

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

KY CASE Spring 2013

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History of 704 KAR 7:160

- In 2009 Government Accountability Office (GAO) report disclosed hundreds of reports that school children, most with disabilities, had suffered trauma, injury, and death from the use of physical restraint and seclusion in schools.
- The National School Boards Association has determined that nearly 80% of physical restraints and over 61% of seclusions involve special education students.

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- Also in 2009, the Office of Civil Rights surveyed Kentucky's schools to determine the extent of physical restraint and seclusion in our Commonwealth.
 - 104 of 174 Kentucky school districts responded
 - 2,543 uses of physical restraint (339 of which involved students without disabilities),
 - 926 mechanical restraints (20 of which involved students without disabilities), and
 - 1,833 instances of seclusion (390 of which involved students without disabilities.)

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- The Kentucky Education Professional Standards Board documented 310 allegations of teacher assaults on students between 2006 and 2012.
- Assaults by teachers upon students comprise the second most frequent complaint lodged with the Board.
- These 310 cases represent those that are so conspicuous and outrageous that formal action is taken. It is impossible to know how many incidents were unreported. Shockingly, between 2008 and 2012, over half of these cases involved alleged assaults upon special education students.

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- The Kentucky Department of Public Advocacy, Protection and Advocacy Division, has documented over 100 complaints alleging the abuse and misuse of restraint and seclusion in 63 Kentucky counties.
- Protection and Advocacy 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, and has found that individual students are often restrained multiple times per day or secluded all day.

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- In May 2012 the United States Department of Education issued a resource document that contained principles for states and interested stakeholders to consider in addressing physical restraint and seclusion. Even before this guidance document was issued, federal legislation had been proposed and state agencies and governments outside of Kentucky had begun to implement regulations, statutes, and guidance to restrict the use of physical restraint and seclusion in schools.

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- In Kentucky, physical restraint and seclusion was regulated in mental health treatment facilities by 1982, for hospitalized children by 1988, in child care centers by 1991, and in juvenile detention facilities and nursing homes by 2005.
- The Commonwealth had no regulation governing the use of physical restraint or seclusion for Kentucky's population of over 675,000 schoolchildren.

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- In the face of this compelling information, and charged by KRS 156.160

<http://www.lrc.state.ky.us/KRS/156-00/160.PDF>

and KRS 158.444

<http://www.lrc.state.ky.us/KRS/158-00/444.PDF>

to promulgate regulations providing for the physical welfare and safety of children in the public schools, and related to school safety and student discipline, the Kentucky Board of Education and the Kentucky Department of Education began work on an administrative regulation to guide school personnel in the safest use of physical restraint and seclusion.

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- During the regulatory process, a tremendous volume of anecdotal, documentary, written, and testimonial comment and feedback was received from educational partners and interested parties. After extensive and collaborative drafting, the regulation was completed, and enacted on February 1, 2013.

704 KAR 7:160

Use of Physical Restraint and Seclusion in Public Schools

Enacted on February 1, 2013, the 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 and does not prohibit the lawful exercise of law enforcement duties by sworn law enforcement officers.

Local School District Requirements

Local District Policies and Procedures Required:

- Each local school district shall revise existing policies or develop policies consistent with this administrative regulation within ninety (90) calendar days of the effective date of this administrative regulation.

Local District Policies and Procedures Shall:

- Ensure school personnel are aware of and parents are notified how to access the policies and procedures regarding physical restraint and seclusion;
- Are designed to ensure the safety of all students, school personnel, and visitors;
- Require school personnel to be trained in accordance with the requirements outlined in Section 6 of this administrative regulation;

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- 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;

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- Require notification, within twenty four (24) hours, to 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 or organ; or
 - impairment of mental faculty resulting from the use of physical restraint or seclusion;

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- 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
- Outline a procedure to regularly review data on physical restraint and seclusion usage and revise policies as needed.

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The Use of Physical Restraint

Physical Restraint Shall Not Be Used:

- As punishment or discipline;
- To force compliance or to retaliate;
- As a substitute for appropriate educational or behavioral support;
- To prevent property damage, except as permitted under KRS Chapter 503 <http://lrc.ky.gov/KRS/503-00/CHAPTER.HTM>
- As a routine school safety measure; or
- As a convenience for staff.

School Personnel Shall Not Impose the Following On Any Student at Any Time:

- Mechanical restraint;
- Chemical restraint;
- Aversive behavioral interventions;
- Physical restraint that is life-threatening;
- Prone or supine restraint; or
- Physical restraint if they know that physical restraint is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition.

Physical Restraint May Only be Implemented In a Public School or Educational Program when:

- The student's behavior poses an imminent danger of physical harm to self or others and as permitted under:
 - KRS 503.050 <http://lrc.ky.gov/KRS/503-00/050.PDF>;
 - KRS 503.070 <http://www.lrc.ky.gov/KRS/503-00/070.PDF>; and
 - KRS 503.110 <http://www.lrc.ky.gov/KRS/503-00/110.PDF>.

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- 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 restraint appears likely to result in physical harm to self or others;

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- The student's physical and psychological well-being is monitored for the duration of the physical restraint;
- 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;

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- School personnel implementing the physical restraint are appropriately trained as required by Section 6(3) (Core Team Training) of this administrative 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; and
- 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:

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

The Use of Seclusion

Seclusion Shall Not Be Used:

- As punishment or discipline;
- To force compliance or to retaliate;
- As a substitute for appropriate educational or behavioral support;
- To prevent property damage in the absence of imminent danger of physical harm to self or others, as permitted under KRS Chapter 503;
- As a routine school safety measure;
- As a convenience for staff; or
- As a substitute for timeout.

Seclusion May Only Be Implemented When:

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

The Use of Seclusion Shall End As Soon As:

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

A Setting Used for Seclusion Shall:

- Be free of objects and fixtures with which a student could inflict physical harm to self or others;
- Provide school personnel a view of the student at all times;
- Provide adequate lighting and ventilation;
- Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use;
- Have an unlocked and unobstructed door; and
- Have at least an annual fire and safety inspection.

Documentation of the Use of Physical Restraint and Seclusion

All physical restraints and seclusions shall be documented by a written record of each use of seclusion or physical restraint 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:

- The student's name;
- A description of the use of physical restraint or seclusion and the student behavior that resulted in the physical restraint or seclusion;
- The date of the physical restraint or seclusion and school personnel involved;
- The beginning and ending times of the physical restraint or seclusion;

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- A description of any events leading up to the use of physical restraint or seclusion including possible factors contributing to the dangerous behavior;
- A description of the student's behavior during physical restraint or seclusion;
- A description of techniques used in physically restraining or secluding the student and any other interactions between the student and school personnel during the use of physical restraint or seclusion;
- A description of any behavioral interventions used immediately prior to the implementation of physical restraint or seclusion;

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- A description of any injuries to students, school personnel, or others;
- A description as to how the student's behavior posed an imminent danger of physical harm to self or others;
- The date the parent was notified;
- A description of the effectiveness of physical restraint or seclusion in de-escalating the situation;
- A description of the school personnel response to the dangerous behavior;

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- A description of the planned positive behavioral interventions which shall be used to reduce the future need for physical restraint or seclusion of the student; and
- For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act, documentation of a referral under either law or documentation of the basis for declining to refer the student.

Notification

Requirements for Notification

- 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.

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- 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.
- The physical restraint or seclusion record as outlined in subsection (1) of this section shall be completed by the end of the next school day following the use of seclusion or physical restraint.

The Debriefing Session

If the parent or emancipated youth requests a debriefing session under Section 2(1)(d) of this administrative regulation, a debriefing session shall be held after the imposition of physical restraint or seclusion upon a student.

Requirements for Debriefing Session

- 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 Following Persons Shall Participate In the Debriefing Session:

- The implementer of the physical restraint or seclusion;
- 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;
- The parent of an unemancipated student;
- The student, if the parent requests or if the student is an emancipated youth; and

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- 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 Include:

- Identification of the events leading up to the seclusion or physical restraint;
- Consideration of relevant information in the student's records and information from teachers, parents, other school district professionals, and the student;

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- 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

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- 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.

NOTE:

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

Training Requirements

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:

- Increase appropriate student behaviors;
- Decrease inappropriate or dangerous student behaviors; and
- Respond to dangerous behavior.

**This training may be delivered utilizing web-based applications.*

This Training Shall Include:

- Appropriate procedures for preventing the need for physical restraint and seclusion, including positive behavioral supports and interventions;
- State administrative regulations and school district policies and procedures regarding physical restraint and seclusion;
- Proper use of positive reinforcement;
- The continuum of use for alternative behavioral interventions;
- Crisis Intervention;

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- De-escalation strategies for responding to inappropriate or dangerous behavior, including verbal de-escalation, and relationship building; and
- Proper use of seclusion as established in Section 4 of this administrative regulation, including instruction on monitoring physical signs of distress and obtaining medical assistance if necessary.

The Core Team

- A core team of selected school personnel shall be designated to respond to dangerous behavior and to implement physical restraint of students.
- 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.

Core Team Training

The core team, except school resource officers and other sworn law enforcement officers, shall receive additional yearly training.

The Core Team, Except School Resource Officers and Other Sworn Law Enforcement Officers, Shall Receive Additional Yearly Training In the Following Areas:

- Appropriate procedures for preventing the use of physical restraint except as permitted by this administrative regulation;
- 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;

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- Simulated experience of administering and receiving physical restraint, and instruction regarding the effect on the person physically restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- Instruction regarding documentation and notification requirements and investigation of injuries; and
- Demonstration by core team members of proficiency in the prevention and use of physical restraint.

Data Requirements

The Following Data Shall Be Reported By the District In the Student Information System Related to Incidents of Physical Restraint and Seclusion:

- Aggregate number of uses of physical restraint;
- Aggregate number of students placed in physical restraint;
- Aggregate number of uses of seclusion;
- Aggregate number of students placed in seclusion;

- 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;
- 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 related to physical restraint and seclusion; and

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- 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.

(39 Ky.R. 678; 1207; 1400; eff. 2-1-2013.)

Resources:

- The entire text of the regulation:
<http://www.lrc.ky.gov/kar/704/007/160.htm>
- KDE's Guidance Document:
<http://education.ky.gov/specialed/excep/Documents/KDE%20Guidance%20Document%20for%20704%20KAR%207%20160.pdf>
- KDE's Frequently Asked Questions:
<http://education.ky.gov/specialed/excep/Documents/Frequently%20Asked%20Questions%20Regarding%20Physical%20Restraint%20and%20Seclusion.pdf>