

**Date:** July 25, 2022

**To:** DESE approved private agency administrators

**From:** DESE Office of Special Education Compliance

**Subject:** Revisions to Section 160.263, RSMo

Revisions to [Section 160.263, RSMo](https://revisor.mo.gov/main/OneSection.aspx?section=160.263) went into effect August 28, 2021. Sections 1 – 3 went into effect immediately while sections 4 – 7 went into effect July 1, 2022. Administrators and educators at school districts, charter schools, and publicly contracted private providers should review sections one through three of the statute to ensure familiarity with the definitions, discipline policy requirements, and prohibitions.

 Section 3 prohibits the use of any mechanical, physical or prone restraint technique that:

  (1)  Obstructs views of the student's face;

  (2)  Obstructs the student's respiratory airway, impairs the student's breathing or respiratory capacity, or restricts the movement required for normal breathing to cause positional or postural asphyxia;

  (3)  Places pressure or weight on or causes the compression of the student's chest, lungs, sternum, diaphragm, back, abdomen, or genitals;

  (4)  Obstructs the student's circulation of blood;

  (5)  Involves pushing on or into the student's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything including, but not limited to, soft objects such as pillows, blankets, or washcloths;

  (6)  Endangers the student's life or significantly exacerbates the student's medical condition;

  (7)  Is purposely designed to inflict pain;

  (8)  Restricts the student from communicating.  If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods unless an employee determines that such freedom appears likely to result in harm to self or others.

Section 4. (1) describes the July 2011 requirement to adopt a written policy that comprehensively addresses the use of restrictive behavioral interventions as a form of discipline or behavior management technique. The policy shall be consistent with professionally accepted practices and standards of student discipline, behavior management, health and safety, including the safe schools act. The policy shall include but not be limited to:

  (a) Definitions of restraint, seclusion, and time-out and any other terminology necessary to describe the continuum of restrictive behavioral interventions available for use or prohibited in the district, consistent with the provisions of this section;

  (b) Description of circumstances under which a restrictive behavioral intervention is allowed and prohibited, consistent with the provisions of this section, and any unique application requirements for specific groups of students such as differences based on age, disability, or environment in which the educational services are provided;

  (c) Specific implementation requirements associated with a restrictive behavioral intervention such as time limits, facility specifications, training requirements or supervision requirements; and

  (d) Documentation, notice and permission requirements associated with use of a restrictive behavioral intervention.

  (2) Before July 1, 2022, each written policy adopted under this subsection shall be updated to prohibit the school district, charter school, or publicly contracted private provider from using any restraint that employs any technique listed in subsection 3 of this section.

  (3) Before July 1, 2022, each written policy adopted under this subsection shall be updated to state that the school district, charter school, or publicly contracted private provider will reserve restraint or seclusion for situations or conditions in which there is imminent danger of physical harm to self or others.

DESE has a [model policy on seclusion and restraint](https://dese.mo.gov/media/pdf/model-policy-seclusion-and-restraint-0) available for use by agencies, such as yours, required to adopt a policy on seclusion and restraint.

Section 5 requires a student be removed from seclusion or restraint as soon as it is determined the student is no longer a danger to self or others and requires an annual review of policies and procedures involving the use of seclusion and restraint. Section 5. (3)(a) introduces new requirements for documenting and reporting incidents resulting in the use of seclusion or restraint:

Each time seclusion or restraint is used for a student, the incident shall be monitored by a member of the school district, charter school, or publicly contracted private provider personnel, and a report shall be completed by the school district, charter school, or publicly contracted private provider that contains, at a minimum, the following:

  a. The date, time of day, location, duration, and description of the incident and interventions;

  b. Any event leading to the incident and the reason for using seclusion or restraint;

  c. A description of the methods of seclusion or restraint used;

  d. The nature and extent of any injury to the student;

  e. The names, roles, and certifications of each employee involved in the use of seclusion or restraint;

  f. The name, role, and signature of the person who prepared the report;

  g. The name of an employee whom the parent or guardian can contact regarding the incident and use of seclusion or restraint;

  h. The name of an employee to contact if the parent or guardian wishes to file a complaint; and

  i. A statement directing parents and legal guardians to a sociological, emotional, or behavioral support organization and a hotline number to report child abuse and neglect.

  (b) The school district, charter school, or publicly contracted private provider shall maintain the report as an education record of the student, provide a copy to the parent or legal guardian within five school days, and a copy of each incident report shall be given to the department of elementary and secondary education within thirty days of the incident;

  (4) The school district, charter school, or publicly contracted private provider shall attempt to notify the parents or legal guardians as soon as possible but no later than one hour after the end of the school day on which the use of seclusion or restraint occurred.  Notification shall be oral or electronic and shall include a statement indicating that the school district, charter school, or publicly contracted private provider will provide the parents or legal guardians a copy of the report described in subdivision (3) of this subsection within five school days;

Section 5. (5) prohibits retaliation:

An officer, administrator, or employee of a public school district or charter school shall not retaliate against any person for having:

  (a) Reported a violation of any policy established under this section or failure of a district or charter school to follow any provisions of this section in relation to incidents of seclusion and restraint; or

  (b) Provided information regarding a violation of this section by a public school district or charter school or a member of the staff of the public school district or charter school.

Section 6 describes how DESE is required to compile and maintain incident data. As with other student data collections, school district and charter school administrators will be responsible for reporting to DESE the incidents of seclusion and restraint of students they have placed in private agencies. It will be necessary for Missouri approved private agency personnel to collect, maintain, and provide all of the information described in 4. (3)(a) through 4. (5)(b) above to a representative of the school district or charter school that placed the student in the private agency.

Section 5, subsection 4 requires that the contracted private provider give timely notice to parents. Parents should receive notification as soon as possible but no later than one hour after the end of the school day on which the use of seclusion or restraint occurred. The notification must include a statement indicating that the publicly contracted provider will provide the parents or legal guardians a copy of the report described in subdivision (3) of subsection 5 within five school days. The school district or charter school shall also receive a copy of the report provided to the parent within five school days.

Timely provision of this information to school district or charter school representatives will ensure that those representatives will be able to meet the requirements for reporting the incident information to DESE in accordance with state law. Please place the highest priority on establishing contacts for this purpose at the public schools and charter schools whose children you serve so that you will keep them informed and all agencies will comply with the requirements of the state statute.

The Office of Special Education Compliance team developed a flow chart designed to assist approved private agency personnel and public and charter school personnel comply with state statutes regarding the use of seclusion and restraint. The flow chart includes fields for documenting information that demonstrates compliance. The flow chart can be used with or without the documentation fields. The flow chart is posted on the DESE Compliance Approved Private Agency resource web page.

Please contact DESE OSE compliance section if you have any questions about seclusion and restraint requirements 573-751-0699 or secompliance@dese.mo.gov.

Sincerely,

****Beverly Luetkemeyer, DirectorOffice of Special Education