

June Christensen

From: Rick Cagan [rcagan@namikansas.org]
Sent: Monday, February 13, 2012 10:24 PM
To: Mike Kiegerl; Bill Wolf; Sean Gatewood; Steve Brunk; TerriLois Gregory; Melody McCray-Miller; Kelly Meigs; Charles Roth; John Rubin
Subject: HB 2444 Seclusion & Restraint in Schools
Attachments: Memo to the House Committee on Children and Families HB 2444 restraint and seclusion 2-8-12.pdf

Members of the House Children and Families Committee

I wanted to take this opportunity to reinforce our support for HB 2444 and to indicate that NAMI Kansas supports the arguments outlined in the attached memo from the Disability Rights Center.

Thank you for your consideration and I look forward to the bill being advanced to the House floor.

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Please Support HB 2444:

Kansas must join the majority of states with an enforceable law ... not voluntary guidelines that don't work.

To: Kansas House Committee on Children and Families
From: Disability Rights Center of Kansas
Date: February 7, 2012
Re: Follow up to the Testimony and Questions about HB 2444 – the Freedom from Unsafe Restraint & Seclusion Act

This memo is a follow-up to the hearing on HB 2444, the Freedom from Unsafe Restraint & Seclusion Act. HB 2444 would take the current voluntary 'guidelines' on the use of these dangerous tactics and make them enforceable.

For the committee's benefit, we want to review some of the issues that were brought up in the hearing. In particular, some opponents used calculated and confusing terminology to slyly leave the *misimpression* that there are existing and enforceable requirements or processes that can protect students from these dangerous tactics in Kansas. This is false.

- There is currently **NO** federal law to protect children from the deadly and dangerous tactics of seclusion & restraint in schools. It was mentioned that "federal law" could protect kids. This is false. The federal Government Accountability Office (GAO) stated in its most recent report on seclusion and restraint in schools that there are "no federal laws restricting the use of seclusion and restraints in public schools."
- There is currently **NO** enforceable requirement that parents or KSDE can effectively use to protect children from these tactics. Nothing. Not mediation, not due process, not an Office of Civil Rights (OCR) complaint, not a formal complaint to KSDE. Again, nothing. Why? It's simple, and several Committee members pointed this out. There is no requirement in Kansas that has the force and effect of law. Without a requirement that has the force and effect of law **NONE** of these methods (due process, complaints, mediation, etc.) can be used to help bring change to the student's life and education.
 - DRC Kansas has spoken personally with OCR at the Department of Justice and OCR within the federal US Dept. of Education. Both of these agencies, as well as the GAO report and the Autism National Committee, confirm that there is not an enforceable method in Kansas ... because there is no law at either the federal or Kansas government level! It's up to Kansas to ensure better standards. That's why you must pass HB 2444!

(OVER)

- Without a standard in law, policymakers have nothing to enforce and training requirements are meaningless. Also, if a parent files a *due process complaint* that is found “frivolous” because there is not an enforceable standard, then the parents risk being forced to pay the school’s attorney’s fees! Talk about a chilling effect! The chips are stacked against parents and it’s easy for them to feel intimidated.
- According to the Autism National Committee 2012 Report, the majority of states (36 states) have enacted some form of enforceable protections on seclusion and restraint with the force and effect of law.
 - Only 13 states have voluntary guidelines. Kansas is in the vast minority of states, and is out of touch with the national consensus on this issue by only having voluntary guidelines.
 - **NO FISCAL EFFECT!** – According to the official fiscal note from the Division of the Budget (Jan. 31, 2012) this bill would have no fiscal effect: “According to KSDE, enactment of HB 2444 would have no fiscal effect.”
 - Some school conferees gave the misperception that HB 2444 would create an unfunded mandate. The fiscal note proves that these were misstatements. An equal education for students with disabilities, free from inappropriate restraint and seclusion, can never be unfunded mandate. This kind of a reference is unfair and discriminatory and only serves to de-value students who have special education needs.
 - Every single school staff member that testified talked about how they are already implementing the voluntary guidelines. If that’s the case, then why would they oppose making what they say they are already doing the requirement in law?
 - Despite agreement among proponents and opponents that Positive Behavior Supports and other quality training programs exist, there are no enforceable training requirements for teachers and para-educators so good techniques are just not used in too many of our Kansas classrooms.
 - These are dangerous and deadly tactics. In a different report, the GAO found that as many as 500 people a year die from the inappropriate use of seclusion and restraint.

It should be clear to the committee that the voluntary guidelines currently in place are not being followed by all 1,445 schools in every one of the 293 school districts. Until the voluntary guidelines are made law, there will be no relief for parents, students and teachers alike. The stories like those heard by committee members at the hearing will continue to play out in classrooms, hallways, and even makeshift seclusion rooms across the state. Many schools and districts will continue to **choose to not to report** incidences of restraint and seclusion. They will continue to **refuse to inform parents** when these tactics are used on their children. There will be **no requirement to train staff** on proper methods of using these deadly tactics.

Please pass HB 2444 favorably out of your Committee. Thank you!