KANSAS STATE BOARD OF EDUCATION

ADMINISTRATIVE REVIEW

On April 13, 2018 [redacted] ("Parent 1"), filed a complaint with (...) on behalf of herself and [redacted] ("Parent 2") regarding the March 13th, 2018 use of restraint on her daughter ("the student") and the subsequent notification. (...) investigated the restraint and notification and provided a report to the parents on or about May 16th, 2018. Commissioner of Education Watson received the parents' request for an administrative review on or about June 19th, 2018. This Hearing Officer now makes certain findings of fact and conclusions of law after conducting a brief but thorough investigation. In support of the forthcoming findings, this Hearing Officer conducted the following investigation:

1. Telephone conversations with Parent 1 and Parent 2.
2. Telephone conversations with (...) and (...) from (...).
3. Review of all documents provided by the Parents, as well as documentation from USD regarding the content of any training provided to district staff, documentation regarding which staff members received that training, and a copy of the district's policies regarding the use of emergency safety interventions.

Because there are no allegations of the student being placed in seclusion and there were no concerns raised by either parent regarding the school environment, there was no on-site investigation.

Findings of Fact

1. (...) is a music teacher for (...). She received ESI training prior to March 13, 2018. (...) is a paraprofessional for (...). (...)received ESI training prior to March 13, 2018. (...) is the Principal of (...) Elementary school where the student attended classes during the 2017-2018 school year. Mr. (...) received ESI training prior to March 13, 2018. Many of the training materials were provided by the Crisis Prevention Institute (CPI). CPI is nationally recognized as a provider of training and support for schools in the appropriate use of seclusion and restraint.
2. On March 13, 2018 the student was participating in a group activity during music class. There were at least two adults in the classroom – (...) and (...).
3. During music class, the student made multiple attempts to take a classmate's nametag away from him. The adults redirected the student's attention back to the appropriate activity each time the student reached for a classmate's nametag.
4. At approximately 11:36 a.m., the student pushed a classmate and was on top of him trying to take the nametag off his shirt collar. At this time, (...) physically removed the student from her classmate and restrained her movement toward him. This physical restraint lasted less than one minute.
5. None of the training materials provided to district staff address appropriate ways to lift one student off another, but staff are trained that picking up a student constitutes a physical restraint.

6. Ms. (…) teaches for approximately 2-3 hours at a time before going to another school building. During the Spring 2018 semester, she taught at (…) on Tuesdays and Thursdays. The restraint occurred on a Tuesday. Ms. (…) informed Mr. (…) on her way out of the building the following Thursday that a student "may have been restrained." Mr. (…) talked about the allegation with other staff. The parents received notification of the use of physical restraint the next day (March 16, 2018).
7. The parents utilized the district's local dispute process as is provided for by law.
8. The district investigated the March 13th use of physical restraint, and shared the results of its investigation with the parents.
9. The parents sought administrative review by the Kansas State Board of Education as authorized by K.A.R. 91-42-5.

The parents raise three main concerns within their request for an Administrative Review:

1. The use of the physical restraint should not have been necessary if the student had appropriately been de-escalated,
2. The staff of (…) have not received adequate and/or appropriate training, and
3. The parents were not timely notified of the use of the physical restraint.

It is worth clarifying the scope of this administrative review. K.A.R. 91-42-5(a) allows any parent who filed a written complaint with a local board regarding the use of emergency safety interventions to request an administrative review by the Kansas State Board of Education *of the local board's final decision*. This hearing officer interprets the ending clause of subsection (a) to mean this is an *appeal* of the decision reached by the local school board similar to how appellate courts review decisions and/or rulings of lower courts. The overarching question before this hearing officer is whether the local board's final decision accurately interprets and upholds current law regarding the use of said intervention.

Was there an unlawful use of physical restraint?

During a phone conversation, Parent 1 acknowledged that once the student was on top of/in a position to potentially hurt herself or another child it was appropriate for staff to physically restrain the student by way of lifting her away from the other child. The parents' concern is how the student was ever allowed to get herself into such a position. The parents essentially accuse district staff of behaving in ways that escalated the student's behavior to the point at which physical restraint became necessary. There is no evidence to support that claim.

Parents' request for review indicates the student has an Individualized Education Program (IEP), and the IEP includes means by which the student may be calmed or redirected. These means include verbal redirection, breaks, calming techniques and giving the student certain choices. Parents question why these techniques were not used of waiting until there was a need for physical restraint.

The means described above appear to be part of a Behavior Intervention Plan (BIP) or some form of intervention plan incorporated into the student's IEP. Interventions such as these are appropriate proactive mechanisms to help prepare a student to engage in a positive learning experience. These techniques are not considered emergency safety interventions by the very nature of when and why emergency safety interventions are used. For example, when seeing one student push over and crawl on top of another student an educator would not be expected to only give the student

verbal redirection or to give the student "choices." Nobody can predict exactly when or how a child will act up. It would be an unreasonable expectation of an educator to expect him or her know that one child is going to knock over and climb on top of another child. An adult could spend every minute watching and re-directing a child as necessary and still not be able to prevent the child from acting in a manner that places themselves or another in immediate danger of physical harm. That is why emergency safety interventions exist.

The questions are whether staff used a prohibited form of physical restraint and whether the physical restraint ceased as soon as the immediate danger of physical harm ceased to exist. The district determined that verbal redirection used prior to the restraint was not effective, that even though there had not been training on how to lift one student off of another there was no use of a prohibited restraint, and that the physical restraint ended immediately after the students were no longer at risk of immediate danger of physical harm. This Hearing Officer agrees with the district's determination. Questions as to whether the student's IEP was followed are not germane to this administrative review. There are separate processes to address questions of IEP and the provision of FAPE. Was it appropriate for a faculty member to safely lift the student off her classmate and to physically separate the two? Yes.

Were the staff members of (...) properly trained?

The Freedom from Unsafe Seclusion and Restraint Act requires local school boards to develop and implement written policies to govern the use of emergency safety interventions at schools. *K.S.A. 72-6153(g).* The policies must require training designed to meet the needs of personnel as appropriate. USD 266 policies essentially mirror the Act, stating that all school staff will be trained regarding the use of positive behavior intervention strategies, de-escalation techniques, and prevention techniques. The district policy also requires that administrators, licensed staff members, and other staff deemed most likely to need to restrain a student will be provided more intense training than classified staff who do not work directly with students in the classroom. The local school board's written policy fully complies with state law.

In accordance with the district's policy, (…) and (…) received more intense training. The district's *Investigation Results* referred to this as "additional training." The Parents question whether, in light of the timing, this could actually be considered additional training. It is irrelevant whether the staff received training all in one day or if the training occurred on multiple occasions. The law only requires school policies to provide training designed to meet the needs of personnel as appropriate to their duties and potential need for the use of emergency safety interventions. *K.S.A. 72-6153(g)(1)(A), K.A.R. 91-42-3(a)(1)(A).* Having reviewed the training materials used by the school district, this Official did not see anything within the training materials that did not comply with state law. The training provided to all district staff covered state law and district policy, and gave an overview of the use of emergency safety interventions. Perhaps one weakness of (…)'s training is the discussion of the need to report to parents in a timely manner. Otherwise, this Official saw nothing inappropriate about the training used by USD 266.

Did USD 266 appropriately notify Parents of the March 13th physical restraint?

Discussions with the parents and with (…) staff revealed the same information described in the district's *Investigation Results*. The school failed to provide any notification to the parents the day of

the physical restraint, and it further failed to provide written documentation to the parents on the next school day. There is no ambiguity or room for interpretation in *K.S.A. 72-6154(a)(1)* or *K.A.R. 91-42-4(a)*. Both bodies of law require the school to notify the parent on the same day the emergency safety intervention was used.

It is easy to understand why the parents might ask "what part of 'the school shall notify the parent on the same day the emergency safety intervention was used' did you not understand?" It is also easy to understand that a school administrator is only able to inform parents when his or her staff provide the necessary information to that administrator in a timely manner. Even though neither parent could specify any actual harm that had come to their child or describe how the child's education suffered due to the school's delay, the school failed to fulfill its legal obligation.

Soon thereafter, the parents requested an investigation per (...)'s local dispute resolution process. (...), the Coordinator of Secondary Education & Special Programs for (...), investigated the parents' claims and provided the parents and the district with her findings. Ms. (...) recommended even more training for district staff, specifically focusing on identifying and reporting emergency safety interventions. Prior to the start of this administrative review, Ms. (...)'s recommendations were followed and refresher training was provided to building administrators and to the staff members involved with the March 13th physical restraint.

During this process, the parents raised additional concerns about the safety of their child. Those concerns are not addressable in this administrative review. The parents also raised concerns about a general lack of communication from the district. The parents and the district should work together to resolve any issues regarding how and when the parents will be contacted regarding any future use of any emergency safety interventions.

It is the opinion of this hearing officer that (...) appropriately resolved the complaint pursuant to its dispute resolution process. No additional corrective action is suggested at this time.

Designated Hearing Officer,

R. Scott Gordon
General Counsel
Kansas State Department of Education
8/17/2018