

## Testimony in Opposition to Sub for HB 2170

March 9, 2015

My name is Dr. Joan Robbins and I am opposed to HB 2170. I am the Director of Special Education in Blue Valley School District and the chair of the Kansas Special Education Advisory Council.

Whether you are hearing from parents, the Disability Rights Center, or school district staff, we all have the same goal of keeping children safe when they walk through the doors of our schools. While public schools gladly accept every student, no matter ability or disability, and we firmly believe in the right of every child to a Free Appropriate Public Education, it is important to consider that today, our students are more complex and come to school with greater issues than ever before.

With cuts to mental health services, public schools are asked to serve children who may lack critical services outside of the public school that they need for success. The truth is that schools have some tough students to serve. We have students who engage in aggressive and injurious behaviors. In fact, the students that we thought were tough 10 years ago aren't even on our radar now. Public schools cannot and should not say that a child is too hard to serve or that we can't afford the resources needed to serve a child with a disability.

As you consider this bill, the advocates will present many moving stories that seem to indicate that schools are simply not protecting the safety of students. In fact, as you listen to testimony, you may feel that voting in favor of this bill is a no-brainer. You might ask yourself, "How can it hurt to vote in favor of this bill?" or "How would it look if I voted against a bill to protect students?" If it was that simple, I would be supporting the bill myself. But I firmly believe this bill is a step in the wrong direction and let me tell you why.

Emergency Safety Interventions (ESI) has been a topic of discussion since at least 2005 and various bills have been proposed which were very similar to the bill in front of you today. In March 2012, HB2444 was before this committee and, at that time, you gave the State Board of Education (SBOE) the direction to develop regulations on ESI. The SBOE did as requested and those regulations went into effect in April 2013.

To be clear, **the state of Kansas already has binding regulations passed by the State Board of Education.** Students do have and will have substantial and consequential protections. The SBOE regulations are not only in place, **they are working.** They require, among other things:

- Annual training for ALL staff members (teachers, aides, bus drivers, food services, office staff) on how to avoid having to use an ESI.
- An ESI can only be used in the case of a danger of injury to self or others.
- The use of an ESI cannot be a part of a student's behavior plan.
- A district policy in place about the use of ESI.
- Parents must be notified in writing within 2 school days following the use of an ESI.
- All ESIs must be reported to KSDE twice per year
- Districts must review the use of ESIs twice per year
- Mandatory Technical assistance is provided to districts that use ESIs outside the expected rate.

The existing regulations were the result of many stakeholders' input and were developed as the result of research and careful consideration of many factors. In fact, in the publication, "How Safe is the Schoolhouse?" an annual report about national seclusion and restraint policies and laws, Kansas is listed among states that provide "meaningful protections" for children (p.8). Kansas was mentioned as a state that moved from non-binding guidelines to regulations. Since those regulations were passed, we have identified a couple of areas that we want to improve upon and those are currently being addressed through the administrative review process. As part of that process, there will be an appeal process for parents who have a dispute with the district related to the use of an ESI. There will also be a provision that will exempt police officers based on a conflict with current law.

The bill that is being proposed is flawed and takes us several steps back from where we already are. In effect, we are starting over with a bill that was not worked on with various stakeholders. In particular:

- The definition of altercation is unclear whether it includes a situation where a student attacks students or staff, thus adding confusion about the use of ESIs.
- We worked very hard to eliminate conflicts between statutes and regulations related to police officers and the use of ESIs. This bill creates the same confusion by not specifically exempting those personnel.
- Most concerning, the definition of immediate danger being "an immediate and impending threat of 'serious physical harm.'" The word "serious" is a very high standard. If you were to use the "serious bodily injury" threshold from the Individuals with Disabilities Education Act, it means "substantial risk of death; extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." Let's put this into a scenario. A student with autism becomes agitated and despite the effort of the staff to deescalate the situation, the student becomes aggressive. The student bites a staff member or

student so hard that it breaks the skin and she is screaming for help. Could you stand by and not act because a bite likely wouldn't result in death or disfigurement? What about if the student was attacking your child or grandchild? If the student attacked or threatened to attack your child, would you as a parent, be willing to accept that the teacher wasn't able to intervene because they didn't think the injury was going to be "serious" enough? I wish this case was an imaginary "what if" scenario. However, as we were preparing for this testimony, a similar situation happened in one of our schools. Fortunately, school personnel were able to act under our current regulations. Trained staff intervened in a way that protected the student and limited physical injury to the staff member.

- The requirement to report ESI by school would release confidential student information to the public. This is because it is very typical that only one or two students per school are typically involved with the use of an ESI. Releasing ESI data by school would readily identify the students involved.

Before you vote to support this bill or any legislation related to seclusion and restraint, I encourage you to:

- Go to a public school and visit the classrooms that serve students with the most significant disabilities. Ask the teachers and principals about the students they serve and how they make decisions about secluding or restraining. You would be amazed at the lengths our staff goes to in order to AVOID the use of Emergency Safety Interventions. In most cases of student aggression, our staff is not restraining students; instead, they move out of harm's way, if possible.
- Please talk to special education directors. Ask them about the implementation of the current regulations and how they are working in their district.
- Only consider the stories about the inappropriate use of seclusion and restraint that occurred in Kansas and after the implementation of the current regulations (April 2013).

At the very least, please consider an interim study prior to voting on this bill. Take a look at the data and work that the SBOE and KSDE have done with regard to ESI. Talk with public school officials and get the information first-hand about the positive impact of the current regulations.

In conclusion, the current regulations are working. The proposed bill is "a solution in search of a problem" at best and a detriment to safety at worst.

Sincerely,

Dr. Joan Robbins

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