

Senate Substitute for Substitute HOUSE BILL No. 2170

AN ACT concerning schools; creating the freedom from unsafe restraint and seclusion act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 8, and amendments thereto, shall be known and may be cited as the freedom from unsafe restraint and seclusion act.

Sec. 2. As used in sections 1 through 7, and amendments thereto:

(a) “Department” means the state department of education.

(b) “Emergency safety intervention” means the use of seclusion or physical restraint.

(c) “Parent” means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as a parent as defined in K.S.A. 72-1046(d)(2), and amendments thereto; (4) a legal guardian; (5) an education advocate for a student with an exceptionality; (6) a foster parent, unless the student is a child with an exceptionality; or (7) a student who has reached the age of majority or is an emancipated minor.

(d) “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.

(e) “School” means any learning environment, including any non-profit 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 of education.

(f) “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.

Sec. 3. (a) Emergency safety interventions shall be used only 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 to emergency safety interventions, such as positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student’s behavior prior to the use of any emergency safety interventions. The use of emergency safety interventions 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. Use of an emergency safety intervention for purposes of discipline, punishment or for the convenience of a school employee shall not meet the standard of immediate danger of physical harm.

(b) A student shall not be subjected to 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 existence of such 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.

(c) When a student is placed in seclusion, a school employee shall be able to see and hear the student at all times.

(d) All seclusion rooms 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, such as fire or severe weather.

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

Sec. 4. (a) When a student is subjected to an emergency safety intervention, the school shall notify the parent, or if a parent cannot be notified, then shall notify an emergency contact person for such student, the same day the emergency safety intervention was used. Documentation of the emergency safety interventions used shall be completed and provided to the parent no later than the school day following the day on which the emergency safety intervention was used. The parent shall be provided the following information after the first incident in which an

emergency safety intervention is used during the school year, and may be provided such information after each subsequent incident that occurs during the school year: (1) A copy of the standards of when emergency safety interventions can be used; (2) a flyer on the parent's rights; (3) 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 (4) 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. Upon the first occurrence of an incident involving the use of emergency safety interventions, the parent shall be provided the foregoing information in printed form, and upon the occurrence of a second or subsequent incident shall be provided with a full website address containing such information.

(b) If a parent believes emergency safety interventions have been used in violation of this act, rules and regulations adopted pursuant thereto or policies of the school district, then within 30 days from being informed of the use of emergency safety intervention, such parent may file a complaint through the local dispute resolution process. A parent may file a complaint under the state board of education complaint process within 30 days from the date a final decision is issued pursuant to the local dispute resolution process.

(c) 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 website, and to 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 subsection (c)(1) through (c)(3) reported by school to the extent possible;
- (11) the information reported under subsections (c)(1) through (c)(9) aggregated by age and ethnicity of the students on a statewide basis; and
- (12) such other information as the department deems necessary to report.

Sec. 5. (a) 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) 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), 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 be-

havioral 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.

(c) The student shall be invited to any meeting called pursuant to this section.

(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.

(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.

Sec. 6. The state board of education shall adopt rules and regulations as necessary to implement the provisions of this act on or before March 1, 2016. Such rules and regulations shall include, but not be limited to, the standards for the use and reporting of emergency safety interventions as provided in sections 2 through 5, and amendments thereto.

Sec. 7. (a) There is hereby established the emergency safety intervention task force. The task force shall consist of the 17 members appointed as follows:

(1) Two members shall be appointed by the state board of education, one of which shall be a member of the state board of education and one of which shall be an attorney for the department;

(2) two members shall be appointed by the disability rights center of Kansas;

(3) two members shall be appointed by families together inc., one of which shall be a parent of a child with a disability;

(4) two members shall be appointed by keys for networking, inc., one of which shall be a parent of a child with a disability;

(5) two members shall be appointed by the special education advisory council;

(6) two members shall be appointed by the Kansas association of special education administrators;

(7) two members shall be appointed by the executive director of the Kansas council on developmental disabilities, one of which shall be a parent of a child with a disability;

(8) two members shall be appointed by the Kansas association of school boards, one of which shall be an attorney for the association; and

(9) one member shall be appointed by the center for child health and development of the university of Kansas medical center, who shall be a person licensed to practice medicine and surgery in Kansas who is a practicing physician with experience treating and diagnosing individuals with disabilities, but who is not a staff member of the center for child health and development of the university of Kansas medical center.

(b) The emergency safety intervention task force shall study and review the use of emergency safety interventions and prepare a report on its findings and recommendations concerning the use of such interventions. The task force's report shall be submitted to the governor and the legislature on or before January 20, 2016.

(c) The member of the task force who is also a member of the state board of education shall call an organizational meeting of the task force on or before August 1, 2015. At such organizational meeting the members shall elect a chairperson and vice-chairperson from the membership of the task force. The task force also shall consider dates for future meetings, the agenda for such meetings and the need for electing a facilitator to assist in discussions among the members of the task force.

(d) The task force may meet at any time and at any place within the state on the call of the chairperson. A quorum of the task force shall be eight members. All actions of the task force shall be by motion adopted by a majority of those members present when there is a quorum.

(e) If approved by the legislative coordinating council, members of the task force attending meetings authorized by the task force shall be

paid amounts for expenses, mileage and subsistence as provided in K.S.A. 75-3223(e), and amendments thereto.

Sec. 8. The provisions of sections 1 through 8, and amendments thereto, shall expire on June 30, 2018.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.