

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:35 p.m. on March 3, 2005, in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Rocky Nichols, Disability Rights Center of Kansas
James Bart, Lawrence parent
Lilly Shipman, Wichita parent
Shari Coatney, Southeast Kansas Independent Living
Resource Center
Kerrie Bacon, Kansas Commission on Disability Concerns
Leigh Ann Carroll, Lenexa parent
Kevin Graham, Office of the Attorney General
Bob Coleman, Kansas Association of Special Education
Administrators

SB 241—Special Education Seclusion and Restraint Modernization and Parental Support Act

Carolyn Rampey, Legislative Research Department, explained that the bill would establish guidelines for the use of seclusion and restraints for special education children. It prohibits placing a special education child in a locked seclusion room, the use of chemical restraints (medication), or the use of mechanical restraints such as tying or taping a student down. She noted that, based upon testimony heard by the Legislative Education Planning Committee (LEPC) during the Interim, school districts presently have their own local board policies on how to deal with time outs, seclusion rooms, etc. The bill would establish a state law.

Ms Rampey called attention to the definition section beginning on page 1, section 2. She noted that “extended seclusion” refers to keeping a child in a seclusion room for more than one minute for each year of the child’s age. She explained that “Human Rights Committee” in subsection (k) refers to a mandated committee that each school district must establish to review documentation on the use of seclusion rooms and restraints. The committee would be comprised of family members of special education children, advocacy representatives, and school district staff. She noted that subsection (m) includes a list what characterizes “positive behavior support,” which is a teaching method developed as an alternative to traditional ways of dealing with children wherein, instead of punishing inappropriate behavior, there is a focus on creating an environment that provides incentive to behave appropriately. She noted that Section 3 includes a list of things a school district cannot do with regard to seclusion rooms and gives guidelines as to when a seclusion room may be used. Page 3, subsection (2) addresses extended seclusion. Keeping a child in a seclusion room for more than a minute for each year requires prior parental consent, and written documentation must be provided following the incident. Subsection (D) on page three outlines the guidelines for the use of physical restraints when a student poses imminent risk of physical harm to himself or to others and provides that the incident must be documented. Section (5) provides that, if physical restraint or seclusion rooms are used, there must be notification to the parents, and documentation must be sent to the building administrators and the Human Rights Committee within 24 hours of the incident. She noted that the list of items that must be documented in that report begins on page 5 of the bill. In Section 6, the Department of Education is required to collect and compile data on a quarterly basis on the use of seclusion and restraint. Section 7 provides that school district staff must receive specialized individual training and demonstrate competency before the school can use restraint and seclusion. She noted that Section 9 provides that the State Department of Education must annually grant \$400,000 each to designated associations and agencies who must use the money for training parents of children with disabilities, for legal advocacy services, and for assistance and support for parents with disabled children.

Ms. Rampey noted that, according to the Division of Budget, in addition to a \$1.2 million grant, the State Department of Education indicated that it needs \$68,000 to administer the program. In addition, there could be costs at the school district level for staff training, and possibly some school districts would have to remodel building space for seclusion rooms.

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:35 p.m. on March 3, 2005, in Room 123-S of the Capitol.

Rocky Nichols, Disability Rights Center of Kansas (DRC), testified in support of **SB 241** on behalf of DRC, Families Together, Keys for Networking, and the Kansas Council on Developmental Disabilities. He pointed out that currently there is no state law to limit the use or require standards when placing children in seclusion rooms or potentially harmful restraints in Kansas schools. However, Kansas closely regulates and limits seclusion and restraint in state institutions and residential treatment facilities. He noted that proposals to significantly reduce the use of seclusion and restraint have received national attention in recent years, and the U.S. Department of Health and Human Services has set out a plan to dramatically reduce and eventually eliminate the use of seclusion and restraint in all publically funded treatment programs. He went on to say that the bill attempts to carry out the objectives of President Bush's New Freedom Commission on Mental Health. He explained that the Child Health Act of 2000 addresses the use of seclusion and restraint for people up to age 21 in public facilities, but the act is limited to emergency situations only. He noted that research at the University of Nebraska on physical restraints in schools found that immediate action is required to ensure that schools employing restraint do not jeopardize student safety and that there is a need for clear standards regarding the use of restraint procedures in schools as well as training of staff before they use restraints. He noted that the Kansas Attorney General recently stated that state policy needs to hold schools accountable for the use of seclusion rooms and restraint, and he worked with DRC to develop the bill. In drafting the bill, DRC focused on laws and policies enacted in several other states and model legislation developed by the National Association of Protection and Advocacy Systems. He pointed out that the bill does not outlaw the use of all forms of seclusion and restraint in schools, but it establishes specific policies, standards, and requirements for the proper use of seclusion rooms and restraint. In conclusion, he discussed what the bill specifically does. (Attachment 1)

James Bart, whose son Jacob is autistic, testified in support of **SB 241**. Mr. Bart discussed his son's extreme behavioral challenges in his educational and family life. At one point, it became necessary to admit him to a Wichita private school specializing in autism. After eight months, he was able to transition back into his home and his local school. Unfortunately, there was public debate about the merits of the IEP team's decision to send him to a private school for special education, and he was labeled a "tax burden." In Mr. Bart's opinion, the state should be held responsible for coverage for catastrophic expenses for special education. He believes that the bill will have a positive impact on the lives of a population this is often overlooked or hidden. As part of his testimony, Mr. Bart distributed pictures of Jacob's school, classroom, and his family. He noted that the pictures illustrate that, "Real people are being affected by this everyday." (Attachment 2)

Lilly Shipman, whose son Kenneth was diagnosed with severe autism and tourettes syndrome, testified in support of **SB 241**. At the outset, she distributed pictures of Kenneth. She noted that her family moved from New York to Wichita six years ago for the sole purpose of obtaining an appropriate education for him. However, the last six years have proven to be a fight every step of the way to protect him from cruel and disrespectful professionals in his school. She complained that her son has become the victim of a school system which, at this time, has no law, regulations, or safeguards in place. She explained that her son has been secluded in the "time out" room 334 times in the 112 days he has attended school this school year. During those time outs, he has been physically restrained more than 100 times, resulting in severe bruising to several parts of his body. He has been placed in a time-out box, depriving him of all sensory needs, which was justified as "behavior modification." Ms. Shipman described the time-out box as essentially an unfinished wooden closet with an area no more than three feet square. She reported that she recently attempted to photograph the box, but she was not allowed to enter the room and was told that the building principal warned security that no one is ever allowed go photograph the room or the boxes. Due to his experience with seclusion and restraint, her son has become afraid of teachers and other school staff, and he flinches whenever anyone nears to touch him. She urged the Committee "to stop the abuse of her child and every other imperfect school child in the state." (Attachment 3)

Shari Coatney, Southeast Kansas Independent Living Resource Center, testified in support of **SB 241**. She informed the Committee that one of her sons is autistic and was put into restraints in a seclusion room many times. She commented that, while plans need to be developed to protect the child or others in the classroom, the fact that no guidelines are set and these practices are not monitored put children at risk. After her son went to another school in a classroom setting with positive reinforcement, he was able to end his high school years with many positive outcomes and no restraints. She supports the bill in the interest of allowing other children the opportunity for positive classroom experiences. (Attachment 4) Ms. Coatney distributed copies of

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:35 p.m. on March 3, 2005, in Room 123-S of the Capitol.

testimony in support of **SB 241** by Jeannie Ingalsby, who was unable to attend the hearing, but she wanted to relate her son's experiences with restraints. (Attachment 5)

Kerrie Bacon, Kansas Commission on Disability Concerns, testified in support of **SB 241**. She maintained that the use of seclusion and restraint in the education system needs to have clear guidelines. She reasoned that a clear understanding of what action to take when a situation at school escalates would help foster respect between student and staff. (Attachment 6)

Leigh Ann Carroll, the parent of a nine-year-old son with Asperger Syndrome and anxiety disorder, testified in support of **SB 241**. She explained that her son was subjected to frequent, improper restraints in the public school system, including being grabbed, hit, having fingers pulled back, and being forced to lay prone under gym mats for long periods of time. In addition to bodily harm, he felt humiliated and that he was "bad." She orally reported his injuries to school officials, but nothing was done to alleviate these practices. After sending a written complaint, school officials responded by having their attorney call her and attempt to intimidate her. She felt she had no choice but to remove her son from the public school system and home school him. She argued that parents would feel their special education child was safe at school if there were regulations governing the use of restraints, if there was more accountability, if there were better training requirements, and if there was parental input. (Attachment 7)

Connie Zienkewicz, Families Together, stood in support of **SB 241** and distributed a packet including a copy of the booklet, "The President's New Freedom Commission on Mental Health," a sample from a survey prepared through the joint effort of the National Center for Child Traumatic Stress and the Federation of Families, and written testimony from 24 parents in support of the bill. (Attachment 8)

Kevin Graham, Assistant Attorney General, testified in support of **SB 241**. He noted that Attorney General Phill Kline worked with DRC and the disability community to introduce the bill after he became interested in the topic because of the focus that seclusion and restraint has received at the federal level. Mr. Graham noted that schools are the largest provider of services to children in Kansas, yet, there are no consistent state standards to limit the use of seclusion rooms and restraint in schools. (Attachment 9)

Bob Coleman, Special Education Director for Wichita public schools, testified in opposition to **SB 241** on behalf of the Kansas Association of Special Education Administrators. He noted that the challenges that schools and staff have in working with disabled students are very significant, and they have grown every single year. He emphasized that administrators and other school staff do not want to use restraint or seclusion, but providing school safety for all involved is very important. In his opinion, the bill does not identify a significant need. He commented that, through the use of anecdotal evidence, the writers of the bill claim that serious abuse is being inflicted on significant numbers of students, but this simply is not true. He emphasized that schools have been proactive in efforts to meet the needs of these students by training staff in effective methods of managing behavior, including positive behavioral supports and anger management as well as training on how to effectively and safely use physical restraints and seclusion. In addition, he noted that the bill would suggest that no effective recourse exists for parents or students when they believe inappropriate behavioral interventions are being used. He listed the options currently available to parents which address this concern. He noted that, in most cases, schools are able to resolve issues with parents. He went on to say that the bill would add a significant burden to already overstretched school resources, and it would likely create additional harmful effects for staff and students. He pointed out that the bill sets up school staff members for possible litigation, which then precludes them from being able to deliver the appropriate services. He noted that staff members would be asked to make a judgement within a second or two of what they need to do to protect a child and other children and staff within the classroom. He further noted that, although the intent of the bill was to focus on the more severely disabled student population, it would also include the mildly disabled and, thus, would limit school staff in being able to effectively deal with student behaviors that are not a manifestation of the student's disability. (Attachment 10)

Bobbie Rine, a mother of three children with learning or emotional disabilities, testified in support of **SB 241**. She explained that her 19-year-old son is bipolar. When he was in school, she knew nothing about special education, and school staff never suggested that he might be eligible for special education services. When he was 15, the school referred her to a mental health center. At that time, she learned about Keys for

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:35 p.m. on March 3, 2005, in Room 123-S of the Capitol.

Networking, a parent advocacy organization. Keys suggested her son might be eligible for a Section 504 plan; however, by this time he had dropped out of school. Over the years she has received training from parent advocacy organizations. She emphasized that parents never stop needing the support and information these organizations provide. She now uses what she has learned to help other parents. (Attachment 11)

Jenifer Wisdom introduced her nine-year-old son, Micah. She informed the Committee that he attended Wichita public schools all his life until she recently took him out. She explained that he was placed in handcuffs twice because he was playing a radiator that was not turned on in the office at Funston Elementary School. She noted that Micah gets nervous and has to fidget. At the time, the radiator was all that he had to fidget with. Staff placed him in handcuffs, and a few moments later, he started to fidgeting with something else, and they placed him in handcuffs again. Ms. Wisdom explained, "Micah has missed out on a whole lot of education due to the fact that they can't deal with him. He is way behind because the teachers and administration at Funston could not care for him. He has missed a month and a half worth of recess. The first nine weeks of school, my son only received grades in three subjects due to the fact that they would not send him to the other classroom because they couldn't teach him. Now that we've left the Wichita public school system, my son is doing better than he has ever done in his life. He has all A's. Before, he never received an A. Currently, he is reading higher than he was in Wichita public schools. I think that the services that we have received have educated me to the point to where I know what is fair for my child and what is not fair. We were not being treated fairly by the Wichita public schools." Ms. Wisdom noted that Micah now attends school in Maize.

Written testimony in support of **SB 241** was submitted by Jane Adams, Director of Keys for Networking, Inc. Letters from parents in support of the bill were attached to Ms. Adam's testimony. (Attachment 12)

Written testimony in support of **SB 241** was submitted by Jane Rhys, Kansas Council on Developmental Disabilities. Along with her testimony, Ms Rhys included letters in support of the bill from Dr. Charles R. Spellman, University of Kansas, Michael L. Wehmeyer, Ph.D., Kansas University Center on Developmental Disabilities, and a letter from a parent of a child with developmental disabilities, a letter from a foster parent providing foster care for children with disabilities, and a letter from a mother of child with a learning disability. (Attachment 13)

There being no further time, Senator Schodorf continued the hearing on **SB 241** to March 7.

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for March 7, 2005.

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:35 p.m. on March 3, 2005, in Room 123-S of the Capitol.