

# **Report of the Emergency Safety Intervention Task Force to the 2016 Kansas Legislature**

**CHAIRPERSON:** Jim Porter,\* Member, Kansas State Board of Education

**VICE-CHAIRPERSON:** Rocky Nichols\*, Executive Director, Disability Rights Center of Kansas

**OTHER MEMBERS:** Jane Adams, PhD, Executive Director, Keys for Networking, Inc.; Betty Arnold, Board of Directors, Kansas Association of School Boards; Terry Collins, Kansas Association of Special Education Administrators; Kris Ehling, parent member, Families Together, Inc.; Lesli Girard, Families Together, Inc.; John Hurla, parent member, Keys for Networking, Inc.; Catherine Johnson\*, Disability Rights Center of Kansas; Laura Jurgensen, attorney, Kansas State Department of Education; Dr. Valarie Kerschen, Center for Child Health and Development of the University of Kansas Medical Center; Katherine Kersenbrock-Ostmeyer, Kansas Association of Special Education Administrators; Sarah Loquist\*, attorney, Kansas Association of School Boards; Jawanda Mast\*, parent member, Kansas Council on Developmental Disabilities; Marvin Miller, Special Education Advisory Council; Dr. Joan Robbins\*, Special Education Advisory Council; and Representative John Rubin, Kansas Council on Developmental Disabilities.

\* denotes members appointed to the Drafting Subcommittee

## **CHARGE**

Study and Review the use of emergency safety intervention (ESI) and to prepare and submit a report on its findings and recommendations concerning ESI to the Governor and the Legislature on or before January 20, 2016.

# Emergency Safety Intervention Task Force

## REPORT

### Conclusions and Recommendations

The Committee recommends the Freedom from Unsafe Restraint and Seclusion Act enacted in 2015 (Senate Sub. for Sub. for HB 2170) be amended in the following ways:

- Define “incident” in Section 2 (KSA 2015 Supp. 72-89d02) as “each occurrence of the use of an emergency safety intervention (ESI).”
- Amend Section 3(b) (KSA 2015 Supp. 72-89d03(b)) regarding the prohibition of seclusion of a student with a medical condition to include restraint; for both seclusion and restraint, require a licensed health care provider to include certain information in the written statement, including an explanation of the diagnosis and why seclusion, restraint, or both would put the student in mental or physical danger, as well as any potential alternatives the licensed health care provider might suggest to use instead; and include an exception for use of ESI in circumstances in which not using an ESI would result in significant physical harm to the student or others.
- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to remove language allowing a school to notify an emergency contact person for a student if the student’s parents cannot be notified and add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice.
- Allow parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day’s worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day.
- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to allow parents who have email to designate their preference to receive an electronic version of information currently required to be provided in printed form after a first ESI incident.
- Amend the requirement in Section 4(a) (KSA 2015 Supp. 72-89d04(a)) for written documentation that must be provided to parents to:
  - Require an incident report that would include: (1) a description of what happened leading up to the ESI incident; (2) what behaviors necessitated the ESI; (3) what was done to transition the child back into the educational setting; (4) the other basic information already provided concerning the type of ESI conducted, the start and stop time of the ESI, and total length of the ESI; (5) a space or additional form for parents to provide feedback and comments to the school on the use of ESI; (6) a statement that invites and strongly encourages parents to contact the school to schedule a meeting to discuss the ESI incident and how to prevent its future use (instead of the required meeting after the third incident of

ESI in a school year in Section 5 (KSA 2015 Supp. 72-89d05)); and (7) email and phone information to contact the school to schedule the meeting.

- Authorize schools to group incidents together for the purposes of items (1)-(3) of such written documentation when the triggering issue necessitating the ESI is the same.
- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to require a school to notify parents, using the parents' preferred method of contact, if it is aware of law enforcement or a school resource officer using seclusion or restraint on their child, including mechanical restraint such as handcuffs. The written documentation required in Section 4(a) (KSA 2015 Supp. 72-89d04(a)) would not be required.
- Amend Section 4(c)(11) (KSA 2015 Supp. 72-89d04(c)(11)) to require reporting of the information in subsections (c)(1) through (c)(9) aggregated by gender and eligibility for free and reduced lunch on a statewide basis. Statewide reporting of age and ethnicity of the students already is required.
- Recommend to the Data Governance Board within the Kansas State Department of Education (KSDE) that the actual data value be used when providing statewide aggregate data for the KSDE report.
- In Section 5 (KSA 2015 Supp. 72-89d05):
  - Remove the requirement for schools to meet with parents after the third ESI incident.
  - Specify a meeting requested by the parent must be held within ten school days and retain Section 5(d), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period.
  - Specify the parents of a student younger than 18 should decide whether their student will attend the meeting.
  - Modify the remaining language of that section to extend the requirements to a meeting that, after amendment, would be requested by a parent pursuant to Section 4(a) (KSA 2015 Supp. 72-89d04(a)).
  - Add language stating the focus of any meeting convened pursuant to Section 5 (KSA 2015 Supp. 72-89d05) would be discussing proactive ways to help prevent the need for ESIs and reduce the use of such interventions in the future. [Note: this language was proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools.]
  - Add language regarding students parentally placed in private schools to provide the meeting will be between the parent and the private school staff. If the student has an individualized education program (IEP), one topic of the meeting would be whether the parent should request an IEP Team meeting and, if the parent requests a meeting, the private school would help the parent facilitate such meeting. [Note: this language is adapted from that proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools.]

- Amend the ESI statutes to incorporate provisions currently found only in the ESI regulations or draft rules and regulations and amending regulations to mirror the language of the ESI statute.

**Proposed Legislation:** Though the recommended changes outlined above refer to section numbers in 2015 Senate Sub. for Sub. for HB 2170 and their corresponding provisions in the codified Freedom from Unsafe Restraint and Seclusion Act, KSA 2015 Supp. 72-89d01 to 72-89d08, no draft legislation has been proposed at this time.

## BACKGROUND

The Emergency Safety Intervention Task Force (Task Force) was created by 2015 Senate Sub. for Sub. for HB 2170, Section 7 (KSA 2015 Supp. 72-89d07) to study and review the use of emergency safety interventions (ESI) and to prepare and submit a report on its findings and recommendations to the Governor and the Legislature on or before January 20, 2016. The 17-member task force is composed of one practicing physician with experience treating children with disabilities appointed by the Center for Child Health and Development of the University of Kansas Medical Center and two members each appointed by:

- The Kansas State Board of Education (KSBE), including one Board member and one attorney for the Kansas State Department of Education (KSDE);
- The Disability Rights Center of Kansas;
- Families Together, Inc., including one parent of a child with a disability;
- Keys for Networking, Inc., including one parent of a child with a disability;
- The Special Education Advisory Council;
- The Kansas Association of Special Education Administrators;
- The Kansas Council on Developmental Disabilities, including one parent of a child with a disability; and

- The Kansas Association of School Boards (KASB), including one KASB attorney.

The statute allows the Task Force to meet at any time and place within Kansas on the call of the Chairperson and, if approved by the Legislative Coordinating Council, members would be paid for expenses, mileage, and subsistence.

A drafting subcommittee was appointed to prepare and present draft recommendations for the Task Force's consideration as part of the Task Force's overall charge.

## COMMITTEE ACTIVITIES

### August 4, 2015

The Task Force had its first meeting August 4, 2015. The Task Force elected officers, and discussed petitioning the Legislative Coordinating Council (LCC) for assistance from the Kansas Legislative Research Department and the Office of Revisor of Statutes, as well as for approval for reimbursement for that meeting and all future meetings.

The KSDE attorney appointed to the Task Force explained prior guidelines promulgated by the KSDE's Special Education Advisory Council in 2007 were applicable to students with disabilities and, in 2010, were expanded to be applicable to general education students. The KSDE attorney then reviewed current rules and regulations, pending amendments to the rules and regulations, and 2015 Senate Sub. for Sub. for HB 2170, which took effect on publication in the *Kansas Register* on June 4 and will sunset in 2018.

She also reviewed the data KSDE has collected concerning ESI and current resources available to school districts through the KSDE Technical Assistance System Network (TASN).

The representative of Families Together, described the interaction that organization has had with families on this issue.

The Task Force then took up several issues to determine which it would need to consider at future meetings. A member drew the Task Force's attention to the U.S. Department of Education's *15 Principles on the Use of Seclusion and Restraint* (*15 Principles*), suggesting they could be compared to current Kansas law and used to develop additional policies.

## **August 25**

At the Task Force's second meeting, the KSDE attorney appointed to the Task Force gave an overview of the *15 Principles* and compared them to Kansas law, regulations, and TASN training materials. The KSDE attorney and the representative of Families Together then presented on training offered through the KSDE and Families Together.

The Task Force discussed the addition of restraint to the statutory provisions prohibiting the use of seclusion 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 Task Force highlighted the importance of communication among a student's licensed healthcare provider, individualized education program (IEP) team, and parents if these restrictions were extended to the use of restraint.

The Task Force also discussed the same-day notification requirement and how to address parental preference about who should be contacted, the method of communication, and how often notification should be provided. Some parents are not able to receive phone calls during the day and may not have intended for the student's emergency contact to receive notification about ESI. Further, in instances where ESI is used multiple times a day, the parent may prefer not to be contacted after each occurrence. The Task Force discussed creating a form that would allow

parents to specify preferences about each of these issues.

## **September 29**

The Task Force's third meeting began with a discussion of the LCC's decision to fund only one meeting, as well as plans for future meetings. The Task Force agreed to request approval of six total meeting days, including the two days the Task Force had already met, the current meeting day, and three additional meetings to be held in the coming months.

The rest of the meeting featured presentations from parents and the following interested parties: a current University of Kansas Ph.D. candidate and representatives of USD 229, Blue Valley; USD 271, Stockton; USD 305, Salina; USD 330, Mission Valley; USD 345, Seaman; USD 501, Topeka; USD 618, Sedgwick County Cooperative; Lakemary Center; the Archdiocese of Kansas City in Kansas, Office of Catholic Schools; and Heartspring.

At the conclusion of the presentations, the Task Force discussed the appointment of a subcommittee to prepare and present draft recommendations for the Task Force's consideration. The Task Force decided the subcommittee would consist of six members: the Chairperson, the Vice-chairperson, two members appointed by the Chairperson, and two members appointed by the Vice-chairperson. Members of the subcommittee were appointed at a later date, contacted by email, and polled for the best date for all to meet.

## **October 19—Subcommittee Meeting**

At its first meeting, the subcommittee compiled a list of issues for the full committee to consider.

## **October 20**

At the Task Force's fourth meeting, members heard from a parent from Sedgwick County, and it received the results of a survey conducted by the Kansas Association of Special Education Administrators. The KSDE attorney appointed to the Task Force provided an update on the status of

pending rules and regulations, as well as an update on the Task Force's request for ESI data, which would have to be approved by KSDE's Data Governance Board (DGB) at its monthly meeting. The DGB had already met in October, so the earliest the request could be processed was the November 3 meeting.

The Task Force spent the rest of the day in extensive discussion of the issues the Subcommittee identified and agreed to the following [Note: section numbers refer to sections of 2015 Senate Sub. for Sub. for HB 2170]:

- Amend Section 4(a) (KSA 2015 Supp. 72-89d04(a)) to remove language allowing a school to notify an emergency contact person for a student if the student's parents cannot be notified and add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice.
- Allow parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day's worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day.
- Clarify the time limit in Section 5 (KSA 2015 Supp. 72-89d05) is 10 school days, rather than simply "10 days."
- Allow parents to decide whether a student who is younger than 18 should attend the meeting currently required after a third ESI incident in a school year.

### **November 17—Subcommittee Meeting**

The Subcommittee met to further refine Task Force recommendations. In addition to those items the full Task Force previously agreed to, the Subcommittee agreed to recommend the addition of a definition for "incident"; changes to seclusion and restraint of a student with a medical condition; additions to the written documentation provided to

parents after an ESI incident; replacement of the requirement to meet after a third ESI incident in a school year with provisions allowing parents to call a meeting at any time after an ESI incident; changes to notification and reporting requirements; and the addition of provisions currently found only in rules and regulations.

Given the Subcommittee's recommended removal of the requirement to meet after a third ESI incident in a school year, two of the Task Force's previous recommendations may no longer be applicable, specifically the 10 "school day" time limit and whether parents would decide if a student younger than 18 should attend such a meeting. The subcommittee did not specifically address whether these recommendations should stand.

### **December 10**

All members were present for the final meeting of the Task Force and voted unanimously to adopt the subcommittee's recommendations with the following additions:

- Recommend to the DGB within KSDE that the actual data value, rather than a value less than ten, be used when providing statewide aggregate data;
- Clarify the meeting requested by a parent would be required within 10 school days and Section 5(d), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period, would be retained;
- Specify the parents of a student younger than 18 can determine whether a student should attend a meeting requested by the parents; and
- Clarify the recommendation concerning the addition of provisions currently found only in regulations or draft rules and regulations is, ultimately, for the statutes and regulations to mirror each other such that when one is amended, the other also is amended to reflect those changes.

## CONCLUSIONS AND RECOMMENDATIONS

The Task Force agreed to define “incident” for the purposes of the bill as “each occurrence of the use of an emergency safety intervention.” Further, the Task Force recommended allowing restrictions on the use of restraint when a student has a medical condition and, for both seclusion and restraint, requiring the licensed health care provider to include certain information in the written statement, including an explanation of the diagnosis and why seclusion, restraint, or both would put the student in mental or physical danger, as well as any potential alternatives the doctor might suggest to use instead. An exception would exist for circumstances in which not using an ESI would result in such significant physical harm to the student or others that use of ESI is justified.

The Task Force made numerous recommendations concerning the notice and written documentation schools are required to provide to parents. The Task Force agreed to recommend removal of language allowing a school to notify an emergency contact person for a student if the student’s parents cannot be notified and to add language requiring use of two or more methods to contact a parent. Notification requirements would be satisfied if the school uses multiple methods in an attempt to provide same-day notice. Further, the Task Force agreed to recommend allowing parents to designate their preferred method of contact and to agree in writing to receive only one notification for a day’s worth of ESI incidents. Delivery of written documentation of each incident would still be required the following school day. Additionally, parents could designate their preference to receive an electronic version of information currently required to be provided in printed form after a first ESI incident.

The Task Force recommended amendments to the requirements for the written documentation that must be provided to parents to include an incident form with: (1) a description of what happened leading up to the ESI incident; (2) what behaviors necessitated the ESI; (3) what was done to transition the child back into the educational setting; (4) the other basic information already provided; (5) a space or additional form for

parents to provide feedback and comments to the school on the use of ESI; (6) a statement that invites and strongly encourages parents to contact the school to schedule a meeting to discuss the ESI incident and how to prevent its future use (instead of the required meeting after the third incident of ESI in a school year in Section 5 [KSA 2015 Supp. 72-89d05]); and (7) email and phone information to contact the school to schedule the meeting. For the purposes of the written documentation, the Task Force agreed to allow schools to group incidents together for items (1)-(3) when the triggering issue necessitating the ESI is the same.

The Task Force also recommended requiring schools to notify parents, using the parents’ preferred method of contact, if the school is aware of law enforcement or a school resource officer using seclusion or restraint on their child, including mechanical restraint such as handcuffs. The written documentation otherwise required when an ESI is used would not be required.

Concerning reporting at the state level, the Task Force recommended requiring KSDE to report statewide aggregate data for KSA 2015 Supp. 72-89d04(c)(1)-(9) by gender and eligibility for free and reduced lunch. The Task Force also recommended that the DGB use the actual data value, rather than a value less than ten, when providing statewide aggregate data for the KSDE report.

The Task Force recommended changes to meetings currently required after the third ESI incident in a school year. The Task Force recommended removing the requirement and instead recommended that parents be allowed to request a meeting after any ESI incident to be held within ten school days. Section 5(d) (KSA 2015 Supp. 72-89d05(d)), allowing an extension beyond the ten-school-day limit if the parent of the student is unable to attend within that time period, would be retained. The Task Force agreed that the parents of a student younger than 18 should be able to decide whether their student will attend the meeting.

The Task Force recommended modifying the remaining provisions of Section 5 (KSA 2015 Supp. 72-89d05) to extend the requirements of the meeting after the third incident to a meeting

requested by a parent. Further, it recommended the addition of language proposed by the Archdiocese of Kansas City in Kansas, Office of Catholic Schools stating the focus of any meeting convened pursuant to Section 5 (KSA 2015 Supp. 72-89d05) would be discussing proactive ways to help prevent the need for ESI and reduce the use of such interventions in the future (see Appendix I). Other language proposed by the Archdiocese regarding students parentally placed in private schools would be modified to provide the meeting will be between the parent and the private school

staff. If the student has an IEP, one topic of the meeting would be whether the parent should request an IEP Team meeting and, if the parent requests a meeting, the private school would help the parent facilitate such meeting.

Finally, the Task Force recommended incorporating in the ESI statutes the provisions currently found only in the ESI regulations or draft rules and regulations and amending regulations to mirror the language of the ESI statute.



Added language (underlined)

~~Deleted language (stricken through)~~

Sec. 5. (a) For students attending public schools, if there is a third incident involving the use of emergency safety interventions within a school year on a student who has an individualized education program or a section 504 plan, then such student's individualized education program team or section 504 plan team shall meet within 10 days after such 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.

(b) For students attending accredited private schools, if there is a third incident involving the use of emergency safety interventions within a school year on a student who has an individualized education program, then the parent will be given the choice of whether to meet with the individualized education team or the private school team made up of private school teachers and other professionals working with the student. If the parent chooses to meet with the private school team, then that team will meet within 10 days and will consider ways to reduce the use of emergency safety interventions in the future and whether it is necessary to schedule a subsequent individualized education program team meeting led by the public school to proactively examine the parent and private school team's recommendations. If the parent decides they want an individualized education program team meeting, then the private school shall assist the parent in setting up this meeting and the public school will hold this meeting within 10 days of the request. If the parent chooses to forgo the meeting with private school team, then the individualized education program team shall meet within 10 days after such 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 has agree upon a different process.

(c) For students attending accredited private schools, if there is a third incident involving the use of emergency safety interventions within a school year on a student who has a section 504 plan, then such student's 504 team at the private school shall meet within 10 days after such third incident to discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan or amend the Section 504 plan, unless the section 504 plan team has agree upon a different process.

(d) ~~(b)~~ 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 subsection (a) ~~(b)~~ or (c), then a meeting between such student's parent and school employees shall be conducted within 10 days after such third incident to 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. Any 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 such other school employees designated

by the school administrator as appropriate for such meeting. Pursuant to this subsection, if the student is enrolled in an accredited private school, then the private school shall ensure this meeting occurs.

~~(e)~~—(e) The student shall be invited to any meeting called pursuant to this section.

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

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

(h) Whenever a team meets pursuant to this section, the focus of such team meetings shall be to discuss proactive ways to help prevent the need for emergency safety interventions and help reduce the use of such interventions in the future.