



by Matt Carver, Director of Legal Services

New Restraint, Confinement and Detention Rules for Schools

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A buzz is spreading throughout Iowa's schools concerning the recent revisions to Iowa Administrative Code 281 - Chapter 103, relating to corporal punishment in schools (more specifically, to physical restraint, physical confinement, and detention). Under the revised rules, which go into effect November 12, 2008, Iowa schools (as used in this column, the term "school(s)" refers to public schools, accredited nonpublic schools, and area education agencies) will have to take a second look at some of the techniques used in the past when working with students.

[This is the point in the column where I usually try to insert some type of humorous hook. However, due to the sensitive nature of this month's column, I have decided to set humor aside for the month. As such, I am leaving it up to you to insert whatever level of humor you find appropriate on the topic of physical restraint and physical confinement and detention at this point. No, I would rather not know what you came up with. I just hope that you exercised a little restraint in formulating your response. Ba Duh Ba.]

Let's get into the details about the revisions to Chapter 103 (hereinafter "Revised Chapter 103").

In the calls I have received up to this point regarding Revised Chapter 103, perhaps the greatest confusion relates to whether the administrative rules will undermine the authority of school officials to use such disciplinary measures as in-school suspensions or detentions. Concerning this point, Revised Chapter 103 includes the following exclusion:

"Reasonable periods of detention, not in excess of school hours or brief periods of before and after school detention, in a seat, classroom or other part of a school facility, unless the detention is accomplished by the use of material restraints applied to the person. ... "

To clarify how schools have to comply with all of the new requirements (as we will cover below), I submitted a series of questions to Thomas Mayes, the legal consultant in special ed for the DE who drafted Revised Chapter 103. You will see my questions below in bold and Thomas Mayes's answers in quotations. Okay, let the questions begin.

Q. May I assume that typical in-school suspensions are included in the "exclusion"? ... **A:** "Absolutely."

While all of the new requirements would not apply to the typical in-school suspension or detention, schools should still ensure that students serving an in-school suspension or detention are: placed in a room of reasonable dimensions, with sufficient light and ventilation, a comfortable temperature; allowed reasonable break periods to attend to bodily needs (this does not include sleep); able to readily leave the area during an emergency; and, adequately supervised.

Beyond in-school suspensions and detentions, also excluded from Revised Chapter 103 are:

- 1) verbal recrimination or chastisement directed toward a student. [This does not mean that you may call your students "blockhead" as my basketball coach/accounting teacher called me in high school. And no, the truth of the matter asserted should not have been a defense on his part.];
- 2) reasonable requests or requirements of a student during physical education class or extracurricular athletics;
- 3) actions consistent with and included in an individualized education program ("IEP") developed under the Individuals with Disabilities Education Act. However, under NO CIRCUMSTANCES shall an IEP violate the provisions of Revised Chapter 103.

Q. Wait, are IEPs excluded or are they not excluded? **A:** "Chapter 103 applies to students with and without IEPs. If a student has an IEP, actions taken pursuant to an IEP must comply with this chapter."

So, if in-school suspensions and the like are excluded, what is covered by Revised Chapter 103? Under Revised Chapter 103, the "physical confinement and detention" that is covered by the rules is defined as: "confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted." While the provisions in Revised Chapter 103 are not limited to situations involving students with behavioral disorders or after behavioral outbursts by students, it is a safe assumption that application of Revised Chapter 103 will occur most often when school officials attempt to deal with student behavioral issues.

In Memoriam

Roger Horn, former high school principal at West Marshall and DE staff member (10-21-08)

Clifford McKee, retired superintendent, Aplington (10-1-08)

In addition to the conditions listed above (e.g., reasonable dimensions, sufficient light, comfortable temperatures, etc.), it's also incumbent for schools to:

- 1) ensure that rooms are free from hazards and dangerous objects or instruments, considering the age, size, and physical and mental condition of the student subject to confinement and detention; and
- 2) that the period of detention and confinement is reasonable, considering the age, size, and physical and mental condition of the student subject to confinement and detention, and not in excess of the hours in a school day as defined by local board policy or rule; however, reasonable periods of before- and after-school detention are permissible. Confinement and detention exceeding the shorter of 60 minutes or the school's typical class period require staff member evaluation of the need for continued confinement or detention, as well as approval by an administrator or the administrator's designee for periods **beyond the initial periodic reevaluation**. Such continued confinement or detentions must comply with the administrator's or designee's directives.

Q. What is the "initial periodic reevaluation?" **A:** "The evaluation for the need for continued confinement at the end of 60 minutes or typical class period, whichever is shorter."

Q. Regarding the one hour time limit (or the length of the period), does the school have to involve the administrator every hour, or may an administrator make a determination (or may there be agreed upon terms in an IEP) whereby a student is placed in timeout for longer than one hour at a time? **A:** "The rule requires administrator approval only after the first 60 minutes or typical class period (whichever is shorter). Based on the facts she or he is provided by staff, an administrator may order the seclusion to be discontinued (child returns to class, other interventions attempted), the administrator may allow seclusion for an additional fixed period ([for example], only another 15 minutes), the administrator may allow continued seclusion but require additional consultation (call me back in 30 minutes), or the administrator may allow continued confinement without restriction (this would be in unusual cases, and is not recommended)."

3) **Adequate and continuous adult supervision is provision.**

Q. What is "adequate and continuous adult supervision?" **A:** "'Adequate and continuous' is not read by the Department to mean non-stop, line-of-sight view of the student, and the Department rejected that suggestion made by two commentators. The continuous supervision requirement may be met by an adult within proximity of the seclusion room who may readily detect changes in the student's status and respond with swiftness. The DE would expect periodic visual assessments of students (through a window, cctv, etc.), though it will not require such visual assessment be non-stop."

- 4) Material restraints applied to the person are not used to effect confinement. Meaning, for example, you are not to use restraints as a means to ensure that a student is confined to a timeout room.
- 5) Rooms used for confinement and detention should not have a locking mechanism unless: the locking mechanism automatically unlocks when the building's fire alarm is activated, the building's severe weather warning system is activated, or electrical power to the mechanism is interrupted; or, if it does not have the ability to automatically unlock, it only remains locked while someone holds the lock in place from the outside. (As soon as a person on the outside of the door releases the lock, the door must be able to be readily opened from the inside.)

Before using physical restraints, physical confinement and detention, or both, schools, must go through the following checklist of minimum requirements. (As with other state requirements, your school may decide to adopt additional requirements of your own.)

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

Q. What are minor infractions? **A:** "The DE would give this term its ordinary meaning when applied in a reasonable manner to the facts of each case. The harm to be addressed by this rule was the use of seclusion for offenses such as 'disrespect' or 'talking out of turn.' The reason for this rule is that science indicates that the use of seclusion for minor offenses increases the rate of negative behavior and decreases the effectiveness of seclusion as a response to more serious behaviors."

- 2) All school employees, before using physical restraint or physical confinement and detention, SHALL receive adequate and periodic training, which SHALL be documented and which SHALL include:
 - Training on the revised Chapter 103 and the employer's relevant policies and procedures.
 - Positive behavior interventions and supports.
 - Disciplinary alternatives to seclusion and restraint.
 - Crisis prevention, crisis intervention, and crisis de-escalation techniques.
 - Student and staff debriefing.
 - Safe and effective use of physical restraint and physical confinement and detention.
- 3) Schools must annually notify parents/guardians and students about Chapter 103, as well as any additional policies and procedures addressing physical restraint and physical confinement and detention.

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- 4) Any physical restraint SHALL be reasonable and necessary in duration, in light of the provisions in Chapter 103.
- 5) [And now for the requirement that has received a great deal of attention] If a student is subjected to physical restraint or physical confinement and detention, the school SHALL maintain documentation FOR EACH SUCH OCCURRENCE, which SHALL contain AT LEAST the following information:
 - The names of the student and the employees involved in the restraint, confinement, or detention, as well as the administrator who authorizes any additional periods of confinement or detention, as referenced above.
 - The date, time, and duration of the occurrence.
 - The actions of the student before, during, and after the occurrence.
 - The actions of the employees involved in the occurrence before, during, and after the occurrence, including student and staff debriefing.
 - The alternatives to physical restraint or physical confinement and detention attempted before the occurrence.
 - A description of any injuries (whether to the student or others) and any property damage.
 - A description of future approaches to the student's behavior.

Q. Do schools have to notify parents/guardians every time an employee physically restrains a student? "Yes." Q. What if it is referenced in an IEP? A: "According to OSEP [Office of Special Education Programs], an IEP must comply with state rules on seclusion and restraint."

- 6) The school SHALL ATTEMPT to notify a child's parent or guardian on the same day the child is subjected to physical restraint or physical confinement and detention. [I would encourage you to have staff keep a written log of attempts to notify parents/guardians.]
- 7) The school SHALL provide the student's parent or guardian a written copy of the documentation required above, which SHALL be postmarked within three school days of the occurrence. The student's parent or guardian may elect, IN WRITING, to receive the required communication via electronic mail or facsimile transmission. [By getting parents/guardians to agree to receiving written notification by e-mail, your staff will be able to kill two birds with one stone; e-mail serves as the initial *and* written notifications. This manner of notification will also assist in simplifying the recordkeeping requirements.]

As for new administrative rules concerning physical restraint, school officials need to know the following:

- 1) No employee shall use any prone restraint (meaning a restraint where the student is held face down on the floor). If such a restraint is used during a time of emergency, the employee must take immediate steps to end the prone restraint.
- 2) No employee shall use any restraint that obstructs the airway of any student.
- 3) If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.

Concerning another issue that is undoubtedly of interest to school officials, Revised Chapter 103 also does not limit or eliminate employee immunity, as provided under Iowa Code §280.21 or any other provision of law. Iowa Code §280.21, which prohibits the use of corporal punishment of students by school employees, provides civil and criminal immunity to employees who come into physical contact with a student in the reasonable course of the employee's responsibilities, if the physical contact is reasonable under the circumstances and involves the following:

- 1) Encouraging, supporting, or disciplining the student.
- 2) Protecting the employee, the student, or other students.
- 3) Obtaining possession of a weapon or other dangerous object within a student's control.
- 4) Protecting employee, student, or school property.
- 5) Quelling a disturbance or preventing an act threatening physical harm to any person.
- 6) Removing a disruptive student from class or any area of the school premises, or from school-sponsored activities off school premises.
- 7) Preventing a student from the self-infliction of harm.
- 8) Self-defense.
- 9) Any other legitimate educational activity.

Beyond having immunity in the above situations, I would like to reiterate that Revised Chapter 103 still allows school officials to use physical restraint to protect the restrained student, as well as to protect others. As I often share with administrators, always err on the side of safeguarding students and staff.

So, where are we after Revised Chapter 103? Schools need to:

- 1) Revise policies on physical restraint and physical confinement and detention, to ensure that the school provides (at the very least) the protections set forth in Revised Chapter 103;
- 2) Ensure that staff are trained on the new requirements;
- 3) Inspect facilities to ensure that timeout rooms and other rooms used for confinement and detention satisfy Revised Chapter 103;
- 4) Inform families and students at least annually about Revised Chapter 103 and related school policies and procedures;
- 5) Not use physical restraint and physical confinement and detention for minor infractions, and when such techniques are used for other matters, only do so after other disciplinary techniques have been attempted;
- 6) Document as required under Revised Chapter 103;
- 7) Ensure parent(s)/guardian(s) are notified when school officials use physical restraint or physical confinement and detention.

While you've likely noticed that I have inserted large portions of Revised Chapter 103 in this column, you may review the rules in its entirety in the legal section of the SAI Web site. While this month's column may have required an extra cup of coffee, hopefully it has cleared up some of the confusion out there. Have a great Thanksgiving.

