

To: Senate Committee on Education

Re: Written testimony regarding Substitute for HB 2170 – Schools and school districts; seclusion and restraint of pupils

March 11, 2015

Dear Sen. Abrams and Members of the Committee;

Thank you for the opportunity to address the concerns raised by proponents of the Sub. For HB 2170. I assure you the Kansas State Board of Education has heard the concerns raised by this bill. HB 2170 is an effort to fight a battle that has already been fought, but is problematic for the following reasons:

- The use of seclusion and restraint for purposes of discipline, punishment or for the convenience of school employees was part of a culture that no longer pervades schools in Kansas. Inappropriate uses of seclusion and restraint prior to the adoption of State Board regulations were the result of a lack of training and a failure of school staff to understand techniques of prevention and de-escalation. Due to efforts of Kansas State Department of Education staff, we have seen a change in attitudes and behaviors of school staff. No similar requirements for training in prevention or de-escalation techniques are present in HB 2170.
- Schools are now required by law to provide all parents a copy of the district's policies pertaining to the use of emergency safety interventions. Schools are also required by law to publish those policies on the district websites, the school's code of conduct, the school's safety plan, and/or the district's student handbook. This is a pro-active approach to keep informed before emergency safety interventions are ever used, as opposed to HB 2170 which does not require parents to be informed of any district policies until *after* interventions have already been used.
- Schools are required establish internal procedures for the collection, maintenance, and periodic review of their use of emergency safety interventions. Information about the use of seclusion and restraint is provided to the Department on at least an annual basis and upon request. HB 2170 takes the impetus of self-monitoring away from local school districts and the State Board and requires the legislature to interpret the data.
- School faculty and staff are currently authorized to use emergency safety interventions when a student presents an immediate danger to self or others. There is no requirement that faculty or staff make a subjective determination as to when the danger becomes serious enough to intervene – if there is immediate danger to the student or others, intervention is appropriate. Conversely, HB 2170 requires school staff to make a subjective determination as to the seriousness of the potential injury before they are allowed to protect the student.

I have attached a quick factsheet which compares the Substitute for House Bill 2170 to laws already adopted by the Kansas State Board of Education. Thank you again for this opportunity. I look forward to answering your questions.

Sincerely,

Ken Willard
Kansas State Board of Education

Sub. for HB 2170 Freedom from Unsafe Restraint and Seclusion Act	Comparison of Sub. for HB 2170 to Current and Proposed Kansas State Board of Education Regulations	Kansas State Board of Education Regulations Adopted in April 2013
Sub. for HB 2170 is largely reactive in that there is no requiring for district staff training in prevention and de-escalation techniques, parents do not have to be informed about ESI requirements until after an ESI incident has occurred, and districts are not required to review the district's ESI data.	Proactive v. reactive	The ESI regulations are largely proactive in that district staff are required to be trained in prevention and de-escalation techniques to prevent the need for ESI, parents must be informed about a district's ESI policy through multiple methods regardless of whether ESI is used with a student, and district's must periodically review ESI data.
- Defines "immediate danger" as "an immediate and impending threat of a student causing serious physical harm to themselves or others." - Only allows faculty and staff to intervene when a student's violent destruction of property also poses a threat of a student causing serious physical harm to themselves or others. - Applies to all students attending public schools or accredited, private schools. However, four provisions of the bill only apply to public schools: - A copy of the school policy only required to be provided to <i>public school employees</i>. - Only <i>public school districts</i> are required to report ESI data to KSDE. - The stated purpose of collecting ESI data is to help reduce the use of seclusion and restraint in <i>public schools</i>. - Only parents of <i>public school students</i> may request an review from KSDE	Definitions and Application	- Allows faculty and staff to intervene when a student presents an immediate danger to self or others. Does not require faculty or staff to wait until there is a risk of <i>serious physical harm</i>. - Allows faculty and staff to intervene when a student is violently destructive of property. - Applies to all students attending public schools or accredited, private schools.

• No requirement that all parents be affirmatively provided with a district's ESI policy. • No requirement that a district's ESI policy be on each school's website and in each school's code of conduct, school safety plan, or student handbook.	Communication of district policy	• Requires that a parent annually be provided with a district's ESI policy. • Requires that a district's ESI policy be on each school's website and in each school's code of conduct, school safety plan, or student handbook.
• No requirement for training in prevention and de-escalation techniques and positive behavioral intervention strategies, as appropriate, for all school personnel. • The school shall attempt to notify the parent the same day the ESI was used. • Documentation regarding the incident shall be completed and provided to the parent no later than the school day following the day on which ESI was used.	Training and Notification	• District policies shall include training to address prevention and de-escalation techniques and positive behavioral intervention strategies, as appropriate, for all school personnel. • Written parental notification within two school days of the day an ESI is used.
• No requirement for districts to establish a procedure for the collection, maintenance, and periodic review of the use of ESI at each school.	Data Review	• Districts are required to establish a procedure for the collection, maintenance, and periodic review of the use of ESI at each school.
• The state board shall adopt any necessary regulations to implement the provisions of the bill, including creating an independent complaint process. This must be done by January 1, 2016.	Complaint Review	• The state board has taken an initial vote on K.A.R. 91-42-4 (administrative/complaint review).
• The state board must adopt regulations which include a process for determining sanctions if a district fails to comply with identified corrective actions that resulted from a parent complaint filed with KSDE regarding ESI.	Sanctions	• Under proposed K.A.R. 91-42-4, if a local board fails to initiate corrective action, that resulted from a parent's request of administrative review regarding ESI, within the time allowed by the hearing officer, the hearing officer shall inform the state board during its next scheduled board meeting.

