

Freedom from Unsafe Restraint and Seclusion Act; House Sub. for SB 193

House Sub. for SB 193 amends the Freedom from Unsafe Restraint and Seclusion Act (Act) to add and clarify definitions; revises the standards for the use of emergency safety intervention (ESI); requires each local board to develop and implement policies governing the use of ESI; clarifies parent notification requirements after the use of ESI; expands the data to be compiled by the Kansas Department of Education (KSDE); clarifies the process for a parent to request a meeting with the school to discuss each incident involving the use of ESI; and changes the sunset for provisions of the Act from June 30, 2018, to June 30, 2020.

Definitions

The bill adds and revises definitions of key terms. The amended definition of ESI, formerly “the use of seclusion or physical restraint,” clarifies it would not include the use of time-out. Further, the bill, by definition, distinguishes among the following types of officers: campus police officer, law enforcement officer and police officer, school resource officer, and school security officer.

Restrictions on the Use of ESI

The bill prohibits use of an ESI on a student when he or she is known to have a medical condition that could place the student in mental or physical danger if used. Prior law prohibited seclusion where a student was known to have such a medical condition, so the change from “seclusion” to “ESIs” further prohibits the use of physical restraint under these circumstances. The bill adds an exception to the use of seclusion and physical restraint if not subjecting the student to an ESI would result in significant physical harm to the student or others. The bill requires the written statement from the student’s licensed health care provider to include an explanation of the student’s diagnosis, a list of any reasons why an ESI would put the student in mental or physical danger, and any suggested alternatives to the use of ESIs.

The bill also prohibits the following types of restraints:

- Physical restraints that are prone (face-down), are supine (face-up), obstruct the student’s airway, or impact a student’s primary mode of communication;
- Chemical restraints, except as prescribed treatments for a student’s medical or psychiatric condition by a person appropriately licensed to issue such treatments; and
- Mechanical restraints, except:
 - Protective or stabilizing devices ordered by a person appropriately licensed to issue an order for the device or required by law;
 - Any device used by a certified law enforcement officer in carrying out law enforcement duties; and

- Seat belts or any other safety equipment used to secure students during transportation.

Campus police officers and school resource officers are exempt from the requirements of the Act when engaged in an activity with a legitimate law enforcement purpose. However, school security officers are not exempt.

Local Board Written Policies on Use of ESI

The bill requires each local board to develop and implement written policies to govern the use of ESI in schools. At a minimum, the written policies must conform to the standards, definitions, and requirements of the Act. Written policies are required for:

- School personnel training;
- A local dispute resolution process;
- A system for the collection and maintenance of documentation for each use of ESI;
- A procedure for the periodic review of the use of ESI at each school, to be compiled and submitted at least biannually to the superintendent or the superintendent's designee; and
- A schedule for when and how parents are provided notice of the local board's policies on the use of ESI.

Written policies developed pursuant to the Act must be accessible on each school's website and included in each school's code of conduct, safety plan, or student handbook.

Parent Notification of Use of ESI

The bill amends requirements regarding the school's notification of a parent when ESI is used. If the school is unable to contact the parent, the school must attempt to contact the parent using at least two methods of contact. If the school attempts at least two methods of contact, the same-day notification requirement will be satisfied. A parent can designate a preferred method of contact to receive the required same-day notification and can agree, in writing, to receive only one same-day notification from the school for multiple incidents occurring on the same day.

The bill amends the required documentation of the use of an ESI to require the documentation be in writing and include the following:

- Events leading up to the incident;
- Student behaviors necessitating the ESI;

- Steps taken to transition the student back into the educational setting;
- The date and time the incident occurred, the type of ESI used, the duration of the ESI, and the school personnel who used or supervised the ESI;
- Space or an additional form for parents to provide feedback or comments to the school regarding the incident;
- A statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of ESIs; and
- Email and phone information for the parent to contact the school to schedule the ESI meeting.

If the triggering issue necessitating the ESIs is the same, the school can group incidents together when documenting the events leading up to the incident, student behaviors that necessitated the ESI, and steps taken to transition the student back into the educational setting.

A parent can request the information required to be provided after the first incident of use of ESI during the school year be provided to the parent by e-mail, instead of in printed form. The bill requires the full and direct website address containing such information be provided to a parent on the occurrence of a second or subsequent incident.

If a school is aware a law enforcement officer or school resource officer has used seclusion, physical restraint, or mechanical restraint on a student, the school must notify the parent the same day using the parent's preferred method of contact. However, the school need not complete and provide written documentation of ESI use by law enforcement to a parent or to report the same to the KSDE. As it pertains to use by a law enforcement officer, mechanical restraint includes, but is not limited to, the use of handcuffs.

KSDE Aggregate Data Reports on Use of ESI

All statewide aggregate data required to be included in the KSDE's annual report to the Governor and House and Senate Education Committees on the use of ESI must be aggregated by gender and eligibility for free and reduced-price lunch. The law already requires statewide aggregate data to be reported by age and ethnicity. Further, the bill requires the KSDE Data Governance Board to use the actual data value when providing statewide aggregate data.

Meetings After Use of ESI

The bill amends when and how a parent can request a meeting following the use of ESI to allow for a discussion and debriefing after each incident, instead of after the third incident within a school year, as the law had provided. The parent can request such a meeting verbally, in writing, or by electronic means. The school must hold such a meeting within ten school days of the parent's request, and the focus of the meeting is to discuss proactive ways to prevent the need for ESI and to reduce future incidents. The parent determines whether the student will be

invited to the meeting. If a parent is unable to attend the meeting within the ten-school-day limit, the time for calling the meeting can be extended.

For any student with a Section 504 Plan, the bill requires the student's Section 504 team to discuss and consider the need for an evaluation under the Special Education for Exceptional Children Act at the meeting following the use of ESI.

For any student with an individual education plan (IEP) placed in a private school by a parent, the bill requires a meeting after the use of ESI to include the parent and the private school, who would consider whether the parent should request an IEP team meeting. If a parent requests an IEP team meeting, the bill requires the private school to help facilitate the meeting.

For a student who does not have an IEP or a Section 504 Plan, the bill requires the parent and school 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 behavior analysis, or the need for a behavior intervention plan.

Such meetings must include the student's parent, a school administrator for the school where the student attends, one of the student's teachers, a school employee involved in the incident, and other school employees designated by the school administrator as appropriate for such meeting.