

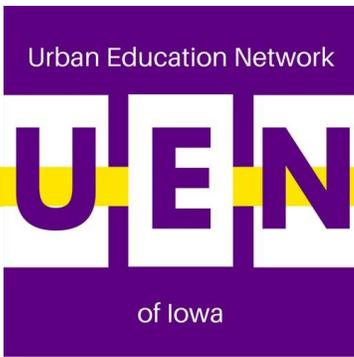
January 7, 2020

UEN Comments Regarding Proposed Rules Public Hearing Chapter 103 Seclusion and Restraint

Thank you for the opportunity to provide comment regarding proposed rules to Chapter 103 Corporal Punishment Ban; Restraint; Physical Confinement and Detention. We appreciate the inclusive process and hard work of the Department staff and involved and caring stakeholders that have been meeting, discussing, researching and reviewing these proposed rules. The very serious nature of these situations, both very individual and infrequent in occurrence, with student and staff safety at-risk, while protecting student's rights, are at the very intersection of difficult public policy-making. That task of striking balance between those individual rights, protecting staff and students, and practically administering training and procedures, is daunting.

Many comments made along the way have been seriously considered and incorporated into this latest draft and we are grateful for these many conversations and opportunity for additional revisions. While the use of seclusion and restraint is infrequent, there are situations where the practices are necessary. Our prior input and status of these concerns being incorporated into this latest draft follows:

1. 281-103.6(1) Reasonable Force – **strike (e) “regarding staff motivation”**. It is difficult to prove what motivated someone's action, the appropriate motivation to protect staff and students is clearly stated throughout the chapter, and other possible motivations, such as imposing discipline, retaliation, compliance or for convenience, are clearly prohibited. *With the clear list of 103.7(2)(h) on the bottom of page 5, there is no need to include (e) at the end of this list of considered factors. If there is another possible inappropriate motivation, it should be among those listed in (h), instead of being included in the consideration of reasonableness.*
2. 281-103.7(1) Reasonable Force –**definitions** amend subparagraph (a) and remove the term “serious.” Both in the definitions section 103.2 and here in 103.7(1), that term has been replaced, now referred to as “bodily” injury. We support this change.
3. 281-103.7(2) (b) regarding **notification of parents**: new language in this draft is a good compromise. This draft would require a school to notify the student's parent 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. This new language respects that the primary consideration during a seclusion or restraint event must be the safety of the student and staff. We support this change. We also are thankful for the change to the administrator approval process, 15 minutes of seclusion triggers initial administrator approval and then every 30 minutes thereafter. However, in 103.7(2)(c)(5), a new word appears, that schools and employees who initiate and then use “nonapproved restraints” must explain why they had no other option. The wording in the prior draft, “unable to obtain approval” we believe to be clearer. *A nonapproved restraint might inadvertently suggest use of a prohibited restraint (such as prone position) rather than focusing on the approval process by the administrator. We suggest the original wording requiring documenting of why approval was not obtained by the administrator be reinstated.*
4. 281-103.8 **Training, documentation, debriefing, and reporting requirements** – Subsection (1) Training requirements – although some of this might be imbedded in ACES and Mental Health training, we anticipate that additional training for all staff will be costly for schools. *We know training is important and would already be providing much more of it if schools had sufficient time and financial resources to do so. If possible, the AEAs and DE should work together to streamline the content applicable to all schools and provide (but not mandate) a virtual training option to comply. Likewise, it would be helpful to promote compliance if DE would create the documentation template listing those items required by rule to be included.*



5. UEN also had requested amending 103.9, **Seclusion Room requirements**, subparagraph 16 to grandfather into compliance those seclusion rooms that were built since the adoption of the current rules and met those rules, as well as meet all other provisions of the proposed rules, except subrule 103.9(2), concerning room dimension. We agree that rooms should be large enough for the student to move around and avoid the potential of scalability, but the immediate cost necessary to bring existing rooms into compliance will create an enormous financial burden to the school district and disrupt construction and renovation cycles that are many times planned out over ten or more years. *This draft now includes a grandfather period of 5 years or until the portion of the school containing the room is renovated, whichever is earlier, and that is definitely progress. Although this is improvement, we would also suggest that a room meeting current rules be allowed to continue indefinitely as seclusion and restraint space if the district determines that the size of the room is sufficient to prohibit a student from scaling the walls, which was the original intent of the requirement. For example, a current room so designated which meets the criteria of no less than seven feet between walls could be less than 54 square feet. We do not understand that research basis or rationale for requiring costly remodeling of any room between 49 and 54 square feet currently in use.*

Thanks again for the opportunity to provide additional feedback.

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