior supports; that they support the inclusion of positive behavior support training

in the regulation because it provides teachers with the tools to improve student behavior and helps create a safer and more effective learning environment; and that by restricting the use of physical restraint to situations when the student's behavior poses a danger of physical harm to them or someone else, this ensures school personnel are trained in the tools of positive behavioral support and intervention and classrooms will become safer and more productive learning environments.

Commenters stated that, as an alternative to seclusion, students were allowed to de-escalate in a center room with the goal of returning to the classroom as soon as possible.

Commenters stated that, in the moment of a fight, there is no time for de-escalation.

Commenters stated that current research and literature on positive behavioral supports are in agreement with the administrative regulation.

Those speaking or offering written comments on positive behavioral interventions were: Lori Franklin (Menifee County Schools), Rachel Yarbrough (Crittenden County Schools), Susan Clifton (WKSEC), Sheila Baugh (Simpson County Schools), Kim Johnson (Owensboro Independent Schools), Sarah Thompson (Simpson County Schools), Michelle Antle (Simpson County Schools), D'Arcy Robb (CCDD), Raphael Schweri (Self), Greta C. Stanfield (KYCASE), Ronald Livingood (Grant County Schools), Tres Settle (McLean County Schools), and Wendy Wheeler-Mullins (Autism Society of the Bluegrass).

(b) Response: No change has been made. The use of positive behavior supports is well-established. While the regulation is responsive to the need for school personnel to react in emergency situations, such as breaking up a fight, the focus of the regulation is on prevention through the provision of positive behavior supports and interventions (as defined in the regulation) which are well-established in research and practice.

(24) Subject Matter: Abuse of restraint and seclusion

(a) Comment: Commenters stated that across the country, student deaths are resulting from the inappropriate use of restraint and seclusion; that the Government Accounting Office (GAO) has documented use of and abuse of physical restraint and seclusion.

Commenters stated that there have been no substantiated serious injuries to students in Kentucky arising from the use of physical restraint and seclusion, only allegations.

Commenters stated that they have never had a child in their district injured by physical restraint or seclusion.

Commenters stated that P & A has documented 80 allegations of abuse and misuse of restraint in more than 45 districts in the last five years; that physical restraint and seclusion are most frequently used for staff convenience; that P & A has documented cuts, abrasions, bruises, friction burns, sprains, broken bones and fractures, psychological trauma, miscarriage, hemorrhage, and shunt displacement resulting from improper physical restraint and seclusion; that individual students are often restrained multiple times per day or secluded all day. Commenters stated that physical restraint and seclusion are ineffective, and cause, reinforce, and maintain aggression.

Commenters stated that in 2009 the GAO, looking at restraint and seclusion across the country reported "hundreds of cases of alleged abuse and death related to the use of restraint and seclusion. Restraint and seclusion are not effective methods in changing behavior"; and that a 2012 article in the American Journal of Orthopsychiatry suggested that schools could benefit from the lessons learned in the mental health and child welfare systems, including the conclusion that restraint and seclusion are high-risk procedures that have the potential to cause severe physical injury, death, and emotional trauma and have little to no therapeutic effect.

Commenters stated that one school in Kentucky had no special rooms available for seclusion, so a student was placed between a bookcase and the wall for seclusion; that the school's staff would react from personal emotional responses and send students to a center room for extended periods, which could have been avoided altogether with the use of positive behavioral supports and interventions.

Commenters stated that persons had witnessed numerous instances of inappropriate seclusion and physical restraint in Kentucky.

Commenters stated that students with autism are disproportionately subjected to physical restraint and seclusion; and that many parents of public school students were afraid to share their comments on this administrative regulation due to fear of retaliation from school personnel.

Commenters stated that a student was forced to wear a demeaning harness and this negatively affected the student; that the parent expressed concerned that the district has retaliated due to complaints by the parent; and that a BIP was implemented too late to help the student succeed.

Those speaking or offering written comments on abuse of restraint and seclusion were: Lucy Heskins (P & A), D'Arcy Robb (CCDD), Lora Wallace (Parent), Raphael Schweri (Self), William Scott (KSBA), Anessa Roberts (Sharpe Elementary), Casey Allen (Ballard County), Traci Sharpe (KCCBD), and Wendy Wheeler-Mullins (Autism Society of the Bluegrass).

(b) Response: No change has been made. Most of these comments appear to be aimed at supporting the relevant portions of the administrative regulation which prohibit the use of physical restraint or seclusion except for the limited purpose of responding to an imminent danger of serious physical harm to self or others. The impetus behind the administrative regulation is to alleviate the risk of psychological or physical harm to students allowed in the administrative regulation's absence, as identified by these comments, and the administrative regulation aims to promote the health and safety of all in the schools. Comments that no injuries have occurred appear to be anecdotal, in light of the GAO and P & A findings of substantial injuries and death attributable to physical restraint and seclusion.

(25) Subject Matter: Regulation opens districts to litigation

(a) Comment: Commenters stated that the lack of clear definitions and the restrictive nature of the administrative regulation could lead to frivolous lawsuits against school personnel and the district.

Commenters stated that the administrative regulation has been put forth in response to a relatively few incidents and from fear of legal and image concerns rather than from concern about the welfare of students.

Commenters stated that the General Assembly needs to provide liability protections for school personnel who use physical restraint and seclusion, as well as immunity for school personnel who act in good faith.

Commenters stated that the administrative regulation contravenes KRS 158.148, KRS 158.154, KRS 158.155, KRS 158.156, KRS 158.444, KRS 161.180, KRS 161.190, KRS 405.025, KRS 500.080, and KRS 503.110.

Commenters stated that the administrative regulation shifts all legal liability onto the shoulders of school personnel who will inevitably injure students while following the administrative regulation.

Commenters stated that injured school personnel may seek punitive damages from districts, when school personnel are injured while physically restraining students in compliance with the administrative regulation, because the administrative regulation creates a foreseeable hazard.

Commenters stated that school personnel should receive, as a precondition for compliance with the administrative regulation, indemnification from any personal liability, administrative, or disciplinary proceedings that will arise when a child impacts the floor.

Those speaking or offering written comments on the administrative regulation opening districts to litigation were: Michael Owsley (ELPO), Tiffany Williams (Murray Middle School), Raphael Schweri (Self), Donna Klingman (Self), and Bill Scott (KSBA).

(b) Response:

The agency has determined that the Sixth Circuit Court of Appeals has noted, with approval, the United States Supreme Court's statement that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established federal statutory or constitutional rights of which a reasonable person would have known.

Under the Paul D. Coverdell Teacher Protection Act of 2001, a teacher will be afforded immunity from lawsuits for harm caused by his or her efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school so long as the teacher's actions are reasonable.

Teachers are also protected from liability by the "sudden emergency" doctrine. Under this doctrine, a person confronted with a situation she had no reason to anticipate, and was not brought on by her own fault, is not negligent by reason of her speedy decision to address the situation, if her actions are reasonable and prudent in the emergency. If she has a duty to act because of statute, or regulation, that duty can be completely removed by the emergency.

Kentucky has also enacted a "choice of evils" statute. Conduct that would otherwise constitute an offense is justifiable when the actor believes it necessary to avoid an imminent public or private injury greater than the injury which is sought to be prevented by the statute defining the offense. KRS 503.030.

Through statutes codified at KRS 503.010, KRS 503.050, KRS 503.070, and 503.100, Kentucky teachers are afforded immunity from civil and criminal liability when acting in their own defense, or to protect others.

Kentucky educators are also protected by KRS 503.110, cited by commenters. Under that statute, the use of physical force by a teacher is justifiable when the teacher believes that the force used is

necessary to promote the welfare of the student, or to maintain reasonable discipline in a school or class, and the force that is used is not designed to cause or known to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme mental distress. The legislature has elected, through this statute, to protect teachers from liability arising from certain uses of physical force in school or class.

Regarding KRS 158.148 (4) the agency has determined that this law regards student discipline guidelines and dictates that the Kentucky Department of Education must develop statewide student discipline guidelines; accordingly this administrative regulation does not contravene KRS 158.148.

Regarding KRS 158.154, principal's duty to report certain actions to local law enforcement agency, the agency finds that the administrative regulation does not contravene a principal's statutory duties.

Regarding KRS 158.155, reporting of specified incidents of student conduct, the agency finds that the administrative regulation does not contravene specified statutory duties.

The agency makes the same finding regarding KRS 158.156, reporting of commission of a felony, and KRS 158.990, penalties.

Regarding KRS 158.444, the agency finds that the cited statute, titled Administrative regulations relating to school safety, requires the Kentucky Department of Education to promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters. The agency does not contravene that dictate by promulgating this administrative regulation relating to school safety, student discipline, and related matters. To the extent that commenters indicate that the agency is required to collaborate with the Kentucky Center for School Safety, the agency agrees, but notes that the cited statute requires the agency to collaborate with the Center for School Safety in carrying out the center's mission, and does not require the agency to defer to the Kentucky Center for School Safety or to abdicate its statutory responsibilities to the Kentucky Center for School Safety.

As to KRS 405.025, regarding parent liability for willful damage to property caused by a minor, the agency finds that this administrative regulation has no bearing on the liability of any party for such damage and does not contravene the statute.

Regarding KRS 500.080, the agency finds that the definition of serious physical injury contained in that statute is not relevant to this administrative regulation. KRS 500.080 explicitly states that its definitions apply to the Kentucky penal code. This administrative regulation does not pertain to or involve the Kentucky penal code. There is no indication in the cited statute that it is intended to apply other than to matters involving the Kentucky penal code. Additionally, "serious physical injury" is intended, in this administrative regulation, to have its dictionary meaning.

The agency has determined that student injury is not an inevitable consequence of the administrative regulation, and that injury as a consequence of the administrative regulation is neither certain or foreseeable. In light of the immunities and defenses described above, the agency has determined that indemnification of school personnel is not necessary. The agency rejects a demand for indemnification as a precondition for compliance with the administrative regulation, as Section 177 of the Kentucky Constitution prohibits indemnification.

Regarding liability, the agency has determined that districts are, in all likelihood, at risk of violating the Individuals with Disabilities Education Act (IDEA) by denying a free appropriate public education to the thousands of students who have been physically restrained and secluded each year.

In Chris D. v. Montgomery County Board of Education, 753 F.Supp.922 (M.D.Ala.1990), a United States District Court entered judgment against the Montgomery County Board of Education (AL), its Superintendent, and its Special Education Coordinator.

The student, for the five years discussed in the opinion, verbally abused others, hit other students, refused to follow direction, cursed at teachers, refused to sit in his seat or stop shouting, tried to run away from school, threatened other children and adults, and attacked other students. In response, school personnel pulled the student out of regular classes, locked him in a classroom, had him sit in the office with a special crisis teacher, and physically restrained him. The Court found that the student behaved only when and because a teacher or other adult stood over him.

The Court found that the district, by addressing the student's behavior in these ways, failed to provide him with a free appropriate public education. The Court's judgment enjoined the local board of education from failing to implement an Individualized Education Program designed by the student's expert, ordered the local board to provide counseling and training for the student's parents, and gave the student's lawyers the opportunity to recover all fees, expenses, and costs from the local board of education, the superintendent, and the coordinator of special education.

This case was decided nearly twenty-two years ago, and, based on the comments received, some Kentucky districts, superintendents, and special education personnel presently occupy precisely the same position as those in this case, unaware of the catastrophic legal exposure they have.

The public comments suggest that many commenters are wholly unaware of their current liability exposure, and believe that the present use of physical restraint and seclusion is liability-free. The agency has determined that restricting the use of physical restraint and seclusion is necessary to avoid liability under IDEA.

(26) Subject Matter: Including the use of restraint and seclusion in a student's IEP

(a) Comment: Commenters stated that if the IEP team comprised of both parents and school personnel agree that the use of seclusion and physical restraint will enable a student to remain in the least restrictive environment possible and to educationally benefit from the teaching and services the student needs, then these techniques should be allowed to be written into the student's IEP.

Commenters stated that parents should be free to choose the treatment and treatment they feel is best suited for their child and not leave this up to the legislature. Commenters cited Youngberg v. Romeo, 457 U.S. 307 (1982).

Commenters stated that IEPs and Behavior Intervention Plans (BIPs) should be implemented with fidelity.

Those speaking or offering written comments on including the use of restraint and seclusion in a student's IEP were: Bruce Chapman (HWC), Donna Klingman (self), Angela Bray (Pulaski County Schools), and Lucy Heskins (P & A).

(b) Response: No change has been made. However, earlier versions of the administrative regulation were changed, prior to filing the official version of the regulation, to allow the use of physical restraint and seclusion to be included in a student's IEP. Including the use of physical restraint or seclusion in an IEP is not prohibited by federal or state law. The decision to include physical restraint or seclusion in an IEP will be left to the student's Admissions and Release Committee (ARC), which includes the student's parents.

(27) Subject Matter: General Comments

(a) Comments: Commenters support the regulation of physical restraint and seclusion and agree with Local Superintendents Advisory Council (LSAC) recommendations.

Commenters support having a restraint and seclusion regulation but cannot support the current version of the administrative regulation.

The administrative regulation should not require face-to-face monitoring of a physically restrained student because the safety of the student and of school personnel might be compromised.

Commenters stated that, rather than implementing the administrative regulation, the agency should rely upon the professional code of ethics for Kentucky school certified personnel.

Commenters stated that that the administrative regulation should include documentation of the basis for declining to refer a student.

Commenters stated that they support the administrative regulation.

Commenters stated that some exceptions should be made for special needs classrooms.

Those speaking or offering general written comments were: Leon Mooneyhan (OVEC), Ronald Livingood (Grant County Schools), Michael Owsley (ELPO), Sheila Baugh (Simpson County Schools), Angela Bray (Pulaski County Schools), Tiffany Williams (Murray Middle School), Holly Bloodworth (Murray Elementary School), Casey Allen (Ballard County Schools), Anessa Roberts (Sharpe Elementary), (Janet Board (Grandparent), Beth Harrison (KYTASH), Natalie Kelly (DBHDID), D'Arcy Robb (CCDD), Lucy Heskins, (P & A), Martha Newman (MHAKY), and Curtis Hall (NKCES).

(b) Response: The agency carefully considered the valuable recommendations of LSAC and other commenters and, in response: broadened the definition of physical restraint; made clear that the use of physical restraint and seclusion in the IEP is not prohibited; amended debriefing requirements so that a debriefing session is only required upon request by a parent or emancipated youth; and removed the requirement of face-to-face monitoring and replaced that with a requirement that school personnel monitor a student's physical and psychological well-being for the duration of the physical restraint or seclusion.

The agency has determined that, as the professional code of ethics for school certified personnel does not apply to all school personnel, this administrative regulation is necessary to clarify the duties of all school personnel.

The agency has determined that the present version of the administrative regulation requires documentation of the basis for referring or declining to refer a student after the use of physical restraint or seclusion.

No changes have been made in response to comments of support.

In response to comments regarding exceptions for special needs classrooms, this administrative regulation was promulgated to promote the safety of all students and staff. Disparate treatment of students in special needs classrooms is inconsistent with the necessity and function of this administrative regulation. The 2009-10 physical restraint and seclusion data submitted to OCR from one hundred and four of Kentucky's school districts reflect that the overwhelming majority of restraints and seclusion incidents involved students with disabilities. This data does not support exceptions for any group of students.

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 704 KAR 7:160. A number of the comments requested more specific language, including definitional changes, to better explain the actions required of school personnel and districts. In many instances, the language provided by commenters was adopted, and led to the identification of other areas of the regulation requiring modification.

In response to comments from the public, the agency has removed functional behavioral assessment (FBA) and behavioral intervention plan (BIP) from the administrative regulation, since those are terms are particular to special education and IDEA, raised a host of issues regarding parental consent requirements and otherwise, and confused school district staff. However, the removal of these requirements did not remove the review of the student's records and events leading up to a use of physical restraint or seclusion, and a plan for prevention of the future need for physical restraint and seclusion with that student – these are still included in Section 5's written record and debriefing requirements.

In response to comments that the definitional section of the administrative regulation did not contain enough detail to distinguish what the regulation intends to govern and what it does not intend to govern, the definition of "physical restraint" has been amended and clarified.

The regulation now contains a definition for "emancipated youth."

The definitions of "prone restraint" and "supine restraint" have been amended to respond to comments and to ensure that the text of the definitions reflects the goals of the agency.

Commenters raised concerns regarding the definitions for, and responsibilities of, school resource officers and law enforcement officers. The agency has, in response, amended the definition of "school personnel" for clarity and to require that all school personnel receive training in the use of positive support and intervention, de-escalation strategies, and other procedures to prevent the need for physical restraint and seclusion.

Commenters raised concerns about interactions between school personnel and students during weekend dances or ballgames, and the agency has added language to the beginning of Sections 3 and 4 to clarify that this regulation is aimed at school personnel's interactions with students in public schools during educational programs and not at other times.

Commenters raised concern about language regarding the physical restraint of students who utilized sign language or an augmentative mode of communication, and the agency has amended the regulation to clarify the appropriate response of school personnel in such circumstances.

In response to comments that school personnel physically restraining a student without anyone else around may not be able to safely monitor the student's face, depending on the position of the school personnel and the student during the restraint, the agency has removed the requirement for facial monitoring, and amended the regulation to provide that the student's physical and psychological well-being shall be monitored for the duration of the physical restraint.

Commenters requested clarification regarding the training requirements of the regulation, and additional language has been added in response.

The agency has amended and moved the emergency exception language to clarify the allowances of the exception as well as to add a requirement that core team members be summoned as soon as possible (to ensure the safety of students and school personnel).

The agency has made other technical changes in response to comments for greater clarity for editing purposes that do not change the content of the regulation.

While many comments were received regarding the regulation's prohibition against the use of physical restraint and seclusion in defense of property in the absence of imminent danger of serious physical harm, and regarding the threshold requirement of an imminent risk of "serious" physical harm for the use of physical restraint and seclusion, the regulation was not changed as a result of these comments.

The agency proposes the following amendments after comments:

Page 1
Title
Line 5
After "Use of", insert "Physical".
RELATES TO:
Line 6 Delete "KRS 156.160 (1) (g)" and insert "KRS 156.160 (1) (h)".
STATUTORY AUTHORITY
Line 7 Delete "KRS 156.160 (1) (g)" and insert "KRS 156.160 (1) (h)".

Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Line 8 Delete "KRS 156.160 (1) (g)" and insert "KRS 156.160 (1) (h)".
Line 13
After "improper use of", insert "physical".
Line 15
After "inappropriate", insert "physical".
Line 16
After "restraint", insert "or".
Delete "and".
After "inappropriate behaviors,", insert "physical".
Line 18
After "self or others.", insert "Physical".
Lowercase "Restraint".
Line 19
After "safety of students and", insert "school personnel".
Delete "staff".
Line 20
After "the requirements for the use of", insert "physical".

Page 2
Line 1
After "data reporting requirements for the use of", insert "physical".

Page 2
Section 1(2)
Line 9
After "(2)", insert "Behavioral".
Delete "Behavior".
Line 10
After "learning of the students", delete "or others".

Page 2
Section 1(3) and 1(4)
Lines 11 to 15
After "(3)". delete the remainder of subsection (3) and delete the notation "(4)".

Page 2
Section 1(5)
Line 19
Before "(5)", insert "(4)".
Delete "(5)".

Page 3
Section 1(6)
Line 1
Before "(6)", insert "(5)".
Delete "(6)".
Line 3
After "self or others.", insert the following new subsection:
(6) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

Page 3
Section 1(8) and 1(9)
Lines 6 to 12
After "(8)", delete the remainder of subsection (8) and delete the notation "(9)".

Page 3
Section 1(9)
Line 13
After "freedom of movement, but does not", insert "mean: (a)".
Delete "include".
Capitalize "devices".
Lines 15 and 16
After "devices were designed", insert "; (b)".
Delete "and that may include"
Capitalize "Adaptive".
Line 18
After "mechanical supports;", insert "(c)".
Capitalize "Vehicle".
Line 19
After "moving vehicle;", insert "(d)".
Capitalize "restraint".
Line 20
After "immobilization; or", insert "(e)".
Capitalize "orthopedically".
Lines 20 and 21
After "participate in activities", insert "without".
Delete "with".

Page 3
Section 1(10)
Line 22
Before "(10)", insert "(9)".
Delete "(10)".
Line 23
After "parent or a guardian", insert "of a student".

Page 4
Section 1(11)
Line 1
Before "(11)", insert "(10)".
Delete "(11)".
Line 2
After "student to move", insert "the student's".
Delete "his or her".
After "freely", insert a comma.
After "but does not", insert "mean: (a)".
Delete "include".
Line 4
After "to a safe location", insert the following:
;
(b) Does not mean behavioral interventions, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;
(c) Does not mean less restrictive physical contact or redirection to promote student safety; or
(d) Does not mean physical guidance or prompting when teaching a skill or when redirecting the student's attention

Page 4
Section 1(12)
Line 5
Before "(12)", insert "(11)".
Delete "(12)".

Page 4
Section 1(13)
Line 12
Before "(13)", insert "(12)".
Delete "(13)".
After "face down position", insert the following:
on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the prone position

Page 4
Section 1(14)
Line 13
Before "(14)", insert "(13)".
Delete "(14)".
Line 14
After "nurses, librarians,", insert the following:
school resource officers, other sworn law enforcement officers,
Lines 15 and 16
After "contractual basis", delete the following:
but does not include school resource officers defined in KRS 158.441(2)

Page 4
Section 1(15)
Line 17
Before "(15)", insert the following:
(14) "School resource officer" is defined in KRS 158.441(2).
Line 18
After "leaving but does not", insert "mean".
Delete "include".

Page 4
Section 1(17)
Line 22
After "restraint' means", insert "the".
Delete "a".
After "face up position on", insert "the student's".
Delete "his or her".
After "back", insert the following:
on the floor or other surface, and physical pressure is applied to the student's body to keep the student in the supine position

Page 5
Section 2(1)
Line 4
After "(1) Local", insert "school".
After "shall establish", delete "local".

Page 5
Section 2(1)(a)
Line 5
After "how to access", insert "the".
Delete "its".
Line 6
After "procedures regarding", insert "physical".

Page 5
Section 2(1)(b)
Lines 7 and 8
After "all students,", delete the following:
including students with the most complex and intensive behavioral needs,

Page 5
Section 2(1)(c)
Line 10
After "Section", insert "6".
Delete "7".

Page 5
Section 2(1)(d)
Line 11
After "during and after each", insert "use".
Delete "incident involving the imposition".
Line 12
After "restraint or seclusion", delete "upon a student".

Page 5
Section 2(1)(e)
Line 15
After "(24) hours,", insert "to".
Delete "of".

Page 5
Section 2(1)(f)
Line 22
After "surrounding the", insert "physical".

Page 6
Section 2(1)(g)
Line 1
After "review data on", insert "physical".

Page 6
Section 3(1)
Line 6
After "not be used", insert the following:
in public schools or educational programs

Page 6
Section 3(1)(a)
Line 7
After "As punishment", insert "or discipline".

Page 6
Section 3(1)(b)
Line 8
After "(b)", delete the following:
As a means of coercion
Capitalize "to".
After "compliance or", insert "to retaliate".
Delete "retaliation".

Page 6
Section 3(2)(c)
Line 17

After "behavioral interventions", delete the following:

that compromise health and safety

Page 6
Section 3(3)
Line 21

After "only be implemented", insert the following:

in public schools or educational programs

Page 7
Section 3(3)(b)
Line 2

After "mode of communication", insert the following:

, unless the student uses sign language or an augmentative mode of communication as the student's primary mode of communication and the implementer 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

Page 7
Section 3(3)(c)
Line 3

After "The student's", insert the following:

physical and psychological well-being shall be

Delete "face is".

Page 7
Section 3(3)(d)
Line 4

After "Less restrictive", insert "behavioral".

Page 7
Section 3(3)(e)
Line 7

After "(e)", insert the following:

School personnel implementing the physical restraint are appropriately trained as required in Section 6(3) of this administrative regulation, except 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

Delete the remainder of paragraph (e) in its entirety, except leave the period.

Page 7
Section 3(4)
Line 8

After "a physical restraint,", insert "school personnel".

Delete "staff".

Page 7
Section 3(6)(a)
Lines 16 to 21

Delete the following:

(6) School personnel imposing physical restraint in accordance with this regulation shall: (a) Be trained by an individual or individuals who have been certified by a crisis intervention training program that meets the established criteria in Section 6 of this administrative regulation, except in the case of clearly unavoidable emergency circumstances when trained school personnel are not immediately available due to the unforeseeable nature of the emergency circumstance; and

Lines 22 to 23

Delete the following:

(b)Be trained in state regulations and school district policies and procedures regarding restraint and seclusion.

Page 8
Section 3(7)
Lines 1 and 2

Delete subsection (7) in its entirety.

Page 8
Section 4(1)
Line 3

After "not be used", insert the following:

<u>in public schools or educational programs</u>

Page 8
Section 4(1)(a)
Line 4

After "As punishment", insert "<u>or discipline</u>".

Page 8
Section 4(1)(b)
Line 5

After "(b)", delete the following:

As a means of coercion

Capitalize "to".

After "compliance or", insert "<u>to retaliate</u>".

Delete "retaliation".

Page 8
Section 4(2)
Line 12

After "only be implemented", insert the following:

<u>in public schools or educational programs if</u>

Delete "when".

Page 8
Section 4(2)(d)
Line 17

After "(d)", insert the following:

<u>School personnel implementing the seclusion are</u>

Delete "Assigned staff is".

Page 9
Section 5(1)
Line 9

After "All", insert "physical restraints and seclusions".
Delete the following:
incidents of the use of restraint and seclusion

Line 11

After "record of each", insert "use".
Delete "episode".

Line 12

After "record. Each", delete "incident".
After "record", insert the following:
of a use of physical restraint or seclusion

Page 9
Section 5(1)(b)
Line 15

After "description of the", insert the following:
use of physical restraint or seclusion
Delete "incident".
After "resulted in the", insert "physical".

Page 9
Section 5(1)(c)
Line 17

After "The date of the", insert the following:
physical restraint or seclusion and school personnel
Delete "incident and staff members".

Page 9
Section 5(1)(d)
Line 17

After "times of the", insert "physical restraint or seclusion".
Delete "incident".

Page 9
Section 5(1)(e)
Line 18

After "up to the use of", insert "physical".

Page 9
Section 5(1)(f)
Line 20

After "student's behavior", insert "during physical".
Delete "in".

Page 9
Section 5(1)(g)
Line 21
After "techniques used in", insert "physically".
Line 22
After "the student and", insert "school personnel".
Delete "staff".
After "during the use of", insert "physical".

Page 10
Section 5(1)(h)
Line 1
After "description of any", insert "behavioral".
After "implementation of", insert "physical".

Page 10
Section 5(1)(i)
Line 2
After "any injuries", delete "whether".
After "to students,", insert "school personnel".
Delete "staff".

Page 10
Section 5(1)(j)
Line 4
After "(j)", insert the following:
A description as to how the student's
Delete the following:
An explanation as to why this

Page 10
Section 5(1)(l)
Line 7
After "effectiveness of", insert "physical".
After "de-escalating the situation;", delete "and".

Page 10
Section 5(1)(m)
Line 8
After "A description of", insert "school personnel".
Delete "staff".
After "dangerous behavior", insert the following:
;
(n) 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
(o) 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

Page 10
Section 5(2)
Line 9

After "notified of the", insert "physical".

Page 10
Section 5(4)
Line 15

After "(4) The", insert "physical restraint or seclusion".
Delete "incident".

Line 16

After "completed", insert the following:
by the end of the next school day
Delete "within twenty-four (24) hours".
After "following the", insert "use".
Delete "incident".

Page 10
Section 5(5)
Line 18

After "imposition of", insert "physical".
After "restraint", insert "or".
Delete "and".

Pages 10 and 11
Section 5(6)
Lines 20 to 22, 1, and 2

After "(6)", insert the following:
The following persons shall participate in the debriefing session:
(a) The implementer of the physical restraint or seclusion;
(b) At least two (2) of any other school personnel who were in the proximity of the student immediately before or during the physical restraint or seclusion;
(c) The parent;
(d) The student, if the parent requests or if the student is an emancipated youth; and
(e) Appropriate supervisory and administrative school personnel, which may include appropriate Admissions and Release Committee members, Section 504 team members, or response to intervention team members
Delete the remainder of this subsection, not including the period.

Page 11
Section 5(8)(c)
Lines 11 to 14

After "consideration of", insert the following:
recommended appropriate positive behavioral supports and interventions to assist school personnel responsible for implementing the student's IEP, or Section 504 plan, or response to intervention plan, if applicable, and consideration of whether positive behavioral supports and interventions were implemented with fidelity
Delete the remainder of this paragraph (starting with "the results of functional"), not including "; and".

Page 11
Section 5(8)(d)
Line 16

After "Education Act,", insert "consideration".
Delete "evidence".

Line 17

After "either law", insert "and".
Delete ", or".
After "documentation of the", insert the following:

referral or documentation of the

Page 11
Section 6(1)
Line 20

After "(1)", insert "All school personnel shall be trained in state regulations and school district policies and procedures regarding physical restraint and seclusion. All".
Lowercase "School".
After "shall be trained", insert "annually".

Lines 20 and 21

After "array of positive", insert "behavioral supports and intervention".
Delete the following:

behavior interventions, strategies, and supports

Line 21

After "appropriate student behaviors", insert ", to".
Delete "and".

Pages 11 and 12
Section 6(1) and 6(2)
Lines 22 and 1 to 4

After "dangerous student behaviors", insert the following:

and to respond to dangerous behavior. This

Delete the following:

.
(2) All school personnel in local districts shall have annual basic training in responding to students in a behavioral crisis and shall receive communication from the district identifying core team staff in the school setting that have been trained to engage in physical restraint or seclusion procedures. The

Page 12
Section 6(2)
Line 4

After "web-based applications.", insert "This".
Delete "The".

Page 12
Section 6(2)(a)
Line 6

After "physical restraint and", insert "seclusion".
Delete "crisis intervention".

Line 7

After "including positive", insert "behavioral supports and interventions".
Delete "behavior management strategies".

Line 8

After (b), insert "State regulations and school district policies and procedures regarding physical restraint and seclusion;"
Delete "Proper use of positive reinforcement".

Line 9-14

Insert "(c)Proper use of positive reinforcement".
Re-letter items (d), (e), and (f).

Page 12
Section 6(2)(e)
Line 11

After "De-escalation strategies", insert the following:
for responding to inappropriate or dangerous
Delete "of problematic".

Page 12
Section 6(2)(f)
Lines 13 and 14

After "(g)", insert the following:
(g) Proper use of seclusion as outlined in Section 4 of this administrative regulation, including instruction on monitoring physical signs of distress and obtaining medical assistance when necessary.
(2) All school personnel shall receive annual written or electronic communication from the district identifying core team members in the school setting who have been trained to implement physical restraint
Delete the remainder of this paragraph, not including the period.

Page 12
Section 6(3)
Lines 15 and 16

After "to respond to", insert the following:
dangerous behavior and to implement
Delete "emergency situations, including the".

Line 16

After "physical restraint", delete "or seclusion".
After "The core team", insert the following:
, except school resource officers and other sworn law enforcement officers,
After "shall receive", insert "additional".

Page 12
Section 6(3)(a)
Lines 18 to 20

After "for preventing the", insert the following:

use of physical restraint except as permitted by this administrative regulation

Delete the remainder of this paragraph, except the semi-colon.

Page 12
Section 6(3)(b)
Line 21

After "dangerous behaviors", delete the following:

on the part of students

Line 22

After "physical restraint", delete "or crisis intervention".

Page 13
Section 6(3)(b)
Lines 1 and 2

After "physical restraint", delete "or crisis intervention".

Page 13
Section 6(3)(c)
Line 3

After "physical restraint", delete "and crisis intervention".

Line 4

After "regarding the", insert "effect".

Delete "effect(s)".

After "on the person", insert "physically".

Page 13
Section 6(3)(d)
Line 6

After "regarding documentation", insert "and notification".

Delete "reporting".

Page 13
Section 6(3)(e)
Lines 7 and 8

After "Demonstration by", insert the following:

core team members of proficiency in the prevention and use of physical restraint

Delete the remainder of this paragraph, not including the period.

Page 13
Section 7
Line 9

After "The following data shall be reported" insert "by the district".

Line 10

After "incidents of", insert "physical".

Page 13
Section 7(6)
Line 20

After "or mental faculty to", insert "school personnel".
Delete "staff".

Page 13
Section 7(7)
Line 21

After "school resource officer", insert the following:
or other sworn law enforcement officer
After "is involved in the", insert "physical".

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