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MEMORANDUM

To: Chairman Highland and members of the House Committee on Education
From: Nick Myers, Assistant Revisor of Statutes
Date: January 14, 2016
Subject: Emergency Safety Intervention Task Force

Emergency safety interventions refer to certain procedures used by a school in which a student is physically restrained or secluded from others in response to behaviors or actions that place the student or others at risk of injury or harm. Prior to 2013, Kansas had no laws concerning emergency safety interventions.

On April 19, 2013, the Kansas State Department of Education promulgated regulations concerning emergency safety interventions. These regulations can be found at KAR 91-42-1 and 91-42-2. The KSDE regulations require school districts to develop and implement written policies to govern the use of emergency safety interventions. School policies and procedures required under this regulation must: (1) prohibit certain physical restraints, the use of chemical restraints, and the use of mechanical restraints; (2) require specific training for personnel; (3) require parental notification when an emergency safety intervention is used; (4) contain requirements for documentation of the use of emergency safety interventions; (5) contain procedures for collection, review, and submission of emergency safety intervention data; and (6) provide for a local dispute resolution process.

In the 2015 session, the Legislature passed Senate Substitute for Substitute for HB 2170 which created the Freedom from Unsafe Restraint and Seclusion Act and the Emergency Safety Intervention Task Force. HB 2170 was referred to and heard by the House Committee on Children and Seniors and the Senate Committee on Education. The provisions of this act became effective on June 4, 2015, and are found at K.S.A. 2015 Supp. 72-89d01 through 79-89d08.

The following is an overview of the statutory provisions of the Freedom from Unsafe Restraint and Seclusion Act:

K.S.A. 72-89d02 contains definitions of commonly used terms. Some important definitions in this provision are:

- "Emergency safety intervention" means the use of seclusion or physical restraint.

- "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.
- "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; and (3) the student is prevented from leaving, or the student reasonably believes that such student will be prevented from leaving, the enclosed area.

K.S.A. 72-89d03 provides requirements for the use of emergency safety interventions in schools. Emergency safety interventions shall only be used when a student presents a reasonable and immediate danger of physical harm to such student or others with the present ability to effect such physical harm. Less restrictive alternatives must be deemed inappropriate or ineffective prior to using an emergency safety intervention. The intervention must end as soon as the immediate danger of physical harm ceases to exist. If a student has a medical condition that could put the student in mental or physical danger as a result of using seclusion, and such medical condition is indicated in a written statement by a licensed health care provider and provided to the school, then seclusion cannot be used upon such student. Seclusion rooms are required to be safe places with similar characteristics to other rooms and must allow for exit in case of emergency.

K.S.A. 72-89d04 provides requirements for parental notifications, documentation and data collection. Schools must notify a parent or an emergency contact person on the same day an emergency safety intervention is used. No later than the day following the use of an emergency safety intervention, schools must provide parents with documentation of the emergency safety intervention used by the school. Schools must provide parents with printed forms with information about the emergency safety intervention standards, parental rights and filing complaints through the local dispute resolution process and the State Board of Education complaint process. KSDE is required to compile school reports and annually publish aggregate data on the use of emergency safety interventions in schools.

K.S.A. 72-89d05 requires a school to hold a meeting within 10 days after the third use of an emergency safety intervention on the same student within a school year. For students with an individualized education plan or a section 504 plan, the individualized education plan team or the section 504 plan team must meet to consider the need for a functional behavior analysis, a behavior intervention plan or modifications to such plans. For students who do not have an individualized education plan or a section 504 plan, the school must hold a meeting with the student's parent to discuss the need for an evaluation under the special education for exceptional children act, the need for a functional behavior analysis or the need for a behavior intervention plan.

K.S.A. 72-89d06 gives the State Board of Education authority to adopt rules and regulations to implement the provisions of this act. Such rules and regulations shall include the standards for the use of emergency safety interventions and the standards for the reporting of emergency safety interventions as provided in this act.

K.S.A. 72-89d07 created the 17 member Emergency Safety Intervention Task Force. The membership of the Task Force was specified in the statute. The Task Force's charge was to study and review the use of emergency safety interventions and prepare and submit a report on its findings and recommendations.

K.S.A. 72-89d08 provides a sunset provision for the act in which the provisions of the act expire on June 30, 2018.