

Emergency Safety Interventions Regulations

K.A.R. §§ 91-42-1 to -2 (2013).
Guidance Document

Kansas State Department of Education

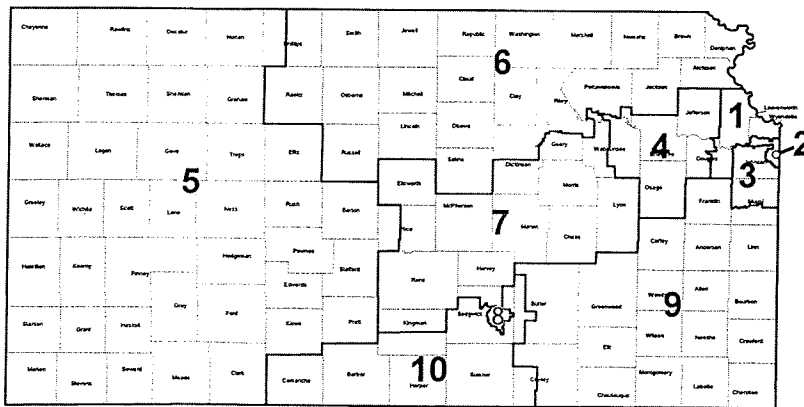
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- Provide a flexible delivery system to meet our students' changing needs.
- Provide an effective educator in every classroom.
- Ensure effective, visionary leaders in every school.
- Promote and encourage best practices for early childhood programs.
- Develop active communication and partnerships with families, communities, business stakeholders, constituents and policy makers.

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Guidance Document on Kansas Emergency Safety Interventions Regulations

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Emergency Safety Intervention (ESI)

Safety for students and staff is always the number one concern. It is important to remember that behavior is learned and that every behavior serves a purpose. There may be times when a student's behavior escalates to the point where the student's actions present an immediate potential for causing harm to persons or property. However, it is often possible to avoid such situations if proper prevention and de-escalation strategies are utilized. When the focus is on preventing or deescalating a verbal or physical outburst, early and calm intervention is key. There are training programs available that teach participants to recognize behavioral escalation levels and utilize effective research-based responses. When students are provided appropriate supports, the potential for problem behavior is minimized. The Kansas State Department of Education (KSDE) does **not** promote the use of ESIs with any student. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion. Please do not interpret the state regulations or this guidance document to imply that KSDE endorses the use of seclusion or restraint with any student. The focus is on prevention.

An ESI is the use of seclusion or physical restraint when a student presents an immediate danger to self or others. Violent action that is destructive of property may necessitate the use of an ESI. The use of an ESI should be discontinued the moment the immediate danger has passed.

There is no prohibition on the use of seclusion and physical restraint. The intention of the regulations is to standardize when an ESI may be appropriate to use, if ever, and if used, to delineate the next steps that must be taken to prevent, or eliminate, the need for the use of an ESI in the future. The use of an ESI should never be taken lightly and always be the last step taken. Again, if an ESI is used with a student, school personnel must follow the process set out in the regulations and in their district's policies and procedures.

Applicability of the Regulations

The regulations on ESIs apply to **all** students. The regulations apply to **any** learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school, that receives public funding or over which KSDE has regulatory authority. This definition includes preschools run by a public school district or an accredited nonpublic school. For accredited nonpublic schools, the use of "district" throughout the regulations and in this guidance refers to the governing body of the accredited nonpublic school. The regulations also apply to **all** school personnel **and** individuals hired by a district or school to perform work on behalf of the district or the school.

Cooperatives, interlocals, and independent contractors of a district are bound by the various policies adopted by the local boards of the students that they serve. An ESI that occurs at a cooperative or interlocal or is used by an independent contractor of a school or district should be communicated to the student's home school for reporting purposes. This ensures that the

district with ultimate responsibility for the student is aware of the use of an ESI with that student. If a parent wishes to file a complaint against the cooperative or interlocal, alleging that the ESI regulations have not been followed with respect to their child, the cooperative or interlocal, through its member districts, should be clear in written communication with the parent regarding the appropriate venue for investigation and resolution of a complaint.

ESI, Individualized Education Program (IEP), and Behavior Intervention Plan (BIP)

It is not recommended for the use of an ESI to be included in an IEP or BIP. Seclusion and restraint should be used in emergency situations only. An ESI should not be a planned intervention for a specific student under foreseeable circumstances. An ESI is not an acceptable alternative to prevention. If you are planning for it, it means you can see it coming. If you can see it coming, every effort should be made for prevention. However, if an IEP team decides to include the use of an ESI in an IEP or BIP the IEP must be followed as well as the regulations. Even if the IEP team includes the use of an ESI in an IEP or BIP with the intent that the ESI be used for a therapeutic purpose this does not exempt the school and the district from following the regulations.

Physical Restraint

Physical restraint means bodily force used to substantially limit a student's movement. The use of prone, or face-down, physical restraint; supine, or face-up, physical restraint; physical restraint that obstructs the airway of a student; or any physical restraint that impacts a student's primary mode of communication is prohibited. Physical restraint does not include physical escort, which is defined as 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. However, a physical escort could escalate into a physical restraint and, if it does, the regulations must be followed.

Physical Restraint – Use and Restrictions

Physical restraint should not be used for purposes of discipline, punishment, or staff convenience. Physical restraint should only be used if the child's behavior presents an immediate danger to self or others. The use of restraint should always be a last resort. The amount of force used to restrain the student should be reasonable and only what is necessary to diffuse the emergency and ensure the safety of staff and students.

Physical restraint may never be an option for children who have a medical condition that could put the child in mental or physical danger as a result of the use of physical restraint. Before using physical restraint, a school employee should be trained, consistent with nationally-recognized training programs, to ensure the safe use of this behavior intervention strategy. School districts should identify and/or develop training to be provided to employees prior to using physical restraint as an intervention. Any identified training program must address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies.

Restraint may be necessary to separate two students who are involved in a fight, when the students are presenting an immediate danger to self or others. It is possible that a fight could be considered an emergency where it may be appropriate to use physical restraint. If physical restraint is used to separate two students involved in a fight then the requirements of the regulations and the district's policy must be followed.

Mechanical Restraint

Mechanical restraint means any device or object used to limit a student's movement. The use of mechanical restraint is prohibited, except for those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device, required by law, used by a law enforcement officer in carrying out law enforcement duties, or seatbelts and any other safety equipment when used to secure students during transport.

If a mechanical restraint is ordered for a student, it may only be used for that student for the purpose written in the order. A school or district, in consultation with the district's attorney, should determine the individuals appropriately licensed to issue the order for a mechanical restraint. A mechanical restraint ordered for one student may not be used on another student, without an order. A mechanical restraint should not be used in a nontherapeutic (prescribed) manner.

The exception to allow law enforcement officers to use mechanical restraints in carrying out law enforcement duties applies to law enforcement officers that are directly employed by a school district as well as those who are employed by a local law enforcement agency that has a contract with the school district. There is no exception to the physical restraint requirements for law enforcement officers and those portions of the regulations must be followed by these individuals, regardless of the individual's employer, when physical restraint is used in a school setting.

Chemical Restraint

Chemical restraint means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement. Chemical restraint is prohibited, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments.

Inclusion of a Mechanical Restraint or Chemical Restraint in an IEP

Mechanical restraint ordered by a person appropriately licensed to issue the order for the device or chemical restraint as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments may be included in an IEP if approved by an IEP team. IEP teams choosing to include these type of restraints should evaluate the student and the environment to determine whether this type of restraint is appropriate, consider the triggers for the behavior that the restraint is being used to prevent, and try other interventions before using prescribed mechanical or chemical restraint. If the mechanical or chemical restraint is prescribed and placed in the IEP, the IEP should detail the circumstances under which the mechanical or chemical restraint should be used, how often it

should be used, alternatives, or discontinuation of the use of the mechanical or chemical restraint as a goal.

Seclusion

Seclusion, when used with a student, means all of 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 reasonably believes that the student will be prevented from leaving, the enclosed area.

Seclusion – Use and Restrictions

Seclusion should not be used as a routine school safety measure. Seclusion should not be used for purposes of discipline, punishment, or staff convenience. Seclusion should only be used if the child's behavior presents an immediate danger to self or others. The use of seclusion should always be a last resort.

Seclusion may never be an option for children who have a medical condition that could put the child in mental or physical danger as a result of seclusion. No child should be placed in seclusion unless supervised by a school employee at all times. Before using seclusion, a school employee should be trained, consistent with nationally-recognized training programs, to ensure the safe use of this ESI. School districts should identify and/or develop training to be provided to employees prior to using seclusion as an intervention. Any identified training program must address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies.

Any enclosed area used for secluding a child should be of a size that is appropriate to the child's chronological and developmental age, size, and behavior. The area should have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which it is located and should be equipped with heating, cooling, ventilation, and lighting systems that are comparable to the systems that are in use in the other areas of the building. The area should be free of any objects that pose a danger to the child who is being placed in the area. Any area used for seclusion should be equipped with a door that locks only if the lock is equipped with a device that automatically disengages the lock in case of an emergency, such as a fire or severe weather. Any child who is placed in seclusion should be monitored – visually and audibly – at all times and should be removed from seclusion immediately when the child no longer presents an immediate danger to self or others.

Time-out is not seclusion. Time-out is defined in the regulations as a behavioral intervention in which a student is temporarily removed from a learning activity without being confined. If you are concerned that the time-out practices at your school are too similar to seclusion and you are having trouble distinguishing between them, you should consider changing your practices

regarding time-out so that they more closely resemble the definition given above and not the definition of seclusion.

In-school suspension is not seclusion. In-school suspension does not typically involve the student being isolated from adults and peers and thus does not meet the definition of seclusion. If you are concerned that the in-school suspension practices at your school are too similar to seclusion and you are having trouble distinguishing between them, you should consider changing your practices regarding in-school suspension.

District Policies

Documentation

Any time an ESI is used with a student it must be documented. Documentation must include:

- Date and time of the intervention,
- The type of intervention (seclusion or restraint),
- The length of time (in minutes) the intervention was used, and
- Names of school personnel who participated in or supervised the intervention.

These are the minimum requirements for documentation. A school may draft a form calling for more information than the regulations require. As suggested best practice, districts may want to consider documenting when parents were notified in writing of the use of an ESI with their child. Schools may also wish to document the behavior of the student for which an ESI was used and alternative interventions school staff tried prior to implementing an ESI. This information may help school staff determine how to prevent the need for using an ESI in the future. This documentation becomes part of the student's educational record, which parents may view upon request. Districts may also choose to provide the documentation of the ESI with the written parental notification of the incident.

Note: The documentation of any school's or any district's use of an ESI must be provided to KSDE upon written request from KSDE.

A sample form for documentation is provided in Appendix B.

Notification

When an ESI is used with a student, the parents must be notified in writing within two school days. Email meets the requirement of written notification.

The regulations allow for a maximum of two school days to notify parents in writing when an ESI is used with their child. However, if an ESI is used with a student the day before a school break, for example, it is not best practice to wait until the next school day after the break to notify the parent. Every effort should be made to notify the parent as soon as possible after an ESI is used with their child, with a maximum of two school days permitted under the regulations. Districts may consider adopting shorter time frames for parental notification.

Written policies developed pursuant to this regulation shall be accessible on each school's web site and shall be included in each school's code of conduct, school safety plan, student handbook, or any combination of these. The intent behind this is that the policy be accessible and available to parents in two places. Even if your school's code of conduct, which includes the district's ESI policy, can be found on your school's web site, the district's ESI policy must be located both in the school's code of conduct and in a separate location on the school's web site. Parents must be provided with these policies annually.

Use of Data

Districts must establish procedures for the collection, maintenance, and periodic review of the use of ESIs at each school. Information maintained by the school on the use of ESI must be compiled and submitted, at least biannually (twice a year), to the district superintendent or district designee. School staff must follow the procedure set out by the district to review the ESI data for that school. School administration is encouraged to review this data as frequently as necessary to ensure they are familiar with the incidents occurring in their school.

Districts must develop a system to collect and maintain documentation for each use of an ESI at the district level as well. The district-level documentation must include, at a minimum, the date and time of an incident of ESI, the type of intervention used, the length of time the intervention was used, and the school personnel who participated in or supervised the intervention. District-level staff must follow the district procedure for reviewing the ESI data for all schools in the district. District administration is encouraged to review this data as frequently as necessary to ensure they are familiar with the incidents occurring in their school.

This review of data is important, both at the school and district levels, because it is the information that administration will use to decide what school personnel training is appropriate. Decisions on school personnel training should be based on the needs of the students and the needs of school personnel as appropriate to their duties and potential need to use an ESI.

School Personnel Training

District policies must include school personnel training consistent with nationally recognized training programs on the use of ESIs. Training must address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies. Training must be designed to meet the needs of personnel as appropriate to their duties and potential need to use an ESI. Schools and programs must maintain documentation on training provided and those who attended. Please note that the training component is required for all school personnel.

The intention with this component of the regulations was never to require all school personnel to be trained in the most restrictive behavioral intervention techniques involving the use of physical restraint. This training component has been described as a continuum, allowing districts to (1) look at the data on the use of seclusion and restraint within the district; (2) evaluate what is already in place in the district with regards to training on prevention, de-

escalation, and positive behavioral intervention strategies; and, (3) customize the additional training to meet the identified needs of that district with respect to the requirements of the regulations. Districts are also encouraged to look at the district's crisis plan, if one is in place. The use of an ESI denotes a crisis, an emergency situation in which safety is in jeopardy. It may be appropriate in some districts for those school personnel who currently respond to a school crisis to be trained in the use of the most restrictive behavioral intervention techniques should the need for the use of a physical restraint arise.

Resources for training are available at the Kansas Technical Assistance System Network webpage under the "Emergency Safety Intervention Resources" tab. www.ksdetasn.org

Local Dispute Resolution Process

Districts must develop policies that establish local dispute resolution processes. Local dispute resolution processes must include: a complaint investigation procedure; a procedure for parents to present written complaints to the local board of education to initiate a complaint investigation by the local board of education; and a procedure for parents, the school, and KSDE to receive written findings of fact and, if necessary, corrective action from the local board of education within 30 days of the filing of a complaint.

Note: In order to retain objectivity in the local dispute resolution process, KSDE recommends that any complaint investigation initiated under the regulations be conducted by the local board of education and not by school or district personnel. KSDE recognizes, in some instances, that it may be appropriate to designate another individual, such as the local board of education's attorney, to handle the complaint investigation.

The local dispute resolution process as established in the regulations does not preclude nor preempt any other dispute resolution processes a parent may choose to employ. A parent may at any time file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR), make a report to the Kansas Department for Children and Families' (DCF) Kansas Protection Report Center, file a lawsuit, make a report to local law enforcement that may lead to the filing of a criminal charge by the county or district attorney or utilize KSDE's special education dispute resolution procedures, if applicable to the child involved.

Reporting

Districts shall report all incidents of ESIs to KSDE by the date and in the form specified by KSDE. Currently, districts report ESI data quarterly to KSDE through KAN-DIS, a secure web-based application. More information on reporting procedures can be found at www.ksde.org/kandis. To ensure uniformity across the state, quarters for ESI reporting purposes are established annually and do not necessarily match district calendars. ESI reporting dates for the upcoming school year are communicated to administrators in May of the previous school year and ESI reporting reminders are sent to administrators on a quarterly basis. All reported ESI data will be used by KSDE to provide an annual report to the Board about the use of ESI with all students in Kansas.

Kansas Emergency Safety Interventions Regulations

(Adopted by the Kansas State Board of Education on February 13, 2013.

Became law on April 19, 2013.)

Article 42. – EMERGENCY SAFETY INTERVENTIONS

91-42-1. Definitions. As used in this regulation and in K.A.R. 91-42-2, each of the following terms shall have the meaning specified in this regulation:

(a) “Chemical restraint” means the use of medication to control a student’s violent physical behavior or restrict a student’s freedom of movement.

(b) “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, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(c) “Emergency safety intervention” means the use of seclusion or physical restraint when a student presents an immediate danger to self or others. Violent action that is destructive of property may necessitate the use of an emergency safety intervention.

(d) “Mechanical restraint” means any device or object used to limit a student’s movement.

(e) “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.

(f) “Physical restraint” means bodily force used to substantially limit a student’s movement.

(g) “School” means any physical learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school, that receives public funding or over which the Kansas state department of education has regulatory authority.

(h) “Seclusion,” when used with a student, means that all of 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 reasonably believes that the student will be prevented from leaving, the enclosed area.

(i) “Time-out” means a behavioral intervention in which a student is temporarily removed from a learning activity without being confined.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013.)

91-42-2. Policy, documentation, and reporting requirements.

(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 definitions and requirements of these regulations, including that seclusion and physical restraint shall be used only when student conduct meets the definition of necessitating an emergency safety intervention. Parents shall be annually provided with the written policies on the use of emergency safety interventions. The written policies shall include the following:

(1) Policies and procedures for the use of emergency safety interventions:

(A) Policies and procedures shall prohibit the following:

(i) The use of prone, or face-down, physical restraint; supine, or face-up, physical restraint; physical restraint that obstructs the airway of a student; or any physical restraint that impacts a student's primary mode of communication;

(ii) the use of chemical restraint, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments; and

(iii) 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; and

(B) written policies developed pursuant to this regulation 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, or any combination of these;

(2) school personnel training consistent with nationally recognized training programs on the use of emergency safety interventions:

(A) Training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;

(B) training shall be designed to meet the needs of personnel as appropriate to their duties and potential need for emergency safety interventions; and

(C) schools and programs shall maintain written or electronic documentation on training provided and lists of participants in each training;

(3) written parental notification whenever an emergency safety intervention is used. This notification shall be provided within two school days;

(4) documentation of any incident of emergency safety intervention, which shall include the date and time of the intervention, the type of intervention, the length of time the intervention was used, and the school personnel who participated in or supervised the intervention;

(5) procedures for the collection, maintenance, and periodic review of the use of emergency safety intervention at each school, which shall include the documentation described in paragraph (a)(4); and

(6) local dispute resolution processes. Each district shall develop policies that, at a minimum, shall include the following:

(A) A complaint investigation procedure;

(B) a procedure for parents to present written complaints to the local

board of education to initiate complaint investigation by the local board of education; and

(C) a procedure for parents, the school, and the Kansas state department of education to receive written findings of fact and, if necessary, corrective action from the local board of education within 30 days of filing of a complaint by a parent.

(b) Each district shall develop a system to collect and maintain documentation for each use of an emergency safety intervention, which shall include the information described in paragraph (a)(4).

(1) Information maintained by the school shall be compiled and submitted, at least biannually, to the district superintendent or district designee.

(2) Documentation of any school's or district's use of emergency safety intervention shall be provided to the Kansas state department of education upon written request of the Kansas state department of education.

(3) Each district shall report all incidents of emergency safety intervention to the Kansas state department of education by the date and in the form specified by the Kansas state department of education. An annual report shall be provided by the Kansas state department of education to the Kansas state board of education.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013.)

