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Kansas Emergency Safety Interventions Law
Kansas Administrative Regulations
Article 42. EMERGENCY SAFETY
INTERVENTIONS

K.A.R. 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 (K.S.A. 2017 Supp. 72-3115), 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.
- (k) "Mechanical restraint" means any device or object used to limit a student's movement.
- (l) "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 (K.S.A. 2017 Supp. 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) "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) "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.
- (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.
- (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.
- (q) "State board" means Kansas state board of education.
- (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 July 7, 2017.)

K.A.R. 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 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.
- (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.
- (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 July 7, 2017.)

K.A.R. 91-42-3. District policy, training, and local board dispute resolution.

- (a) Each district shall develop and implement written policies to govern the use of emergency safety interventions over all schools. At a minimum, written district policies shall conform to the standards, definitions, and requirements of this article. The written policies shall also include the following:
 - (1) (A) School personnel training shall be designed to meet the needs of personnel as appropriate to their duties and potential need for emergency safety interventions;
 - (B) training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;
 - (C) any training on the use of emergency safety interventions by the district shall be consistent with nationally recognized training programs; and
 - (D) schools and programs shall maintain written or electronic documentation on training provided and lists of participants in each training; and
 - (2) a local dispute resolution process, which shall include the following:
 - (A) A procedure for a parent to file a complaint with the local board. If a parent believes that an emergency safety intervention has been used with the parent's child in violation of this article or the district's emergency safety intervention policy, the parent may file a complaint with the local board. The complaint shall be filed within 30 days of the date on which the parent was informed of the use of that emergency safety intervention;
 - (B) a complaint investigation procedure;
 - (C) a dispute resolution final decision. The local board's final decision shall be in writing and shall include findings of fact and any corrective action required by the district if the local board deems these actions necessary. The local board's final decision shall be mailed to the parent and the department within 30 days of the local board's receipt of the complaint; and

(D) a statement of the parent's right to request an administrative review by the state board as specified in K.A.R. 91-42-5, including information as to the deadline by which the parent must submit the request to the state board.

(3) a system for the collection and maintenance of documentation for each use of an emergency safety intervention, which shall include the following:

(A) the date and time of the emergency safety intervention;

(B) the type of emergency safety intervention;

(C) the length of time the emergency safety intervention was used;

(D) the school personnel who participated in or supervised the emergency safety intervention;

(E) whether the student had an individualized education program at the time of the incident;

(F) whether the student had a section 504 plan at the time of the incident; and

(G) whether the student had a behavior intervention plan at the time of the incident;

(4) procedures for the periodic review of the use of emergency safety intervention at each school, which shall be compiled and submitted at least biannually to the district superintendent or district designee; and

(5) a schedule for when and how parents are provided with notice of the written policies on the use of emergency safety interventions.

(b) written policies developed pursuant to this article shall be accessible on each school's web site and shall be included in each school's code of conduct, school safety plan, or student handbook. (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.)

K.A.R. 91-42-4. Parent notification, required meeting, and 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. 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;

- (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;
 - (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 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 (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 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) For a student who has an individualized education program or a section 504 plan, the student's individualized education program team or section 504 plan team shall 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.

- (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 (K.S.A. 2017 Supp. 72-3403) 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.
- (4) For a student who does not have an individualized education program or section 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 (K.S.A. 2017 Supp. 72-3403) 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.
- (5) The parent shall determine whether the student shall be invited to any meeting called pursuant to this subsection.
- (6) The time for calling a meeting pursuant to this subsection shall be extended beyond the 10-school day limit if the parent of the student is unable to attend within that time period.
- (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.
- (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 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 July 7, 2017.)

K.A.R. 91-42-5. Administrative review.

- (a) Any parent who filed a written complaint with a local board regarding the use of emergency safety intervention may request an administrative review by the state board of the local board's final decision.
- (b) Each parent seeking administrative review shall provide the following information in the request:
- (1) The name of the student and the student's contact information;
 - (2) the name and contact information, to the extent known, for all involved parties, including teachers, aides, administrators, and district staff;
 - (3) a detailed statement of the basis for seeking administrative review, with all supporting facts and documentation. The documentation shall include a copy of the complaint filed with the local board and shall include the local board's final decision, if issued. The request shall be legibly written or typed and shall be signed by the parent. Relevant written instruments or documents in the possession of the parent shall be attached as exhibits or, if unavailable, referenced in the request for administrative review; and
 - (4) written consent to disclose any personally identifiable information from the student's education records necessary to conduct an investigation pursuant to this regulation.
- (c)(1) Each request for administrative review shall be filed with the commissioner within 30 days from the date a final decision is issued pursuant to the local dispute resolution process or, if a final decision is not issued, within 60 days from the date a written complaint was filed with the local board.
- (2) The hearing officer shall forward a copy of the request for administrative review to the clerk of the local board from whom the administrative review is sought.
- (d) Upon receipt of each request for administrative review, the hearing officer shall consider the local board's final decision and may initiate its own investigation of the complaint. Any investigation may include the following:
- (1) A discussion with the parent, during which additional information may be gathered and specific allegations identified, verified, and recorded;
 - (2) contact with the local board or other district staff against which the request for administrative review is filed to allow the local board to respond to the request with facts and information supporting the local board's final decision; and
 - (3) an on-site investigation by department officers or employees.
- (e) If the hearing officer receives information that the hearing officer determines was not previously made available to both parties during the local board dispute resolution process,

the hearing officer may remand the issue back to the local board. The local board then has 30 days to issue a written amended final decision.

Upon remand, the hearing officer's case will be closed. All rights to and responsibilities of an administrative review shall begin again when the local board's amended final decision is issued or upon 30 days from when the hearing officer's remand is issued, whichever occurs first.

(f) Within 60 days of the commissioner's receipt of the request for administrative review, the hearing officer shall inform the parent, the school's head administrator, the district superintendent, the local board clerk, and the state board in writing of the results of the administrative review. This time frame may be extended for good cause upon approval of the commissioner.

(g) The results of the administrative review shall contain findings of fact, conclusions of law, and, if needed, suggested corrective action. The hearing officer shall determine whether the district is in violation of this article based solely on the information obtained by the hearing officer during the course of the investigation and the administrative review process. This determination shall include one of the following:

(1) The local board appropriately resolved the complaint pursuant to its dispute resolution process.

(2) The local board should reevaluate the complaint pursuant to its dispute resolution process with suggested findings of fact.

(3) The hearing officer's suggested corrective action is necessary to ensure that local board policies meet the requirements of law.

(h) Nothing in this regulation shall require exhaustion of remedies under this regulation before using procedures or seeking remedies that are otherwise available. (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.)

K.A.R. 91-42-6. Exemptions.

(a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Appointing authority" means a person or group of persons empowered by statute to make human resource decisions that affect the employment of officers.

(2) "Campus police officer" means a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222 (K.S.A. 2017 Supp. 72-6146), and amendments thereto.

(3) "Law enforcement officer," and "police officer" mean a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of criminal or traffic laws of this state or of any Kansas municipality. This term shall include "campus police officer."

- (4) “Legitimate law enforcement purpose” means a goal within the lawful authority of an officer that is to be achieved through methods or conduct condoned by the officer’s appointing authority.
- (5) “School resource officer” means a law enforcement officer or a police officer employed by a local law enforcement agency who is assigned to a district through an agreement between the local law enforcement agency and the district.
- (6) “School security officer” means a person who is employed by a board of education of any school district for the purpose of aiding and supplementing state and local law enforcement agencies in which the school district is located, but is not a law enforcement officer or police officer.
- (b) Campus police officers and school resource officers shall be exempt from the requirements of this article when engaged in an activity that has a legitimate law enforcement purpose.
- (c) School security officers shall not be exempt from the requirements of this article. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-1716, Feb. 17, 2016; effective, June 10, 2016.)

K.A.R. 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;
 - (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, 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 July 7, 2017.)

NOTE: The statutory sections of Chapter 72 of the Kansas Statutes annotated were transferred for the purpose of providing clarity and uniformity with respect to the subject matter of Chapter 72, which is elementary and secondary education. The transferred sections are included in the 2017 supplement to the Kansas Statutes Annotated. The regulations have not been amended to reflect these new statutory section numbers. For the purpose of this document, the new statutory references are in parentheses after the original statute. For example, K.S.A. 72-1106 appears as K.S.A. 72-1106 (K.S.A. 2017 Supp. 72-3115).