

The Freedom from Unsafe Restraint and Seclusion Act; Senate Sub. for Sub. for HB 2170

Senate Sub. for Sub. for HB 2170 creates the Freedom from Unsafe Restraint and Seclusion Act (Act), regarding the use of seclusion and restraint of students in the school setting. The bill defines key terms; addresses the use of emergency safety intervention (ESI); requires notification and documentation of the use of ESI; provides a process for a parent to file complaints through the local dispute resolution process and the State Board of Education (Board) complaint process; requires the Kansas Department of Education (Department) to collect data on the use of ESI; requires the Board to adopt rules and regulations necessary to implement the Act; and establishes the ESI Task Force.

Definitions

The bill defines key terms, including:

- “Emergency safety intervention” means the use of seclusion or physical restraint;
- “Physical restraint” means bodily force used to substantially limit a student’s movement, but does not include consensual, solicited, or unintentional contact or contact to provide comfort, assistance, or instruction;
- “School” means any learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school that receives public funding or is under the regulatory authority of the Department; and
- “Seclusion” means the student was:
 - Placed in an enclosed area by school personnel;
 - Purposefully isolated from adults and peers; and
 - Prevented from leaving, or the student reasonably believes he or she will be prevented from leaving, the enclosed area.

Use of ESI

The bill allows for the use of ESI only if a student presents a reasonable and immediate danger of physical harm to self or others with the present ability to effect such physical harm. ESI used for discipline, punishment, or the convenience of a school employee does not meet the standard of immediate danger of physical harm, however. Further, the bill specifies the school employee witnessing the student’s behavior must determine whether less restrictive alternatives to ESI, such as positive behavior interventions support, are inappropriate or ineffective prior to the use of ESI. The use of ESI must cease as soon as the immediate danger of physical harm ceases to exist. Violent action that is destructive of property may necessitate the use of ESI.

Use of Seclusion

The bill prohibits the use of seclusion if the student is known to have a medical condition that may put the student in mental or physical danger as a result of seclusion. Such medical condition must be indicated by the student's licensed health care provider in a written statement, with a copy provided to the school and placed in the student's file.

The bill requires school personnel be able to see and hear the student in seclusion at all times. Seclusion rooms equipped with a locking door must have a lock that automatically disengages when the school employee viewing the student walks away from the seclusion room, or in cases of emergency, such as fire or severe weather. A seclusion room must be a safe place with proportional and similar characteristics as other rooms frequented by students, free of any condition that may endanger the student, and well-ventilated and sufficiently lit.

Documented Use of ESI

When a student is subjected to ESI, the bill requires the school to notify the parent or, if a parent cannot be notified, an emergency contact person for such student the same day ESI is used. Further, the bill requires documentation of ESI used be completed and provided to the parent no later than the school day following the day on which ESI is used. After the first incident in which ESI is used during the school year, the parent also is to be given:

- A copy of the standards for the use of restraint and seclusion;
- A flier regarding parent's rights;
- Information on the parent's right to file a complaint through the local dispute resolution process and the complaint process of the Board; and
- Information to help navigate the complaint process, including contact information for the parent training and information center and protection and advocacy system.

On the first occurrence of an incident involving the use of ESI, the bill requires the information be provided in printed form. After each subsequent incident that occurs during the school year, the full website address containing the information is to be provided.

Parental Appeal Rights

If a parent believes ESI was used in violation of the Act, rules and regulations adopted pursuant to the Act, or policies of the school district, a parent may file a complaint through the local dispute resolution process within 30 days of being informed of the use of ESI. Within 30 days of the final decision from the local dispute resolution process, parents may file a complaint under the Board complaint process.

Data Reporting on Use of ESI

The bill requires the Department to compile reports from schools on the use of ESI and provide the results based on aggregate data on the Department website and to the Governor and the Committees on Education in each chamber by January 20, 2016, and annually thereafter. The reported results must include, at a minimum:

- The number of incidents in which ESI was used on students who have individual education plans (IEPs);
- The number of incidents in which ESI was used on students who have section 504 plans;
- The number of incidents in which ESI was used on students who do not have IEPs or section 504 plans;
- The total number of incidents in which ESI was used on students;
- The total number of students with behavior intervention plans subjected to ESI;
- The number of students physically restrained;
- The number of students placed in seclusion;
- The maximum and median number of minutes a student was placed in seclusion;
- The maximum number of incidents in which ESI was used on a student;
- All of the information reported above aggregated by age and ethnicity of the students on a statewide basis;
- To the extent possible, the information reported by the school on the number of incidents in which ESI was used on students with IEPs, section 504 plans, or neither; and
- Such other information as the Department deems necessary to report.

Third Use of ESI

If there is a third incident involving the use of ESI within a school year on a student who has an IEP or a section 504 plan, the bill requires such student's IEP team or section 504 plan team to meet within ten days of the incident to discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan, or amend either if already in existence, unless the team has agreed on a different process.

If there is a third incident using ESI on a student without an IEP or section 504 plan, the bill requires a meeting to be conducted within ten days of the incident to discuss the incident and consider the appropriateness of a referral for an evaluation under the Special Education for Exceptional Children Act; the need for a functional behavioral analysis; or the need for a behavior intervention plan. The meeting is to involve the parent, an administrator for the school the student attends, one of the student's teachers, a school employee involved in the incident, and such other employees designated by the administrator as appropriate for the meeting. The student also is to be invited to the meeting. If the parent of the student is unable to attend within the ten-day limit, the time for calling the meeting is to be extended.

The bill specifies this section is not to be construed to limit similar actions prior to the occurrence of a third incident.

Rules and Regulations Authority

The bill requires the Board to adopt rules and regulations necessary to implement the provisions of the Act on or before March 1, 2016. The rules and regulations must include, but not be limited to, the standards for the use and reporting of ESI.

Creation of the ESI Task Force

The bill establishes the ESI Task Force (Task Force), which is charged with studying and reviewing the use of ESI and preparing a report on its findings and recommendations concerning the use of ESI. The report is to be submitted to the Governor and the Legislature on or before January 20, 2016. The 17-member task force is to be appointed as follows:

- Two members appointed by the Board, one of which must be a Board member and the other a Department attorney;
- Two members appointed by the Disability Rights Center of Kansas;
- Two members appointed by Families Together, Inc., one of which must be a parent of a child with a disability;
- Two members appointed by Keys for Networking, Inc., one of which must be a parent of a child with a disability;
- Two members appointed by the Special Education Advisory Council;
- Two members appointed by the Kansas Association of Special Education Administrators;
- Two members appointed by the executive director of the Kansas Council on Developmental Disabilities, one of which must be a parent of a child with a disability;

- Two members appointed by the Kansas Association of School Boards (KASB), one of which must be a KASB attorney; and
- One member appointed by the Center for Child Health and Development of the University of Kansas Medical Center, who must be a person licensed to practice medicine and surgery in Kansas and is a practicing physician with experience treating children with disabilities, but who is not a staff member of the Center for Child Health and Development of the University of Kansas Medical Center.

The appointed Board member is to call an organizational meeting on or before August 1, 2015. At such meeting, the members are to elect a chairperson and vice-chairperson from the membership of the Task Force and consider dates for future meetings, the agenda for such meetings, and the need for electing a facilitator to assist in discussions among the members of the Task Force. The Task Force may meet at any time and place within Kansas on the call of the Chairperson. All Task Force action is to be by motion adopted by a majority of those members present when there is a quorum, which is eight members. If approved by the Legislative Coordinating Council, members are to be paid for expenses, mileage, and subsistence.

Sunset

The provisions of the bill expire on June 30, 2018.