

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 103, "Corporal Punishment Ban," Iowa Administrative Code.

Iowa Code section 280.21 requires the State Board of Education to adopt rules to implement the general statutory ban on corporal punishment and the exceptions. Chapter 103 has not been reviewed since 1991. In recent years, there has been much research regarding seclusion ("time out" rooms) and restraint of students. These amendments provide more detail than is presently in the current rule (103.6(280)) regarding allowable parameters when a student is physically restrained or confined and detained.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6838B**. Twenty-one written public comments were received, and five persons made oral comments at the public hearing (which originated in the ICN Room on the second floor of the Grimes Sate Office Building and was narrowcast at nine remote ICN sites across the state) held on July 8, 2008. Public comments were allowed until close of business on July 8, 2008. Comments were received in favor and support of the proposed rule making. Many commenters supported most of the rule making, but had concerns or reservations about particular portions of the rule making; therefore, these amendments have been changed since the Notice of Intended Action.

Several commenters expressed concern that the proposed amendments would restrict such practices as seat detention and in-school suspension. That not being the intent of the Board, the amendments have

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been revised to add a definition for “physical confinement and detention” and to clarify the chapter’s application to physical confinement and detention.

In response to commenters who requested clarification of the term “dangerous instrument,” the language has been revised to indicate that the dangerousness of an instrument is based on the facts of each instance of physical confinement and detention. Other commenters requested clarification of other words in the proposed rule making, such as “reasonable” and “adequate.” Because “reasonableness” is embedded as a constant theme in the underlying statute, it is impractical to attempt the requested further definition. What is reasonable or adequate shall be determined based on the facts at hand.

Several commenters requested that requirements about assessing the need for continued physical confinement and detention be added, suggesting that a school nurse or a person designated in a student’s Individualized Education Program (IEP) be responsible for such assessment. While a school nurse may provide useful information concerning such continued need, there is no data suggesting a school nurse is the sole professional capable of making such an assessment. Furthermore, while an IEP may name a person or position responsible for monitoring an eligible individual’s physical confinement and detention, the Board considers it essential that an administrator or designee be involved in decisions about lengthy restraint. No change has been made to the amendments in response to this comment.

The proposed training requirement received much favorable comment. One commenter suggested adding debriefing of students and staff as a training topic. The Board concurs in this suggestion. Debriefing may be an essential means by which future physical confinement and detention or restraint is avoided. The same commenter requested that any documentation include results of student and staff debriefing. For the same reasons, the Board concurs in this suggestion. The text of the rule making has been changed accordingly.

Several commenters asserted that the notification requirement should be amended to provide notice to parents on the day of the instance of restraint or of physical confinement and detention. The rationales advanced by the commenters are convincing. The text of the rule making has been amended to require school officials to attempt to notify parents on the day of the instance, with written documentation to be provided within three days.

Several commenters suggested that time limits imposed on physical confinement and detention be shortened. The Board has concluded that the limits contained in the rule making strike an appropriate balance between student safety and the safe and effective operation of schools. No changes have been made in this regard. One commenter requested that the rule making include a specific time in which contact with an administrator (or designee) must be made. The Board has concluded that such an addition is unnecessary. The time at which an administrator is contacted is left to the discretion of the local entity, so long as approval is obtained prior to the expiration of 60 minutes or a typical class period, whichever is shorter.

One commenter asked the Board to require videotaping of all periods of physical confinement and detention. While videotaping may be prudent and certainly within the discretion of a local entity, the Board does not view this proposed requirement as necessary to protect the interests of students and education entities.

Several commenters requested a ban on all seclusion and restraint. These requests are inconsistent with the enabling statute; therefore, no changes have been made.

Several commenters expressed concern about the proposed ban on prone restraints. While not opposing the ban, the commenters expressed reservations about the ban’s interplay with the immunity provision contained in the underlying statute. To address these concerns, the Board has modified proposed rule 103.8(256B.280) to account for these concerns. Based on the expressed concern that the rule prohibiting any practice that “otherwise impairs breathing” is too broad, the Board has deleted that language. The amendment prohibiting any restraint that obstructs the airway of a child accounts for the harm to be addressed by the proposed rule, but leaves other restraints subject to the reasonableness standard currently contained in Chapter 103.

Based on technical assistance received from the Iowa Department of Public Safety and in light of fire code concerns, all references to key-operated locking mechanisms have been removed from the adopted amendments.

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All other suggested changes are inconsistent with the underlying statute, are inconsistent with other state and federal education laws, or are adequately addressed by the text of the rule making.

An agencywide waiver provision is provided in 281—Chapter 4.

These amendments are intended to implement Iowa Code sections 256B.3 and 280.21.

These amendments shall become effective November 12, 2008.

The following amendments are adopted.

ITEM 1. Amend **281—Chapter 103**, title, as follows:

CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION

ITEM 2. Strike “(280)” wherever it appears in **281—Chapter 103** and insert “(256B,280)” in lieu thereof.

ITEM 3. Amend rule 281—103.1(256B,280) as follows:

281—103.1(256B,280) Purpose. In conjunction with Iowa Code Supplement section 280.21, the purpose of this chapter is to define and exemplify generally the limitations placed on employees of public schools, accredited nonpublic schools, and area education agencies in applying physical contact or force to enrolled students, and to require that any such force or contact is reasonable and necessary under the circumstances. These rules also provide requirements for administrators and staff of public schools, accredited nonpublic schools, and area education agencies regarding the use of physical restraints and physical confinement and detention. The applicability of this chapter to physical restraint or physical confinement and detention does not depend on the terminology employed by the organization to describe physical restraint or physical confinement and detention.

ITEM 4. Amend rule 281—103.3(256B,280) as follows:

281—103.3(256B,280) Exclusions. Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized ~~education~~ education program developed under the ~~Education for All Handicapped Children Act and Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281—Chapter 41; however, under no circumstance shall an individualized education program violate the provisions of this chapter;~~
4. ~~Detention~~ 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; If detention meets this chapter’s definition of “physical confinement and detention,” the provisions of this chapter on physical confinement and detention must be followed. For purposes of this chapter, material restraints do not include devices, objects, or techniques required or ordered for reasons of safety (e.g., safety harnesses on school buses) or for therapeutic or medical treatment (e.g., devices used for physical or occupational therapy), provided those devices, objects, or techniques are so used, and used for no other purpose;
5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of an area education agency employing or utilizing the services of the employee.

ITEM 5. Amend rule 281—103.6(256B,280) as follows:

281—103.6(256B,280) Physical confinement and detention. If a student is physically confined ~~or~~ and detained in a portion of a school facility, the following conditions shall be observed: For the purposes of this chapter, “physical confinement and detention” means the 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.

1. The area of confinement and detention shall be of reasonable dimensions, and shall be 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;

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2. There shall be sufficient light and adequate ventilation for human habitation;
3. A comfortable temperature shall be maintained, consistent with the facility that includes the confinement and detention ~~or confinement~~ area.
4. Reasonable break periods shall be afforded the student to attend to bodily needs. However, sleep shall not be considered a "bodily need" for purposes of this subrule;
5. The period of detention ~~or~~ 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, however, reasonable periods of before- and after-school detention are permissible. If a period of physical confinement and detention exceeds the shorter of 60 minutes or the school's typical class period, staff members shall evaluate the continued need for physical confinement and detention, shall obtain administrator (or designee) approval for any continued confinement and detention beyond the initial periodic reevaluation, and shall comply with any administrator (or designee) directives concerning any continued confinement and detention.
6. Adequate and continuous adult supervision is provided;
7. Material restraints applied to the person are not used to effect confinement;
8. If a room or enclosure used for physical confinement and detention has a locking mechanism, such room and mechanism shall comply with all applicable building code requirements and the following additional requirements:
 - If a locking mechanism is used, it shall be constructed so it will engage only when a handle, knob, or other device is held in position by a person, unless the mechanism is electrically or electronically controlled and automatically releases when the building's fire alarm system is activated, the building's severe weather warning system is activated, or electrical power to the mechanism is interrupted.
 - When the locking mechanism is released, the door must be able to be readily opened from the inside.
 - If a locking mechanism requires a handle, knob, or other device to be held in position by a person before the mechanism is engaged, no person shall take any action, or cause such action to be taken, or employ any object, device, or instrument, or cause such to be employed, that disables the handle, knob, or other device such that the locking mechanism engages or remains engaged without the handle, knob, or other device being held in position by a person.

ITEM 6. Adopt the following new rule 281—103.7(256B,280):

- 281—103.7(256B,280) Additional minimum mandatory procedures.** If a public school, accredited nonpublic school, or area education agency seeks to use physical restraint or physical confinement and detention, or both, it shall do so in compliance with the minimum requirements of this chapter. The board of a public school, accredited nonpublic school, or area education agency may adopt policies and procedures regarding the use of physical restraint or physical confinement and detention, or both, that exceed the minimum requirements contained in this chapter. Additional minimum mandatory procedures are as follows:
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;
 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 these rules and the employer's 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; and the safe and effective use of physical restraint and physical confinement and detention;
 3. Parents and students are notified at least annually of the provisions of this chapter and of any additional policies and procedures of the public school, accredited nonpublic school, or area education agency on physical restraint and physical confinement and detention;
 4. Any physical restraint shall be reasonable and necessary in duration, in light of the provisions of this chapter;

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5. If a student is subjected to physical restraint or physical confinement and detention, the public school, accredited nonpublic school, or area education agency 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 pursuant to numbered paragraph “5” of rule 103.6(256B,280);
 - 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;
 - 6. The public school, accredited nonpublic school, or area education agency 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; and
 - 7. The student’s parent or guardian must be provided a written copy of the documentation required by numbered paragraph “5” of this rule, which shall be postmarked within three school days of the occurrence. The student’s parent or guardian may elect, in writing, to receive the communication required by this numbered paragraph via electronic mail or facsimile transmission.

ITEM 7. Adopt the following new rule 281—103.8(256B,280):

- 281—103.8(256B,280) Additional provisions concerning physical restraint.** If an employee of a public school, accredited nonpublic school, or area education agency employs physical restraint, the following provisions shall apply:
1. No employee shall use any prone restraints. For the purposes of this rule, “prone restraints” means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint;
 2. No employee shall use any restraint that obstructs the airway of any child;
 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;
 4. Nothing in this rule shall be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21 or any other provision of law.

ITEM 8. Amend **281—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code Supplement sections 256B.3 and 280.21 and ~~1990 Iowa Acts, chapter 1218.~~

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/08.