

§ 410.1304 Behavior management and prohibition on seclusion and restraint.

(a) Care provider facilities shall develop behavior management strategies that include evidence-based, trauma-informed, and linguistically responsive program rules and behavior management policies that take into consideration the range of ages and maturity in the program and that are culturally sensitive to the needs of each unaccompanied child. Care provider facilities shall not use any practices that involve negative reinforcement or involve consequences or measures that are not constructive and are not logically related to the behavior being regulated. Care provider facilities shall not:

(1) Use or threaten use of corporal punishment, significant incident reports as punishment, unfavorable consequences related to sponsor unification or legal matters (e.g., immigration, asylum); use forced chores or work that serves no purpose except to demean or humiliate the child; forced physical movement, such as push-ups and running, or uncomfortable physical positions as a form of punishment or humiliation; search an unaccompanied child's personal belongings solely for the purpose of behavior management; apply medical interventions that are not prescribed by a medical provider acting within the usual course of professional practice for a medical diagnosis or that increase risk of harm to the unaccompanied child or others; and

(2) Use any sanctions employed in relation to an individual unaccompanied child that:

(i) Adversely affect an unaccompanied child's health, or physical, emotional, or psychological well-being; or

(ii) Deny unaccompanied children meals, hydration, sufficient sleep, routine personal grooming activities, exercise (including daily outdoor activity), medical care, correspondence or communication privileges, religious observation and services, or legal assistance.

(3) Use prone physical restraints, chemical restraints, or peer restraints for any reason in any care provider facility setting.

(b) Involving law enforcement should be a last resort. A call by a facility to law enforcement may trigger an evaluation of staff involved regarding their qualifications and training in trauma-informed, de-escalation techniques.

(c) Standard programs and residential treatment centers (RTCs) are prohibited from using seclusion. Standard programs and RTCs are also prohibited from using restraints, except as described at paragraphs (d) and (f) of this section.

(d) Standard programs and RTCs may use personal restraint only in emergency safety situations.

(e) Secure facilities (that are not RTCs):

(1) May use personal restraints, mechanical restraints and/or seclusion in emergency safety situations, and as consistent with State licensure requirements. All instances of seclusion must be supervised and for the short time-limited purpose of ameliorating the underlying emergency risk that poses a serious and immediate danger to the safety of others.

(2) May restrain an unaccompanied child for their own immediate safety or that of others during transport.

(3) May restrain an unaccompanied child while at an immigration court or asylum interview if the child exhibits imminent runaway behavior, makes violent threats, demonstrates violent behavior, or if the secure facility has made an individualized determination that the child poses a serious risk of violence or running away if the child is unrestrained in court or the interview.

(4) Must provide all mandated services under this subpart to the unaccompanied child to the greatest extent practicable under the circumstances while ensuring the safety of the unaccompanied child, other unaccompanied children at the secure facility, and others.

(f) Care provider facilities may only use soft restraints (e.g., zip ties and leg or ankle weights) during transport to and from secure facilities, and only when the care provider believes a child poses a serious risk of physical harm to self or others or a serious risk of running away from ORR custody.