



Serving Educational Leaders,
Inspiring Student Success

HOT LEGAL TOPICS 2016

Fall Summit 2016

Fair Labor Standards Act (FLSA)




- FLSA is a federal employment law
- Establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
 - Applies to public school districts

2

Final FLSA Overtime Regulations




- Issued and became final on May 23, 2016, with an effective date of **December 1, 2016**.
- The final rule:
 1. Sets the minimum salary for full-time salaried workers at \$47,476 per year (\$913.00 per week);
 2. Increases the annual salary for highly compensated employees from \$100,000 to \$134,004; and
 3. Establishes a mechanism to automatically update the salary levels every 3 years to maintain levels.
 - Beginning January 1, 2020
 - DOL will provide advance notice

3

For an employee to be exempt you must say...



to all three parts of the overtime exemption test!!!

4

Three-Part Test for Overtime Exemption



1. Salary Basis Test – No Change
 - Be salaried, pay predetermined, fixed salary not subject to reduction because of variation in quality or quantity of work performed
2. Minimum Salary Test – Major Change
3. Duties Test – No Change
 - Executive
 - Administrative
 - Professional
 - Certain Computer Employees



5

Executive Employee




Paid not less than \$913 per week?	Y	N
Paid on a salary basis?	Y	N
Primary duty managing the school district or a customarily recognized department or subdivision of the school district?	Y	N
Regularly and customarily supervises two or more employees in the department the executive is managing?	Y	N
Suggestions and recommendations about hiring, firing, advancement, promotion or any other tangible employment action with regard to other employees are given particular weight?	Y	N

6

Administrative Employee KASB

Paid not less than \$913 per week?	Y	N
Paid on a salary basis?	Y	N
Primary duty consists of the performance of office or non-manual work directly related to the management or general business operations of the school district?	Y	N
Primary duty requires the exercise of discretion and independent judgment with regard to matters of significance?	Y	N



7

Examples of Administrative Exemptions KASB

- Academic Administrators
 - Specific exemption for administrative employees whose primary duty is performing administrative functions directly related to academic instruction or training in an education establishment
- Business Managers
- HR and Employee Benefits Managers
 - Does not include a personnel clerk who “screens” applicants for minimum qualifications and fitness for employment.
- Public Relations/Communications Directors



8

Professional Employee KASB



Paid not less than \$913 per week? (Not Required for Teachers)	Y	N
Paid on a salary basis? (Not Required for Teachers)	Y	N
Does the employee's primary duty consist of the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired?	Y	N

9

Examples of Professional Exemption KASB

- Teachers; but not Teaching Assistants
- Lawyers, but not paralegals
- Nurses (RNs); but not LPNs
- Athletic trainers (if completed four years of pre-professional study in accredited program and are certified by Board of Certification of the National Athletic Trainers Association)
- Accountants (CPAs); but not Accounting clerks or bookkeepers who do routine work



* This is an expanding area as new degrees and certifications are created.

10

Teachers are Exempt Employees KASB

- Salary and salary basis requirements do not apply to teachers.
- Primary duty must be teaching, tutoring, instructing, lecturing, employed and the employee must be engaged in activity as teacher in educational establishment
 - Primary duty of teaching by its very nature requires exercising discretion and judgment



11

Nurses KASB

- Registered nurses who are registered by appropriate state examining board generally meet duties requirements for learned professional exemption.
 - Many registered nurses, however, are paid by hour, not on salary basis, and thus are entitled to overtime pay
- Licensed practical nurses generally do not qualify as exempt learned professionals.



12

Computer Professional KASB

Is the employee paid at least \$913 per week on a salary basis or paid on an hourly basis, at a rate not less than \$27.63 an hour.	Y	N
Paid on a salary basis (unless hourly)?	Y	N
Is the employee employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below?	Y	N
Does the employee's primary duty consist of: The application of systems analysis techniques and procedures to determine hardware, software or system functional specifications; •The design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications; •The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or •A combination of the above.	Y	N

13

Computer Employee Exemption KASB

Current duties test is relatively specific, requiring high level work, such as computer analysis and/or programming. (29 C.F.R. § 541.400)

Not exempt:

- Computer operators or employees engaged in computer manufacturing, repair, or maintenance
- Employees whose work highly depends on or is facilitated by the use of computers and computer software programs, but who do not perform the computer analysis or programming duties

14

Rule 10 Coaches KASB



- Rule 10 coaches cannot be volunteers. (KSHSAA rules)
- Rule 10 coaches are not exempt employees. (FLSA)
- Rule 10 coaches are subject to minimum wage and overtime requirements (FLSA)
- Be careful to recognize joint employment problems that may arise.

15

Joint Employment KASB

1. Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or
2. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or
3. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.



16

Realistic Consequences KASB

What I think I look like



What I actually look like



- Reduced "hourly rate" to account for overtime
- Employers reclassifying employees as hourly employees
 - Timekeeping requirements
 - Reduced flexibility
 - Not paid for doctors appointments
 - Accessing e-mails from phone
 - No longer allowed to work from home
- Asking exempt employees to do more

17

What to do Now KASB

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    graph TD
      A[Identify Affected Employees] --> B[Develop Strategy]
      B --> C1[Zero Cost Implementation]
      B --> C2[Cost Mitigation]
      B --> C3[Cost Absorption]
      B --> C4[Long-Term Implications]
      C1 --> D[Develop Strategies]
      C2 --> D
      C3 --> D
      C4 --> D
      D --> E[Communicate Changes]
  
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18

What to do Now KASB



2. Analyze alternatives

- Zero-cost implementation strategy
 - Reduce hours to avoid paying overtime?
 - Reduce hourly pay so worker's hourly wages plus overtime equal correct salaries?
- Increase employees to the new minimum
 - Raise salaries for those who pass the duties test & have salaries that are close to the new threshold.
- Work distribution
 - Redistribute work so no employee who would otherwise be eligible for overtime pay has to work overtime, i.e. shift more work to exempt employees?
- Productivity loss
 - Hire more workers to fill gap?
- Long-term projections

19

Timekeeping KASB



- Have supervisory, payroll and finance staffs monitor weekly time records for accuracy and completeness.
 - Report all overtime worked by nonexempt staff to the business office to ensure the employees are paid overtime or credited with compensatory time.
 - If the school has concerns about information being recorded properly or staff being paid properly, determine if an audit of employee records is needed.

20

Compensatory Time KASB



- School employers may offer comp time
 - 1 ½ hours off with pay for each OT hour worked
 - Employee may bank or carry over 240 hours of comp time
 - Any overtime over this amount must be paid in cash
 - Employee must be permitted to use accrued comp time within a reasonable period after it is requested
 - Unless to do so would unduly disrupt the operations of the school
 - Comp time used only if agreement negotiated with employee prior to beginning work
 - Employer must show how employee is informed of how comp time earned, preserved, used or cashed out

21

School District Liability KASB



- A school district's failure to follow FLSA overtime requirements may result in the following:
 - Back wages due
 - Back wages may go back 2-3 years (29 USC 216(b))
 - Liquidated damages doubling back wages due and attorneys fees
 - Criminal penalties
 - Civil penalties up to \$1,100 per violation
 - Kansas can assess fines from \$250 to \$1,000 for any violations. K.S.A. 44-1210(a)
 - And...

22

Suicide Prevention SB 323 KASB

- Suicide was the tenth leading cause of death for all ages in 2013.
- There were 41,149 suicides in 2013 in the United States—a rate of 12.6 per 100,000 is equal to **113 suicides each day or one every 13 minutes.**

23

In Kansas... KASB



- One person dies by suicide every 19 hours.
- Suicide is actually the 2nd leading cause of death for ages 10-34.
- Over 4x as many people die by suicide than by homicide each year.

24

Gender Disparities

KASB

- Males take their own lives at nearly four times the rate of females and represent 77.9% of all suicides.
- Females are more likely than males to have suicidal thoughts.
- Suicide is the seventh leading cause of death for males and the fourteenth leading cause for females.
- Firearms are the most commonly used method of suicide among males (56.9%).
- Poisoning is the most common method of suicide for females (34.8%). (*Id.*)

25

Suicide by Age

KASB



- Third leading cause of death among persons aged 10-14,
- Second among persons aged 15-34 years,
- Fourth among persons aged 35-44 years,
- Fifth among persons aged 45-54 years,
- Eighth among person 55-64 years, and
- Seventeenth among persons 65 years and older.

26

Suicide Prevention: Sub. for SB 323

KASB



- The Jason Flatt Act requires all school personnel to have one hour annually of suicide prevention training (based on State Board approved programs) and requires schools to have crisis prevention plans.

27

Suicide Prevention

KASB

- Suicide training may be satisfied through independent self-review of suicide prevention training materials.
- Crisis Plan:
 - Developed for each school building
 - Must include:
 - Steps for recognizing suicide ideation;
 - Appropriate methods of interventions; and
 - A crisis recovery plan.



28

Risk Factors: Intrapersonal

KASB

- Recent or serious loss
- Mental disorders (particularly mood disorders)
- Hopelessness, helplessness, guilt, worthlessness
- Previous suicide attempt
- Alcohol and other substance use disorders
- Disciplinary problems
- High risk behaviors
- Sexual orientation confusion

29

Risk Factors: Social/Situational

KASB

- Recent or serious loss (e.g., death, divorce, separation, broken relationship; self-esteem; loss of interest in friends, hobbies, or activities previously enjoyed)
- Family history of suicide
- Witnessing family violence
- Child abuse or neglect
- Lack of social support
- Sense of isolation
- Victim of bullying or being a bully



30

Risk Factors: Cultural/Environmental

KASB

- Access to lethal means (i.e. firearms, pills)
- Stigma associated with asking for help
- Barriers to accessing services (lack of bilingual service providers, for example)
- Unreliable transportation
- Financial costs of services
- Cultural and religious beliefs (e.g., belief that suicide is noble resolution of a personal dilemma)

31

S.B. 367 Juvenile Justice

KASB

Goals

“...establishing clear guidelines for how and when school based behaviors are referred to law enforcement or the juvenile justice system with the goal of reducing such referrals and protecting public safety”



32

Required Skill Development Training

KASB

Superintendent or designee of school district and any law enforcement officer assigned to school **shall** complete skill development training.



33

Skill Development Training (Con't)

KASB

Skill development training shall include:

1. Information on adolescent development
2. Risk and needs assessments
3. Mental health
4. Diversity
5. Youth crisis intervention
6. Substance abuse prevention
7. Trauma informed responses
8. Other evidence-based practices in school policing to mitigate juvenile justice exposure



34

Skill Development Training (Con't)

KASB

Requires Attorney General, law enforcement training center and state board of education to develop regulation creating skill development training to respond effectively to misconduct in school while reducing student exposure to juvenile justice system.



35

MOU Requirements

KASB

- Superintendent in each school district or designee shall develop, approve, and submit to SBOE memorandum of understanding (MOU) developed in collaboration with relevant stakeholders, including:
 - Law enforcement agencies
 - Courts
 - District and county attorneys
- Establishing clear guidelines for how and when school-based behaviors are referred to law enforcement or juvenile justice system with the goal of reducing such referrals and protecting public safety

36

MOU Requirements (Con't)

KASB

- State board of education shall provide annual report to corrections and to judicial administration of school district compliance and summarizing content of each MOU.
- Effective July 1, 2017



37

Required School Safety and Security Reporting

KASB

Each Board of Education shall annually report to SBOE the following information relating to school safety and security:

- Types and frequency of criminal acts that are required to be reported (misdemeanors, felonies and weapons)
- Arrests and referrals to law enforcement or juvenile intake and assessment services made in connection to the criminal act (NEW)

38

- Disaggregated by occurrence at school, on school property and at school supervised activities
- Data must include an analysis according to race, gender, and any other relevant demographic information
- Effective July 1, 2017
- K.S.A. 2015 Supp. 72-89b03

KASB



39

School Security and Law Enforcement Officer, Employment, Powers and Duties

KASB

- K.S.A. 72-8222
- Board of Education of any school district or Board of Trustees of any community college may employ school security officers and may designate any one or more as campus police officers to aid and supplement law enforcement agencies of state, city, and county.

40

- Protective Function of school security officers and campus police officers extend to all property and protection of students, teachers, employees, and property of individuals on property or adjacent to.
- While engaged in protective functions, each school security officer shall possess and exercise all general law enforcement powers, rights, privileges, protection, and immunities.

KASB

41

MOU Items to Consider

KASB

- Arrange for stakeholders meeting
- Review authority of schools to discipline short term suspension up to 10 days
 - ✓ Long term suspension up to 90 days
 - ✓ Expulsion up to 186 days unless weapon
 - ✓ Review draft MOU



42

MOU Items to Consider

KASB

- Truancy reporting procedures issues?
- School Safety and Security reporting?
- Driver's License reporting issues?
- ESI and calling law enforcement when students become violent?
- Other local coordination/cooperation issues
- Monthly or follow-up meetings?



43

Need to Monitor

KASB

Juvenile taken into custody by law enforcement shall be brought to the parents unless

- Pose a risk to public safety or property
- If can't deliver to parents, police officer may
 - Issue notice to appear
 - Contact or deliver student to juvenile intake and assessment

44

Need to Monitor Juvenile Justice Information Reporting

KASB

JJA Director required to report—K.S.A. 38-2330

1. Number of juvenile offenders diverted by intake and assessment before filing
2. Number of notice to appear citations issued in each school district
3. New offense referrals
4. Juvenile offenders or CINC adjudications within 3 years of immediate intervention
5. Length of supervision for immediate interventions
6. Immediate intervention completions & failures including reason for failures

45

QUESTIONS

KASB

Call KASB Legal Staff at 800-432-2471 or email

Lori Church – lchurch@kasb.org
Sarah Loquist – sloquist@kasb.org
David Shriver – dshriver@kasb.org
Luke Sobba – lsobba@kasb.org
Angie Stallbaumer – astallbaumer@kasb.org
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46

SAMPLE

MEMORANDUM OF UNDERSTANDING BETWEEN

_____ USD No. _____
[Name of School District]

*This Agreement is entered into on this _____ day of _____, 2016 between
U.S.D. _____, _____ County, Kansas and*

Local Law Enforcement Agencies:

[List all if school district is in more than one community]

Courts Represented:

County and District Attorney's Office(s) Represented:

*[INSERT NAMES OF ALL PARTIES-- PARTIES MUST INCLUDE, AT A MINIMUM, ALL LOCAL LAW
ENFORCEMENT AGENCIES, COURTS, AND THE COUNTY OR DISTRICT ATTORNEY'S OFFICE]*

I. PURPOSE OF MEMORANDUM OF UNDERSTANDING

- A. This Memorandum of Understanding (“Memorandum”) is entered into between the *[insert name and number of school district]* (“School District”), the *[insert names of all parties pursuant to K.S.A. 72-89b03(i). Parties must include, at a minimum, all local law enforcement agencies, courts, and the county or district attorney’s office.]* The purpose of this Memorandum is to establish understanding between community agencies (“Parties”) involved in the referral of school-based behaviors to law enforcement or the juvenile justice system. The goal of this Memorandum is to reduce such referrals and protect public safety. The Parties understand and agree that each party will use its best efforts to comply with the terms and conditions of this Memorandum.
- B. The Parties acknowledge and agree that decisions affecting the filing of a complaint against a student and whether to restrain a student and place a student in secure detention should not be taken lightly. This Memorandum delineates the responsibilities of each party when school districts are required to report student behavior under Kansas law and when schools need the assistance of local law enforcement and the district and county attorney to protect the safety of all students or an individual student to promote the best interests of the student and the community.
- C. The Parties further acknowledge that avoiding formal arrest, handcuffing, and transporting the student to juvenile intake may help the student avoid being negatively labeled.
- D. The Parties acknowledge and agree that this Memorandum is a cooperative effort among the public agencies named herein to establish guidelines for the referral of school-based behaviors to law enforcement or the juvenile justice system with the goal of reducing such referrals and protecting public safety. The Parties further acknowledge and agree that the guidelines contained herein are intended to establish uniformity in the referral of school-based behaviors to law enforcement or the juvenile justice system while simultaneously ensuring that each case is addressed on an individual basis to promote a response proportional to the various and differing facts which affect each student’s case.
- E. The Parties acknowledge and agree that the matter in which each student incident is handled by the law enforcement officer, school principal or designee, and/or juvenile intake is dependent upon the many factors unique to each student that include, but are not limited to, the student’s background, present circumstances, general demeanor and disposition toward others, student discipline record, mental health status, the student’s individualized education program, crisis plan, behavior intervention plan, criminal record, and other factors. Therefore, the Parties acknowledge that students involved in the same

incident or similar incidents may receive different and varying responses depending on the specific facts relating to the student's behavior and the above factors.

- F. The Parties acknowledge and agree that when responding to a disturbance at a school district location, the law enforcement officers will inquire whether the school involved has exhausted the district's conflict resolution alternatives before making an arrest(s) or removing the student unless a greater public safety concern exists.
- G. The Parties agree that a cooperative effort will be made to coordinate intake services to insure that students who do not meet criteria for placement in secure detention or present a high risk to re-offend are not detained and instead are appropriately placed with parent(s), guardian(s) or in another appropriate setting.

II. DEFINITIONS

- A. "Behavior intervention plan" means a plan traditionally created by a team of district staff and parents that includes strategies, including positive behavioral interventions and supports, designed to prevent behavior that impedes a child's learning or that of others. If a behavior intervention plan is developed by a student's IEP team, it shall become part of the student's IEP.
- B. "Campus police officer" means a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222, and amendments thereto.
- C. "Crisis plan" means steps to follow and who to contact when a student escalates to a crisis level and/or appears to be in danger of harming self or others.
- D. "Individualized Education Program" or "IEP" means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of K.S.A. 72-987, and amendments thereto.
- E. "Law enforcement officer," and "police officer" mean a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of criminal or traffic laws of this state or of any Kansas municipality. This term shall include "campus police officer" and "school resource officer."

F. "School-based behaviors" mean:

1. Willful violation of any published policy for student conduct adopted or approved by the local board of education;
2. Conduct which substantially disrupts, impedes or interferes with the operation of any public school;
3. Conduct which endangers the safety of others or which substantially impinges upon or invades the rights of others at school, on school property, or at a school supervised activity;
4. Conduct which, if pupil is an adult, constitutes the commission of a felony or, if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult;
5. Conduct at school, on school property, or at a school supervised activity, which constitutes the commission of a misdemeanor or, if the pupil is a juvenile, would constitute the commission of a misdemeanor if committed by an adult; or
6. Disobedience of an order of a teacher, peace officer, school security officer or other school authority when such disobedience can reasonably be anticipated to result in disorder, disruption or interference with the operation of any public school or substantial and material impingement upon or invasion of the rights of others.

G. "School resource officer" means a law enforcement officer or a police officer employed by a local law enforcement agency who is assigned to a district through an agreement between the local law enforcement agency and the district.

H. "Student" means a child officially enrolled in a USD *[insert district number]* school.

III. TERMS OF MEMORANDUM OF UNDERSTANDING

A. School-based behaviors, as defined in this Memorandum, will generally be referred to law enforcement or the juvenile justice system, when in the opinion of the Superintendent or his/her designee the student's behavior is so disruptive that it creates a reasonable and foreseeable risk of harm to self, others, or property.

The Parties agree that the response to the commission of a school-based behavior should be determined by the school staff and/or law enforcement officer(s) involved in the incident after reviewing the unique characteristics of each student including the student's discipline history and the facts of the specific behavior incident. The Parties agree that each incident will be addressed on a case by case basis to promote a uniform response proportional to the

unique factors applicable to the student, the student's discipline history and the specific behavior incident.

- B. Any student arrested for a felony and/or who is on court supervision and those juveniles who are likely to flee or pose a public safety risk, shall be taken by *[insert name of appropriate party]* to *[insert name of appropriate local site to take the described individuals]*. Ultimately the decision is made by the law enforcement officer(s) involved in the incident in consultation with the school staff. Any student can be taken directly to *[insert name of appropriate local site to take the described individual]* for any offense if deemed appropriate by a law enforcement officer.
- C. The school district and/or law enforcement shall inform the County or District Attorney's Office of the student's cooperation in this process. In any future proceedings, the County or District Attorney may take into consideration the student's performance and/or cooperation.

IV. KANSAS STATUTES REQUIRING REPORTING TO LAW ENFORCEMENT – MANDATORY TRUANCY REPORTING

- A. Mandatory Truancy Reporting K.S.A. 72-1113
 - 1. K.S.A. 72-1113(a) requires school districts to report students who are not attending school as required by law (i.e., the child is inexcusably absent from school on either 3 consecutive school days, 5 school days in a semester or 7 school days in a school year) to the Department for Children and Families (DCF) if the student is less than 13 years of age or to the county or district attorney if the student is 13 years old and less than 18 years old.
 - 2. Before reporting the student as truant the school district must personally deliver or mail the parent a written notice that if the student does not return to school within the school day after the notice is personally delivered or 3 school days after the notice is mailed then the district has to report the student as truant to DCF or the county or district attorney.
- B. The Parties agree that the required reporting of student truancy reports could be improved by the following:
[Discuss and list any changes that would improve the local procedures for reports]

V. KANSAS STATUTES REQUIRING REPORTING TO LAW ENFORCEMENT – KANSAS SCHOOL SAFETY AND SECURITY ACT

- A. Mandatory School Safety and Security Reporting Act K.S.A. 72-89b01 to 72-89b05:

K.S.A. 72-89b03(b) requires school districts to make an immediate report to law enforcement if any school employee knows or has reason to believe that an act has been committed at school, on school property, or at a school supervised activity and the act constituted the commission of a felony or misdemeanor or involved the possession, use or disposal of explosives, firearms or other weapons.

- B. The Parties agree that the required reporting by the school district to law enforcement under the Kansas School Safety and Security Act, K.S.A. 72-89b01 to 72-89b05, could be improved by the following:

[Discuss and list any changes that would improve the procedures for reporting]

VI. MANDATORY SCHOOL SAFETY VIOLATIONS REPORTING - SUSPENSION OF DRIVING PRIVILEGES

- A. Mandatory Suspension of Driving Privileges – K.S.A. 72-89c02

1. K.S.A. 72-89c02 requires school districts to report to law enforcement whenever a pupil 13 years or older has possessed a weapon or illegal drug at school, on school property or at a school supervised activity or engaged in an act or behavior at school, on school property or at a school supervised activity which resulted in, or was substantially likely to result in, serious bodily injury to others.
2. The report shall be made as soon as practicable, but not later than 10 days from the date of the student's act.
3. Upon receipt of report from the school district, law enforcement shall investigate the matter and give written notice to the Division of Motor Vehicles of the Kansas Department of Revenue of the incident as soon as practicable, but not later than 10 days from the date of receipt of the school district's report. Law enforcement must also give a copy of this notice to the pupil and the pupil's parent or guardian.
4. The Division of Motor Vehicles shall suspend the pupil's driver's license or privileges to operate a motor vehicle for a period of one year.

- B. The Parties agree that the required reporting of mandatory school safety violations regarding suspension of driving privileges could be improved as follows:

[List any changes that would improve the above reporting procedures]

VII. SECLUSION AND RESTRAINT (EMERGENCY SAFETY INTERVENTIONS)

- A. Kansas law prohibits school districts from using certain types of restraint with students and limits a school district's use of student seclusion and restraint with certain students. This law applies to the use of seclusion and restraint with all students.

1. 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 affect such physical harm. Violent action that is destructive of property may necessitate the use of an Emergency Safety Intervention.
 2. All school staff members must be trained on the use of positive behavioral intervention strategies, de-escalation techniques, and prevention techniques.
 3. If a student is physically restrained or secluded, the school district has extensive requirements regarding documenting the events and reporting to the student's parents and the Kansas State Department of Education.
- B. The Parties agree that the school district's contacting law enforcement regarding violent acts of students that results in the destruction of property and/or presents a reasonable and immediate danger of physical harm to such student or others with the present ability to effect such physical harm could be improved as follows:
[Discuss and list any changes that would improve the above reporting procedures]

VIII. KANSAS MANDATORY CHILD ABUSE REPORTING

- A. K.S.A. 38-2223 requires any school employee to promptly report suspected child abuse.
1. The report may be oral or written and is to be made to DCF, except when DCF is not open for business, then the reports shall be made to the appropriate law enforcement agency. K.S.A. 38-2223(c)(1).
 2. The report must include, if known, the name and address of the child; the name and address of the child's parents or those responsible for the child's care; location of the child if not at the child's residence; child's gender, race and age; reason why reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of persons responsible for harm.
 3. Teachers and other staff members may not always tell school administrators of the report, even though it is a recommended policy, as they are independent reporters under the law.
- B. The Parties agree that the required reporting of child abuse could be improved by the following:
[Discuss and list any changes that would improve the local procedures for reporting to law enforcement]

IX. DURATION AND MODIFICATION OF THE MEMORANDUM OF UNDERSTANDING

- A. This Memorandum shall become effective immediately upon its execution by all Parties hereto and shall remain in full force and effect until such a time as terminated in writing by any party to this Memorandum. This Memorandum shall terminate effective the day written termination is provided to all Parties. This Memorandum may be modified at any time by written amendment to the Memorandum by all Parties hereto.

- B. The Parties acknowledge and agree to meet (on a monthly or a regular basis) for the first year of implementation to provide oversight of the Memorandum by reviewing data and making recommendations on any needed modification to the Memorandum to the heads of each agency a party to this Memorandum. Following the first year of implementation, the Parties agree to meet as all Parties deem necessary.

- C. *[Insert name and number of school district]* will host and staff the (monthly or regular) oversight meetings and any future meetings deemed necessary to facilitate implementation of the Memorandum process.

IN WITNESS WHEREOF, the Parties hereto, intending to cooperate with one another, have hereunder set their hands on the date set forth below.

[insert name of superintendent], Superintendent
[insert name and number of school district]

Date

[insert name and title of party]
[insert name of organization]

Date

[insert name and title of party]
[insert name of organization]

Date

[insert name and title of party]

[insert name of organization]

Date

[Parties must include, at a minimum, all local law enforcement agencies, courts, and the county or district attorney's office.]



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Inspiring Student Success



Sample Memorandum of Understanding Instructions

This document is designed to support your school district in complying with the requirements under K.S.A. 2016 Supp. 72-89b03(i). These requirements include developing and approving a memorandum of understanding (Memorandum) developed in collaboration with relevant stakeholders, including local law enforcement agencies, courts, and the county or district attorney. This Memorandum must establish clear guidelines for how and when school-based behaviors are referred to law enforcement or the juvenile justice system. The goal of the Memorandum is to reduce these referrals and to protect public safety.

To assist you in the creation of this Memorandum, the Kansas Association of School Boards (KASB) and the Kansas State Department of Education (KSDE) worked collaboratively to create these instructions and the accompanying sample Memorandum. We encourage you to use the sample Memorandum that we have created, but you are not required to. If you do not use the sample Memorandum you must draft your own Memorandum that conforms with the requirements of K.S.A. 2016 Supp. 72-89b03(i). Your district's Memorandum must be developed and approved by July 1, 2017.

The sample Memorandum also contains some issues that school districts are required by law to report to local law enforcement or requires certain local stakeholders to cooperate and work together. School districts may want to review these requirements and discuss them as part of the Memorandum. School districts are also welcome to delete them, if they would prefer not to review any of these items as part of the Memorandum. These issues are included in sections IV–VIII of the sample Memorandum.

Identify the Relevant Stakeholders and Organize a Meeting

- The superintendent or the superintendent's designee will identify all relevant local stakeholders to this process. Relevant stakeholders must include, at a minimum, representatives from all local law enforcement agencies, courts, and the county or district attorney. Other relevant stakeholders would be any community organizations involved in law enforcement or juvenile justice.
- Once the relevant stakeholders have been identified, invite those stakeholders to a meeting to discuss this Memorandum. The school district is responsible for coordinating this meeting. Find a meeting time and place where representatives of all required stakeholder organizations can be present.

- When inviting stakeholders, it will be helpful to explain the purpose of the meeting and to provide a copy of the sample Memorandum in advance so that the stakeholders understand the intent of the meeting.

Hold a Meeting (or Meetings) to Develop and Approve a Memorandum of Understanding

- Use the sample Memorandum to guide your discussion on establishing clear guidelines for how and when school-based behaviors will be referred to law enforcement or the juvenile justice system. Focus on your goal of reducing such referrals and protecting public safety.
- On page 1 fill in the names of all relevant stakeholder organizations, as directed. If stakeholders other than those required attend this meeting, create a new section to record the names of those stakeholder organizations.
- In section I. A. fill in the names of the organizations that will be bound by the Memorandum. Those bound by the Memorandum must include, at a minimum, representatives from the school district, all local law enforcement agencies, courts, and the county or district attorney.
- In section III. B. fill in the information, as directed, to reflect what occurs in this situation in your community.
- Discuss which party to the Memorandum is most appropriate to handle Memorandum oversight. This party will be responsible, under III. D., for reviewing all intake summaries to determine whether the Memorandum was followed. If this party determines that the Memorandum was not followed, such party is responsible for convening a discussion of all relevant parties as directed in the sample Memorandum.
- Sections IV–VIII are not required to be included in the Memorandum required by K.S.A. 2016 Supp. 72-89b03(i). However, these are issues that school districts are required by law to report to local law enforcement or requires certain local stakeholders to cooperate and work together. The school district may want to review these requirements and discuss them as part of the Memorandum or delete them, if the school district would prefer not to review any of these items as part of this Memorandum.
- All parties to the Memorandum should sign the Memorandum where indicated. Those parties must include, at a minimum, representatives from the school district, all local law enforcement agencies, courts, and the county or district attorney.

Meetings Following Approval of the Memorandum

- The superintendent or superintendent’s designee will work with all parties to the Memorandum to create a schedule of monthly or regular meetings in the first year following the approval of the Memorandum.
- After the first year following the approval of the Memorandum the parties will meet when all parties deem necessary.
- The district will host and staff all meetings following approval of the Memorandum.

Modifying or Terminating the Memorandum

- The Memorandum may be modified at any time by written amendment by all parties to the Memorandum.
- The Memorandum is terminated the day written termination is provided to all parties. In the event this Memorandum is terminated, the superintendent or superintendent's designee should organize a meeting of all relevant stakeholders to develop and approve a new Memorandum of Understanding that meets the requirements of K.S.A. 2016 Supp. 72-89b03(i).

Inform Relevant District Staff

- The superintendent or the superintendent's designee should inform all relevant district staff of the contents of the Memorandum and their specific responsibilities under the Memorandum.
- Identify the district procedure for staff to notify the superintendent or the superintendent's designee of incidents where staff believes the Memorandum was violated.
- The superintendent or the superintendent's designee should determine what information regarding the Memorandum, if any, is necessary to provide to the local board of education and families.

Questions?

Please contact KASB at (785) 273-3600 or KSDE at (785) 296-3743.

U.S. Department of Education

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Key Policy Letters Signed by the Education Secretary or Deputy Secretary

September 8, 2016

Dear Colleagues:

I know that many of you, like me, have become increasingly concerned about school-based law-enforcement officers' involvement in the administration of school discipline in many of our Nation's schools. While these officers—commonly known as school resource officers (SROs)—can help provide a positive and safe learning environment and build trust between students and law enforcement officials in some situations, I am concerned about the potential for violations of students' civil rights and unnecessary citations or arrests of students in schools, all of which can lead to the unnecessary and harmful introduction of children and young adults into a school-to-prison pipeline. As education leaders, you can empower schools, educators, and staff with the skills and capacity to avoid relying on SROs in the first place, and also eliminate SRO-related school discipline policies and practices that may harm young people and needlessly contribute to their involvement with the juvenile and criminal justice systems.

In accordance with the specific needs of each school and district, the role of law enforcement in school learning environments should be determined by local educational officials in consultation with local law enforcement agencies, school leaders, educators, families, students, and community and civil rights stakeholders. This requires education leaders to engage in a deliberate process resulting in thoughtful decisions about whether and when to use SROs. Where SROs are used, education leaders and local law enforcement agencies should work together to understand local needs and reexamine policies and practices to ensure the proper role of law enforcement within a community's schools.

School districts that choose to use SROs should incorporate them responsibly into school learning environments and ensure that they have no role in administering school discipline. State and local leaders should consider setting policy and passing legislation designed to help SROs minimize citations and arrests of students and use diversion programs and other alternatives to arrest, detainment, or the use of force. With appropriate training, support, and community engagement, SROs can bolster a school's capacity to ensure safety and promote learning among all students. Indeed, students and their families have the right to expect that all school-based personnel coming into contact with students are professionals trained to exercise appropriate judgment and to do so in a nondiscriminatory fashion.

To further these ends, I am pleased to announce the release of a new resource created by the U.S. Departments of Education (ED) and Justice (DOJ)—the Safe, School-based Enforcement through Collaboration, Understanding, and Respect (SECURE) Rubrics (<http://www2.ed.gov/policy/gen/guid/school-discipline/support.html#tools>)—to assist States and districts in improving SRO-related policy and practice. This new resource can help education and law enforcement agencies that use SROs to review and, if necessary, revise SRO-related policies in alignment with

common-sense action steps that can lead to improved school safety and better outcomes for students while safeguarding their civil rights. The SECURE Rubrics are premised on the notion that partnerships between school districts, law enforcement agencies, and juvenile justice entities should be formalized through locally developed memoranda of understanding (MOUs) among these parties. Additionally, the SECURE Rubrics can support school safety and other SRO-related policies and practices that are informed by educators, families, students, and community and civil rights stakeholders; are updated regularly; and explicitly articulate that SROs should ensure safety and security *but should not* administer discipline in schools.^[1]

I encourage those school districts that choose to place SROs in schools to make good use of the SECURE Rubrics, and all other available resources.^[2] to create or strengthen partnerships between school districts, law enforcement, and juvenile justice entities. Strong partnerships can enable SROs to improve safety, while keeping students out of the criminal justice system. Our partners at DOJ are also releasing a letter for law enforcement leaders to highlight these resources. You can find the letter at <http://cops.usdoj.gov/supportingsafeschools> (<http://cops.usdoj.gov/supportingsafeschools>) and may wish to share it with your local law enforcement partners.

In order to eliminate overreliance on SROs in schools, school staff and administrators should be well trained to address behavioral issues through a variety of corrective, non-punitive interventions, including restorative justice programs and mental health supports.^[3] As many States and districts are already demonstrating and as ED and DOJ have recognized through the Supportive School Discipline Initiative (<http://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance>), any approach to improving school safety, security, and discipline should also focus on creating a positive school climate.^[4] that helps students thrive, including employing a multi-tiered behavioral support framework such as Positive Behavioral Interventions and Supports.^[5] These strategies can prevent and resolve students' behavioral issues without relying on SROs while reducing unnecessary detentions, suspensions, expulsions, citations, and arrests in schools. Further, any consequences for negative student behaviors should be nondiscriminatory, fair, and age-appropriate.

As educators, we are bound by a sacred trust to safeguard the well-being, safety, and extraordinary potential of the children and youth within the communities we serve. In order to fulfill this trust, it is incumbent upon us to abolish the use of unnecessary school discipline practices that could deny students the opportunity to mature into capable, healthy, and responsible adults. We should also work with intention to build credible and sustainable systems, structures, and partnerships that provide safe, supportive learning environments that lift up students and nurture them when they do well *and* when they make mistakes. While there should be effective responses to a student's willful misbehavior, the focus should be on prevention and positive interventions—not reflexively removing students from regular academic instruction or unnecessarily escalating situations by calling SROs into classrooms to enforce discipline. We should condone no other approach.

Thank you for your leadership and action to ensure appropriate supports for SROs and educators, and safe and positive learning environments for all students.

Sincerely,

/s/

John B. King, Jr.

Footnotes

1. Resources on strengthening partnerships are available at ED's Youth for Youth. (<https://y4y.ed.gov/learn/partnerships/>)**[Return to text]**

2. States, districts, and schools may access free resources to help improve school environments at ED's technical assistance centers, including the National Center for Safe Supportive Learning Environments (<https://safesupportivelearning.ed.gov/>) and the National Technical Assistance Center for Neglected or Delinquent Children and Youth. [<http://www.neglected-delinquent.org/>]**Return to text**]
3. Many of these approaches have been promoted through the Administration's Supportive School Discipline Initiative (<http://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance>).**[Return to text]**
4. Under section 725(1) of the McKinney-Vento Act, the terms "For more information on positive school climate, consult "Quick guide on Making School Climate Improvements." U.S. Department of Education, Office of Safe and Healthy Students. Washington, DC (2016). This document is available free of charge at <http://safesupportivelearning.ed.gov/SCIRP/Quick-Guide> (<http://safesupportivelearning.ed.gov/SCIRP/Quick-Guide>). Additional information and resources on improving school discipline can be found at <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html> (<http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>).**[Return to text]**
5. For more information and resources on Positive Behavioral Interventions and Supports, please visit ED's Technical Assistance Center on Positive Behavioral Interventions and Supports at <http://www.pbis.org/> (<http://www.pbis.org/>).**[Return to text]**

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