

Substitute for HOUSE BILL No. 2170

By Committee on Children and Seniors

2-19

1 AN ACT concerning schools and school districts; relating to seclusion and
2 restraint of pupils.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 5, and amendments thereto, shall be
6 known and may be cited as the freedom from unsafe restraint and
7 seclusion act.

8 Sec. 2. As used in this statute, the following terms shall have the
9 meanings specified herein:

10 (a) "Altercation" means a fight involving a student. Any student
11 possessing a weapon in such a manner as to pose an immediate danger also
12 qualifies as an altercation.

13 (b) "Chemical restraint" means the use of medication to control a
14 student's violent physical behavior or restrict a student's freedom of
15 movement.

16 (c) "District" means a school district organized under the laws of this
17 state that is maintaining a public school for a school term pursuant to
18 K.S.A. 72-1106, and amendments thereto. This term shall include the
19 governing body of any accredited nonpublic school.

20 (d) "Department" means the state department of education.

21 (e) "Emergency safety intervention" means the use of seclusion or
22 physical restraint when a student presents an immediate danger to himself
23 or others. Violent action that is destructive of property may necessitate the
24 use of an emergency safety intervention if the property destruction poses
25 an immediate danger. Use of an emergency safety intervention for
26 purposes of discipline, punishment or for the convenience of a school
27 employee shall not meet the standard of immediate danger.

28 (f) "Immediate danger" means an immediate and impending threat of
29 a student causing serious physical harm to himself or others.

30 (g) "Mechanical restraint" means any device or object used to limit a
31 student's movement.

32 (h) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a
33 person acting as a parent as defined in K.S.A. 72-1046(d)(2); (4) a legal
34 guardian; (5) an education advocate for a student with an exceptionality;
35 (6) a foster parent, unless the student is a child with an exceptionality; or
36 (7) a student who has reached the age of majority or is an emancipated

1 minor.

2 (i) "Physical escort" means the temporary touching or holding of the
3 hand, wrist, arm, shoulder, or back of a student who is acting out for the
4 purpose of inducing the student to walk to a safe location.

5 (j) "Physical restraint" means bodily force used to substantially limit
6 a student's movement, except that consensual, solicited or unintentional
7 contact and contact to provide comfort, assistance or instruction shall not
8 be deemed to be physical restraint.

9 (k) "School" means any learning environment, including any
10 nonprofit institutional day or residential school and any accredited
11 nonpublic school, that receives public funding or over which the Kansas
12 state department of education has regulatory authority.

13 (l) "Seclusion," when used with a student, means that all the
14 following conditions are met:

15 (1) The student is placed in an enclosed area by school personnel;

16 (2) the student is purposefully isolated from adults and peers; and

17 (3) the student is prevented from leaving, or reasonably believes that
18 such student will be prevented from leaving, the enclosed area.

19 (m) "Time-out" means a behavioral intervention in which a student is
20 temporarily removed from a learning activity without being confined.

21 Sec. 3. (a) The use of prone, or face down, physical restraint on a
22 student, supine, or face up, physical restraint on a student; physical
23 restraint that obstructs the airway of a student; or any physical restraint
24 that impacts a student's primary mode of communication is prohibited.

25 (b) The use of chemical restraint on a student is prohibited, except as
26 prescribed treatments for a student's medical or psychiatric condition by a
27 person appropriately licensed to issue such treatments.

28 (c) The use of mechanical restraints on a student is prohibited, except
29 those protective or stabilizing devices either ordered by a person
30 appropriately licensed to issue the order for the device or required by law,
31 any device used by a law enforcement officer in carrying out law
32 enforcement duties, and seatbelts and any other safety equipment when
33 used to secure the student during transportation.

34 (d) Emergency safety intervention shall be used only if a student's
35 behavior creates an immediate and impending threat of causing serious
36 physical harm to himself or others. Violent action that is destructive of
37 property may necessitate the use of an emergency safety intervention if the
38 property destruction poses an immediate danger. Use of an emergency
39 safety intervention for purposes of discipline, punishment or for the
40 convenience of a school employee shall not meet the standard of
41 immediate danger. However, if the student is involved in an altercation,
42 then physical restraint may still be used even if the immediate danger
43 standard is not met.

1 (e) A student shall not be subjected to an emergency safety
2 intervention except by a school employee who has been trained in the
3 appropriate use of emergency safety interventions, consistent with
4 nationally recognized training programs. This training requirement shall
5 not apply if the student is involved in an altercation.

6 (f) A student shall not be subjected to seclusion if the student is
7 known to have a medical condition that could put the student in mental or
8 physical danger as a result of seclusion. The existence of such
9 medical condition must be indicated in a written statement from the
10 student's licensed health care provider, a copy of which has been provided
11 to the school and placed in the student's file.

12 ~~(g) A student shall not be subjected to seclusion if the student is
13 known to have a medical condition that a licensed health care provider has
14 indicated, in a written statement that is provided to the school and that is
15 on file with the school, which precludes this action.~~

16 ~~(h) {(g)}~~ While in a seclusion, school personnel must be able to see
17 and hear the student at all times.

18 ~~(i) {(h)}~~ All seclusion rooms equipped with a locking door shall
19 ensure that the lock automatically disengages when the teacher or
20 attendant viewing the student walks away from the seclusion room, or in
21 cases of emergency, such as fire or severe weather.

22 ~~(j) {(i)}~~ If a school uses a seclusion room, such room will be a safe
23 place with proportional and similar characteristics as other rooms where
24 students frequent. It shall be free of any condition that could be a danger to
25 the student, be well-ventilated and sufficiently lighted.

26 Sec. 4. (a) When any student is subjected to an emergency safety
27 intervention, the school employee who conducted the emergency safety
28 intervention, or an employee who witnessed its use, shall document the use
29 of the seclusion or the physical restraint. The school shall attempt to notify
30 the parent the same day the emergency safety intervention was used. This
31 documentation shall be completed and provided to the parent no later than
32 the school day following the day on which the seclusion or physical
33 restraint is used. The parent shall be given a copy of the standards of when
34 restraint and seclusion can be used, a flyer on their rights, including
35 complaint rights through the local dispute resolution process and the
36 complaint process of the state board of education, and information that
37 will help them navigate the complaint process, including contact
38 information for the parent training and information center and protection
39 and advocacy system. Parents will also have 30 days from being informed
40 of the use of emergency safety intervention to file a complaint through the
41 local dispute resolution process. Parents will have at least 30 days from the
42 final decision from the local dispute resolution process to file a complaint
43 under the state board of education complaint process pursuant to section 5,

1 and amendments thereto.

2 (b) Each public school district shall submit information and data on
3 the use of seclusion and restraint as required by the department. At a
4 minimum, the department shall collect sufficient information and data to
5 ensure the patrons, policymakers and the public can gain a clear picture of
6 the depth and breadth of the use of seclusion and restraint in Kansas
7 schools. The purpose of the information and data collected is to provide
8 detailed information so that policymakers can identify trends and
9 opportunities in order to help reduce the use of seclusion and restraint in
10 public schools.

11 (c) The department shall compile the reports from the schools and
12 provide the results to the public, the governor and the committees on
13 education in the senate and the house of representatives by January 20,
14 2016, and annually thereafter, and publish any school policy adopted by
15 the state board of education pursuant to section 5, and amendments
16 thereto, to ensure uniformity and compliance with this act. In issuing these
17 reports, the department will ensure that as much information and data as
18 possible are provided on the use of seclusion and restraint in order to allow
19 patrons, policymakers and the public to be able to compare the data
20 regarding the use and incidences between school districts and individual
21 schools. In compiling the aggregate data, individual student confidentiality
22 shall be protected in accordance with the family educational rights and
23 privacy act (FERPA) to ensure that personally identifiable information is
24 not included.

25 (d) A copy of this policy shall be distributed to each public school
26 employee at the start of the school year or upon employment.

27 Sec. 5. The state board of education shall adopt rules and regulations
28 as necessary to implement ~~the provisions of this act including {sections 1~~
29 **through 4, and amendments thereto. The state board shall also adopt}**
30 ~~rules and regulations—regarding: {creating an independent complaint~~
31 **process as set out in subsections (a) through (e) which shall be in effect**
32 **no later than January 1, 2016.}**(a) A process for a parent to submit a
33 complaint to the Kansas state department of education alleging that a
34 public school is violating or has violated a provision of sections 1 through
35 5, and amendments thereto, or K.A.R. 91-42-1 through 91-42-2, and any
36 other rules and regulations promulgated regarding emergency safety
37 interventions. This complaint process to the Kansas state department of
38 education shall be an option for parents after they have completed the local
39 dispute resolution process.

40 (b) A process for investigating a complaint submitted under
41 subsection (a).

42 (c) A process for ensuring that parents and schools are treated equally
43 in the complaint process.

1 (d) A process for completion of a written report of findings of facts
2 and conclusions.

3 (e) A process for determining sanctions if a district fails to comply
4 with identified corrective actions.

5 Sec. 6. This act shall take effect and be in force from and after its
6 publication in the statute book.