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January 31, 2012

Representative Mike Kiegerl  
Kansas State Capitol Building, Rm. #173 W  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612

Dear Representative Kiegerl,

On behalf of the 27,000 active members of the CPI Instructor Association and CPI (Crisis Prevention Institute), thank you for the opportunity to provide comment on **Kansas House Bill No. 2444: An Act concerning schools and school districts; relating to seclusion and restraint of pupils.** For over 30 years, CPI has been active in educating and training educators in the skills necessary to manage a crisis situation and to safely intervene physically when required. We share the State of Kansas' goals of promoting positive behavioral interventions and supports in schools and minimizing risks associated with the use of restraint and seclusion by focusing on early prevention and safe, effective interventions.

CPI commends the State for drafting the proposed rule to replace the current guidelines. For years, CPI has supported legislature, departments of education, and advocacy groups in developing rules and policies for the use of restraint and seclusion in public schools. CPI makes the following suggestions, based on our knowledge of best practices and our expertise, on the use of physical restraint and in supporting organizations to become restraint-free environments.

Upon reviewing House Bill No. 2444, we have several concerns about "missing pieces." Over 20 states have updated existing, or written new rules to guide the use of restraint and seclusion in schools over the past two years. CPI encourages Kansas to take the bold step to prohibit the use of high risk restraint positions such as prone, supine, seated, or side restraint positions. In Section 3. (a), the state is requiring that no child with a disability be "subjected to unreasonable, unsafe, or unwarranted use of physical restraint or seclusion." The current version of the Act does not provide the specificity to guide staff as to what is "unsafe or unwarranted".

Furthermore CPI suggests adding sections that further define the use and prohibitions around restraint and seclusion, and sections that address debriefing, parent notification, and specific training and re-training requirements.

Below is a sample of a rule we recently drafted on behalf of another state. We believe this represents the best practices in addressing this important issue. While Kansas may choose not to implement all aspects as outlined below, we hope it serves as a starting point to further enhancing House Bill No. 2444 ensuring a safer school climate for all staff and students.

Finally, we would encourage Kansas to make this rule applicable to ALL students, not just students identified with disabilities and to broaden the application to situations involving altercations as defined in Section 2. (a). Safety and violence prevention in schools is a school-wide issue and is the responsibility of every person in the building.

Here is sample language for you to consider—including what we feel to be missing pieces in House Bill No. 2444:

### **Requirements for the Use of Physical Restraint and Seclusion for all students**

This rule establishes standards and procedures for the use of physical restraint and seclusion. Physical restraint and seclusion may only be used as an emergency intervention when the behavior of a student presents an imminent risk of injury or harm to the student or others. The rule sets forth permitted and prohibited uses of restraint and seclusion, required notification and documentation of incidents of restraint or seclusion, aggregate reporting of incidents to administrators and the department of education, notification of parents, response to multiple incidents of restraint or seclusion of a student, local and state complaint processes and department approval of training programs.

#### **A. Definitions:**

1. **Aversive procedure** means the use of a substance or stimulus, intended to modify behavior that would cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include but are not limited to: infliction of bodily pain, (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.
2. **Behavior Intervention Plan (BIP)** is a comprehensive plan for managing problem behavior by changing or removing contextual factors that trigger or maintain it, and by strengthening replacement skills.
3. **Chemical Restraint** is the use of medication, including those administered PRN (as needed), given involuntarily to control student behavior.
4. **Covered Entity** is any educational setting receiving public funds from the Kansas Department of Education including, but not limited to: public schools, public regional programs, charter schools, private schools, special purpose private schools, Career and Technical Education schools, and public pre-kindergarten.
5. **De-escalation** is the use of behavior management techniques intended to cause a situation involving problem behavior of a student to become more controlled, calm and less dangerous, thus reducing the risk for injury or harm.
6. **Dangerous Behavior** is behavior that presents an imminent risk of injury or harm to a student or others.
7. **Emergency** is a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.
8. **Functional Behavioral Assessment (FBA)** is a school-based process which includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child's environment. The term includes direct assessments, indirect assessments and data analysis designed to assist the team to identify and define the problem behavior in concrete terms, identify the contextual factors (including affective and cognitive factors) that contribute to the behavior, and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior.



Formal documentation of the assessment by appropriately qualified individuals becomes part of the child's educational record.

9. **High-risk restraint positions** are any physical restraints that restrict the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech. These positions include floor restraints in which the individual is forcibly held prone (facedown), supine (face-up), on the side, or seated.
10. **Imminent risk of injury or harm** describes a situation in which a student has the means to cause harm or injury to self or others and such injury or harm is likely to occur at any moment; such that a reasonable and prudent person would take steps instantly to protect the student and others against the risk of such injury or harm.
11. **Individualized Education Plan (IEP)** is a term used under special education law to reference the written document that states goals, objectives and services for students receiving special education.
12. **Individual Health Plan (IHP)** is a plan of action for a student with special health care needs, actual and potential. It is an adaptation of the nursing care plans commonly used in health care institutions.
13. **Mechanical Restraint** is any item worn by or placed on the student to limit behavior or movement and which cannot be removed by the student.
14. **Parent** is (as defined by current administrative code)
15. **Physical Restraint** is an intervention that restricts a student's freedom of movement or normal access to his or her body, and includes the forcible moving of a student against the student's will. Physical restraint does not include the temporary touching or holding of the hand, wrist, arm, shoulder, hip or back for the purpose of moving a student voluntarily.
16. **Positive alternatives** are a set of instructional and environmental supports to teach students pro-social alternatives to problem behaviors with high rates of positive feedback.
17. **School Day** is a day in which a school or program is in operation as an instructional day and/or a teacher in-service day.
18. **Seclusion** is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion is not timeout..
19. **Section 504 Plan** refers to a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
20. **Serious bodily injury** is any bodily injury which involves—
  - A. A substantial risk of death;
  - B. Extreme physical pain;
  - C. Protracted and obvious disfigurement; or
  - D. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
21. **State approved training program** is a nationally recognized, evidenced-based training program approved by the State of Kansas that includes the components outlined in section J of this rule.



22. **Student** is a child or adult aged 3 to 20 enrolled in a school or a program that is a covered entity as defined in this section
23. **Timeout** is an intervention where a student requests, or complies with an adult request for, a break, and is not covered by this rule. Timeout is not seclusion.
24. **Transitional Hold** is a brief physical restraint of an individual, which may be on the ground, for the purpose of quickly and effectively gaining physical control of an individual who has met the criteria for physical restraint, with the intent to transition that individual to a safer, standing position as quickly as possible.

## **B) LOCAL POLICY; NOTICE TO PARENTS**

### **1. Local Policy Required**

All covered entities shall have local policies, consistent with this rule, regarding the use of physical restraint and seclusion. Covered entities must also have a procedure available by which parents may submit a complaint regarding the use of physical restraint or seclusion on their child, based upon which the covered entity shall investigate the circumstances surrounding the incident complained of, make written findings and, where appropriate, determine to take corrective action.

Covered entities shall revise existing policies or develop policies consistent with this rule within 90 calendar days of the effective date of this rule.

### **2. Annual notification of rule and local policies**

Annually, each covered entity shall provide overview and awareness information to all staff, including contracted providers, regarding the content of this rule and any local policies or procedures related to the use of physical restraint and seclusion.

Each covered entity shall provide an annual notice informing parents of students enrolled at the covered entity of this rule and any local policies or procedures related to the use of physical restraint and seclusion, including the local complaint process.

## **C) SECLUSION**

### **1. Permitted uses of seclusion**

A. Seclusion may be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.

B. Seclusion must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a seclusion, trained personnel must be summoned to the scene and assume control of the situation as rapidly as possible.

### **2. Prohibited uses of seclusion**

A. Seclusion may not be used for punitive purposes, staff convenience or to control challenging behavior.

B. Seclusion may not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury or harm.



- C. Seclusion may not be used as a therapeutic or educational intervention.
- D. Seclusion may not take place in a locked room.

### **3. Monitoring of a student in seclusion**

- A. At least one adult must be physically present to monitor a student in seclusion at all times. Students must be continuously monitored until the student no longer presents imminent risk of injury or harm to self or others.
- B. In the event of an injury to the student or staff, the local policy for emergency response must be initiated.

### **4. Termination of seclusion**

- A. The staff involved in the use of seclusion shall continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention must be discontinued as soon as possible.
- B. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- C. **The covered entity may request assistance from parents at any time during the incident.**
- D. If attempts to release from seclusion have been unsuccessful and a student is still presenting behaviors that create an imminent risk of injury or harm to self or others, then the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local EMS, or other community resources.
- E. If seclusion continues for more than 10 minutes, an administrator or designee shall determine whether continued seclusion is warranted, and shall continue to monitor the status of the seclusion every 10 minutes until the seclusion is terminated.

### **5. Location of seclusion**

Seclusion can be achieved in any part of a school building with adequate light, heat, ventilation and of normal room height. If a specific room is designated as a seclusion room, it must be a minimum of 60 square feet with adequate light, heat, ventilation, be of normal room height, and be free of hazardous material and objects with which a student could self-inflict bodily injury.

## **D) PHYSICAL RESTRAINT**

### **1. Permitted uses of physical restraint**

- A. Physical restraint may be used only as an emergency intervention when the behavior of a student presents imminent risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.
- B. Physical restraint must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a physical restraint, trained personnel must be summoned to the scene and assume control of the situation as rapidly as possible.



- C. Physical restraint may be used to move a student only if the need for movement outweighs the risks involved in such movement.
- D. If a student is demonstrating imminent risk while on the ground, or if during the process of physical restraint the student directs the restraint to the ground, staff should make attempts to disengage or utilize a transitional hold to move the student back to a safer restraint position.
- D. Protective equipment or devices that are part of a treatment plan as prescribed by a licensed health care provider are not prohibited by this rule.

## **2. Prohibited forms and uses of physical restraint**

- A. Physical restraint may not be used for punitive purposes, staff convenience or to control challenging behavior.
- B. Physical restraint may not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury.
- C. No physical restraint may be used that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech (restraint-related positional asphyxia) of a student.
- D. No physical restraint may be used that involves taking the student to the floor and forcibly holding him or her in a prone, supine, seated or side position.
- D. No physical restraint may be used that relies on pain for control, including but not limited to joint hyperextension, excessive force, take-down (supported or unsupported), the use of any physical structure (e.g. wall, railing or post), punching and hitting.
- E. Physical restraint may not be used as a therapeutic or educational intervention.
- F. Aversive procedures and mechanical and chemical restraints may not be used under any circumstances.
- G. Prescribed assistive devices are not considered mechanical restraints when used as prescribed. Their use must be supervised by qualified and trained individuals in accordance with professional standards.
- H. Prescribed medications administered by a health care provider consistent with a student's health care plan are permitted.

## **3. Monitoring of a student in physical restraint**

- A. At least two adults must be present at all times when physical restraint is used except when, for safety reasons, waiting for a second adult is precluded.
- B. A student in physical restraint must be continuously monitored by an adult not directly involved in the restraint until the student no longer presents imminent risk of injury or harm to self or others.
- C. In the event of an injury, local policy must be followed.

## **4. Termination of physical restraint**

- A. The staff involved in the use of physical restraint must continually assess for signs that the student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention must be discontinued as soon as possible or at the first sign of distress.



- B. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- C. The covered entity may request assistance from parents at any time during the incident.
- D. If attempts to release from physical restraint have been unsuccessful and a student is still presenting behaviors that create an imminent risk of injury or harm to self or others, then the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local EMS, or other community resources.
- E. If physical restraint continues for more than 10 minutes, an administrator or designee shall determine whether continued physical restraint is warranted, and shall continue to monitor the status of the physical restraint every 10 minutes until the physical restraint is terminated.

## 5. Exclusions

Those restraints used by law enforcement officers or school resource officers employed by a police department in the course of their professional duties are not subject to this rule.

## E) NOTIFICATION OF INCIDENT

### 1. Reporting to an Administrator or Designee, others

After each incident of physical restraint or seclusion, a staff member involved shall:

- A. Report to the administrator or designee by oral notification as soon as possible after each incident, but in no event later than the end of the school day of its occurrence, and
- B. If the student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, report the incident to the entity responsible for the student's education, by phone, within 24 hours

### 2. Notification to parents

- A. An administrator or designee shall notify the parent that physical restraint or seclusion and any related first aid have occurred as soon as practical but within the school day in which the incident occurred, utilizing all available phone numbers and other appropriate means. If the parent is unavailable, a phone message must be left for the parent to contact the school as soon as possible. If a parent does not have access to a phone, the entity must use whatever contact information is available for emergencies. The parent must be informed that written documentation will be provided to them within 7 calendar days.
- B. If a restraint or seclusion has occurred outside the school day, notification of the restraint or seclusion and any related first aid must occur as soon as possible in compliance with the entity's procedures for emergency situations

### 3. Reporting of Serious Bodily Injury or Death



If serious bodily injury or death of a student occurs during the implementation of restraint or seclusion:

- A. Oral notification of the incident must follow local health and safety procedures as outlined by the covered entity's policies and procedures; and
- B. The administrator or designee shall notify the Department of Education within 24 hours or the next business day.

## **F) DOCUMENTATION; INCIDENT REPORT**

### **1. Incident Report**

Each use of physical restraint or seclusion must be documented in an incident report. The incident report must be completed and provided to an administrator or designee as soon as practical after the incident and in all cases within two school days. At a minimum, the incident report must include:

- A. Student name;
- B. Age, gender, grade;
- C. Location of the incident;
- D. Date of incident;
- E. Date of report;
- F. Person completing the report;
- G. Beginning and ending time of each physical restraint and seclusion;
- H. Total time of incident;
- I. Description of prior events and circumstances;
- J. Less restrictive interventions tried prior to the use of physical restraint or seclusion. If none used, explain why;
- K. The student behavior that justified the use of physical restraint or seclusion;
- L. A detailed description of the physical restraint or seclusion used;
- M. The staff person(s) involved, their role in the use of physical restraint or seclusion and their certification in an approved training program;
- N. Description of the incident, including the resolution and process of return to program, if appropriate;
- O. Whether the Student has an: a. IEP; b. 504 plan; c. behavior plan; d. IHP; or e. other plan;
- P. If a student or staff sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
- Q. Date, time, and method of parent notification; and
- R. Date, time of staff debriefing.

### **2. Incident Report Provided to Parents, others**

A copy of the incident report must be provided, within 7 calendar days of the incident to

- A. The parent; and
- B. If the student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, the entity responsible for the student's education.



## **G) RESPONSE TO THE USE OF PHYSICAL RESTRAINT OR SECLUSION**

### **1. Debriefing**

- A. Following each incident of physical restraint or seclusion, the covered entity shall ensure that, within two school days, an administrator or designee reviews the incident with all staff persons who implemented the use of physical restraint or seclusion to discuss:
  - (1) Whether the use of restraint or seclusion was implemented in compliance with this rule and local policies, and
  - (2) How to prevent or reduce the future need for physical restraint and/or seclusion.
- B. Following each incident of physical restraint or seclusion, the covered entity shall ensure that, as soon as possible, but no later than two school days or upon the return to school, an administrator or designee shall review the incident with the student(s) involved to discuss:
  - (1) Details of the incident in an effort to assist the student and staff in identifying patterns of behaviors, triggers or antecedents.
  - (2) Alternative positive behaviors or coping skills the student can opt for in future incidents.
- C. When physical restraint or seclusion has resulted in serious bodily injury to a student or staff member requiring emergency medical treatment, the debriefing must take place as soon as possible but no later than the next school day.
- D. Following the debriefing, a written plan for response and de-escalation must be developed (or, if a plan already exists, must be revised) and implemented for the student.

### **2. Multiple Incidents of Physical Restraint and Seclusion**

- A. **Special Education/504 Students after Third Incident.** After the third incident of physical restraint or seclusion in a school year of a student who has been found eligible for special education or has a Section 504 plan, the student's IEP or 504 team shall meet within 10 school days of the third incident to discuss the incident and consider the need to conduct an FBA and/or develop a BIP or amend an existing one.
- B. **For all other students after Third Incident.** For students not described in Paragraph A, a team shall meet within ten school days of the third incident to discuss the incidents.
  - (1) The team shall consist of the parent, an administrator or designee, a teacher for the student, a staff member involved in the incident (if not the



teacher or administrator already invited), and other appropriate staff members.

- (2) The team shall consider the appropriateness of a referral to special education and, regardless of whether a referral to special education is to be made, the need to conduct an FBA, and/or develop a BIP.

- C. Nothing in this section is meant to prevent the completion of an FBA or BIP for any student who might benefit from these measures but who has had fewer than three restraints or seclusions.

### **3. Parent Participation**

The covered entity shall make reasonable, documented efforts to encourage parent participation in the meetings required in section G.2 and to schedule them at times convenient for parents to attend.

A covered entity may not seek written permission from a parent to provide restraint and seclusion to a student, nor may a parent waive their right to notification of an incident of restraint or seclusion.

## **H) CUMULATIVE REPORTING – look at current reporting requirements**

### **1. Building-level reporting, analysis**

*A cumulative report by building must be made to the superintendent or chief administrator on a quarterly and annual basis to include:*

- A. *Aggregate number of physical restraint incidents;*
- B. *Aggregate number of students placed in physical restraint;*
- C. *Aggregate number of seclusion incidents;*
- D. *Aggregate number of students placed in seclusion;*
- E. *Aggregate number of serious bodily injuries to students related to the use of restraint and seclusions; and*
- F. *Aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.*

*The superintendent or chief administrator shall review cumulative reports received as set forth in this section and identify those areas that can be addressed to reduce the future use of physical restraint and seclusion. These cumulative reports may be requested by the Department of Education at any time.*

### **2. Reporting Data to the Department of Education**

*Each covered entity shall submit to the Department of Education an annual report of the incidence of physical restraint and seclusion that must include:*

- A. *Aggregate number of physical restraint incidents;*
- B. *Aggregate number of students placed in physical restraint;*
- C. *Aggregate number of seclusion incidents;*
- D. *Aggregate number of students in placed in seclusion;*
- E. *Aggregate number of serious bodily injuries to students related to physical restraint and seclusion; and*



- F. *Aggregate number of serious bodily injuries to staff related to physical restraint and seclusion.*

***I) COMPLAINT PROCESS – look at current complaint process***

**1. *Local Complaint Process***

*Parent complaints related to restraint and seclusion must be submitted to the covered entity in accordance with local policy and procedure.*

**2. *State Board of Education Complaint Process***

*Any parent who is dissatisfied with the result of the local complaint process may file a complaint with the State Board of Education, which complaint is not considered an appeal of that local process. The Department shall review the results of the local complaint process and may initiate its own investigation of the complaint, and shall issue to the complaining parent and the covered entity a written report with specific findings within 60 days of receiving the complaint. If a violation is found, the Department shall develop a corrective action plan by which the entity will achieve compliance*

**J) STAFF TRAINING; APPROVED PROGRAMS**

**1. *Staff Training***

The Kansas State Board of Education shall maintain a directory of nationally recognized, evidence-based training programs approved for use on its website at <http://www.ksde.org/>. These training programs must require participants to demonstrate physical and written competency to achieve certification, and must include instruction in at least the following core components:

**A.** The use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives;

**B.** Identification of dangerous behaviors that may indicate the need for physical restraint or seclusion and methods for evaluating the risk of harm to determine whether such interventions are warranted;

**C.** Instruction and simulated experience in administering safe physical restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a student, and in recognizing and avoiding positions involving a high risk of restraint-related positional asphyxia (restricting a student's ability to breathe);

**D.** The effects of physical restraint and seclusion on a student, including monitoring physical and psychological signs of distress and when to obtain medical assistance in compliance with the covered entity's procedures for emergency interventions;

**E.** The risks and realities of physical restraint and seclusion; and

**F.** A review of the process of student and staff debriefing.



Each covered entity shall provide all staff with training in the use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives and the process for student and staff debriefing. Each covered entity shall ensure that a sufficient number of staff have additional training in the identification of dangerous behaviors that may indicate the need for physical restraint, how to safely administer physical restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a student, recognizing and understanding the risks of the use of physical restraint and seclusion, including monitoring for signs of physical and psychological distress and when to obtain medical assistance in compliance with the covered entity's procedures for emergency interventions. This training shall occur at the time of hire and shall be formally refreshed annually.

Thank you again for the opportunity to support this effort. We would welcome the opportunity to further discuss our comment should you have questions. We apologize that we were not able to attend the public hearing on the matter; but I am out of the country on Thursday, February 2<sup>nd</sup>. I will have access to email while I am away. Please feel free to contact me that way or I will return to my office on Monday, February 13<sup>th</sup> should you wish to call.

Sincerely,



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