



EQUALITY ♦ LAW ♦ JUSTICE

**Testimony to the House Children and Families Committee  
Testimony in Support of HB 2444**

Chairman Kiegerl and the honorable members of the Committee, my name is Rocky Nichols. I am the Executive Director of the Disability Rights Center of Kansas. The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c) (3) nonprofit corporation. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, and to improve those laws.

**An Enforceable Law is Needed for these Dangerous & Deadly Tactics -**

The current “guidelines” on the use of seclusion and restraint (S/R) in schools is a complete lack of clear or enforceable standards, training and accountability on the use of these dangerous tactics. Kansas’ current policy is to not have a policy. That policy does not serve any of us well. Students with disabilities - who are perhaps the most at risk of being the victim of abuse and neglect - are exposed to the use of seclusion and restraint without any rules or boundaries much less reasonable ones thought through in consultation with experts in child development, disability, medicine and the law.

These proposed regulations protect students, teachers and schools.

**HB 2444 is a Compromise – These are Minimal & Reasonable Standards to Establish Much Needed Accountability:**

- These are the bare minimum for regulations – Some parents and organizations won’t support these because they don’t go far enough (many want to eliminate the tactic of seclusion or restraint altogether).

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- These are based on a compromise crafted by educators, advocates and parents. They are not perfect, but they are sound. HB 2444 takes the current non-enforceable guidelines on the use of the dangerous tactics of seclusion and restraint and makes them enforceable in law.
- Seclusion Rooms – Can continue to be used under these regulations if either:
  - 1) its use is in the Individualized Education Plan (IEP) **or**
  - 2) the student’s behavior poses an imminent risk of harm.
- Restraint – Can be used if the student’s behavior poses an imminent risk of harm.
- Staff Training is mandated for the safe use of these dangerous tactics (w/ altercation exemption). The training must be approved by KSDE.
- Seclusion Room must be a minimum of 36 square feet in area (after July 1, 2008). Before July 1, 2008, it’s as dictated in the IEP.
- Parents must be notified when seclusion or restraint is used

**What these regulations do NOT do. The regulations:**

- Do NOT eliminate the ability to use seclusion and restraints
- Do NOT impact “time out” (having a student taking a break, sitting on a carpet square, etc.) The regulations only regulate seclusion rooms (boxes) and restraint.
- Do NOT take away local control. These are minimum standards and each local school district may adopt other standards not inconsistent with these regulations.
- Do NOT eliminate the ability to use seclusion or restraint, even without proper training, if an altercation occurs. Some in the disability community argue that this standard is not sufficient. We don’t disagree with those concerns. Again, this is a compromise position.

**Why Guidelines have not worked:**

A guideline does not have the force or effect of law and won’t ensure training, informed parents, or create an enforceable standard for when seclusion and restraint can be used.

Only something with the force or effect of law can give KSDE staff the power to use your existing complaint and investigative system to create enforceable corrective plans of action. Guidelines cannot.

We hear all the time from parents and students about how the guidelines have failed them. The lack of a clear standard with the force and effect of law has failed them. Often, the stories we hear are of how the guidelines have failed and the parents and students have suffered. You will hear some concerning stories from parents today. What you need to know is that these parents are amazingly brave. There are many parents who are deathly scared of the overt and covert retaliation they will face from schools for speaking the truth publically about the horrors of the dangerous tactics of seclusion and restraint used on their children. The parents who are testifying today agreed to do so on a scant couple days notice. Many parents said they wanted desperately to testify, but they could not risk the retaliation. Without enforceable standards, they felt their child was at risk. Please understand and take into account the parents who could not be here today because the lack

of requirements that have the force and effect of law is a barrier to get parents to speak out on this.

Some of the stories you will hear have a so-called “happy ending.” These “happy ending” examples typically mean that problematic and inappropriate use of seclusion or restraint was *eventually* controlled in a more acceptable manner. Even these examples provide a stunning look at why the lack of enforceable standards have failed Kansas students, parents and teachers. Often the reason why the inappropriate use of seclusion or restraint was stopped – and thus the “happy ending” -- is frankly luck. As Legislators you cannot ignore that even the so-called happy endings typically have gruesome, harmful and long and drawn out examples. Even these “happy ending” examples are often tales of when parent and student got lucky that the principal changed, or through the parents own sheer will (often combined with the will of a strong advocacy organization). We should not hope of luck to protect our students, teachers and parents. We need clear, enforceable, reasonable requirements with the force and effect of law.

### **A few Words as to Why IDEA and Due Process are not effective at controlling**

#### **Seclusion and Restraint:**

Some may argue that the Individuals with Disabilities Education Act (IDEA) and due process under IDEA can offer relief to parents and limit seclusion and restraint. This isn't the case. Due process deals with federal law involving Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). Seclusion and restraint is a different standard (safety). If due process was effective for seclusion and restraint, why do 29 states have meaningful, enforceable standard to regulate the use of seclusion and restraint in schools?

DRC is not aware of any due process or other legal cases in Kansas that have held that any seclusion or restraint has been a denial of FAPE or LRE. The IDEA is not effective at dealing with the issues of seclusion and restraint in schools. That's why we haven't found a single case where IDEA offered any protection to a parent. Unless we get regulations, schools are basically free to do whatever they want with regard to seclusion and restraint because there are no federal statute/regulations or state statute/regulation governing the use of seclusion and restraint. That's why guidelines won't work. IDEA and due process doesn't work. That's why you have to pass regulations. That's why numerous states (including Colorado, Texas, Illinois, Maryland, Nevada, Maine, California, Connecticut, Massachusetts, Wisconsin and Rhode Island to name a few) have enacted rules, regulations and law to limit or control seclusions and restraint in schools.

A review of the last ten years worth of formal complaints to KSDE finds that there was not a single one that dealt with seclusion or restraint. Why? Because without a regulation KSDE cannot enforce the standard. **DRC made a complaint about a child being put in a dog kennel as a form of seclusion and restraint. KSDE could not investigate it or correct it because there is no enforceable standard with the force and effect of law. Guidelines have not fixed that.**

## **HB 2444 is Based on Clear National Consensus to Closely Regulate Seclusion and Restraint:**

- **President George W. Bush's New Freedom Initiative** -  
“... Seclusion and restraint are safety interventions of last resort; they are not treatment interventions. In light of the potentially serious consequences, seclusion and restraint should be used only when an imminent risk of danger to the individual or others exists and no other safe, effective intervention is possible.”
- **Federal Govt / HHS Official Policy** – S/R must be dramatically reduced & eventually eliminated.
- **Child Health Act of 2000** – limits use of seclusion and restraint to “emergency” situations for young people up to age 21 in public facilities and settings.
- **American Medical Association (AMA), American Psychological Assoc. (APA), American Academy of Pediatrics (AAP), American Academy of Child and Adolescent Psychology (AACAP), International Society of Psychiatric-Mental Health Nurses (ISPN) ...**
  - *All these above medical groups say that restraint should be a tactic of last resort and as emergency interventions to maintain safety (try least restrictive first). All call for staff training, etc.*
- **Autism National Committee** – calls on Congress and State Legislatures to limit restraint on children with disabilities (brief, emergencies only involving serious threat of injury to self or others, etc.). Recommends standardized reporting procedure.
- **Child Welfare League of America** – call for minimum national standard on training, research on crisis prevention models, etc.
- **National State Mental Health Program Directors Position** – “seclusion and restraints, including ‘chemical restraints,’ are safety interventions of last resort and are not treatment interventions. Seclusion and restraint should never be used for the purposes of discipline, coercion, or staff convenience, or as a replacement for adequate levels of staff or active treatment.”

## **S/R is Regulated in Almost Every Setting Serving Kids w/ Disabilities ... Except Schools** –

Seclusion & restraint is closely regulated and controlled in every in every state hospital, every residential care or treatment facility, every setting regulated by the Federal Child Health Act of 2000, providers of child welfare services that receive funding from the Kansas Department of Social and Rehabilitation Services, etc. Children spend the greatest time at school, why should they get the least protection while in schools?

## **No Real Increase in Paperwork Placed on Schools; Inform Parents** –

Parents don't currently have to be informed when seclusion or restraint is used on their child. Informing parents will not significantly increase paperwork. Even the KSDE staff impact statement says this notification can be as simple as filling out a pre-printed form the size of a post card where you check a box regarding which tactic was used.

**Dangerous Tactics Call for Regulation:**

Examples of school kids all throughout our nation getting seriously harmed or even killed due to these dangerous tactics are unfortunately not isolated cases. In fact the HHS / CMS survey indicated that from 1999 to 2004, 130 people in US died from the use of seclusion and restraint. The GAO (General Accounting Office) of the US Government has estimated that as many as 500 a year die from the use of seclusion and restraint. We must remember that seclusion and restraint are serious tactics and deserve enforceable standards. Seclusion and restraint is not having a student take a “time out” on a carpet square or in a corner. This involves adults placing potentially dangerous restraint holds on children or putting them in small boxes that can lead to serious mental or physical injury or even death.