

Approved: February 14, 2012

February 2, 2012

## MINUTES OF THE HOUSE CHILDREN AND FAMILIES COMMITTEE

The meeting was called to order by Chairperson Mike Kiegerl at 9:04 AM on Thursday, February 2, 2012, in Room 142-S of the Capitol.

All members were present:

Committee staff present:

June Christensen, Committee Assistant  
Rena Jefferies, Office of the Kansas Revisor of Statutes  
Jay Hall, Kansas Legislative Research Department

Conferees appearing before the Committee:

Rocky Nichols, Executive Director, Disability Rights Center  
Kathy Whaley, Parent (did not appear)  
Kris Ehling, Parent  
Angela Lopez, Parent  
Jane Adams, Keys for Networking, and parents Janette Kiel and Cherie Reynolds  
Gayla Ward, Parent  
Jane Rhys, Disability Advocate  
Rick Cagan, Executive Director, National Alliance on Mental Illness (NAMI Kansas)  
Darla Nelson-Metzger, Education Advocate Co-Coordinator, Families Together, Inc.  
Don and Phyllis Porter, Parents

Written Testimony:

Jim Snyder, Kansas Committee on Children and Families  
Bruce Linhos, Children's Alliance of Kansas  
Kathy Winters, Kansas Family Rights Coalition  
Julie Aldridge, Parent  
Chonita Nigus, Parent  
Sonja Woynick, Parent  
Michele and David Wall, Parents  
Aimee Keohane, Parent  
Tracy Milam, Parent  
Jeremy and Rachel Banning, Parents  
Colin Thomasset, Policy and Research Analyst, Ass'n of Community Mental Health Centers of Kansas, Inc.

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CONTINUATION SHEET

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Kendall Sinclair, Crisis Prevention Inc. Milwaukee, Wisconsin

*Opponents:*

Terry Collins, Doniphan County Educational Cooperative #616  
Robert Coleman, Director of the ANW Special Education Interlocal  
Deborah Meyer, Director of Special Education, Shawnee Mission School District  
Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards  
Mike Bilderback, Director of Special Education, Wamego

Written Testimony:

Kathy Kersenbrock-Ostmeyer, Parent and Director of Special Education, NWKESS

*Neutral*

Sue Storm, Kansas State Board of Education Legislative Coordinator

Others in attendance:

See attached list.

Chairman Kiegerl introduced a bill that would address runaway foster care children with a provision that they would be detained in secure facilities until judicial decisions are made.

Hearing on **HB 2537 – children in need of care, access to records-**

Written Testimony only:

Jim Snyder, Silver-Haired Legislature ([Attachment 1](#)).  
Bruce Linhos, Children’s Alliance of Kansas ([Attachment 2](#)).

Hearing on **HB 2542 – Grades K-12; use of seclusion and restraint of students with disabilities; reporting thereof-**

Written Testimony only:

Kathy Winters, Kansas Family Rights Coalition ([Attachment 3](#)).

Hearing on **HB 2444-Grades K-12; use of seclusion and restraint of students with disabilities; reporting thereof.**

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Chairman Kiegerl asked conferees to briefly summarize testimony to allow time for all speakers. He introduced Rocky Nichols, Executive Director of the Disability Rights Center, who spoke in favor of the proposed legislation, which would change previously passed guidelines to increase safety for the most vulnerable children. He explained that it is a compromise that would establish more accountability and continuity among schools. He emphasized that passage of the bill will not eliminate the ability to use seclusion and restraint without proper training if an altercation should occur, time-outs, or take away local control. He said that many parents don't believe the bill goes far enough to address their concerns but that a compromise is preferable to the present guidelines. He informed the committee that 36 states now have such legislation. He said data collection is not the answer to preventing problems. (Attachment 4).

Rick Cagan, Executive Director, National Alliance on Mental Illness (NAMI Kansas) also spoke in favor of the bill, noting that seclusion and restraint often reignited trauma and should be used in emergency cases only. He suggested other preventive measures can be used that would be better alternatives to address behavior issues. (Attachment 5).

Darla Nelson-Metzger, Education Advocate Co-Coordinator, Families Together, Inc., spoke in favor of the bill and said 33 parents from several communities throughout Kansas have contacted their group with concerns about seclusion and restraint. Although much has been accomplished since the guidelines went into place, much still needs to be done. Families Together suggests that inclusion of all students rather than just those with disabilities be included in the bill. (Attachment 6).

Jane Rhys, Disability Advocate, said she is presently an advocate for six children and another just recently assigned. She has been involved for many with this issue for many years as a teacher and working for the Kansas State Department of Education and the state of Kansas. She expressed concern that lack of training in the use of seclusion and restraint can result in harm to children, teachers, and other involved persons. In conversation with attorneys, she said other statutes cover some of the concerns, but oftentimes school personnel suggest their methods can be used in the absence of definitive laws. (Attachment 7).

Kathy Whaley, Parent (did not appear)

Kris Ehling, parent of a now 12-year-old child, who has had extensive exclusion and restraint experiences, said documentation was not presented regarding the issue despite the guidelines in place. A new principal has eliminated the use of seclusion and restraint as a behavior and management tool and further use of it would be rare. He presented several data charts from the

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district showing that reduced use of seclusion and restraint had diminished incidents as a result of this practice. ([Attachment 8](#)).

Representative Ruben questioned how many total schools in the district and if these were the only schools that reported seclusion, which Mr. Ehling said it was.

Chairman Kiegerl asked how children were being handled with the elimination of seclusion and restraint, and Mr. Ehling said proper training and prevention and other methods to deescalate student behavior are the keys.

Angela Lopez, parent of a 13-year-old child with mental retardation, who is immediately put in seclusion if he touches another person, addressed the committee. She said there is no warning but immediate consequences, and he is often left alone for several hours in a room with no windows and a closed door. This often happens up to four times a week, and he has seizures that might not be observed. She urged adoption of the proposed bill. ([Attachment 9](#)).

Representative McCray-Miller questioned if she has been advised of the due process policy, which Ms. Lopez said she had not

Jane Adams, Keys for Networking, spoke in favor of the proposed bill, and because of the absence of parents Janette Kiel and Cherie Reynolds, combined the three testimonies. She told the committee that the Atchison and Seaman School Districts had done extraordinary work by using programs that helped the children—positive behavior and schoolwide teacher training by professional mental health personnel. Both of the above parents had adopted children, who were born of drug-addicted mothers, and previous use of abiding by the guidelines did not work. She believed passage of the proposed legislation would be a good choice. ([Attachment 10](#)).

Gayla Ward, parent of a ten-year-old autistic child, who is nonverbal and communicates with sign language, addressed the Committee. She also volunteers with Families Together. Despite being told her son would not be placed in a safe room, he was, and had both physical and emotional difficulties as a result. They are still awaiting results of due-process hearing. He was eventually enrolled in the Kansas City Autism Training Center, which with proper techniques, has allowed him to become a happy person again. It came at the cost of over \$100,000 to the family. She urged passage of the bill to make nonbinding guidelines into law to protect the children. ([Attachment 11](#)).

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## CONTINUATION SHEET

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Don and Phyllis Porter, grandparents and advocates for Parents and Children's Justice. They are involved with the Kansas Family Rights Coalition in Kansas, and reported that children in the custody of SRS care providers have been reported as being physically and sexually abused. They requested a solution to protect parents, grandparents and children. ([Attachment 12](#)).

Chairperson Kiegerl closed the proponent section of the hearing.

Written Testimony in support of the bill was presented as follows:

Julie Aldridge, Parent ([Attachment 13](#)).  
Chonita Nigus, Parent ([Attachment 14](#)).  
Sonja Woynick, Parent ([Attachment 15](#)).  
Michele and David Wall, Parents ([Attachment 16](#)).  
Aimee Keohane, Parent ([Attachment 17](#)).  
Tracy Milam, Parent ([Attachment 18](#)).  
Jeremy and Rachel Banning, Parents ([Attachment 19](#)).  
Colin Thomasset, Policy and Research Analyst, Association of Community Mental Health Centers of Kansas, Inc. ([Attachment 20](#)).  
Kendall Sinclair, Crisis Prevention Inc. Milwaukee, Wisconsin ([Attachment 21](#)).

Representative Kiegerl opened the hearing to opponents of the proposed legislation.

Terry Collins, Doniphan County Education Cooperative #616, spoke in opposition to the proposed legislation saying that the present guidelines do work if used properly. In the six years they have been in place, there have not been any documented cases indicating improper use of physical restraint or seclusion. Two reports were filed this year, one of which was unsubstantiated, and the other not yet settled. He said the use of seclusion and restraint has been a last resort and used only to keep children and others from getting hurt. ([Attachment 22](#)).

Representative Rubin asked if civil rights are in place, why some of the incidents presented today are happening. Mr. Collins said complaints can be filed, and third-party mediators can be used. The office of Civil Rights can also be contacted. Rep. Rubin said that the Judicial Committee is considering a bill that indicates lack of legislative requirements could cause more lawsuits to be filed.

Representative Miller-McCray asked if Mr. Collins believed these incidents had occurred, and he said some of the data is outdated. She said this is current data and asked if schools might be

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underreporting and if there is third-party involvement. Mr. Collins said the data was taken from the State Department of Education reports, and if there is any question the reports can be accessed.

Representative Gatewood questioned why there might be underreporting. Rocky Nichols said there is no enforceable action for seclusion and restraint with due process, and there would have to be extensive evidence if filed. Parents would also have to pay the school district attorney costs if the case were considered to be frivolous. It can take a very long time, and with the expense and possibility of losing, very few are filed.

Chairman Kiegerl said that lawsuits have been filed and dismissed, and cost is a concern.

Robert Coleman, Director of the ANW Special Education Interlocal #603, Humboldt, said that most staff members don't like to use seclusion and restraint, but there are many challenges with these children. He suggested that parents and school districts work together to address issues without litigation. He recommended mediation and said he thought passage of this bill might cause more litigation, and also, with the threat of a lawsuit, some staff may not intervene in a potentially serious situation. He encouraged more training in dealing with the children and how to properly restrain them. (Attachment 23).

Representative Rubin noted that the bill would still allow seclusion and restraint if absolutely necessary. Mr. Coleman said sometimes a decision had to be made very quickly. Representative Rubin questioned how you exercise the Civil Rights (CR) protection. Mr. Coleman the parent can call the CR office, and they do the investigation and also may investigate other situations. Once it goes to them, the school is no longer dealing with the parents. It can cause federal money to be withheld to the schools. Very few cases have been filed.

Deborah Meyer, Director of Special Education, Shawnee Mission School District, requested the bill not be further debated or moved out of committee. She said her district is committed to handling situations properly and doesn't believe further legislation will improve that. Incidents are reported on a quarterly basis, and the Kansas State Department of Education has adequate guidelines. Since her district has stopped using seclusion rooms, there is a higher incidence of the police being called, and that could increase if the bill is passed. (Attachment 24).

Representative Brunk noted that her district has found a better way of handling the situation, but if there is not a consistent way to handle children that works for both parents and kids, what else is available. She said adequate training and preventive measures appear to work better.

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Representative McCray-Miller asked if data is being used and analyzed, and she said it was.

Chairman Kiegerl questioned why there would be more expense; Ms. Meyer said each additional regulation costs more money for staff and data that would have to be collected. He questioned if there are sufficient regulations and laws on the books, why so much difference in school districts applying them. How can children be treated equally? Ms. Meyer said there are still many questions and answers to be addressed.

Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards, (KASB) spoke in opposition to the proposed legislation, indicating there should be an independent cost study with additional state funding or endorsement by KASB. The resulting training costs, reduced resources, and possibility of more litigation will affect school district budgets. Many of the districts belong to Special Education Cooperatives, where here is consistency. (Attachment 25).

Mike Bilderback, Director of Special Education, Wamego, which also sponsors Mill Creek and Rock Creek, spoke and said only nine students in the three districts have been restrained in the first quarter. Average amount of restraint time was two-and-a-half minutes, and average seclusion time was 45 minutes. He said the district has quality control between himself, the school psychologist, and training staff, and if it is determined a staff member has not followed guidelines, it is addressed. They also monitor students carefully for prevention, have several training sessions each year, starting before school begins, work with parents and faculty to reduce amount of restraint and seclusion problems. He reported much progress has been made in his district and throughout Kansas and believes the present guideline system is working well. No complaint has been filed in the last six years. (Attachment 26).

Rep. Reuben asked if there were any cases where guidelines were not followed, and Mr. Bilderback said there may be, but if that happens, someone on the team will talk with the staff the following day, and adequate steps will be taken to keep it from happening again. No reprimands have been done, but adequate training is emphasized.

Chairman Kiegerl noted there could be additional costs as reducing the number of instances will require additional training.

Written Testimony from Kathy Kersenbrock-Ostmeyer, Parent and Director of Special Education, NWKESS was presented. (Attachment 27).

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Sue Storm, Kansas State Board of Education (KSBE) Legislative Coordinator and former House of Representatives member, spoke on a neutral basis. She said the bill is very similar to the 2007 guidelines regarding data collection and includes all children. Seclusion and restraint (now called ESI {emergency safety intervention}) encompasses many methods school districts have to report, have adequate training, positive behavior support prevention, not using ESI as discipline but in emergency situations only. A Multi-Tier System of Supports (MTSS) provides training, and the U.S. Department of Education has awarded grant funding to Kansas. She presented data on the three complaints received this year, results and pending status, guidelines, and excerpts from the KSBE meeting minutes. (Attachment 28)

Representative Kiegerl expressed appreciation to all who had presented testimony, and said a hearing on the bill will be held in a future meeting.

The next meeting will be Tuesday, February 7, 2012, 9 a.m. in Room 142S.

The meeting was adjourned at 10:47 a.m.