



Notes

Kansas Special Education Advisory Council
SEAC

November 13, 2018

Call to Order:

Meeting came to order at 9:05 a.m.

Roll Call – Members Present:

| | | |
|----------------|----------------|----------------------------|
| Mike Martin | Rebekah Helget | Joan Macy |
| Heidi Cornell | Amy Dejmal | Tina Gibson |
| Chelle Kemper | Jennifer King | Kathy Kersenbrock-Ostmeyer |
| Judy Martin | Marvin Miller | Heath Peine |
| Laura Thompson | Deb Young | Lesli Girard |
| Rocky Nichols | | |

Members Absent:

| | | |
|-----------------|---------------|--------------|
| Stacie Clarkson | Megan Laurent | Rachel Marsh |
| Sarah Schaffer | Robb Scott | Becci Werner |

KSDE Staff Present:

| | | |
|---------------|-----------------|--------------|
| Colleen Riley | Laura Jurgensen | Myron Melton |
| Pat Bone | Amy Martin | |

APPROVAL OF AGENDA

Motion to approve: Rebekah Helget

Second: Heath Peine

Decision: Approved

Approval of Minutes

Motion to approve as corrected: Kathy Kersenbrock-Ostmeyer

Second: Laura Thompson

Decision: Approved

Corrections on page 2, Jon Harding is with Kansas School for the Blind (KSB).

Emergency Safety Intervention Regulations

Laura Jurgensen

Handouts

Laura provided a recap of the discussion from the September meeting.

Two handouts provided:

- Administrative review (redacted)
- Definition of seclusion.

A brief review of the history describing the development of Emergency Safety Intervention (ESI) regulations was provided. Prior to 2013, the State Board had written guidance and the Kansas State Department of Education (KSDE) was collecting data on the use of seclusion and restraint. SEAC led stakeholder discussions to develop the State Board Regulations. There were meetings both in Topeka and around the state to collect stakeholder input. The State Board passed regulations based on stakeholder feedback in 2013. SEAC continued to have discussions around ESI following the passage of the regulations. The State Board directed SEAC to develop an appeal process for parents. Concerns were expressed from the field on the use of restraints by Law Enforcement Officers. This resulted in amended regulations passed in 2015. The Kansas Legislature passed statutes in 2015, which were signed by the governor. Those statutes set up a task force to study the ESI statutes. This Task Force recommended changes to the statutes and the Kansas Legislature made those changes in 2016, which were signed by the governor. In the past two years, there have not been changes to the regulations or statutes.

During the 2018 Kansas legislative session, members of the legislature raised some concerns. SEAC is holding this discussion and receiving testimony today as a result of the concerns regarding seclusion raised surrounding the interpretation of the “**definition of seclusion.**”

According to the seclusion definition, three conditions must exist:

- (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 the student reasonably believes that the student will be prevented from leaving, the enclosed area.

Currently, a parent may appeal to KSDE, for review by an administrative officer. The review officer is located in the office of general counsel at KSDE and is not a member of the Special Education and Title Services team. Report of the administrative review, which led to the legislature’s concern I included in the handouts. This has been redacted to protect the student’s and family’s privacy. Please refer to page 6 which has the Conclusions of Law. This is where you will find the decision made by the review officer. Paragraphs 10-14 explain facts presented in the case.

Today’s meeting purpose is to hear public comment/testimony about Emergency Safety Interventions, review seclusion definition and possibly make a recommendation to the Kansas State Board of Education.

It has been two years since any change has occurred to statutes or regulations. SEAC has been continuously involved in the discussion on this topic over the years. SEAC holds public comment at every meeting and encourages comments from all perspectives.

Public Comment/Testimony on ESI

- Stephen Perry, Heartspring Director and Megan Swift, special education director
- Ann Matthews, USD 437 Auburn-Washburn, Director of Special Education, and former chair of the SEAC. (Copy of testimony was provided in writing.)
- Lori Stithem, USD 497 Lawrence, Assistant Director of Special Education.

- Mike Burgess, Disability Rights Center of Kansas (DRC), Director of Policy and Outreach
- Written Testimony from Mark Farr, Kansas National Education Association (KNEA), President

Summary of SEAC Discussion following testimony.

- Today, we are focusing on the definition of seclusion to be sure it reflects the intent of the State Board of Education and the ESI Taskforce.
- Lesli Girard provided ESI report from Families Together on consultations January 1 through November 9, 2018. Families Together's emphasis in working with families is on communication with parents and improving communication between parents and the school. In the last three years, the number of calls around ESI has decreased.
- Rocky Nichols distributed the memo from Senator Baumgardner and Representative Erin Davis at the September meeting. (Handouts)
- Reminder that ESI statutes and regulations apply for ALL students. ESI reporting and training is an unfunded legislative mandate. The SETS team has put both a school staff training and monitoring system in place to meet the requirements.
- Redefining these terms may cause more confusion for those in field trying to lead this work.
- Addressing behaviors in an IEP meeting is an appropriate team discussion. Improvement in these processes is occurring.
- Problem is not with the wording of the law but the interpretation by KSDE general counsel.
- Keep statutory definition by regulation; clarify definitions of what is expected to remove instances where kids and schools may fall through the cracks.
- Add a question/answers section (Q&A) to the regulations, which clarifies these definitions.
- Staff are being trained on how to deescalate and avoid these seclusion practices.
- Clarification is good and necessary because of the positive response and work that is occurring.
- Need to provide clarification that a hearing officer would have to follow on future decisions. The hearing officer must be able to cite the clarification as a point of legal argument. If that can be done by State Board action, that is a satisfactory resolution.
- The State Board has the task to develop rules, regulations, and guidance to enforce the law. If the State Board clarifies the definition, will it become law? Board member McNiece will consult with the KSBE attorney for clarification.
- SEAC can make a recommendation to the State Board that hearing officers for ESI reviews take these additional clarifications to the regulations into account during review, but the State Board attorney or KSDE's General Counsel would need to provide guidance on whether a hearing officer would be required to follow the clarifications if they are not included in regulation.
- Add clarification on the following words: placed, purposefully isolated, enclosed area, and student prevented from leaving. Adds information on implementation to the current regulations without changing the intent.
- Use KSBE as the governing authority to clarify terms.

Public Comment

No additional comments were provided today.

Discussion Continued:

Motion: - Kathy Kersenbrock-Ostmeyer

SEAC members believe that the current definition of seclusion in K.A.R. § 91-42-1 should remain in place, but that the Kansas State Board of Education (KSBE) utilize its authority to clarify and provide guidance on language included in the ESI regulation concerning the definition of seclusion at the December meeting on the place of isolation, enclosed area, the purpose of isolation, and student reasonably believes they are prevented from leaving by having the KSBE chair and KSBE-SEAC liaison work with TASN and other providers to clarify the definition of seclusion.

Second: Heath Peine

Discussion on Motion

- Request for conference call and or information sent to members electronically before the December meeting to be sure the work is what the council is expecting to move forward to the State Board.
- Prefer conference call to allow discussion prior to the December Board meeting to review language if needed.

Roll call vote.

14 members voted to approve.

6 members were absent for the vote.

0 members voted against.

Motion passed.

Annual Report Review – Colleen

Final Review of report prior to presentation to the State Board in January. Joan Macy, past chair, will present this report to the State Board.

Edits/Comment on document:

- Page 5 Laura Thompson fulfills majority requirement. Please add this information.
- Para guidance document will move forward into the 18-19 annual report also.

The report will be finalized and presented to the State Board at its meeting in January. Joan Macy, former SEAC chair will present. All members will be introduced during the KSBE meeting. The board may or may not ask questions of SEAC's report.

KSDE Update – Colleen

Handouts

- Breakfast with the KSBE on Wednesday, January 16, 2019 at 7:30. Speaking points will be provided on a pocket card for your use to help guide your conversations on the work of SEAC.
- January is a two-day meeting. Please follow the directions provided on the agenda for hotel reservations.
- KSDE directors and leaders from the SETS team will be invited to the breakfast.

- Office of Special Education and Rehabilitation Services (OSERS) Framework – handout from Assistant Secretary Johnny Collet on Rethinking Special Education. This framework aligns nicely with the Kansas Board Vision. Kansas has already started working on the July Administrators’ conference for next year and Johnny will be presenting as well as Commissioner, Randy Watson.
- KASEA Winter Conference – This will be a two-day conference in a larger setting this year. We are hoping to draw in some regular education administrators to engage in the conversation. The conference is open to anyone. Day 1 will focus on special education and Day 2 keynote will be very applicable to all administrators.

Council Member Reports

- Families Together – Lesli Girard - Report on consultations July 1 through September 30, 2018. New project with Kansas Department for Aging and Disability Services (KDADS) on IEP consultations. This will include an internal referral for families that need assistance. All three centers will be part of using the LifeCourse Framework with families. If you have families to refer, please have them contact their Families Together Center.
- Disability Rights Center (DRC) – Rocky Nichols- DRC has a new program that specifically comes from the social security administration. Representative payees, act on behalf of the beneficiary to spend the benefit checks to meet the needs of the individual and protect them from exploitation. DRC will be able to not only review, but also provide people with services free of charge to provide advocacy.
- Mike Martin has contacted Senator Larry Alley on the education committee. He provided information on SEAC’s role as an advisor and resource to the Kansas State Board of Education. He will also be sharing this information with Senator Baumgardner. The goal of this communication is to help legislators become aware of SEAC and our advisory role. He will make additional contact representatives before the January session. If you have suggestions for contacts, please let Mike know.
- KASEA – Rebekah Helget – At the KASEA membership meeting held last week at the Law Conference, there was a push to align state special education law and standards to the federal special education law. A big issue for this work is the inclusion of gifted at the state level that is not included at the federal level. It gets technical on funding for gifted services if it is not part of the law. There is a need to get stakeholders involved in this decision making process, to start with where we are already on the same page, and to be strategic and collaborative.
- Update on Dyslexia Taskforce- Laura Jurgensen. Dr. Jack Fletcher was able to meet with the taskforce on Friday. He had reviewed our draft recommendations. He was able to provide some feedback on those proposals. Texas has led the way on these discussions. Our Kansas conversation is very much in line with the work that has occurred in Texas. He did provide some recommendations on wording changes. It was great to hear the consensus was that the work of the taskforce is on track. Another meeting of the taskforce will occur after Thanksgiving, on November 28, from 12-5, to determine next steps..
- Heath Peine – KASEA is bringing Dr. Fletcher back in January. They are also looking to bring some trainers in to focus on instruction.
- Professional Learning – lots of opportunities. Let Colleen know of opportunities you would like shared. SEAC members are encourage to submit reimbursement requests for attendance at these activities. Let Pat or Colleen know of your desire to attend.

Mike thanked everyone for the active participation in today’s meeting.

Adjourn:

Motion to adjourn: Rebekah Helget

Second: Tina Gibson

Action: approved

Meeting adjourned at 2:15pm.