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Seclusion and Restraint Legislation:
What does this mean for public schools in Kentucky?
In 2009, the Government Accountability Office (GAO) began collecting information for Congress on the use of restraints, seclusion, and aversives in public schools.

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.
Kentucky’s Action

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 public schools.

In August 2012, the Kentucky Board of Education originally approved 704 KAR 7:160. The Board submitted the proposed regulation for public comments. After the comment period and public hearing, the Board considered all input along with KDE’s proposed changes and approved the regulation on October 3, 2012.
Kentucky’s Action

704 KAR 7:160 Use of Restraint and Seclusion in Public Schools went into effect on February 1, 2013.

Prior to this, Kentucky had no regulation on the use of physical restraint in public schools.
Purpose

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.
Focus

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.

Implementation of school-wide positive behavior supports will improve school climates and culture in order to achieve improved academic and social outcomes.
704 KAR 7:160

Definitions of Importance
"Aversive behavioral interventions" = 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.
"Dangerous behavior" = 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" = use of behavior management techniques intended to:

- Mitigate and defuse dangerous behavior of a student; or
- Reduce imminent danger of physical harm to self or others.
"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
"Seclusion" =

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.
“Positive behavioral supports” means 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.
Districts are required to...
Establish policies and procedures that:

- Ensure school personnel are aware of and parents are notified how to access the policies and procedures regarding physical restraint and seclusion.
- Require school personnel to be trained in accordance with the requirements outlined in Section 6 of this administrative regulation.
- 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.
- 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.
Limitations on the Use of Physical Restraint
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 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 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 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.
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.
School personnel shall not impose the following on any student at any time:

(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 if they know that physical restraint is contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.
NOTE:
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.
Limitations on the Use of Seclusion
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.
A setting used for seclusion shall:

(a) Be free of objects and fixtures with which a student could inflict physical harm to self or others;
(b) Provide school personnel a view of the student at all times;
(c) Provide adequate lighting and ventilation;
(d) Be reviewed by district administration to ensure programmatic implementation of guidelines and data related to its use;
(e) Have an unlocked and unobstructed door; and
(f) Have at least an annual fire and safety inspection.
When shall the Restraining or Seclusion end?
Physical restraint and/or 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.
Staff 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:
  1. Increase appropriate student behaviors;
  2. Decrease inappropriate or dangerous student behaviors
  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.
CORE TRAINING TEAM

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/notification requirements and investigation of injuries; and

(e) Demonstration by core team members of proficiency in the prevention and use of physical restraint.

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.
Documentation and Parent 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;
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;

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

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;

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.
Additional Guidelines

- 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.
Debriefing Information
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.

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

WHY IS THIS IMPORTANT?
Questions???
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