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Written Testimony for Consideration by Kansas Senate Education Committee

in Support of HB 2444 – Freedom from Unsafe Restraint & Seclusion Act

March 6, 2012

Chairperson Schodorf and honorable members of the Committee:

My name is Michael Wehmeyer. I am a Professor of Special Education at the University of Kansas and Executive Director of the Kansas University Center on Developmental Disabilities (KUCDD). The KUCDD expresses its strong support for HB2444, the Freedom from Unsafe Restraint and Seclusion Act. The KUCDD is one of 67 federally-supported University Centers of Excellence in Developmental Disabilities funded by the U.S. Department of Health and Human Services through the Developmental Disabilities Act to "provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life" (Section D of the DD Act). The University Centers of Excellence are interdisciplinary education, research, and public service units of university or public or not-for-profit entities associated with universities that engage in core functions of pre-service training, community services, research, and dissemination of information pertaining to developmental disabilities. We are part of the HHS funded Developmental Disability Network in Kansas, which includes the KUCDD, the Kansas Council on Developmental Disabilities (KCDD), and the Disability Rights Center of Kansas.

The fundamental intent of HB 2444 is to protect the basic civil rights of students with disabilities to receive a free, appropriate public education and to be free from the unreasonable, unsafe, and unwarranted use of seclusion and restraint. It is important to note that these regulations are consistent with best practice with regard to the use of seclusion and restraints within the adult disability service system in virtually every state in the nation and within the special education system in many states. The use of locked seclusion and unregulated physical and mechanical restraints is inherently dangerous and should be either explicitly prohibited or restricted to use by people who are trained to do so and used in emergency circumstances only. As a public school special education teacher in Texas and Oklahoma, as a direct support staff person on a neuropsychiatric ward for juveniles with mental illness and conduct disorders in Oklahoma, and as a behavioral psychologist in an institution for people with intellectual disability in Texas, I have had personal experience with the potential dangers inherent in the use of restraints and performed my professional responsibilities under regulations that were more stringent than those proposed in HB 2444. There are several reasons locked seclusion and physical or mechanical restraints are dangerous. First, there is the possibility that injury will occur accidentally in the context of the situation leading to the restraint. As a psychologist working with people with severe aggressive and self-injurious behaviors, I was trained to use and have employed physical restraints using methods designed to minimize injury to either the person receiving the restraint

or the person being restrained in a manner, methods consistent with that in HB 2444. I know from those experiences that even under the best conditions it is easy for someone to be injured. There is no such thing as a 'safe' form of physical restraint. Physical restraint should be used only in response to a crisis in which a student is at risk for bodily harm or injury or in which the student is an immediate threat to injure someone else. Restraint, whether it is physical or chemical, is not an intervention or treatment. It is a response to a crisis situation and should be implemented as such, with clear distinctions as to when it is to be used and who is to use it, and clear documentation of its use to ensure accountability and program evaluation.

Second, it is important to note that the use of locked seclusion and physical restraint can be dangerous because of the emotions engendered by the situation leading up to the seclusion or restraint. In most cases, locked seclusion or physical restraint occurs when a person is angry. It is also my experience that the situations in which seclusion and restraint occur also heightens the emotions and feelings of the person intervening. Even when one is trained to use restraints in a manner that attempts to protect both the person being restrained and the person employing the restraint, involvement in a situation that includes physical restraint or escorting someone to a locked seclusion area almost inevitably creates feelings of anger or fear in the person intervening. If that person is not held to very high standards with regard to training and professional expectations, that situation can quickly degrade to a personal struggle between the intervener and the person being restrained or escorted and, in situations that are common enough to warrant concern, retaliation. The anger of the situation can also influence how the person being restrained or secluded responds. In my personal experience working on a neuropsychiatric ward for juveniles with mental illness and conduct disorders (again, a situation in which locked seclusion rooms were used under very tight regulations and, in fact, were situated immediately next to and in view of a nurses station at which 24 hour medical staff were on duty), there were incidences in which youth who were locked into the seclusion room set fire to a trash can in the room, creating an obvious safety hazard to that youth and others on the ward, or injured themselves with objects they had secured on their persons or simply by hitting themselves. Objects like matches, pencils, keys and so forth were too frequently missed in the struggle associated with the effort to escort the youth to the seclusion room.

Third, accidents happen with regard to the use of restraints even when they are used in seemingly innocuous situations. In a school district in which I taught in Texas, an elementary age student with severe motor impairments due to cerebral palsy was routinely strapped onto a toilet to assist him in staying upright. While he was usually monitored by a paraeducator, on one occasion the adult in charge of monitoring him had to leave to deal with another issue, and upon her return found that this child had slipped down and the straps ended up tight around his neck. He was freed by the adult and, fortunately, did not experience additional injury, but obviously could have easily suffered serious injury or death.

The threat of physical injury and bodily harm as a result of seclusion or restraint is an important reason to regulate their use. It is not, however, the only reason to do so. First, in addition to the potential of bodily harm and injury, being restrained or secluded is humiliating and degrading. That humilation only results in more anger and, potentially, more aggressive behavior. Second, I have indicated that I believe that this bill not only protects students from injury, but is necessary to ensure a free, appropriate education, as required by the Individuals with Disabilities Education

Act. I say that because, as I have noted, locked seclusion and restraints are not, in and of themselves, treatments that lead to positive change and are not appropriate interventions to problem behaviors. They are responses to emergency situations. A locked seclusion room is not necessary to implement a 'timeout' intervention strategy nor is one needed to provide a place for a student to 'cool off' or to collect his or her thoughts. There is nothing about a physical restraint that is educative or contributes to students learning how to deal with problem situation. Like most punishments, these interventions have evolved as much for the ease of the system. The implementation of Positive Behavior Interventions and Supports involve empirically-validated strategies to address problem behaviors in school settings. These interventions have been shown to reduce student problem behavior, referrals for discipline, tardiness and absences, and other indicators of positive changes. These are proven, effective methods that can achieve what seclusion and restraint do not.

The language in HB 2444 is consistent with existing practices in the majority of states in the nation. The intent of HB 2444 is consistent with scientific knowledge about the detrimental effects of the use of aversive behavioral management techniques. In conclusion, the KUCDD joins other disability advocacy organizations in support of HB 2444 because it is what is best for students with disabilities in the state of Kansas, for their parents, and for educators who want to provide high quality, empirically-based services for children and youth with disabilities in Kansas.

Sincerely,

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