

Proposed

## KANSAS STATE BOARD OF EDUCATION

### Notice of Public Hearing on Proposed Administrative Regulations

February 21, 2017

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, 2017 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 addresses or by email to [plhill@ksde.org](mailto:plhill@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 statements 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](mailto: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 summary of the proposed regulations and economic impact follows.

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](mailto:ogc@ksde.org).

#### **K.A.R. 91-42-1**

Article 42 of this chapter addresses the use of seclusion and restraint of students in the school setting. This regulation defines key terms, many of which were amended by the Freedom from Unsafe Seclusion and Restraint Act.

#### **K.A.R. 91-42-2**

This regulation has been amended to more clearly define the standards for the use

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of emergency safety interventions (ESI). Those standards include:

1. ESI shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others.
2. ESI shall cease to exist as soon as the immediate danger of physical harm ceases to exist.
3. The use of ESI is prohibited for purposes of discipline, punishment, or convenience.
4. Several types of restraint are prohibited, such as face-down restraint, face-up restraint, any restraint that obstructs the airway of a student or impacts a student's primary mode of communication, chemical restraint, and mechanical restraint except in certain circumstances.

This regulation also prohibits the use of seclusion if the student is known to have a medical condition that could put the student in mental or physical danger

**K.A.R. 91-42-4**

Schools will be required to notify parents or, if the parent cannot be reached, the emergency contact person any time an emergency safety intervention is used with their child. This notification will occur the day the intervention is used. Notifications will include information on the standards for when interventions can be used, a flyer on the parent's rights, and guidance on how to file a complaint with the local school board.

**K.A.R. 91-42-7**

The State Board of Education is required to collect data on the use of emergency safety interventions and compile reports based on information provided by school districts. These reports are annually due by January 20<sup>th</sup>. The State Board will report the total number of times an intervention was used, the total number of interventions involving students with an individualized education program, the total number of interventions involving students with a Section 504 plan, the total number of interventions involving students with behavior intervention plans, the total number of students that were physically restrained, the total number of students that were placed in seclusion, and the average amounts of time that interventions lasted.

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.

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91-42-1. Definitions. As used in this article, 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) "Chemical restraint" means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement.

(c) "Commissioner" means commissioner of education.

(d) "Complaint" means a written document that a parent files with a local board as provided for in this article.

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

(f) "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, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

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

(h) "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.

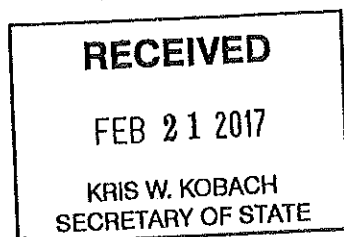
(i) "Incident" means each occurrence of the use of an emergency safety intervention.

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

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

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

(1) A natural parent;



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- (2) an adoptive parent;
- (3) a person acting as a parent, as defined in K.S.A. 72-1046 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.

~~(h)~~(m) "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.

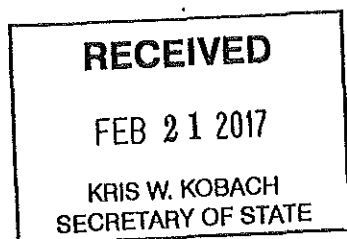
~~(m)~~(n) "Physical restraint" means bodily force used to substantially limit a student's movement, except that consensual, solicited, or unintentional contact and contact to provide comfort, assistance or instruction shall not be deemed to be physical restraint.

~~(n)~~(o) "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.

~~(o)~~(p) "Seclusion" means placement of a student in a location where all 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.
- (3) The student is prevented from leaving, or the student reasonably believes that the student will be prevented from leaving, the enclosed area.

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



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(q)(r) "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 P-\_\_\_\_\_.)

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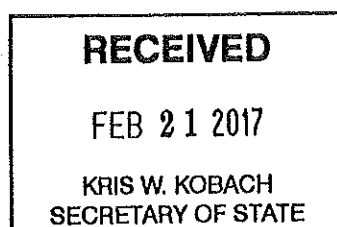
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91-42-2. Standards for the use of emergency safety interventions. (a) An emergency safety intervention shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to 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 interventions 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 ~~seclusion~~ 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 ~~seclusion~~ the emergency safety intervention.

(2) The existence of the medical condition must 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 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) When a student is placed in seclusion, a school employee shall be able to see and hear the student at all times.

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

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

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

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

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(h) 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 P- \_\_\_\_\_.)

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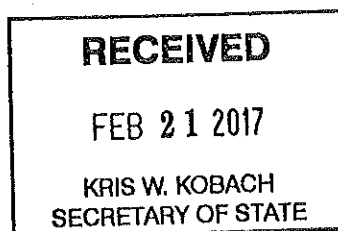


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91-42-4. Parent notification; required meeting; filing a complaint. (a) When an emergency safety intervention is used with a student, the school shall notify the parent the same day the emergency safety intervention was used. ~~If the parent cannot be notified, the school shall notify the emergency contact person for the student.~~ The school shall attempt to contact the parent using at least two methods of contact, one of which shall be the preferred method of contact if so designated by the parent as specified in this subsection. The same-day notification requirement of this subsection shall be deemed satisfied if the school attempts at least two methods of contact. A parent may designate a preferred method of contact to receive the same-day notification required by this subsection. A parent may agree, in writing, to receive only one same-day notification from the school for multiple incidents occurring on the same day.

(b) The school shall provide written documentation of the emergency safety intervention used to the parent no later than the school day following the day on which the emergency safety intervention was used. This documentation shall include the following:

- (1) The date and time of the intervention;
- (2) the type of intervention;
- (3) the length of time the intervention was used, and;
- (4) the school personnel who participated in or supervised the intervention;
- (5) the events leading up to the incident;
- (6) the student behaviors that necessitated the emergency safety intervention;
- (7) the steps taken to transition the student back into the educational setting;
- (8) space or an additional form for parents to provide feedback or comments to the school regarding the incident;



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(9) a statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of emergency safety interventions; and

(10) email and phone information for the parent to contact the school to schedule the emergency safety intervention meeting. Schools may group incidents together when documenting the items in paragraphs (b)(5) through (7) if the triggering issue necessitating the emergency safety interventions is the same.

(c) In addition to the documentation required by subsection (b), the school shall provide the parent ~~additional~~ the following information:

(1) After the first incident in which an emergency safety intervention is used with a student during the school year, the school shall provide the following information in printed form to the parent or, upon the parent's written request, by email:

(A) A copy of the standards of when emergency safety interventions can be used;

(B) a flyer on the parent's rights;

(C) information on the parent's right to file a complaint through the local dispute resolution process and the complaint process of the state board of education; and

(D) information that will assist the parent in navigating the complaint process, including contact information for the parent training and information center and protection and advocacy system.

(2) After subsequent incidents in which an emergency safety intervention is used with a student during the school year, the school shall provide a full and direct web site address containing the information in paragraph (b)(c)(1).

(d) After each incident, a parent may request a meeting with the school to discuss and debrief the incident. A parent may request the meeting verbally, in writing or by electronic

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means. A school shall hold a meeting requested under this subsection within 10 school days of the date on which the parent sent the request. The focus of any meeting convened under this subsection shall be to discuss proactive ways to prevent the need for emergency safety interventions and to reduce incidents in the future.

~~(1) If there is a third incident involving the use of emergency safety interventions within a school year on~~ For a student who has an individualized education program or a section 504 plan, then the student's individualized education program team or section 504 plan team shall meet within 10 days after the third 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 individualized education program team or the section 504 plan team has agreed on a different process.

(2) For a student with a section 504 plan, the student's section 504 plan team shall discuss and consider the need for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq., and amendments thereto.

(3) For a student who has an individualized education program and is placed in a private school by a parent, a meeting called under this subsection shall include the parent and the designee of the private school, who shall consider whether the parent should request an individualized education program team meeting. If the parent requests an individualized education program team meeting, the private school shall help facilitate the meeting.

~~(2)(4) If there is a third incident involving the use of emergency safety interventions within a school year on a student who is not described in paragraph (d)(1), then a meeting between the student's parent and school employees shall be conducted within 10 days after the third incident to~~ For a student who does not have an individualized education program or section

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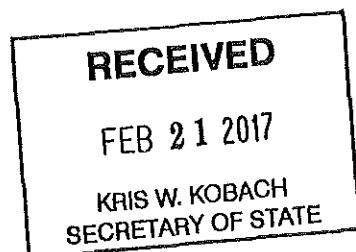
504 plan, the parent and school shall discuss the incident and consider the appropriateness of a referral for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq. and amendments thereto, the need for a functional behavioral analysis, or the need for a behavior intervention plan. Each meeting called pursuant to this subsection shall 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 any other school employees designated by the school administrator as appropriate for the meeting.

~~(3)~~(5) The parent shall determine whether the student shall be invited to any meeting called pursuant to this subsection.

~~(4)~~(6) The time for calling a meeting pursuant to this subsection shall be extended beyond the ~~10-day~~ 10-school-day limit if the parent of the student is unable to attend within that time period.

~~(5)~~(7) Nothing in this subsection shall be construed to prohibit the development and implementation of a functional behavioral analysis or a behavior intervention plan for any student if the student could benefit from such measures ~~but has had fewer than three incidents involving emergency safety interventions within a school year.~~

(e) If a school is aware that a law enforcement officer or school resource officer has used seclusion, physical restraint or mechanical restraint on a student on school grounds or during a school-sponsored activity, the school shall notify the parent on the same day the school becomes aware of the use, using the parent's preferred method of contact as described in K.A.R. 91-42-4(a). A school shall not be required to provide written documentation to a parent, as set forth in subsection (b) or (c) regarding law enforcement use of an emergency safety intervention, or



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report to the department law enforcement use of an emergency safety intervention. For purposes of this subsection, mechanical restraint includes, but is not limited to, the use of handcuffs.

(f) If a parent believes that emergency safety interventions have been used in violation of this article or policies of the school district, then within 30 days from being informed of the use of emergency safety intervention, the parent may file a complaint through the local dispute resolution process. Any parent may request an administrative review by the state board within 30 days from the date the final decision was issued pursuant to the local dispute resolution process. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended P- \_\_\_\_\_.)

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91-42-7. Reporting. (a) Each district shall report information from all incidents of emergency safety interventions that the department deems necessary to the department by the date and in the form specified by the department.

(b) The department shall compile reports from schools on the use of emergency safety interventions and provide the results based on aggregate data on the department web site and to the state board, the governor and the committees on education in the senate and the house of representatives by January 20, 2016, and annually thereafter. The department's reported results shall include but shall not be limited to the following information:

(1) The number of incidents in which emergency safety interventions were used on students who have an individualized education program;

(2) the number of incidents in which emergency safety interventions were used on students who have a section 504 plan;

(3) the number of incidents in which emergency safety interventions were used on students who do not have an individualized education program or a section 504 plan;

(4) the total number of incidents in which emergency safety interventions were used on students;

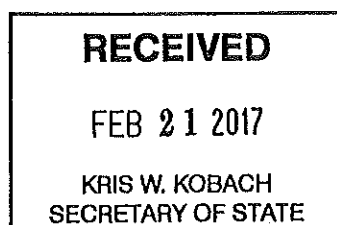
(5) the total number of students with behavior intervention plans subjected to an emergency safety intervention;

(6) the number of students physically restrained;

(7) the number of students placed in seclusion;

(8) the maximum and median number of minutes a student was placed in seclusion;

(9) the maximum number of incidents in which emergency safety interventions were used on a student;



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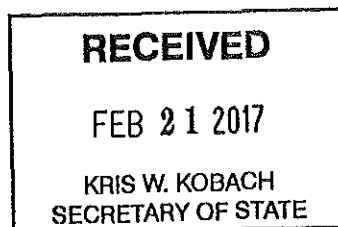
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(10) the information reported under paragraphs (c)(1) through (c)(3) reported by school to the extent possible;

(11) the information reported under paragraphs (c)(1) through (c)(9) aggregated by age and, ethnicity, gender and eligibility for free and reduced lunch of the students on a statewide basis; and

(12) any other information that the department deems necessary to report.

(c) Actual data values shall be used when providing statewide aggregate data for the reports. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended P-\_\_\_\_\_.)



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**KANSAS STATE BOARD OF EDUCATION  
ECONOMIC IMPACT STATEMENT  
K.A.R. 91-42-1, K.A.R. 91-42-2, K.A.R. 91-42-4, and K.A.R. 91-42-7**

**I. Summary of Proposed Regulation, Including Its Purpose.**

K.A.R. 91-42-1, 91-42-2, K.A.R. 91-42-4, and 91-42-7 are amended regulations that govern the use of emergency safety interventions (seclusion and restraint) with all students in all Kansas schools. The purpose of the regulations is to incorporate the changes made to the Freedom from Unsafe Restraint and Seclusion Act, specifically K.S.A. 2016 Supp. 72-89d02 through 72-89d05, and 72-89d08, and amendments thereto, which took effect July 1, 2016.

**II. Reason or Reasons the Proposed Regulations Are Required, Including Whether or Not the Regulations Are Mandated by Federal Law.**

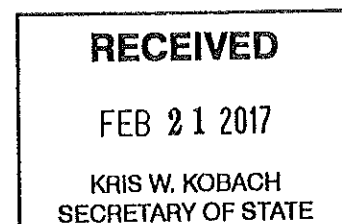
The Kansas State Board of Education (KSBE) previously adopted regulations concerning the use of emergency safety interventions pursuant to its authority under Article 6 of the Kansas Constitution. The proposed amended regulations are necessary to ensure that the regulations are not in conflict with the Freedom from Unsafe Restraint and Seclusion Act, K.S.A. 2016 Supp. 72-89d01 through 72-89d08, and amendments thereto, and that standards and requirements governing the use of emergency safety interventions continue after the Act expires on June 30, 2020. Federal law does not mandate these regulations.

**III. Anticipated Economic Impact upon the Kansas State Board of Education.**

There is no anticipated economic impact to the Kansas State Board of Education.

**IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.**

The Kansas State Board of Education does not anticipate economic impact on other governmental agencies or on private business or individuals.





**V. Anticipated Economic Impact upon School Districts, Following Consultation with the Kansas Association of School Boards.**

The amended regulations do not include any requirement that were not already required by the Freedom from Unsafe Restraint and Seclusion Act, K.S.A. 2016 Supp. 72-89d01 through 72-89d08, and amendments thereto, which took effect July 1, 2016, therefore there is no anticipated economic impact on school districts. The amended notice and reporting requirements found in the amended regulations are anticipated to be transitioned into work the school districts are currently doing with no additional economic impact.

Implementation of the regulatory requirements allows for customization by the local school district. Emergency safety interventions are to be used in emergency situations only and thus it is anticipated the interventions will be used sparingly, if at all.

**VI. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.**

The Kansas State Board of Education has developed regulations that are anticipated to have a minimal economic impact; therefore, no other methods were considered. Additionally, by creating regulations that leave most implementation decisions to school districts, the Kansas State Board of Education believes it has come up with the least intrusive method and, therefore, no consideration of other methods was necessary.

