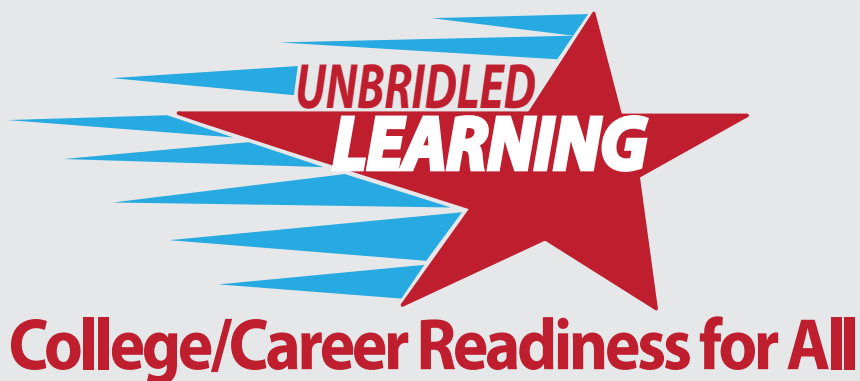




**KENTUCKY DEPARTMENT OF EDUCATION  
GUIDANCE FOR**

**704 KAR 7:160**

**Use of Physical Restraint and  
Seclusion in Public Schools**



**Kentucky Department of Education**

**February 5, 2013**

**Version 1**

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# Table of Contents

- ▶ Introduction.....3
- ▶ **Part 1:** Definitions ..... 4
- ▶ **Part 2:** Limitations on the Use of Physical Restraint .....6
- ▶ **Part 3:** Limitations on the Use of Seclusion ..... 10
- ▶ **Part 4:** Student and Staff Safety When Using Physical Restraint or Seclusion ..... 12
- ▶ **Part 5:** Local Written Policies and Procedures..... 14
- ▶ **Part 6:** Staff Training ..... 15
- ▶ **Part 7:** Documentation and Parental Notification..... 18
- ▶ **Part 8:** Debriefing Session..... 19
- ▶ **Part 9:** Reporting Data..... 21

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# Introduction

In 2009, the Government Accountability Office (GAO) began collecting information for Congress on the use of restraints, seclusion and aversives in public schools. The GAO report detailed serious instances of abuse of restraint and seclusion, some of which resulted in students' deaths. The Secretary of Education, Arne Duncan, followed the GAO report with a letter to states requesting Chief State School Officers review state policies and guidance on restraints and seclusion in schools and then develop or revise their state policies and guidelines, if needed. The Kentucky Commissioner of Education wrote to local superintendents and forwarded Secretary Duncan's reference to the use of positive behavior interventions and supports as a means to prevent aggressive behavior. The Council for Children with Behavior Disorders' (CCBD) position papers on the use of restraint and seclusion in school settings were also sent to the superintendents.

In 2011, while monitoring developments at the federal level, the Kentucky Department of Education (KDE) became increasingly concerned about reports of the use of restraint and seclusion in Kentucky schools.

In August 2012, the Kentucky Board of Education (KBE) originally approved 704 KAR 7:160. The KBE, in compliance with state law (KRS 13A.270), submitted the proposed regulation for public 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. KBE accepted KDE's proposed changes and approved the regulation on October 3, 2012.

704 KAR 7:160 Use of Restraint and Seclusion in Public Schools went into effect on February 1, 2013. Prior to 704 KAR 7:160, Kentucky had no regulation on the use of physical restraint or seclusion in public schools.

704 KAR 7:160 is designed to enhance safety for both students and staff by limiting the use of physical restraint and seclusion, training teachers on more effective ways to improve student behavior, and training teachers on how to safely conduct restraints when absolutely necessary.

The regulation supports a positive approach to behavior that focuses on a school-wide systematic approach that embeds evidence-based practices and data-driven decision-making to create a school environment conducive to learning. The implementation of school-wide positive behavioral supports will improve school climate and culture in order to achieve improved academic and social outcomes; encompass a range of systemic and individualized positive strategies and to reinforce desired behaviors; diminish reoccurrence of inappropriate or dangerous behaviors; and teach appropriate behaviors to students.

## Part 1: Definitions

The following definitions are included in 704 KAR 7:160 and are provided to assist readers in utilizing this document. These definitions provided here mirror the definitions in the regulation.

**Aversive behavioral intervention** 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.

**Behavioral intervention** means the implementation of strategies to address behavior that is dangerous or inappropriate, or otherwise impedes the learning of the students.

**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.

**Dangerous behavior** means behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out of seat behaviors.

**De-escalation** means the use of behavior management techniques intended to

- (a) Mitigate and defuse dangerous behavior of a student; or
- (b) Reduce the imminent danger of physical harm to self or others.

**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.

**Emergency** means a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.

**Mechanical restraint** means the use of any device or equipment to restrict a student's freedom of movement, but does not include:

- (a) A device implemented by trained school personnel or utilized by a student that has been prescribed by an appropriate medical or related services professional that is used for the specific and approved purposes for which the device was designed;
- (b) An adaptive device or mechanical support used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of the device or mechanical support;
- (c) A vehicle safety restraint used as intended during the transport of a student in a moving vehicle;
- (d) Restraint for medical immobilization; or
- (e) An orthopedically prescribed device that permits a student to participate in activities without risk of harm.

**Parent** means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian of the student.

**Physical restraint** means 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:

- (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) A behavioral intervention, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;
- (c) Less restrictive physical contact or redirection to promote student safety; or
- (d) Physical guidance or prompting when teaching a skill or redirecting the student’s attention.

**Positive behavioral supports** mean a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to:

- (a) Improve school climate and culture in order to achieve improved academic and social outcomes;
- (b) Increase learning for all students, including those with the most complex and intensive behavior needs;
- (c) Encompass a range of systemic and individualized positive strategies to reinforce desired behaviors;
- (d) Diminish reoccurrence of inappropriate or dangerous behaviors; and
- (e) Teach appropriate behaviors to students.

**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.

**School personnel** means teachers, principals, administrators, counselors, social workers, psychologists, para-professionals, nurses, librarians, school resource officers, 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.

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

**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 classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

**Student** means any person enrolled in a preschool, school level as established in 703 KAR 5:240, Section 5, or other educational program offered by a local public school district.

**Supine restraint** means the student is restrained in a face up position on the student’s 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.

**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.

## Part 2: Limitations on the Use of Physical Restraint

704 KAR 7:160 limits the use of physical restraints in all public schools and educational programs.

Physical restraint may only be implemented in a public school or educational program if:

- (a) The student's behavior poses an imminent danger of physical harm to self or to others and as permitted under KRS 503.050, 503.070, and 503.110;
- (b) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication, 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 physical restraint appears likely to result in physical harm to self or others;
- (c) The student's physical and psychological well-being is monitored for the duration of the physical restraint;
- (d) Less restrictive behavioral interventions have been ineffective in stopping the imminent danger of physical harm to self or others, except in the case of a clearly unavoidable emergency situation posing imminent danger of physical harm to self or others; and
- (e) School personnel implementing the physical restraint are appropriately trained as required by **Section 6 (3)** of the regulation, except to the extent necessary to prevent physical harm to self or others in clearly unavoidable emergency circumstances where other school personnel intervene and summon trained school personnel as soon as possible.

Physical restraint shall not be used in a public school or educational program:

- (a) As punishment or discipline;
- (b) To force compliance or to retaliate;
- (c) As a substitute for appropriate educational or behavioral support;
- (d) To prevent property damage, except as permitted under KRS Chapter 503;
- (e) As a routine school safety measure; or
- (f) As a convenience for staff.

When implementing a physical restraint, school personnel shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.

The use of physical restraint shall end as soon as:

- (a) The student's behavior no longer poses an imminent danger of physical harm to self or others; or
- (b) A medical condition occurs putting the student at risk of harm.



The following are expressly prohibited in public Kentucky schools and educational programs:

- (a) Mechanical restraint;
- (b) Chemical restraint;
- (c) Aversive behavioral interventions;
- (d) Physical restraint that is life-threatening;
- (e) Prone or supine restraint; or
- (f) Physical restraint known to be contraindicated based on the student's disability, health care needs, or medical or psychiatric condition.

Physical restraints, as defined by this regulation, do not include 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; a behavioral intervention used as a response to calm and comfort an upset student; less restrictive physical contact or redirection to promote student safety; or physical guidance or prompting when teaching a skill or redirecting the student's attention.

## Frequently Asked Questions Regarding Limitations on the Use of Physical Restraints:

**Question:** I have heard that the regulation will not permit teachers 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 regulation, when a student is physically restrained, the student is immobilized. Breaking up a fight does not necessarily require the 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.”

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

School personnel implementing any physical restraint must be appropriately trained as required by Section 6 (3), except to the extent necessary to prevent physical harm to self or others in clearly unavoidable emergency circumstances where other school personnel intervene and summon trained school personnel as soon as possible.

**Question:** Does the regulation force teachers to stand by while students destroy property?

**Answer:** Kentucky laws, and the regulation, permit school personnel to use physical force to protect themselves and others from the risk of harm. School personnel may also use physical force when immediately necessary to prevent a crime involving property.

When a student’s destruction of property is criminal, or puts the student or others at risk of physical harm, school personnel may use physical restraint or seclusion. Physical restraint does not include 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, behavioral interventions, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student; less restrictive physical contact or redirection to promote student safety; or 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 inappropriate student behavior.

**Question:** I have a student with autism who benefits from therapeutic hugs during the day. Are these considered physical restraints?

**Answer:** A therapeutic hug is not a physical restraint because it does not immobilize the student or reduce the student’s ability to move the torso, arms, legs or head freely.

**Question:** 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:** Gently holding a student to keep him from scratching himself would not immobilize the student. It is 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 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 a “seated cradle assist” is an effective way to safely restrain a small child. The student and I are both on the floor during this assist; is this seated cradle assist prohibited?

**Answer:** No. The seated cradle assist may be used.

**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 regulation does not permit supine restraints.

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

**Answer:** Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs) have been removed from the regulation. However, FBAs and BIPs are still governed by state and federal statutes and regulations, which must be followed.

### **Part 3: Limitations on the Use of Seclusion**

704 KAR 7:160 limits the use of seclusion in all public schools and educational programs.

Seclusion may only be implemented in a public school or educational program if:

- (a) The student's behavior poses an imminent danger of physical harm to self or others;
- (b) The student is visually monitored for the duration of the seclusion;
- (c) Less restrictive interventions have been ineffective in stopping the imminent danger of physical harm to self or others; and
- (d) School personnel implementing the seclusion are appropriately trained to use seclusion.

Seclusion shall not be used in a public school or educational program:

- (a) As punishment or discipline;
- (b) To force compliance or to retaliate;
- (c) As a substitute for appropriate educational or behavioral support;
- (d) To prevent property damage in the absence of imminent danger of physical harm to self or others;
- (e) As a routine school safety measure;
- (f) As a convenience for staff; or
- (g) As a substitute for timeout.

The use of seclusion shall end as soon as:

- (a) The student's behavior no longer poses an imminent danger of physical harm to self or others; or
- (b) A medical condition occurs putting the student at risk of harm.

A setting 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.

## Frequently Asked Questions Regarding Limitations on the Use of Seclusion:

**Question:** Must a student be visually monitored while in seclusion?

**Answer:** Yes. The regulation requires that the student be visually monitored for the duration of the seclusion.



## **Part 4: Student and Staff Safety**

When using physical restraint and seclusion, school staff should take precautions to ensure the safety of both the student and staff.

Ensuring safety requires that school personnel implementing the physical restraint and seclusion are appropriately trained as required by Section 6 (3) of the administrative regulation. Staff training is addressed in Part 6 of this document.

When implementing physical restraint, school personnel shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.

Physical restraint shall end as soon as:

- (a) The student's behavior no longer poses an imminent danger of physical harm to self or others; or
- (b) A medical condition occurs putting the student at risk of harm.

Seclusion may only be implemented by school personnel who are appropriately trained to use seclusion.

Seclusion shall end as soon as:

- (a) The student's behavior no longer poses an imminent danger of physical harm to self or others; or
- (b) A medical condition occurs putting the student at risk of harm.

## Frequently Asked Questions Regarding Student and Staff Safety:

**Question:** Won't the 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 defend themselves and other students as permitted under other preexisting Kentucky law.

**Question:** I have heard that in other states where they 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>.

## Part 5: Local Written Policies and Procedures

Each local school district shall establish policies and procedures that:

- (a) Ensure school personnel are aware of and parents are notified how to access the policies and procedures regarding physical restraint and seclusion;
- (b) Are designed to ensure the safety of all students, school personnel, and visitors;
- (c) Require school personnel to be trained in accordance with the requirements outlined in Section 6 of 704 KAR 7:160.
- (d) Outline procedures to be followed during and after each use of physical restraint or seclusion, 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 the Kentucky Department of Education and local law enforcement in the event of death or injury 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 shall require the district and school to investigate the circumstances surrounding the physical restraint or seclusion, make written findings, and if appropriate, take corrective action; and
- (g) Outline a procedure to regularly review data on physical restraint and seclusion usage and revise policies as needed.

Each local school district shall revise existing policies or develop policies consistent with 704 KAR 7:160 within ninety (90) calendar days of the effective date of the regulation.

## Part 6: Staff Training

All school personnel shall be trained in state administrative regulations and school district policies and procedures regarding physical restraint and seclusion.

All school personnel shall be trained annually to use an array of positive behavioral supports and interventions to:

1. Increase appropriate student behaviors;
2. Decrease inappropriate or dangerous student behaviors; and
3. Respond to dangerous behavior.

This training may be delivered utilizing web-based applications.

This training shall include:

1. Appropriate procedures for preventing the need for physical restraint and seclusion, including positive behavioral supports and interventions;
2. State administrative regulations and school district policies and procedures regarding physical restraint and seclusion;
3. Proper use of positive reinforcement;
4. The continuum of use for alternative behavioral interventions;
5. Crisis prevention;
6. De-escalation strategies for responding to inappropriate or dangerous behavior, including verbal de-escalation, and relationship building; and
7. Proper use of seclusion as established in Section 4 of 704 KAR 7:160, including instruction on monitoring physical signs of distress and obtaining medical assistance if necessary.

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.

A core team of selected school personnel shall be designated to respond to dangerous behavior and to physically restrain 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 physical restraint except as permitted by 704 KAR 1: 760;
- (b) A description and identification of dangerous behaviors that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations, in order to determine whether the use of physical restraint is safe and warranted;
- (c) Simulated experience in administering and receiving physical restraint, and instruction regarding the effect on the person physically restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- (d) Instruction regarding documentation and notification requirements and investigation of injuries; and
- (e) Demonstration by core team members of proficiency in the prevention and use of physical restraint.

## Frequently Asked Questions Regarding Staff Training:

**Question:** How will a core team member know whether physical restraint is contraindicated?

**Answer:** Under the regulation, districts are required to establish physical restraint and seclusion policies and procedures. The Kentucky Department of Education believes that districts, as part of their policies and procedures, will establish effective processes to implement the regulation.

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.

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

**Answer:** Yes.

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 physical harm; or
- Core team of trained staff are called as soon as possible.

**Question:** Won’t this regulation burden our teachers even more?

**Answer:** For the vast majority of teachers, the only requirement is participating in an annual training to obtain the skills to prevent or de-escalate dangerous behavior and to safely protect students and themselves.

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



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

**Answer:** The regulation allows training for all school personnel to be delivered through web-based applications. The KDE will lead in developing the training, using the expertise of its own staff and staff in the regional cooperatives.

The requirement for 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. 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 exhibit 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.

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

**Answer:** Because school resource officers or other sworn law officers are trained in physical restraint as part of their job responsibilities. They will participate in the annual training that is required for all school personnel.

## Part 7: Documentation and Parental Notification

All physical restraints and seclusions shall be documented by a written record of each use of physical restraint or seclusion and be maintained in the student's education record. Each 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 and the student behavior that resulted in the physical restraint or seclusion;
- (c) The date of the physical restraint or seclusion and school personnel involved;
- (d) The beginning and ending times of the physical restraint or seclusion;
- (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 restraint or seclusion;
- (g) A description of techniques used in physically restraining or secluding the student and any other interaction between the student and school personnel 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 to students, school personnel, or others;
- (j) A description as to how the student's behavior posed an imminent danger of 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;
- (m) A description of the school personnel 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.

If the student is not an emancipated youth, 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 mailed to the parent via U.S. mail.

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

The physical restraint or seclusion record as outlined in Section 5 (1) of 704 KAR 7:160 shall be completed by the end of the next school day following the use of physical restraint or seclusion.

## Part 8: Debriefing Session

If the parent or emancipated youth requests a debriefing session, a debriefing session shall be held after the imposition of physical restraint or seclusion upon a student.

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 of an un-emancipated student;
- (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.

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.

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 consideration of whether positive behavioral supports and interventions were implemented with fidelity; 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 of a referral under either law and documentation of the referral or documentation of the basis for declining to refer the student.

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

## Frequently Asked Questions Regarding Debriefing Session:

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

**Answer:** The regulation requires that a written record be made in the event of physical restraint or seclusion. The written report 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.

The regulation allows for debriefing upon request of the parent or emancipated student. The debriefing and the written report serve the same purposes: to provide the parent, the student, and the 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 decrease the likelihood of the behavior from recurring.

## Part 9: Reporting Data

The following data shall be reported by the district in the student information system:

- (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 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 students related to physical restraint and seclusion;
- (6) Aggregate number of instances of 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 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.

## Frequently Asked Questions Regarding Reporting Data:

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

**Answer:** Collecting and analyzing data is the only way to determine if the regulation is effective, and whether additional change is needed.

The KDE will review district data as a part of monitoring and audits. Data will be used to determine whether a district or school needs additional technical assistance in physical restraint and seclusion.

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

**Answer:** The regulation was designed to educate school personnel about 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 the first, steps taken.

The regulation does not take away the teacher's right to self-defense or to defend other students.

A teacher who uses physical restraint or seclusion will not be in trouble if the teacher follows the process set out in the regulation, and their 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 physical injury;
- Using only the amount of force required under the circumstances.

**Question: I have a deaf child in my class who communicates through sign language. He has significant behavioral issues. The 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 regulation allows 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 appears likely to result in physical harm to self or others.

**Question: What if a disruptive student refuses to leave my classroom?**

**Answer:** 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. Teachers will learn 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: 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: 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. However, courts can dismiss defendants who are wrongly sued, and the legal system can vindicate defendants who are not legally responsible for injuries. Kentucky's lawmakers have implemented statutes that help to shield school personnel from liability.

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

