

# Doniphan County Education Cooperative # 616

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Terry Collins, Director

House Bill No. 2444 Seclusion & Restraint

KASEA Position: Opponent

Chairman Schodorf and Honorable Members of the Senate Education Committee, I would like to thank you for the opportunity to speak to you today.

I am representing Doniphan County and The Kansas Association of Special Education Administrators. We believe the State has made great progress in providing for the safety of its children regarding seclusion & restraint. HB 2444 proposes to turn the 2007 Guidelines on Seclusion and Restraint into regulation. We believe that making the old 2007 Seclusion and Restraint Guidelines into state law for students with disabilities is not only unnecessary but actually takes Kansas backwards in practice. The 2011 Guidelines for Emergency Safety Interventions are much more proactive and apply to all children not just children with disabilities.

- 2005 – The Kansas Senate considered a bill designed regulate seclusion and restraint in schools. (SB 241)
- 2007 – Non-binding guidelines were developed and passed by Kansas State Board of Education on the proper use of Seclusion and Restraint in schools.
- 2011 January: Rocky Nichols presented to the Kansas Special Education Advisory Council (SEAC). He requested that the 2007 Guidelines for Seclusion and Restraint become regulation and asked for their support. SEAC discussed the recommendation and wanted time to take comments from the public.
- 2011 February: SEAC sets up a SPECIAL meeting via conference call in order to take public comment on the issue of seclusion and restraint. (All testimony is included on SEAC website minutes for February 2011.)
- 2011 April: SEAC discusses the presentation from Rocky as well as public comment at their April meeting. As a result, SEAC has a unanimous decision to make 5 recommendations to the Kansas State Board of Education.
- 2011 May: Chair of SEAC makes a presentation to the Kansas State Board of Education which includes the 5 recommendations to update the Guidelines.
- **2011 June: Kansas State Board of Education adopts 5 recommendations from SEAC, thus updating the 2007 guidelines for Seclusion and Restraint to: Emergency Safety Interventions which took effect July 1, 2011.**
- 2012 April: SEAC meets in April. ESI is an update item on that draft agenda as recommended by SEAC members at the January 2012 meeting. They wanted the topic of discussion to be on going.
- KSDE has been revising and implementing both the reporting and training of the updated guidelines during the 2011-12 school year.
- Every year the Special Education Services (SES) team reports data to the Special Education Advisory Council (SEAC) regarding the use of Emergency Safety

Interventions. The SEAC reviews, discusses and makes recommendations to the State Board.

- The agenda for the upcoming March State Board Meeting includes ESI and there will be an update item on the March 13th board agenda.
- KSBE, KSDE, SEAC, and KASEA promote safety for all children as a top priority.

- **New Kansas State Board of Education (KSBE) Requirements (2011-2012)**

- Schools will report on the use of restraint and the use of seclusion (ESIs) for all students.
- All instances of use of ESI for all students must be reported quarterly (Student ID#, date of the incident, length of the use of an ESI in minutes).
- **Emergency Safety Interventions**  
Seclusion and restraint are considered Emergency Safety Interventions (ESI).
- Under the new guidelines, **seclusion\*\*\*** and restraint should not be used in a behavior program designed to change student behaviors but only for protection from harm. Seclusion and Restraint **should not be part of an IEP. \*\*\***
- A trained school employee can use **seclusion \*\*\*** and physical restraint **on any child** only if the child's behavior presents an imminent risk of harm or the child is involved in an altercation.
- "**Imminent risk of harm**" means an immediate and impending threat of a person causing substantial physical injury to self or others. Violent action that is destructive of property may involve a substantial risk of injury to a person.
- Neither seclusion nor restraint can be used as disciplinary procedures for punishing students.
- Seclusion and Restraint are interventions apart from the IEP which may be used on any child to prevent imminent risk of harm to self or others. They are **Emergency Safety Interventions**
- **All instances** of use of ESI for all students **must be reported quarterly** (Student ID#, date of the incident, length of the use of an ESI in minutes).
- Schools should report the use of ESI on all students quarterly even if there are zero (0) incidents to report.
- Guidelines in the State of Kansas have proven to be a very effective statewide resource even to the point that other States have contacted KSDE for advice and or guidance.
- Remedies for a violation of the guidelines already exist and are very simple. If you do not want a seclusion or restraint program for your child simply don't agree to it. If you have agreed, you can revoke consent or ask for an IEP meeting to change the program. If a school continues a program without your consent you can file a formal complaint.
- There have been no formal complaints from parents or the DRC regarding improper use of seclusion or restraint that have been substantiated by KSDE since the guidelines were developed. I am aware of only three formal complaints and they all occurred between August and January of this school year. Two were unsubstantiated the third is under investigation. There were none in the previous five years.

- The OCR serves as the primary administrative enforcement mechanism for Section 504 and the Americans with Disabilities Act (ADA) in relation to schools (Lohrmann-O'Rourke & Zirkel, 1998). Educational cases frequently are handled by the state education agency (SEA), which resolves disputes regarding IDEA using a system of impartial due process hearings and, at the state's option, a second-tier impartial administrative review. All OCR and SEA hearing officer reports may also be appealed to a federal court.
- Proponents of this bill are utilizing **old sensational data from institutional settings in other states**. To my knowledge, they have collected no data from Kansas Public Schools within the last six years that would indicate improper uses of physical restraint or seclusion. If they have Kansas data, it has not been reported to KSDE.
- Under HB 2444 guidelines will become law which will likely lead to litigation. Mr. Nichols reported to the SEAC “Have tried to work within the non-binding guidelines, but its not working.” Remember there have been no substantiated complaints regarding seclusion/restraint in the last 6 years since the guidelines have been in place.
- KSDE promotes POSITIVE BEHAVIOR INTERVENTIONS AND SUPPORTS,
- In unique circumstances protection from harm will sometimes call for interventions that are more restrictive. Emergency Safety Interventions may be needed.

As a representative of the Kansas Association of Special Education Administrators, I would ask that your allow us to continue making the Kansas Public School System a safe environment for all children utilizing the 2011 Guidelines on Emergency Safety Interventions and hat you would oppose HB 2444.

USD 406  
Wathena

USD 429  
Troy

USD 111  
Doniphan West

USD 486  
Elwood