KANSAS ASSOCIATION OF SCHOOL BOARDS

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Testimony before the
Senate Education Committee
on
HB 2444

by
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Madam Chair, Members of the Committee:

Thank you for this opportunity to testify on **HB 2444**; we appear as an opponent. This bill essentially takes the key elements of the seclusion and restraint guidelines, approved in 2007 and turns the "mays" into "shalls." By doing so, what has been documented as a very successful approach using recommended guidelines is transformed into additional school mandates.

KASB policy, approved by our Delegate Assembly, provides: new curriculum and program requirements should not be imposed unless the change has received an independent cost study and additional funding is provided by the state or the change is endorsed by KASB. The budget director provides a fiscal note of no additional dollars.

KASB believes, however, that's unrealistic. There will be training costs above those currently being absorbed, if nothing else to make people aware of the new status. There is also the possibility of increased litigation that will certainly affect district budgets.

Let me flesh that contention out. Recently legislators received a pamphlet encouraging their vote for **HB 2444** and alleging through a series of unverified stories that students in Kansas were being improperly restrained and secluded. While these stories, if true, are certainly troubling, **HB 2444** would do nothing to prevent these same incidents from occurring to students in the future. As the pamphlet points out, all of these events occurred after the guidelines came into place and Kansas school districts have already agreed to follow the guidelines. Thus, the question arises, what is this really about?

All parents of Kansas students already have two forms of relief if illegal restraint and seclusion is currently being used by a school district or has been used by the school district in the past.

- First, they may use the administrative procedures provided by the Individuals with Disabilities Education Act.
  - Under federal and state disability laws, if a student is being unnecessarily or improperly restrained parents can request an Individual Education Plan Team meeting to review the students Behavior Intervention Plan.
  - If the team chooses to continue using restraint and seclusion and the parents disagree with the Team's decision, they can appeal and seek the opinion of an independent hearing officer.

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- If the parent's disagree with the hearing officer's decision, they can then appeal to district court.
- Under both options, there is an opportunity to review the evidence and determine whether a student has been subjected to illegal restraint and seclusion.

- Second, they may file claims in district court arguing violations of fourth amendment rights, intentional infliction of emotional distress, negligent infliction of emotional distress, etc.

The above procedures also provide the legal system an opportunity to weed out meritless lawsuits. To the contrary, **HB 2444** simply provides parents and students who have an unsubstantiated claim an opportunity to pursue litigation based on technicalities and timelines rather than using the legal process already available to them.

If the goal is to increase the dollars Kansas school districts spend on unnecessary litigation, **HB 2444** will certainly do that, but it will not prevent students with difficult disabilities from being restrained or secluded. The following cases demonstrate that parents of students with disabilities who have been improperly restrained or secluded already have an available path to relief.

- *Brown v. Ramsey*, 121 F.Supp.2d 911 (E.D.Va. 2000). Teachers obtained a summary judgment in their favor in a case involving the use of a "basket hold" on an elementary age student with Asperger's Syndrome. "While the court appreciates the sincerity with which the Browns have pursued a remedy for the alleged abuse suffered by Daniel, like other courts that have considered these issues, there is nothing before the Court to suggest that the alleged actions of Ramsey and Hart were anything other than a disciplinary measure within the sound discretion of the teacher."

- *A.B. v. Adams-Arapahoe 28J Sch. Dist.*, 2011 WL 5910191 (Dist. Colorado 2011). Parents of a student brought a §1983 claim against the school district and various school district employees alleging violation of federal and Colorado state law in relation to student's treatment while attending district's elementary school. The suit revolved around excessive use of restraint and seclusion. Court held fact issues precluded summary judgment on 4th Amendment claims against teacher, behavior consultant, and school principal and procedural due process claims against teacher. Summary judgment was also denied against the district on Rehabilitation Act and ADA claims.

- *CJN by SKN v. Minneapolis Pub. Schs.*, 38 IDELR 208 (8th Cir. 2003). In upholding a lower court decision that a student with lesions in his brain and a long history of psychiatric illness was not denied FAPE, in part because of the increasing use of restraints in response to his aggressive behavior, the court refused to create a rule prohibiting the use of physical restraints and time-outs because the proper use of such techniques "may help prevent bad behavior from escalating to a level where a suspension is required. . ."

- *P.T. v. Jefferson County Bd. Of Educ.*, 46 IDELR 3 (8th Cir. 2006). An Alabama district appropriately considered the safety of the students on the school bus when it decided to go forward with the use of a safety harness on an 11-year-old nonverbal student with autism and as such did not deny the student FAPE.

- *Florence (SC) County No. 1 Sch. Dist.*, 352 IDELR 495 (OCR 1987). Even though the IEP forbade the use of corporal punishment, OCR found no violation of Section 504 because the physical restraint used by teachers and aides was for the purpose of preventing the student from harming himself or others.

- *Gateway (CA) Unified Sch. Dist.*, 24 IDELR 80 (OCR 1995) OCR concluded the district was in compliance with Section 504 and Title II of the ADA because it properly followed the students IEP and allowed him to eat lunch with his friends if his behavior was under control. Additionally, the students behavior modification plan provided for physical restraint and as such, the use of restraint in

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response to the students representations to school officials that he was going to harm himself was not a violation of Section 504 or Title II.

It is readily apparent looking at the case law that legitimate cases of abusive restraint and seclusion create causes of action that courts will adjudicate. **HB 2444** does not provide any relief that is not already available and the unintended costs and consequences, including districts simply having law enforcement deal with violent students, will ultimately harm the educational process for students who already are at a disadvantage.

The fact remains, there is no need to make these changes. The data at the state level and from our members demonstrate the current guidelines are working even with the most difficult of student behaviors. We urge the committee to let them remain in place.

Thank you.