

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE PROTECTION OF PERSONS FROM RESTRAINT ACT

1 CCR 301-45

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

2620-R- 1.00 STATEMENT OF BASIS AND PURPOSE

- 1.00(1) These Rules were developed in accordance with C.R.S. 26-20-101, et seq. Specific statutory authority for the development of these Rules comes from C.R.S. 26-20-108. These Rules are provided pursuant to the terms of the "Protection of Persons from Restraint Act". These Rules outline the procedures to be followed in the administration of restraint, staff training, documentation requirements, and the review of the use of restraint.
- 1.00(2) The statutory authority for the 2009 amendments to these Rules is found in 26-20-108, C.R.S. The purpose of these amendments is to better align these Rules to the Protection of Persons from Restraint Act; add clarifying language; and reorganize these Rules to provide enhanced clarification for implementation.
- 1.00(3) The purpose of the 2017 amendments is to conform to the changes made in HB 17-1276 to update definitions, generally prohibit the use of prone holds and restraints, and outline the process for complaints concerning the use of restraint or seclusion.

2620-R- 2.00 DEFINITIONS

- 2.00(1) "Bodily Injury" means physical pain, illness or any impairment of physical or mental condition as defined in Section 18-1-901(3)(c), C.R.S.
- 2.00(2) "Complaint" means a signed, written document alleging that there has been a misuse of the use of restraints or seclusion on a student.
- 2.00(3) "Deadly Weapon" means a firearm, whether loaded or unloaded; a knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.
- 2.00(4) "Emergency" means serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury. Emergency includes situations in which the student creates such a threat by abusing or destroying property.
- 2.00(5) "Parent" means
- 2.00(5)(a) A biological or adoptive parent of a child;
 - 2.00(5)(b) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
 - 2.00(5)(c) A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

- 2.00(5)(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
- 2.00(5)(e) An educational surrogate parent who has been assigned in accordance with 1 C.C.R. 301-8 2220-R-6.02(8);
- 2.00(5)(f) Except as provided in section (3)(b) of this Rule 2.00(3), the biological or adoptive parent, when attempting to act as the parent under these Rules and when more than one party is qualified under Section (3) of this Rule 2.00 to act as a parent, must be presumed to be the parent for the purposes of this Section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- 2.00(5)(g) If a judicial decree or order identifies a specific person or persons under Sections 3(a) through (d) of this rule to act as the "parent" of a child or to make educational decisions on behalf of a child, then such persons(s) shall be determined to be the "parent" for the purposes of this Section 2.00(3).
- 2.00(6) "Positional Asphyxia" means an insufficient intake of oxygen as a result of body position that interferes with one's ability to breathe.
- 2.00(7) "Public Education Agency"
- 2.00(7)(a) For the purposes of these Rules only, means:
- 2.00(7)(a)(i) Any public school district organized and existing under the laws of Colorado except a junior college district;
- 2.00(7)(a)(ii) The Charter School Institute as established in Article 30.5 of Title 22, C.R.S.;
- 2.00(7)(a)(iii) The Colorado School for the Deaf and the Blind as created by Article 80 of TITLE 22, C.R.S.;
- 2.00(7)(a)(iv) A Board of Cooperative Education Services as created by Article 5 of Title 22, C.R.S.;
- 2.00(7)(a)(v) An approved facility school as defined in 22-2-402(1) C.R.S. operated by an eligible facility; or
- 2.00(7)(a)(vi) Any public or private entity that has entered into a contract for services with an entity described in Subsections (i) through (v) of this Section 2.00(5)(a).
- 2.00(7)(b) "Public Education Agency" does not include:
- 2.00(7)(b)(i) Educational schools, programs, or facilities operated by or under the supervision, rules or licensing authority of the Colorado Department Of Human Services including:
- 2.00(7)(b)(i)(A) The Division Of Youth Services;
- 2.00(7)(b)(i)(B) The Mental Health Institutes at Fort Logan and Pueblo; and
- 2.00(7)(b)(i)(C) An eligible facility that is a day treatment facility; or

- 2.00(7)(b)(ii) Educational schools, programs or facilities operated by or under the supervision of the Colorado Department of Corrections.
- 2.00(7)(c) These Rules apply to public education agencies, as defined in Section 2.00(7)(a) and to all educational programs, activities or events provided, supervised or sponsored by such public agencies.
- 2.00(8) "Restraint" means any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, chemicals, and seclusion.
- 2.00(8)(a) "Chemical Restraint" means administering medication to a student (including medications prescribed by his or her physician) on an as needed basis for the sole purpose of involuntarily limiting the student's freedom of movement. "Chemical Restraint" does not include:
- 2.00(8)(a)(i) Prescription medication that is regularly administered to the student for medical reasons other than to restrain the student's freedom of movement (e.g., Asthma-cort, medications used to treat mood disorders or ADHD, Glucagon); or
- 2.00(8)(a)(ii) The administration of medication for voluntary or life-saving medical procedures (e.g., EpiPens, Diastat).
- 2.00(8)(b) "Mechanical Restraint" means a physical device used to involuntarily restrict the movement of a student or the movement or normal function of his or her body. "Mechanical Restraint" does not include:
- 2.00(8)(b)(i) Devices recommended by a physician, occupational therapist, or physical therapist and agreed to by a student's IEP Team or Section 504 Team and used in accordance with the student's Individualized Education Program (IEP) or Section 504 Plan;
- 2.00(8)(b)(ii) Protective devices such as helmets, mitts, and similar devices used to prevent self-injury and in accordance with a student's IEP or Section 504 Plan;
- 2.00(8)(b)(iii) Adaptive devices to facilitate instruction or therapy and used as recommended by an occupational therapist or physical therapist, and consistent with a student's IEP or Section 504 Plan; or
- 2.00(8)(b)(iv) Positioning or securing devices used to allow treatment of a student's medical needs.
- 2.00(8)(c) "Physical Restraint" means the use of bodily, physical force to involuntarily limit an individual's freedom of movement. "Physical Restraint" does not include:
- 2.00(8)(c)(i) Holding of a student in a position other than a prone position for less than five minutes by a staff person for the protection of the student or others;
- 2.00(8)(c)(ii) Brief holding of a student by one adult for the purpose of calming or comforting the student, not to include holding a student in a prone position;
- 2.00(8)(c)(iii) Minimal physical contact for the purpose of safely escorting a student from one area to another; or
- 2.00(8)(c)(iv) Minimal physical contact for the purpose of assisting the student in completing a task or response.

- 2.00(8)(d) "Prone Position" means a face-down position.
- 2.00(8)(e) "Prone Restraint" means a restraint in which the individual who is being restrained is secured in a prone position.
- 2.00(9) "Seclusion" means the placement of a student alone in a room from which egress is involuntarily prevented. "Seclusion" does not mean:
- 2.00(9)(a) Placement of a student in residential services in his or her room for the night; or
- 2.00(9)(b) "Time-out" which is the removal of a student from potentially rewarding people or situations. A Time-out is not used primarily to confine the student, but to limit accessibility to reinforcement. In a Time-out, the individual is not physically prevented from leaving the designated Time-out area. Such a Time-out requires effective monitoring by staff.
- 2.00(10) "School Day" means any day or partial day that students are in attendance at the public education programs, agencies or services or sponsored events.
- 2.00(11) "Student," for the purposes of these Rules only, means any individual aged 3 – 21 years.

2620-R- 2.01 BASIS FOR THE USE OF RESTRAINT

2.01(1) Restraints shall only be used:

- 2.01(1)(a) In an emergency and with extreme caution; and
- 2.01(1)(b) After
- 2.01(1)(b)(i) The failure of less restrictive alternatives (such as Positive Behavior Supports, constructive and non-physical de-escalation, and re-structuring the environment); or
- 2.01(1)(b)(ii) A determination that such alternatives would be inappropriate or ineffective under the circumstances.

2.01(2) Restraints must never be used as a punitive form of discipline or as a threat to control or gain compliance of a student's behavior.

2.01(3) School personnel shall:

- 2.01(3)(a) Use restraints only for the period of time necessary and using no more force than is necessary; and
- 2.01(3)(b) Prioritize the prevention of harm to the student.

2620-R- 2.02 DUTIES RELATED TO THE USE OF RESTRAINT

2.02(1) General Requirements

- 2.02(1)(a) When restraints, including seclusion, are used, the public education program shall ensure that:
- 2.02(1)(a)(i) No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating;

- 2.02(1)(a)(ii) No restraint is administered in such a way that places excess pressure on the student's chest, back, or causes positional asphyxia;
- 2.02(1)(a)(iii) Restraints are administered only by staff who have received training, in accordance with Section 2.03 of these Rules;
- 2.02(1)(a)(iv) Opportunities to have the restraint removed are provided to the student who indicates that (s)he is willing to cease the violent or dangerous behavior;
- 2.02(1)(a)(v) When it is determined by trained staff that the restraint is no longer necessary to protect the student or others (i.e., the emergency no longer exists), the restraint must be removed. In the case of seclusion, staff must reintegrate the student or clearly communicate to the student that (s)he is free to leave the area used to seclude the student; and
- 2.02(1)(a)(vi) Student is reasonably monitored to ensure the student's physical safety.

2.02(2) Proper administration of specific restraints.

- 2.02(2)(a) "Chemical Restraints" shall not be used by public education agencies.
- 2.02(2)(b) "Mechanical Restraints" shall not be used by public education agencies, except:
 - 2.02(2)(b)(i) When mechanical restraints are used on a student who is openly displaying a deadly weapon, as defined in Section 2.00(3).
 - 2.02(2)(b)(ii) When used by armed security officers who:
 - Have received documented training in defensive tactics utilizing handcuffing procedures and restraint tactics utilizing prone holds; and
 - Have made a referral to a law enforcement agency.
- 2.02(2)(c) "Physical restraint"
 - 2.02(2)(c)(i) A person administering the physical restraint must use only the amount of force necessary to stop the dangerous or violent actions of the student.
 - 2.02(2)(c)(ii) A restrained student must be continuously monitored to ensure that the breathing of the student in such physical restraint is not compromised.
 - 2.02(2)(c)(iii) A student shall be released from physical restraint within fifteen minutes after the initiation of the restraint, except when precluded for safety reasons.
- 2.02(2)(d) "Prone restraint" shall not be used by public education agencies except:
 - 2.02(2)(d)(i) When prone restraints are used on a student who is openly displaying a deadly weapon, as defined in Section 2.00(3).
 - 2.02(2)(d)(ii) When used by armed security officers who:
 - Have received documented training in defensive tactics utilizing handcuffing procedures and restraint tactics utilizing prone holds; and
 - Have made a referral to a law enforcement agency.

2.02(2)(e) "Seclusion"

2.02(2)(e)(i) Relief periods from seclusion shall be provided for reasonable access to toilet facilities; and

2.02(2)(e)(ii) Any space in which a student is secluded must have adequate lighting, ventilation, and size. To the extent possible under the specific circumstances, the space should be free of injurious items.

2620-R- 2.03 STAFF TRAINING

2.03 All public educational programs shall ensure that staff utilizing restraint in schools or facilities are trained. Training shall include:

2.03(1) a continuum of prevention techniques;

2.03(2) environmental management;

2.03(3) a continuum of de-escalation techniques;

2.03(4) nationally recognized physical management and restraint practices, including, but not limited to, techniques that allow restraint in an upright or sitting position and information about the dangers created by prone restraint;

2.03(5) methods to explain the use of restraint to the student who is to be restrained and to the individual's family;

2.03(6) appropriate documentation and notification procedures; and

2.03(7) retraining at a frequency of at least every two years.

2620-R- 2.04 DOCUMENTATION AND NOTIFICATION REQUIREMENTS

2.04(1) If there is a reasonable probability that restraint might be used with a particular student, appropriate school staff must notify, in writing, the parents and, if appropriate, the student of the restraint procedures (including types of restraints) that might be used; specific circumstances in which restraint might be used; and staff involved. For students with disabilities, if the parents request a meeting with school personnel to discuss the notification, school personnel must ensure that the meeting is convened. This notification may occur at the meeting where the student's Behavior Plan or IEP is developed/reviewed.

2.04(2) If restraints are used by any school employee or volunteer, a written report must be submitted within one (1) school day to school administration.

2.04(3) The school principal or designee shall verbally notify the parents as soon as possible but no later than the end of the school day that the restraint was used.

2.04(4) A written report based on the findings of the staff review referenced in Section 2.05(1)(a) of these Rules, must be emailed, faxed, or mailed to the parent within five (5) calendar days of the use of restraint. The written report of the use of restraint must include:

2.04(4)(a) The antecedent to the student's behavior if known;

2.04(4)(b) A description of the incident;

- 2.04(4)(c) Efforts made to deescalate the situation;
- 2.04(4)(d) Alternatives that were attempted;
- 2.04(4)(e) The type and duration of the restraint used;
- 2.04(4)(f) Injuries that occurred, if any; and
- 2.04(4)(g) The staff present and staff involved in administering the restraint.

2.04(5) A copy of the written report on the use of restraint shall be placed in the student's confidential file.

2620-R- 2.05 REVIEW OF THE USE OF RESTRAINT

2.05(1) Each public education agency shall ensure that a review process is established and conducted for each incident of restraint used. The purpose of this review shall be to ascertain that appropriate procedures were followed and to minimize future use of restraint. The review shall include, but is not limited to:

- 2.05(1)(a) Staff review of the incident;
- 2.05(1)(b) Follow up communication with the student and his/her family;
- 2.05(1)(c) Review of the documentation to ensure use of alternative strategies; and
- 2.05(1)(d) Recommendations for adjustment of procedures, if appropriate.

If requested by the public education agency or the parent(s) of the student, the public education agency shall convene a meeting to review the incident. For students with IEPs or Section 504 Plans, such a review may occur through the IEP or Section 504 process.

2.05(2) Each public education agency shall ensure that a general review process is established, conducted and documented in writing at least annually. The purpose of the general review is to ascertain that the public education agency is properly administering restraint, identifying additional training needs, minimizing and preventing the use of restraint by increasing the use of positive behavior interventions, and reducing the incidence of injury to students and staff. The review shall include but is not limited to:

- 2.05(2)(a) Analysis of incident reports, including all reports prepared pursuant to 2.04(2) and 2.04(4); including but not limited to procedures used during the restraint, preventative or alternative techniques tried, documentation, and follow up;
- 2.05(2)(b) Training needs of staff;
- 2.05(2)(c) Staff to student ratio; and
- 2.05(2)(d) Environmental considerations, including physical space, student seating arrangements, and noise levels.

2620-R- 2.06 EXCEPTIONS

2.06(1) The provisions in these Rules shall not apply to Peace Officers, as defined in Section 16-2.5-101, C.R.S. et seq. who are acting within the scope of their employment or in accordance with Section 16-3-109, C.R.S.

2.06(2) The provisions in these Rules shall not apply to any public education agency while engaged in transporting a student from one facility or location to another facility or location when it is within the scope of that agency's powers and authority to effect such transportation.

2620-R- 2.07 COMPLAINT PROCEDURES AND REGULATIONS

2.07(1) A student or a parent or legal guardian may file a complaint about the use of restraint or seclusion used by an employee or volunteer of a school or charter school of school district or Board of Cooperative Services or any institute charter school by using the procedures established under this section 2.07.

2.07(2) Required Content of the Complaint: The Complaint must contain the following information:

2.07(2)(a) A statement that the employee or volunteer has violated a requirement regarding the use of restraints and an identification of the portion of the statute, rule, or regulation alleged to have been violated, if known by the complainant;

2.07(2)(b) The background information and facts on which the Complaint is based that identify persons, actions and/or omissions;

2.07(2)(c) The name and the residential address of the child against whom the alleged violation occurred;

2.07(2)(d) The name of the school that the child was attending when the alleged violation occurred;

2.07(2)(e) A proposed resolution of the problem to the extent known and available to the complainant at the time the Complaint is filed;

2.07(2)(f) The Complaint must allege that the violation(s) set forth in the Complaint occurred not more than one (1) year prior to the date that the Complaint is filed with the CDE;

2.07(2)(g) The signature and contact information (minimally, address and telephone number) for the complainant; and

2.07(2)(h) Written verification in a cover letter accompanying the Complaint that a complete copy of the Complaint and any attachments have also been mailed, hand-delivered, or delivered by other secure method to the public education agency (i.e. a school district, BOCES, or the Charter School Institute) serving the child.

2.07(3) The Complaint, including any attachments, must be mailed, hand-delivered, or delivered by other secure method to the IDEA State Complaints:

IDEA Part B State Complaints Officer
Colorado Department of Education
Exceptional Student Leadership Unit, Dispute Resolution Office
1560 Broadway, Suite 1175
Denver, Colorado 80202

Additionally, as noted in paragraph 2.07(2)(h) above, a complete copy of the Complaint, including any attachments, must also be mailed, hand-delivered, or delivered by other secure method to the public education agency (i.e. a school district, BOCES or the Charter School Institute) serving the child.

2.07(4) Complaints involving children with disabilities

2.07(4)(a) If the State Complaints Officer determines that the Complaint alleges a violation of the IDEA or its implementing regulations in 34 CFR Part 300, then the Complaint shall be processed through CDE's IDEA dispute resolution process. In these cases, the State Complaints Officer shall also have the authority to investigate and process a Complaint alleging improper use of seclusion and restraints in accordance with the timelines and procedures outlined in these rules.

2.07(4)(b) If the State Complaints Officer determines that the Complaint does not meet the criteria under section 2.07(4)(a), he or she shall refer the Complaint to the Restraint Complaints Officer (RCO) within five (5) calendar days of receiving the Complaint and shall notify the complainant in writing of this referral.

2.07(4)(c) Nothing in this subsection shall require the complainant to submit an additional Complaint directly to the RCO.

2.07(5) The Complaint shall be considered properly filed with the Department when it is received in CDE's Dispute Resolution Office and satisfies paragraph 2.07(2) above. A Complaint, once filed, will not be accepted for investigation if the CDE does not have jurisdiction (i.e., authority) to investigate; or if the Complaint does not set forth sufficient grounds on which to grant relief.

2.07(6) Within ten calendar (10) days of receipt of the Complaint, the RCO shall decide to accept or reject the Complaint for investigation and notify the complainant in writing. If the Complaint was sent via mail, the RCO's decision shall be postmarked by the 10th day. If the Complaint is accepted, the RCO shall:

2.07(6)(a) Notify the complainant of receipt and acceptance of the Complaint;

2.07(6)(b) Notify, by certified or overnight mail, the public education agency of each and every allegation contained in the Complaint together with a complete copy of the Complaint; and

2.07(6)(c) Initiate an investigation concerning the allegations contained in the Complaint.

2.07(7) Complaint Timelines:

2.07(7)(a) Response: Within fifteen (15) calendar days of receiving the RCO's notification of the Complaint, the public education agency may file a Response to the Complaint allegations and provide information which it deems necessary or useful for the RCO to consider in conducting a thorough investigation. If the public education agency fails to timely respond to an allegation, the RCO may, in his/her sole discretion, deem the allegation admitted.

The Response is due by 5:00 p.m. on the date due. The public education agency shall provide any written Response to the RCO and also a complete copy of the Response, including any attachments, to the complainant unless doing so would violate relevant laws regarding confidentiality. The public education agency shall provide the RCO with a legible copy of the written tracking receipt which verifies that a complete copy of the Response, including any attachments, was sent by certified or overnight mail to the complainant.

2.07(7)(b) Reply: Within ten (10) calendar days of delivery of the response, the complainant may file a written Reply to the Response, including any attachments, in support of his/her position. The complainant shall provide any written Reply to the RCO at the address identified in paragraph 2.07(3), above, and also provide the RCO by 5:00 p.m. on the date due with written verification that a complete copy of the Reply, including any attachments, was also mailed or hand-delivered to the public education agency.

The Response and Reply must be delivered by 5:00 p.m. on the date due to the office of the RCO and not merely postmarked by the due date. If the Response or Reply is untimely, the RCO may, within his or her sole discretion, refuse to consider the late document.

2.07(7)(c) Timeline Extensions: If the RCO finds that exceptional circumstances exist with respect to a particular Complaint, the RCO may, in his or her sole discretion, extend for a reasonable period of time, any of the timelines set forth in these Complaint procedures. Any request and extension of a timeline must occur prior to expiration of the timeline and shall be documented in a written order issued by the RCO prior to the expiration of the timeline and mailed to the parties. The RCO does not have authority to extend the regulatory statute of limitations of one (1) year described in Section 2.07(2)(f) above.

2.07(7)(d) If one or more due dates in the process fall on a weekend or a state holiday, the due date shall be the next calendar day following a weekend or state holiday if the due date is on a weekend or state holiday.

2.07(8) Complaint Investigations:

2.07(8)(a) The Complaint investigation may include, but is not limited to: an onsite investigation; request(s) that the complainant or public education agency provide additional information; and request(s) to review records in the possession of either party.

2.07(8)(b) Any time after a Complaint is filed and before the Complaint is resolved, the RCO may recommend a public education agency to undertake immediate action in an extraordinary situation when it is imperative to do so in order to protect the rights, health or safety of any student.

2.07(8)(c) The CDE, through the RCO, shall have sixty (60) calendar days from the date of receipt of the properly filed Complaint, to resolve the Complaint. The parties may mutually agree to extend the sixty (60) calendar day time limit in order to engage in voluntary mediation. Any extension of the Decision due date will be set by the RCO to a date certain as per section 2.07(7)(c), above.

2.07(9) Complaint Resolution:

2.07(9)(a) The RCO shall issue a written decision which details the findings of fact and conclusions of law unless the issues have been previously resolved. Based upon a finding that a public education agency has failed substantially to comply with state laws and regulations for the use of restraint, the RCO will, as part of the resolution of the Complaint, make recommendations to the public education agency of remedial actions that may be taken in order to come into compliance with applicable law and regulations, (e.g., technical assistance and training activities).

2.07(9)(b) The RCO shall have no authority to require corrective action by the public education agency, including but not limited to compensatory education for the child who is the subject of the complaint, monetary reimbursement or attorney fees.

2.07(9)(c) The decision of the RCO shall be final.

Editor's Notes

History

Entire rule eff. 12/31/2009.

Entire rule eff. 11/30/2017.