

Questions on Kansas's Emergency Safety Interventions  
Statute and Regulations in Early Childhood Settings  
(Updated August 2015)

- 1Q: I have been teaching in an early childhood special education or general education classroom for many years and have been told that emergency safety interventions (ESI) reporting requirements don't apply to preschoolers.
- 1A: The ESI statute and regulations, including the reporting requirements, apply to any learning environment, including any nonprofit institutional day or residential schools and any accredited nonpublic school **or preschool** that receives public funding or which is subject to the regulatory authority of the state board of education.
- 2Q: Biting is a common behavior among young children. When does biting meet the definition of a reasonable and immediate danger?
- 2A: When a child bites him/herself or others using teeth. (A child who mouths his or her own hand or arm without using teeth would not be considered to exhibit a reasonable and immediate danger of physical harm to self or others creating an emergency situation.)
- 3Q: Young children frequently throw things. When does throwing toys or other objects meet the definition of reasonable and immediate danger?
- 3A: Throwing something breakable or throwing anything in the direction of others may be considered an emergency situation if the destruction of property creates an immediate danger of physical harm to self or others and the child has the ability to effect such physical harm (Throwing a ball against a wall would not be considered an immediate danger to self or others. Throwing a ball in the direction of a window could pose a reasonable and immediate danger if the child has the ability to throw hard and far enough to hit the window.)
- 4Q: If I pick up a child to prevent them from engaging in a behavior that poses an immediate danger to the student or others, is that considered restraint?
- 4A: If a dangerous behavior poses a reasonable expectation of immediate danger or physical harm to self or others (likely to occur within several seconds), the adult must determine the most appropriate type of response that will prevent or de-escalate the child's behavior. For some children, physical intervention can act to escalate their behavior. The 2015 ESI statute calls for school employees to determine, before using an ESI, that less restrictive alternatives, such as positive behavior interventions, were inappropriate or ineffective under the circumstances. If the adult determines that picking the child up is the most appropriate response, it may constitute restraint if the adult is using physical control to hold or confine a child. Remember, the definition of physical restraint is "bodily force used to substantially limit a student's movement" (K.A.R. 91-42-1(f)).

- 5Q: If a child refuses to comply with a direction to transition from the playground back inside to the classroom and I pick the child up and carry him/her inside, is that considered restraint?
- 5A: Kansas regulations distinguish between physical restraint (K.A.R. 91-42-1(f)) and physical escort (K.A.R. 91-42-1(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.” The example described here would **not** meet the definition of a physical escort. Would it be considered restraint? In this case, if the picking up of the child to move the child to another location required force that substantially limits the child’s movements, it would be considered to be physical restraint. If your action meets the definition of physical restraint, regardless if the situation meets the definition of an emergency, it would be reportable, parents would need to be contacted, and the incident would need to be documented in accordance with changes in requirements under the 2015 ESI statute. The ESI statute makes it clear that ESIs may not be used for purposes of discipline, punishment, or for the convenience of a school employee.
- 6Q: I have a student with a behavior plan that includes a brief “time-out” for specific problem behaviors that are attention seeking and disrupt the learning of other students. I know that time-out (K.A.R. 91-42-1(i)) is not considered to be seclusion (K.A.R. 91-42-1(h)). However, this student cannot sit independently and therefore needs to be placed in a corner chair with a seat belt when he is in time out. Would this be considered restraint?
- 6A: An adaptive seat used for any purpose other than that for which it was prescribed is considered a “mechanical restraint” (K.A.R. 91-42-1(d)). The use of mechanical restraint is prohibited in the regulations, with a few recognized exceptions (K.A.R. 91-42-2(a)(1)(iii)).
- 7Q: I am an early childhood special education teacher with an inclusive preschool classroom in a Head Start center under the direction of our local community action program. I know the Kansas ESI statute and regulations apply to my paraeducators, to our related service providers, and me, since we are all employed by the school district. Do the ESI statute and regulations also apply to the Head Start staff in the center? Do they need to receive the same training that we receive?
- 7A: The Kansas ESI statute and regulations apply to any preschool (including Head Start) operated by a public school district or an accredited nonpublic school (K.A.R. 91-42-1(g)) and to all school personnel and individuals hired by a school district. Unless the Head Start center where your classroom is housed meets these criteria, their staff is not bound by the ESI statute and regulations and the policies (e.g., training procedures, documentation, notification, reporting) adopted by the local school board. In regard to training (although not required in the example), when you can engage your early

childhood partners in collaborative efforts, such as training, it can strengthen your partnership and efforts for a cohesive program.

- 8Q: Our district provides Crisis Prevention Intervention (CPI) training, which includes prevention techniques, de-escalation techniques, positive behavioral intervention strategies, and emergency or crisis intervention, and our early childhood staff always participates. Do we need to do anything different because of ESI regulations or the new ESI statute?
- 8A: The Kansas ESI regulations require districts to provide school personnel with training “consistent with nationally recognized training programs on the use of emergency safety interventions” (K.A.R. 91-42-2(a)(2)). The focus of all training should be on positive behavioral intervention strategies, de-escalation techniques, and prevention techniques. As long as your district training includes materials and adaptations for young children, and all of the school personnel identified as needing the training are receiving it (e.g., paraeducators, related service providers, bus drivers, bus aides, etc.), you do not need to do anything different.
- 9Q: If we participate in district training on ESI, do we still need training in positive behavioral intervention strategies?
- 9A: Yes. If your district’s current ESI training does not include prevention techniques, de-escalation techniques, and training in positive behavioral intervention strategies (K.A.R. 91-42-2(a)(2)(A)) appropriate for school personnel working with preschoolers, your district will need to provide such training to meet the needs of personnel (in regular and special education) as appropriate to their duties and potential need for training (K.A.R. 91-42-2(a)(2)(B)).
- 10Q: Should ESI be included in a child’s behavior plan?
- 10A: Generally, ESI should not be a planned intervention for a specific child under foreseeable circumstances. A behavior plan should focus on positive behavioral interventions and supports, based on a functional assessment of problem behaviors, prevention strategies, teaching and reinforcing replacement skills, and use of function-based interventions. If a team decides to include information about a specific ESI (to be used or not to be used) in a child’s behavior plan, perhaps because of the nature and severity of a child’s dangerous behavior or a history of use of restraint/seclusion, ESI regulations still apply. Any use of an ESI must be documented, communicated to the parents, and reported, according to changes in requirements under the 2015 ESI statute.