



## Early Childhood, Special Education and Title Services

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TO: Rep. J. Russell Jennings, Chair  
House Corrections and Juvenile Justice

FROM: Laura Jurgensen, Attorney II

SUBJECT: HB 2243 – Authorizing school security officers to use certain types of emergency safety interventions

The Kansas State Department of Education (KSDE) opposes HB 2243 which would permit school security officers to use mechanical restraint when significant physical harm to the student or others would occur if mechanical restraint is not used on the student. KSDE opposes this bill for three reasons: 1) The State Board has studied this topic and declined to extend this authority to school security officers; 2) the Emergency Safety Intervention Task Force, established by this legislature, also studied this topic and declined to include this provision in its recommended changes to the emergency safety intervention statutes; and 3) the standard proposed for school security officers' use of mechanical restraint would create confusion with district staff and families and removes existing protections currently provided to students and parents.

In 2013, the Kansas State Board of Education (State Board) passed the first rules and regulations in our state on the use of seclusion or restraint with students, known as emergency safety intervention. Relevant stakeholders began conversations on this topic years before that. Those conversations have included the use of restraint, including mechanical restraint, by school security officers. Despite these frequent conversations and collection of information from law enforcement officers and on behalf of school security officers, the State Board chose not to provide the exception that the proponents of HB 2243 request, in the original emergency safety intervention regulations and in multiple amendments to the regulations since that time. However, current law provides an exemption to campus police officers and school resource officers from emergency safety intervention requirements when engaged in an activity that has a legitimate law enforcement purpose. This exemption does not create a second standard that district staff and families must be aware of, but allows local boards flexibility to designate certain personnel to engage in law enforcement activities, which may include the use of mechanical restraint. The State Board has traditionally relied heavily on the Special Education Advisory Council (SEAC) for recommendations on this topic. Although this law applies to all students, emergency safety interventions are used more often with students with disabilities and so SEAC has been an important partner in developing this law. You will hear from the SEAC chair today that SEAC has studied the use of restraint by law enforcement officers and school security officers extensively, and has declined to recommend the use of mechanical restraint by school security officers.

The Kansas Legislature passed statutes on the use of emergency safety intervention with students in 2015. These statutes established the Emergency Safety Intervention Task Force (Task Force) to further study this topic and recommend changes to the statutes to the 2016 legislature. I represented KSDE on this Task Force and you will hear today from additional members of this Task Force. The Task Force considered

testimony from law enforcement officers and school staff on whether law enforcement officers should be exempt from this law. After testimony from stakeholders and discussion on this topic, the Task Force recommended an exemption for campus police officers and school resource officers from the emergency safety intervention statutes, but declined to extend this exemption, including the use of mechanical restraint, to school security officers, as requested in HB 2243.

HB 2243 would allow school security officers to use mechanical restraint “when significant physical harm to the student or others would occur if mechanical restraint on the student is not used.” The standard “significant physical harm” is a different standard than what is required for school staff to use physical restraint or seclusion with a student. The standard for the use of physical restraint or seclusion of a student is “a reasonable and immediate danger of physical harm to such student or others with the present ability to effect such physical harm.” This means that school security officers would have to keep one standard in mind when using physical restraint or seclusion and a different standard in mind when using mechanical restraint. This difference would no doubt lead to confusion for district staff and families in understanding which standard applied in which circumstances.

What is perhaps most concerning about this bill is that mechanical restraint is not an emergency safety intervention by definition. Therefore, the oversight and protections afforded to students and parents when an emergency safety intervention is used with a student do not apply. These include the following requirements:

- The use of least restrictive alternatives to emergency safety intervention, such as positive behavior supports, and the determination that they are ineffective or inappropriate;
- That the use of an emergency safety intervention shall cease as soon as the immediate danger of physical harm ceases to exist;
- That the use of emergency safety intervention shall not be used for discipline, punishment, or the convenience of a school employee;
- Same day parent notification when an emergency safety intervention is used with a student;
- Detailed written documentation of the use of an emergency safety intervention;
- The encouragement that parents request a meeting with school personnel to discuss the incident and how to prevent the future use of emergency safety interventions;
- Parent notification about the standards for using emergency safety interventions;
- Access to the local dispute resolution process, and the complaint process of the State Board; and
- Reporting incidents to the State Board, which are used for accountability and the provision of technical assistance.

This topic has been studied extensively by the State Board, SEAC, and the Emergency Safety Intervention Task Force. HB 2243 has not come from any of these groups. Additionally, a new standard for school security officers’ use of mechanical restraint would create confusion for families and district staff and remove a great deal of protections from students and families. KSDE respectfully requests that you not take action on this bill.