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KENTUCKY DEPARTMENT OF EDUCATION

FREQUENTLY ASKED QUESTIONS FOR

704 KAR 7:160

Use of Physical Restraint and Seclusion in Public Schools

UNBRIDLED LEARNING

College/Career Readiness for All

Kentucky Department of Education

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Frequently Asked Questions Regarding Restraint and Seclusion

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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.

Question: Does 704 KAR 7:160, Use of physical restraint and seclusion in public schools, prevent the removal of a disruptive student from a classroom.

Answer: The regulation defines physical restraint as follows:

"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 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, 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 redirecting the student's attention.

Escorting a student from a classroom would not constitute a physical restraint unless the student was immobilized. For example, a student could be escorted through temporary touching or holding of the hand, wrist, arm, shoulder, or back or through physical contact that does not immobilize the student.

It is the position of the Kentucky Department of Education that 704 KAR 7:160 will become effective for the 2013-2014 school year, which begins on July 1, 2013. Districts are required to establish and have in place policies and procedures regarding the use of physical restraint and seclusion. The Department will provide web-based training, before the start of the school year, to educate school personnel about the regulation, and has already produced and released a guidance document to assist districts in interpreting the regulation.

Districts may elect to restrict the use of physical restraint and seclusion to a greater extent than the regulation, if they choose to do so. Banning the removal of a disruptive student from a classroom is not required by 704 KAR 7:160.

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.

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/articl/reducing-use-seclusion-and-restraint.

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.

The 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.

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.