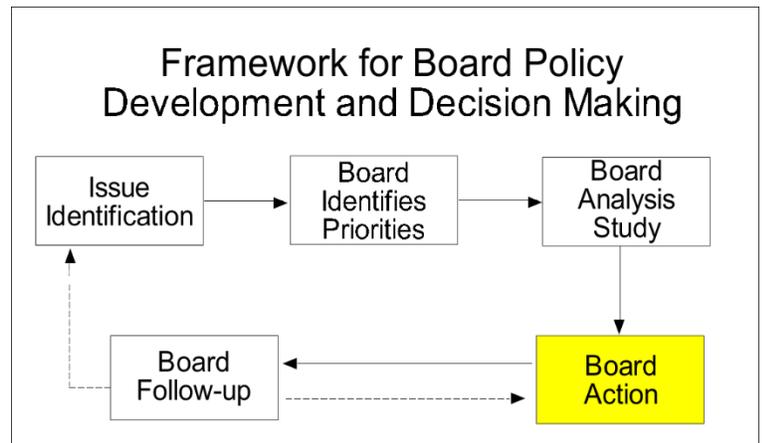


Iowa State Board of Education

Executive Summary

November 18, 2020



Agenda Item: Rules: 281 IAC Chapter 103 – Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students (Adopt)

State Board Priority: Creating a Safe, Healthy, and Welcoming Learning Environment

State Board Role/Authority: Iowa Code section 256.7(5) gives the State Board of Education the statutory authority to adopt rules under Chapter 17A.

Presenter(s): Dave Tilly, Chief
Bureau of Leading, Teaching, Learning Services

Thomas Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board adopt amendments to Chapter 103.

Background: This is the third attempt the Department has made at amending Chapter 103, Iowa’s administrative rules on corporal punishment, seclusion, and restraint. This effort was prompted by a petition for rulemaking, which resulted in a collaborative process to arrive at a consensus document. The detailed history is detailed in the preamble. A public hearing was held on September 15, 2020, at 3:00 p.m. Eleven people attended the hearing: four providing comment and seven as observers. The Department of Education received three written comments. The preamble contains a detailed discussion of the public comment. In light of the public comment, the Department proposes three changes to the rules:

1. More detail in the documentation requirement in rule 103.8(2);
2. Express cross-references to other pertinent rules chapters in rule 103.8; and
3. A requirement to maintain documentation that public safety officials approved a seclusion room for use.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby rescinds Chapter 103, “Corporal Punishment Ban; Restraint; Physical Confinement and Detention,” and adopts 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 adopted under the authority provided in Iowa Code sections 256.7 and 280.21(1).

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 sought revisions to Chapter 103, 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. After publication of the Notice (ARC 4276C, IAB 2/13/19) and receipt of public comment, the Department revised the rules to address public comments and presented the rules to the State Board for adoption. The State Board did not

adopt the rules and instructed the Department to continue to collect feedback on three points of contention in the rules.

The three areas of contention in the rules were as follows: (1) commenters objected to the use of the term “serious physical” injury and felt the term would result in educators second-guessing their actions when situations may call for seclusion and restraint; (2) commenters objected to the requirement that educators contact parents within ten minutes of both the commencement and conclusion of the seclusion or physical restraint because the commenters felt this was not practical under the circumstances and that educators need to be able to handle the situation; and (3) commenters objected to the requirements on the size of seclusion rooms and requested that some rooms be grandfathered into use.

The Department conducted six meetings at six different area education agencies to collect more input on the rules. This rule making reflects changes made after input was received at the six meetings. (1) The term “serious physical” injury was replaced with “bodily” injury; (2) the ten-minute time frame for notifying parents was changed to “as soon as practical after the situation is under control but no later than one hour or the end of a school day, whichever occurs first”; and finally (3) room sizes were modified and districts were given more time to come into compliance with room requirements.

The State Board gave Notice of Intended Action to rescind and adopt a new Chapter 103, which was published in the December 18, 2019, Iowa Administrative Bulletin as ARC 4816C. The Department received several public comments and held a public hearing on January 7, 2020. Due to the public health disaster emergency associated with the COVID-19 pandemic, the Department was unable to present proposed final rules to the State Board and the Notice of Intended Action

expired. Because the revisions of Iowa’s rules on seclusion and restraint are necessary, the State Board gave notice for a third time of its intent to rescind and adopt a new Chapter 103.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 26, 2020, as **ARC 5146C**.

A public hearing was held on September 15, 2020, at 3:00 p.m. at Grimes State Office Building, ICN Room, Des Moines, Iowa, with a video conference option available. Eleven people attended the hearing: four providing comment and seven as observers. The Department of Education received three written comments, one from two of the initial petitioners, supporting the proposed rule as it was noticed, one representing two education organizations, proposing a different size for seclusion rooms, and one from a professor in a practitioner preparation program, proposing substantial changes. Discussion of the proposed changes are as follows.

Process; Rules Overall. Multiple comments from both parent advocates and educational organizations were largely favorable to the proposed rules. One representative of an education organization referenced the partnership with the petitioners and thanked the Department for a very thorough process. The Department thanks the commenters for their kind words and appreciates the candid and collaborative input from multiple parties during this process.

Purpose (Rule 103.1). One commenter asked that the intended purpose of the Chapter be broadened to require effective responses to challenging behaviors, as opposed to merely encouraging them. The purpose is broad and clear enough to encompass the commenter’s concern, and what is effective may vary based on each child’s circumstances. Further, the chapter’s provisions for documentation, training, and monitoring will increase the effectiveness of schools’ responses over time. The Department makes no change.

Definitions (Rule 103.2). One commenter asked that the definition of “seclusion” be broadened to include restrictions on a student’s movement, such as by leaving a classroom. The definitions of “physical restraint” and “seclusion” are commonly accepted, consensus definitions. As the Department understands the comment, the change proposed by the commenter could significantly broaden the scope of this chapter. For example, if a teacher blocks a student from running toward a fight, under the proposed change the student would have been secluded, even if the student was free to move anywhere but toward the fight. The commenter also suggested that restrictions on movement accomplished by an adult holding a child or blocking the child’s movement with an object (such as a mat) should meet the definition of seclusion. The Department disagrees, and notes that in nearly every instance, it would meet the chapter’s definition of “physical restraint,” or, depending how the object is used, a prohibited “mechanical restraint” (Rule 103.3). The Department makes no change.

Modifier to Injury (Rule 103.7(1)“a”). One commenter asked that the modifier of “serious” be restored to the Rules. Another commenter asked that “bodily” be retained as the modifier. As noted above in the preamble, this issue was quite controversial and the current modifier (“bodily”) is significantly more protective than the status quo rules, which contain no modifier to “injury.” The Department has also taken notice of the fact that Senate File 2360, concerning related and overlapping subject matter, uses the term “bodily injury.” The Department makes no change.

Damage to Property (Rule 103.7(1)“b”-“c”). One commenter asked that paragraphs “b” and “c” in subrule 103.7(1) be merged. In effect, student safety concerns would be required before seclusion or restraint due to property damage. While the Department understands the concerns about seclusion and restraint due to threats of minor property damage, the Department must ensure

its rules are faithful to the underlying statute. The current language does both. The Department makes no change.

Documentation Requirements (Rules 103.7(2), 103.8(2)). One commenter noted that several items required to be documented in subrule 103.7(2) are not clearly listed in subrule 103.8(2). The commenter expressed concerns about confusion, potential misalignment, and the potential circular nature of these two subrules. The Department greatly benefited from this commenter's close reading of the relevant rule text. The Department will make changes to subrule 103.8(2), paragraphs "g," "h," and "l".

Breaks (Rule 103.7(2) "c"(1)). One commenter asked for clarification on who determines whether "breaks to attend to personal and bodily needs" are "necessary." No clarification is necessary. This decision is to be made by school officials, based on what is reasonable in light of the circumstances. School officials are cautioned, however, that using breaks to obtain compliance or withholding breaks as punishment is outside the scope of this rule (e.g., "You can use the restroom after you sit in 'body basics' for five minutes on the green circle."). The Department makes no change.

Unauthorized Seclusion Rooms (Rule 103.7(2) "d"). One commenter asked that "clearly impractical" be deleted from the language concerning unauthorized seclusion rooms, stating the use of unapproved seclusion rooms must be "very rare." The Department agrees with the sentiment and the policy goal; however, the current language adequately addresses the concern. The Department makes no change.

Relationship of Chapter 103 and Special Education (Rules 103.7(2) "c", 103.7(6)). One commenter objected to any reference to individualized education plans, behavior intervention plans, or individualized health plans in these rules, asserting that any reference to seclusion and

restraint belongs only in a safety plan. The commenter also stated that seclusion and restraint does not improve challenging behavior, so any reference to making “progress appropriate in light of the child’s circumstances” is improper. As to the first concern, where discussion of seclusion and restraint belongs in a child’s documentation is a matter for the child’s team to determine in the first instance. As to the second concern, while seclusion and restraint does not improve behavior, seclusion and restraint may be necessary to address student safety and allow a student to have access to education. While seclusion and restraint may not be sufficient for a student to make educational progress, in some cases it is necessary. The Department makes no changes.

Debriefing and Special Education Eligibility Standards (Rule 103.8(3)). One commenter requested that the debriefing rules more clearly align with rules and procedures on special education eligibility. The Department believes this concern, which may be broader than eligibility for special education, may be addressed by adding cross-references to applicable administrative rules chapters. The Department will make changes in subrule 103.8(3), paragraphs “c” and “d”.

Dimensions of the Seclusion Room (Rule 103.9(2)). One commenter, representing two education organizations, asked for a forty-nine square feet as a minimum dimension, as opposed to fifty-six square feet, due to costs to districts in bringing rooms into compliance. Another commenter, representing another education organization, stated that the room dimension, as well as the five-year period to bring a room into correction (Rule 103.9(16)), were reasonable. After considering these comments, the Department concludes the dimensions in the notice are reasonable. The proposed dimensions of fifty-six square feet balances numerous interests and was arrived at through a lengthy consensus-building process. The room needs to be of sufficient size to allow the child to be safe in the room, as well as to allow adults to safely and swiftly enter the

room if needed. The current dimensions accommodate those needs. The Department makes no change.

Documentation of Approval (Rule 103.9(15)). One commenter asked that schools be required to maintain documentation that health and safety officials approved the use of a seclusion room after consultation with those officials, not just maintain documentation of the consultation. This request is reasonable, especially given that subrule 103.9(16) contemplates approval by health and safety officials. The Department will add the requested language to subrule 103.9(15).

Amendments are identical to those published in the Notice of Intended Action, with the exceptions noted above and indicated below with underlining (additions).

Adoption of Rule Making

This rule making was adopted by the State Board of Education on November 18, 2020.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa. There may be a cost, of unknown amount, for schools to construct or remodel seclusions rooms to comply with the requirements of subrule 103.9(2).

Jobs Impact

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

Waivers

An agency-wide waiver provision is provided in 281—Chapter 4.

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).

Effective Date

This rule making will become effective on January 20, 2021.

The following rule-making action is adopted:

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:

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

“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 or incidents 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. “Physical restraint” does not mean a technique used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a technique was designed and, if applicable, prescribed. “Physical restraint” does not include instructional strategies, such as physically guiding a student during an educational task, hand-shaking, hugging, or other nondisciplinary physical contact.

“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 seclusion room or area from which the child is prevented or prohibited from leaving; however, preventing a child from leaving a classroom or school building shall not be considered seclusion. “Seclusion” does not include instances when a school employee is present within the room and providing services to the child, such as crisis intervention or instruction.

“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); an individual health plan (IHP); or a 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 resulting in 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 bodily injury to the student or others; or
- b.* To prevent serious damage to property of significant monetary value or significant nonmonetary value or importance; or
- c.* When the student's actions seriously disrupt the learning environment or when physical restraint or seclusion is necessary to ensure the safety of the student and others; and
- d.* When 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
- e.* When 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 as soon as practicable after the situation is under control, but no later than one hour or the end of the school day, whichever occurs first.
- 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, or when a medical condition occurs that puts the student at risk of harm.

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 any necessary breaks to attend to personal and bodily needs, unless doing so would endanger the child or others.

(2) An employee shall obtain approval from an administrator or administrator's designee to continue the seclusion or physical restraint beyond 15 minutes. After the initial approval, an employee must obtain additional approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval must be documented in accordance with rule 281—103.8(256B,280).

(3) The student's parent and the school may agree to more frequent notifications than is required by this subrule.

(4) Schools and employees must document and explain in writing, as required by subrule 103.8(2), the reasons why it was not possible for them to obtain 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, clearly impractical, or clearly contrary to the safety of the student, others, or both; 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.

h. Seclusion or physical restraint shall not be used:

- As punishment or discipline;
- To force compliance or to retaliate;
- As a substitute for appropriate educational or behavioral support;
- To prevent property damage except as described in paragraph 103.7(1) "b";
- As a routine school safety measure; or
- As a convenience to staff.

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, rule 281—103.11(256B,280), 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 this chapter and any school-adopted or school-used 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 are or seclusion is 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, and evidence-based approaches to student discipline and classroom management;
- e.* Research-based 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. Documentation 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, including the use of a nonapproved restraint (subparagraph 103.7(2)“*c*”(5)) or the use of other than a designated seclusion room (paragraph 103.7(2)“*d*”);
- h.* Documentation of approvals for continuation of the seclusion or physical restraint period

generated in accordance with subrule 103.7(2), including why it was not possible to obtain approval;

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, including why it was not possible to attempt to give notice within the time specified by paragraph 103.7(2)“b”.

Schools must provide the student's parent with a written copy of the report by the end of the third school day following the occurrence. The report shall be accompanied by a letter inviting the parent to participate in a debriefing meeting, if necessary under subrule 103.8(3), 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 names and titles 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 third school day after the occurrence.

103.8(3) Debriefing.

a. Schools must hold a debriefing meeting as soon as practicable whenever required by paragraph 103.8(3) “*f*,” 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, other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher), and, if indicated by the student's behavior in the instances prompting the debriefing, an expert in behavioral health, mental health, or another appropriate discipline. The meeting, and the debriefing report that is to be provided to the parent after the meeting, must include the following information and subjects:

- (1) The date and location of the meeting, and the names and titles of the participants;
 - (2) The documentation and report completed in compliance with subrule 103.8(2);
 - (3) A review of the student's BIP, IHP, safety plan, and IEP as applicable;
 - (4) Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
 - (5) Determination of possible alternative responses to the incident/less restrictive means, if any;
 - (6) Identification of additional resources that could facilitate those alternative responses in the future;
 - (7) Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.
- b.* 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 school days after the debriefing meeting.

c. If the debriefing session results in a recommendation that a child might be eligible for a BIP, IHP, safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

d. Any recommended change to a student's BIP, IHP, safety plan, or IEP, or a student's educational placement, shall be made in accordance with the procedures required for amending said plan or changing said placement, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

e. Nothing in this subrule shall be construed to require employers to include information about employees that would be legally protected personnel information, including employee disciplinary information under Iowa Code chapters 279 and 284, or to allow discussion of that personnel information, in debriefing meetings.

f. For purposes of this subrule, a debriefing session is required:

- (1) Upon the first instance of seclusion or physical restraint during a school year;
- (2) Whenever any personal injury occurs as a part of the use of seclusion or physical restraint;
- (3) Whenever a reasonable educator would determine a debriefing session is necessary;
- (4) Whenever suggested by a student's IEP team (if any);
- (5) Whenever agreed by the parent and the school officials.

However, in any case a debriefing session shall occur after seven instances of seclusion or physical restraint. Nothing in this paragraph shall be construed to prevent a school from offering more debriefing meetings.

103.8(4) Confidentiality. 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.

103.8(5) Reporting to department. Schools shall report to the Iowa department of education, in a manner prescribed by the department, an annual count of all instances of seclusion or restraint, an annual count of the number of students who were subjected to seclusion or restraint, and any other data required for the department to implement the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, Public Law 114-95.

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 56 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 seven 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, if any, must be transparent and made of unbreakable or shatterproof glass or plastic.

103.9(15) By July 1, 2021, 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.), and maintain documentation of such consultation and compliance and approval.

103.9(16) Assuming approval pursuant to subrule 103.9(15), a school may continue to use a room that otherwise complies with this rule but for subrule 103.9(2) for a period of five years from [the effective date of this chapter], or whenever the portion of the school containing the room is renovated or remodeled, whichever occurs first.

281—103.10(256B,280) Department responsibilities. The department shall develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury to a student or another person and for the reasonable, necessary, and appropriate physical restraint of a student, consistent with these rules.

The director of the department shall consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this subsection.

281—103.11(256B,280) Other provisions.

103.11(1) To prevail in a civil action alleging a violation of Iowa Code section 280.21 or this chapter, the party bringing the action shall prove the violation by clear and convincing evidence. Any school employee determined in a civil action to have been wrongfully accused under Iowa

Code section 280.21 or this chapter shall be awarded reasonable monetary damages, in light of the circumstances involved, against the party bringing the action.

103.11(2) A school employee's employer and the board of educational examiners shall not engage in reprisal or retaliation against a school employee who, in the reasonable course of the employee's employment responsibilities, comes into physical contact with a student in accordance with Iowa Code section 280.21 or this chapter.

These rules are intended to implement Iowa Code section 280.21