

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rule making related to corporal punishment
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 103, “Corporal Punishment Ban; Restraint; Physical Confinement and Detention,” and to adopt a new Chapter 103, “Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 256B.3 and 280.21.

Purpose and Summary

The Iowa Department of Education received an amended petition for rule making, which was submitted on September 18, 2018, and filed pursuant to Iowa Code section 17A.7. That petition seeks revisions to Chapter 103, the Department’s administrative rules on corporal punishment, physical restraint, and physical confinement and detention, commonly known as the Department’s “seclusion and restraint” rules. The amended petition was received after several meetings between the petitioners, other interested parties, and key Department staff regarding the content of the original petition. After reviewing the proposed rules, the Department recommended that the rules be submitted to the State Board of Education as a Notice of Intended Action to update the current rules to allow all interested parties an opportunity for public comment.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 5, 2019. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
East 14th and Grand Avenue
Des Moines, Iowa 50319-0416
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 5, 2019
9 to 10 a.m.

State Board Room, Second Floor
Grimes State Office Building
East 14th Street and Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 281—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103

CORPORAL PUNISHMENT, PHYSICAL RESTRAINT, SECLUSION, AND OTHER PHYSICAL CONTACT WITH STUDENTS

281—103.1(256B,280) Purpose and objectives. The purpose of this chapter is to provide uniform definitions and policies for public school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited; explain the parameters and protocols for the use of physical restraint and seclusion; and describe other limits on physical contact with students. The applicability of this chapter to physical restraint, seclusion, or behavior management interventions does not depend on the terminology employed by the organization to describe the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or behavioral management technique is prohibited or may be used.

281—103.2(256B,280) Definitions. For the purposes of this chapter:

“*Corporal punishment*” means the intentional physical punishment of a student. “Corporal punishment” includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

“*Debriefings*” are meetings to collaboratively examine and determine what caused an incident resulting in the use of physical restraints or seclusion, how the incident or the use of physical restraints or seclusion or both could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to improve future

outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.

“Mechanical restraint” means the use of a device as a means of restricting a student’s freedom of movement. “Mechanical restraint” does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300), and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means a personal restriction that immobilizes or reduces the ability of a child to move the child’s arms, legs, body, or head freely.

“Prone restraint” means any restraint in which the child is held face down on the floor.

“Reasonable and necessary force” is that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School” includes public school districts, accredited nonpublic schools, and area education agencies.

“Seclusion” means the involuntary confinement of a child in a room or area from which the child is prevented or prohibited from leaving.

“Seclusion room” means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281—103.3(256B,280) Ban on corporal punishment and prone and mechanical restraints. An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student or use prone restraints or mechanical restraints upon a student.

281—103.4(256B,280) Activities that are not considered corporal punishment. 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 program (IEP) developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281—Chapter 41, a behavior intervention plan (BIP), individual health plan (IHP), or safety plan; however, under no circumstance shall an IEP, BIP, IHP, or safety plan violate the provisions of this chapter;
4. Reasonable periods of detention, not in excess of school hours, or brief periods of detention before or after school, in a seat, classroom, or other part of a school facility;
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 a school employing or utilizing the services of the employee.

281—103.5(256B,280) Use of reasonable and necessary force.

103.5(1) Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:

- (1) To quell a disturbance or prevent an act that threatens physical harm to any person.
- (2) To obtain possession of a weapon or other dangerous object within a student’s control.

- (3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
 - (4) To remove a disruptive student from class or any area of the school's premises or from school-sponsored activities off school premises.
 - (5) To prevent a student from the self-infliction of harm.
 - (6) To protect the safety of others.
 - (7) To protect property as provided for in Iowa Code section 704.4 or 704.5.
 - b.* Using incidental, minor, or reasonable physical contact to maintain order and control.
- 103.5(2)** An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281—103.6(256B,280) Reasonable force.

103.6(1) In determining the reasonableness of the physical force used by a school employee, the following factors shall be applied:

- a.* The size and physical, mental, and psychological condition of the student;
- b.* The nature of the student's behavior or misconduct provoking the use of physical force;
- c.* The instrumentality used in applying the physical force;
- d.* The extent and nature of resulting injury to the student, if any, including mental and psychological injury;
- e.* The motivation of the school employee using the physical force.

103.6(2) Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281—103.7(256B,280) Reasonable and necessary force—use of physical restraint or seclusion.

103.7(1) Physical restraint or seclusion is reasonable and necessary only:

- a.* To prevent or terminate an imminent threat of serious physical injury to the student or others; or
- b.* To prevent serious damage to property of significant monetary value or significant nonmonetary value or importance, when the student's actions seriously disrupt the learning environment, and when physical restraint or seclusion is necessary to ensure the safety of the student and others; and
- c.* Less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and
- d.* The physical restraint or seclusion complies with all the rules of this chapter.

103.7(2) If seclusion or physical restraint is utilized, the following provisions shall apply:

- a.* The seclusion or physical restraint must be imposed by an employee who:
 - (1) Is trained in accordance with rule 281—103.8(256B,280); or
 - (2) Is otherwise available and a trained employee is not immediately available due to the unforeseeable nature of the occurrence.
- b.* A school must attempt to notify the student's parent using the school's emergency contact system upon both the commencement and conclusion of the seclusion or physical restraint.
- c.* The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student's behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended.

Unless otherwise provided for in the student's written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

- (1) The student shall be provided with a break to attend to personal and bodily needs.
- (2) An employee shall obtain written approval from an administrator or administrator's designee to continue the seclusion or physical restraint. An employee must obtain such written approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval must be based on current evidence-based practices and standards and be documented in accordance with rule 281—103.8(256B,280).

(3) The student's parent must be notified every 30 minutes thereafter for as long as the seclusion or physical restraint continues unless the parent and the school agree to a different notification schedule for that occurrence.

(4) Schools and employees must document and explain in writing the reasons why it was not possible for them to obtain written approval, notify parents, or take action under paragraphs 103.7(2) "b" and "c" within the prescribed time limits.

(5) Schools and employees who initiate and then end the use of nonapproved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This subparagraph is not intended to excuse or condone the use of nonapproved restraints.

d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 281—103.9(256B,280), unless the nature of the occurrence makes the use of the designated seclusion room impossible; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.

e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint.

f. An employee shall not use any physical restraint that obstructs the airway of the student.

g. If an employee 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 physical restraint, unless doing so is not feasible in view of the threat posed.

103.7(3) An employee must document the use of the seclusion or physical restraint in accordance with rule 281—103.8(256B,280).

103.7(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.

103.7(5) An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action.

103.7(6) If a child's IEP, BIP, IHP, or safety plan includes either or both physical restraint or seclusion measures, those measures must be individualized to the child; described with specificity in the child's IEP, BIP, IHP, or safety plan; and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.

103.7(7) These rules must be complied with whether or not a parent consents to the use of physical restraint or seclusion for the child.

103.7(8) If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 shall be applicable.

103.7(9) Schools must provide a copy of Chapter 103 and its related policies, procedures and training materials to any individual who is not an employee but whose duties could require the individual to participate in or be present when physical restraints or seclusion are being used. Schools must invite these individuals to participate in training offered to employees pursuant to this chapter.

281—103.8(256B,280) Training, documentation, debriefing, and reporting requirements.

103.8(1) Training. An employee must receive training prior to using any form of physical restraint or seclusion. Training shall cover the following topics:

- a.* The rules of this chapter;
- b.* The school's specific policies and procedures regarding the rules of this chapter;
- c.* Student and staff debriefing requirements;
- d.* Positive behavior interventions and supports;
- e.* Research-based disciplinary alternatives to physical restraint and seclusion;
- f.* Crisis prevention, crisis intervention, and crisis de-escalation techniques;

g. Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and

h. Safe and effective use of physical restraint and seclusion.

103.8(2) Documentation and reporting. Schools must maintain documentation for each occurrence of physical restraint and seclusion. An employee who implemented or observed the use of physical restraint or seclusion must complete a written report that must contain at least the following information:

a. The name of the student;

b. The names and job titles of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to subparagraph 103.7(2)“c”(2);

c. The date of the occurrence;

d. The beginning and ending times of the occurrence;

e. The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training required by subrule 103.8(1);

f. A description of the actions of the student before, during, and after the seclusion or physical restraint;

g. A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint;

h. Copies of all written approvals for continuation of the seclusion or physical restraint period generated in accordance with subrule 103.7(2);

i. A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;

j. A description of any injuries, whether to the student or others, and any property damage;

k. A description of future approaches to address the student’s behavior, including any consequences or disciplinary actions that may be imposed on the student; and

l. The time and manner by which the school notified the student’s parent of the use of physical restraint or seclusion.

Schools must provide the student’s parent with a written copy of the report by the end of the next school day following the occurrence. The report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting to be held within five school days of the day the report and letter are mailed to or provided to the parent. The letter must include the date, time and place of the meeting and the name and title of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the next school day after the occurrence.

103.8(3) Debriefing. Schools must hold a debriefing meeting as soon as practicable, but within five school days of the day the report and letter are mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent’s consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, and other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher). The meeting, and the debriefing report that is to be provided to the parent after the meeting, must include the following information and subjects:

a. The date and location of the meeting, and the names and titles of the participants;

b. The documentation and report completed in compliance with subrule 103.8(2);

c. A review of the student’s BIP, IHP, safety plan, and IEP as applicable;

- d. Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
- e. Determination of possible alternative responses to the incident/less restrictive means, if any;
- f. Identification of additional resources that could facilitate those alternative responses in the future;
- g. Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three schools days after the debriefing meeting.

103.8(4) When a student exhibits a pattern of behavior that results in multiple instances of physical restraint or seclusion in the same school year, the school must convene a meeting consisting of employees designated by the school, the student’s parent(s), and an expert in behavioral health, mental health, or another appropriate discipline for the purposes of evaluating the causes of the student’s behavior, reviewing and revising the student’s BIP, IHP, IEP, safety plan, or behavioral plan or developing a plan for the student if none exists, and ensuring the provision of any necessary behavioral supports in order to improve the student’s safety and continued access to education.

103.8(5) Schools must comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), Iowa Code chapter 22, “Examination of Public Records” (Open Records), and other applicable federal and state laws, when taking action pursuant to this rule.

281—103.9(256B,280) Seclusion room requirements. Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

103.9(1) The room must meet and comply with all applicable building, fire, safety, and health codes and standards and with the other requirements of this rule.

103.9(2) The dimensions of the room shall be of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room must be no less than 70 square feet, and the distance between opposing walls must be no less than 7 feet across.

103.9(3) The room must not be isolated from school employees or the facility.

103.9(4) Any wall that is part of the room must be part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).

103.9(5) The room must provide a means of continuous visual and auditory monitoring of the student.

103.9(6) The room must be adequately lighted with switches to control lighting located outside the room.

103.9(7) The room must be adequately ventilated with switches to control fans or other ventilation devices located outside the room.

103.9(8) The room must maintain a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.

103.9(9) The room must be clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects, exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or to climb up a wall.

103.9(10) The room must contain no free-standing furniture.

103.9(11) The room must be constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room shall comply with the state and local building and fire codes and standards.

103.9(12) Doors must open outward. The door shall not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, shall not reduce the required corridor width by more than 7 inches. Doors in any position shall not reduce the required width by more than one-half.

103.9(13) The room must be able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.

103.9(14) Windows must be transparent and made of unbreakable or shatterproof glass or plastic.

103.9(15) Schools must consult with appropriate state and local building, fire, safety, and health officials to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry, and exit, fire suppression, etc.) prior to its use.

These rules are intended to implement Iowa Code section 280.21.