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SECRETARY OF STATE

KANSAS STATE BOARD OF EDUCATION

Notice of Public Hearing on Proposed Administrative Regulations

January 10, 2023

The Kansas State Board of Education will conduct a public hearing at 1:30 p.m., or as soon thereafter as possible, on Tuesday, May 9, 2023, in the Board Room of the Landon State Office Building, 900 SW Jackson Ave., Suite 102, Topeka, Kansas, to consider the adoption of proposed rules and regulations of the Kansas State Board of Education on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of the Kansas State Board of Education at the below address or by email to bhughes@ksde.org. The address for the Kansas State Board of Education is Landon State Office Building, 900 SW Jackson Ave., Suite 102, Topeka, Kansas 66612. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. The hearing shall be conducted in compliance with the public hearing procedures of the Kansas State Board of Education.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Wendy Fritz at (785) 296-5363 (or TDD 785-296-8172) or by e-mail to wfritz@ksde.org. The north entrance to the Landon State Office Building is accessible. Handicapped parking is located at the south end of the Landon State Office Building, across the street from the north entrance to the building, and on Ninth Street, just around the corner from the north entrance to the building.

A copy of the proposed regulations and economic impact statement may be obtained by contacting the Office of General Counsel at the address above prior to the date of the hearing or by email to ogc@ksde.org.

A summary of the proposed regulations and economic impact follows:

K.A.R. 91-42-1

K.A.R. 91-42-1 provides the meanings of terms specified in the Kansas State Board of Education regulations related to emergency safety interventions.

K.A.R. 91-42-2

K.A.R. 91-42-2 provides clarity of the standards for the use of emergency safety intervention.

The Kansas State Board of Education does not anticipate any significant financial or economic impact to this agency, other state agencies, or to the public as a result of these regulations.

91-42-1. Definitions. As used in this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Administrative review" means review by the state board upon request of a parent.

(b) "Area of purposeful isolation" means any separate space, regardless of any other use of that space, other than an open hallway or similarly open environment.

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

~~(e)~~ (d) "Commissioner" means commissioner of education.

~~(d)~~ (e) "Complaint" means a written document that a parent files with a local board as provided for in this article of the department's regulations.

~~(e)~~ (f) "Department" means the state department of education.

~~(f)~~ (g) "District" means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106 72-3115, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

~~(g)~~ (h) "Emergency safety intervention" means the use of seclusion or physical restraint.

~~(h)~~ (i) "Hearing officer" means the state board's designee to conduct an administrative review as specified in K.A.R. 91-42-5. The hearing officer shall be an officer or employee of the department.

~~(i)~~ (j) "Incident" means each occurrence of the use of an emergency safety intervention.

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~~(j)~~ (k) "Local board" means the board of education of a district or the governing body of any accredited nonpublic school.

~~(k)~~ (l) "Mechanical restraint" means any device or object used to limit a student's movement.

~~(l)~~ (m) "Parent" means any of the following:

(1) A natural parent;

(2) an adoptive parent;

(3) a person acting as a parent, as defined in K.S.A. ~~72-1046~~ 72-3122 and amendments thereto;

(4) a legal guardian;

(5) an education advocate for a student with an exceptionality;

(6) a foster parent, unless the foster parent's child is a student with an exceptionality; or

(7) a student who has reached the age of majority or is an emancipated minor.

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

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

(p) "Purposefully isolate," when used regarding a student, means that school personnel are not meaningfully engaging with the student to provide instruction and any one of the following occurs:

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(1) Removal of the student from the learning environment by school personnel;

(2) separation of the student from all or most peers and adults in the learning environment by school personnel; or

(3) placement of the student within an area of purposeful isolation by school personnel.

~~(e)~~ (q) "School" means any learning environment, including any nonprofit institutional day or residential school or accredited nonpublic school, that receives public funding or ~~which~~ is subject to the regulatory authority of the state board.

~~(p)~~ (r) "Seclusion" means placement of a student for any reason other than for in-school suspension or detention or any other appropriate disciplinary measure in a location where ~~all~~ both of the following conditions are met:

~~(1) The student is placed in an enclosed area by school personnel.~~

~~(2) The student is purposefully isolated from adults and peers. School personnel purposefully isolate the student.~~

~~(3)~~ (2) The student is prevented from leaving, or the student has reason to believe, ~~reasonably believes~~ that the student will be prevented from leaving, the ~~enclosed area of~~ purposeful isolation.

~~(q)~~ (s) "State board" means Kansas state board of education.

~~(r)~~ (t) "Time-out" means a behavioral intervention in which a student is temporarily removed from a learning activity without being secluded. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017; amended P-
_____.)

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91-42-2. Standards for the use of emergency safety interventions. (a) An emergency safety intervention shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student's behavior before the use of any emergency safety interventions. The use of an emergency safety intervention shall 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 an emergency safety intervention.

(b) Use of an emergency safety intervention for purposes of discipline or punishment or for the convenience of a school employee shall not meet the standard of immediate danger of physical harm.

(c) (1) A student shall not be subjected to an emergency safety intervention if the student is known to have a medical condition that could put the student in mental or physical danger as a result of the emergency safety intervention.

(2) The existence of the medical condition ~~must~~ shall be indicated in a written statement from the student's licensed health care provider, a copy of which shall be provided to the school and placed in the student's file. The written statement shall include an explanation of the student's diagnosis, a list of any reasons why an emergency safety intervention would put the student in mental or physical danger, and any suggested alternatives to the use of emergency safety interventions.

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(3) ~~Notwithstanding~~ In spite of the provisions of this subsection, a student may be subjected to an emergency safety intervention; if not subjecting the student to an emergency safety intervention would result in significant physical harm to the student or others.

(d) (1) When a student is placed in seclusion, a school employee shall ~~be able to~~ see and hear the student at all times.

(2) The presence of another person in the area of purposeful isolation or observing the student from outside the area of purposeful isolation shall not create an exemption from otherwise reporting the incident as seclusion.

(3) When a student is placed in or otherwise directed to an area of purposeful isolation, the student shall have reason to believe that the student is prevented from leaving.

(~~e~~) (4) ~~Each seclusion room~~ If the area of purposeful isolation is equipped with a locking door designed to prevent a student from leaving the area of purposeful isolation, the door shall be designed to ensure that the lock automatically disengages when the school employee viewing the student walks away from the seclusion room area of purposeful isolation, or in cases of emergency, including fire or severe weather.

(~~f~~) (5) ~~Each seclusion room~~ area of purposeful isolation shall be a safe place with proportional and similar characteristics as ~~other~~ those of rooms where students frequent. Each ~~room~~ area of purposeful isolation shall be free of any condition that could be a danger to the student and shall be well-ventilated and sufficiently lighted.

(~~g~~) (e) The following types of restraint shall be prohibited:

- (1) Prone, or face-down, physical restraint;
- (2) supine, or face-up, physical restraint;

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- (3) any restraint that obstructs the airway of a student;
- (4) any restraint that impacts a student's primary mode of communication;
- (5) chemical restraint, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments; and
- (6) the use of mechanical restraint, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure students during transportation.

~~(h)~~ (f) The following shall not be deemed an emergency safety intervention, if its use does not otherwise meet the definition of an emergency safety intervention:

- (1) Physical escort; and
- (2) time-out. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

The Kansas State Department of Education
Agency

R. Scott Gordon
Agency Contact

785-296-3204
Contact Phone Number

91-42-1; 91-42-2
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 91-42-1 and 91-42-2 are amended rules and regulations that govern the use of emergency safety interventions (seclusion and restraint) with all students in all Kansas schools. The purpose of the amended rules and regulations is to define regulatory terms that were previously undefined and clarify standards for the use of emergency safety intervention.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The amended rules and regulations are not mandated by the federal government. The Kansas State Board of Education has chosen to address this policy issue, as identified in the amended rules and regulations, in the way it deems most appropriate to meet the needs of Kansas students, school staff, and families.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The Kansas State Board of Education does not anticipate economic impact on business activity and growth.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The Kansas State Board of Education does not anticipate economic impact on compliance costs for any specific businesses, sectors, public utility ratepayers, individuals, local governments, or on the state economy as a whole.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Only public-school districts within the state of Kansas will be affected by the proposed regulatory amendments.

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D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There are no costs unique to the amended versions of K.A.R. 91-42-1 and 91-42-2 that do not also apply to the current version of K.A.R. 91-42-1 and 91-42-2. The benefit of the proposed change is the provision of clarity to Kansas families and school staff whose actions fall under these rules and regulations.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

There are no alternative measures available, and there are no costs or impacts of the proposed amended rules and regulations on business and economic development within the State of Kansas or on local government or individuals.

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The Kansas State Department of Education compared the cost of implementing the changes to K.A.R. 91-42-1 and 91-42-2 with the cost of implementing the current version of K.A.R. 91-42-1 and 91-42-2 and found no changes in cost to the Kansas State Board of Education, Kansas State Department of Education, or any other state agency.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

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Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There will be no changes in state revenues or expenditures for any fiscal year.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There will be no economic impact to any individual, small employers, or to the general public.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The Kansas Association of School Boards was represented in the group of stakeholders that the Kansas State Board of Education convened to discuss the amended rules and regulations. No indication of an increase or decrease in revenues or increases in expenditures or fiscal liability was indicated.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The Kansas State Board of Education convened a group of stakeholders to discuss the amended rules and regulations. This group of stakeholders included representation from the Kansas Association of School Boards, Kansas National Education Association, Kansas Association of Special Education Administrators, United School Administrators, Kansas State Department of Education's Technical Assistance System Network, Disability Rights Center of Kansas, and Kansas Special Education Advisory Council. The stakeholder group came to consensus on the language used as the basis for the amended rules and regulations.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

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- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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