KANSAS STATE BOARD OF EDUCATION

ADMINISTRATIVE REVIEW

On May 11th, 2019 ("Parents") filed a formal complaint regarding March 28th, 2019 use of emergency safety intervention(s) ("event") on their son ("Student"). On May 18th, the Parents were informed their formal complaint could not be considered timely because it was sent more than 30 days after they were informed of the event. Parents have requested an administrative review by the Kansas State Board of Education. This Hearing Officer has been duly appointed by the Kansas State Board of Education to conduct the administrative review and provides the following findings of fact and conclusions of law.

In support of this review, the Hearing Officer conducted the following investigation:

1. An interview with Parents by telephone
2. An interview with Ms. Michelle Wallace-Beaven by telephone
3. Interviews with various other staff members at Trail Ridge Middle School
4. Inspection of the seclusion room and other classrooms within Trail Ridge Middle School
5. Review of documents provided by Parents including emails, district policies, and notices
6. Review of documents provided by the school district including district policies, notices, and training records
7. Review of CPI training materials
8. Discussion with staff members of the Special Education and Title Services team of the Kansas State Department of Education

This matter comes before the Hearing Officer as authorized by K.A.R. 91-42-5. The Parents raise many concerns within the request for an administrative review and their supporting documents. This Hearing Officer summarizes the allegations of the Parents as follows:

1. The seclusion room used on March 28th, 2019 was not a safe space as required by state law;
2. The district utilized emergency safety interventions for unlawful purposes;
3. District staff did not receive the training required by state law;
4. The Parents were not provided with appropriate written documentation of the use of emergency safety interventions;

5. USD 231's policies regarding the use of emergency safety interventions do not comply with the requirements of state law.

To the extent there may be other concerns that fall outside the reach of the Freedom from Unsafe Seclusion and Restraint Act and/or the related regulations of the Kansas State Board of Education, those concerns will not be evaluated.

Findings of Fact

1. Trail Ridge Middle School Principal Martin completed training in the use of emergency safety interventions in October, 2018. The training was provided by CPI.
2. Ms. Wallace-Beaven completed training in the use of emergency safety interventions in September, 2018. The training was provided by CPI.
3. Danielle Wagner completed training in the use of emergency safety interventions in October 2018 and again in January, 2019. The training was provided by CPI.
4. Michael Beyer completed training in the use of emergency safety interventions in October, 2018. The training was provided by CPI.
5. CPI is nationally recognized as a provider of training and support for schools in the appropriate use of de-escalation techniques as well as seclusion and restraint.
6. Student was an 8th grade student at Trail Ridge Middle School during the 2018-2019 school year.
7. As of March 28th, 2019 Ms. Wallace-Beaven's classroom consisted of a main classroom with a teacher's desk, student desks, wall decorations appropriate for a middle-school classroom, multiple doors, and several windows with window coverings. Connected to the classroom is a side-room used for instruction and/or quiet space for students. Also connected to this classroom is a seclusion room specifically designed for students to either de-escalate voluntarily or for seclusion if necessary.
8. The seclusion room is of ample size and construction. There is a tile floor, approximately 2" thick foam padding on each wall from floor to approximately 7 ft. high (similar padding seen on many gymnasium walls). The door is padded except for the window. Two small cameras are installed near the ceiling which display on an LCD screen just outside of the room (inside the classroom). The door is fitted with a magnetic lock that is designed to disengage when the lock is released. The lock worked appropriately when tested by the Hearing Officer.
9. Student is familiar with the seclusion room and had previously used the room voluntarily to de-escalate and calm himself.

10. Ms. Wallace-Beaven's classroom is considered a "safe space" for students that need a break from general education classes.
11. On March 28th, 2019, at approximately 2:20 p.m., Student walked into the classroom and past Ms. Wallace-Beaven without greeting or acknowledging her. This is highly unusual conduct for Student, who was described by staff as a polite, courteous young man.
12. Student walked directly to a table near the window of the side-room and sat down. Student began to hit his head on the desk in a loud, violent manner. On prior occasions, Student had been seen tapping his head on his desk as a form of calming and refocusing himself. Student's actions this day were uncharacteristic. A paraprofessional whom Student had known for some time sat across from the Student. When it appeared that Student was at risk of hurting himself on the edge of the table, the paraprofessional placed his own hand between the desk and Student's head to soften the blows.
13. Ms. Wallace-Beaven then attempted to engage Student to find out what was wrong, and made efforts to de-escalate the student using verbal efforts/techniques she had used and seen used successfully with Student in the past.
14. When Ms. Wallace-Beaven was unable to get Student to de-escalate, she asked for assistance from the CPI-Certified Team per district policy and training she has received from CPI.
15. Principal John Martin, School Psychologist Danielle Wagner, and 8th grade teacher Mike Berger arrived in the classroom. The building School Resource Officer ("SRO") also answered the call for help. The SRO is a law-enforcement officer employed by local law enforcement assigned to the school district.
16. During the efforts to de-escalate Student, Ms. Wallace-Beaven acted as the "voice" of the team while other team members assisted in either taking notes, moving furniture out of the way, or holding a hand between Student's head and the desk and/or the wall to prevent physical injury.
17. When verbal efforts to de-escalate Student failed, the SRO requested assistance from other local law enforcement officers. Due to Student's size, the SRO did not feel safe escorting Student to the seclusion room by herself.
18. Upon arrival of additional law enforcement officers and upon staff request, Student was assisted in getting to the seclusion room[1].

[1] Use of the term "assisted" rather than "escorted" here is intentional. Although CPI trains that their method of physical escort is not a form of physical restraint, recent changes to state law and a previous, unrelated administrative review state otherwise. This will be discussed later in this review.

19. Once secured inside the seclusion room, Student was observed screaming, kicking, and swinging his head around. At one point, Student was on or near the floor and violently kicked at the closed door. The kicking resulted in the window becoming dislodged within the metal window frame and the frame being pushed out from where originally installed.
20. Upon seeing the dislodged window and window frame and fearing that he might hurt himself, staff asked the SRO and police officers to remove him from the seclusion room. At this point, Student was no longer subject to seclusion and was in police custody. Student spent approximately six minutes in seclusion.
21. On the same day as the event, March 28, 2019, Trail Ridge Middle School principal John Martin signed and provided one page of USD 231's Parent Notice of Emergency Safety Intervention. At this time, Parents also received several other documents, including the following:
    a. Emergency Safety Intervention Parent Information Sheet with contact information for Dr. Judy Martin
    b. USD 231 Emergency Safety Intervention Policy
    c. Standards for the Use of Emergency Safety Intervention (document written by the Kansas State Department of Education)
    d. Information about state and community resources (document written by the Kansas State Department of Education)
    e. Local Dispute Resolution Guidance for Parents (flowchart written by the Kansas State Department of Education)
    f. Kansas State Board of Education Administrative Review Process
22. USD 231's policy includes:
    a. A requirement that all school personnel be appropriately trained;
    b. A requirement that each building shall maintain appropriate documentation;
    c. A local dispute resolution process;
    d. A procedure for parents to request an administrative review by the State Board;
    e. A system of collection and maintenance of documentation for each use of an ESI;
    f. An exemption for law enforcement officers; and
    g. a schedule for when and how parents are to be provided notice.
23. USD 231's policy also includes references to a means to informally resolve a pending complaint wherein informal resolutions – if reached – are to be shared with the local school board and

with the Kansas State Department of Education. Parents are provided the option to submit a formal written complaint "if the issues are not resolved informally with the building principal and / or the district superintendent."

24. Parents met with staff on or shortly after March 28th to discuss the incident and gather more information. Several emails were exchanged between Parents and staff wherein the Parents expressed concerns for how Student was treated. Parents also requested information from the school district such as video from the hallway prior to the use of the emergency safety interventions, police records, and any documentation related to a worker's compensation claim.
25. On April 2, 2019 Principal Martin emailed the 2nd page of the Parent Information Sheet. This sheet listed the date of the incident, a brief statement of the events leading up to the use of the interventions, a brief statement about the behavior which necessitated the use of the interventions, a brief statement as to the steps to transition the student back into the educational setting, a list of school personnel involved, and a space for Parents to provide written feedback. It is unknown why the 2nd page of required information was not provided the day of the incident.
26. Because the 2nd half of the ESI notice – with at least half of the required elements of Notice – was not actually provided to the Parents until April 2nd, the 30-day time limit for Parents to file a formal complaint began April 3rd, not March 29th.
27. Emails from Parents to the school district continued between March 28th through May 13th. The emails requested a Functional Behavior Assessment, a Behavior Intervention Plan, a safety plan, an educational assessment of Student's education and competence, that all documents/evidence/video of the incident be preserved, police reports, teacher notes, any claim filed for workers' compensation, and photographs of any injuries or damage caused to persons or the building.
28. The first written mention of a formal complaint regarding the March 28th incident is in an email from Parents dated May 11, 2019.
29. Parents were informed in writing on May 18th that the district considered the May 11th email to be an untimely filed formal complaint because it was received more than 30 days after the parents had been informed of the use of an emergency safety intervention.
30. The Commissioner of Education received the Parents' Emergency Safety Intervention Administrative Review Request Form on June 14, 2019.

Analysis

Was the seclusion room a safe space as contemplated by K.S.A. 72-6153 and K.A.R. 91-42-2?

State law defines seclusion as placement of a student in an enclosed area by school personnel where the student is purposefully isolated from adults and peers wherein the student is prevented from leaving, or the student reasonably believes the student will be prevented from leaving the enclosed area. The school district and Parents both accurately contend Student was placed in seclusion on March 28th, 2019. K.A.R. 91-42-2(f) requires a seclusion room to be "a safe place with proportional and similar characteristics as other rooms where students frequent. Each room shall be free of any condition that could be a danger to the student, and shall be well-ventilated and sufficiently lighted."

The question of what constitutes a safe place with proportional and similar characteristics as other rooms is one of first impression. This Hearing Officer could not find any reference to or discussion of this question in any prior administrative review. In reviewing past drafts of the law, the current language has been consistently used throughout several suggested amendments without any discussion of alternatives. Reviewing written testimony that was provided to the legislature during the adoption of the Freedom from Unsafe Seclusion and Restraint Act and subsequent amendments, parents shared concerns over the use of "boxes" and "unlit closets" for seclusion. Neither of those descriptions would accurately describe the seclusion room that was used on March 28th.

Although the seclusion room at Trail Ridge Middle School could not be confused with any other room, it may well be one of the safest - if not the safest - room in the building. The padding covers most surfaces of the room. The room is approximately the size of a large elevator and was lighted just like any classroom. A full-grown adult over 6-foot-tall weighting approximately 200 lbs. could lay down inside the room without touching any of the walls.[2] As required by K.A.R. 91-42-2(e), students within the room can be seen and heard at all times either by way of the small security cameras or the window installed in the door. Because state law requires students to be seen at all times, there must be a window large enough to have a clear view inside the room. Parents claim the window created an unsafe space because it was not indestructible/Student was not able to kick at it as much as he had wanted. This

[2] hypothetically

Hearing Officer does not believe "proportional and similar characteristics of other rooms" requires any school to build a completely indestructible room.

This Hearing Officer was provided with photographs of the dislodged window and window frame taken immediately or shortly after the incident. The window itself was not broken. The metal frame looked dislodged from its original installation and there appeared to be a gap between the wood door and the metal frame. All things considered, the window and frame held up very well against the kicking of an angry/upset 180+ lb.[3] person. It is reasonable for the school district to believe the room was of sound construction and appropriate for its intended purpose. The seclusion room was empty and free of any objects which may have injured the student while secluded. There was no indication of the door not opening appropriately once the lock was disengaged. When tested by the Hearing Officer, the door locked and unlocked appropriately. At the time of the incident, staff were observant and upon belief that the room *may* no longer be a safe place for Student he was removed. It is the finding of this Hearing Officer that Trail Ridge Middle School's seclusion room complies with state law.

Was the March 28th use of emergency substitute interventions in violation of state law?

K.A.R. 91-42-2 authorizes the use of emergency substitute interventions only when the student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. The March 28th incident began after less restrictive efforts to de-escalate were ineffective. Rather than sit and watch Student beat his head against his desk until he started to bleed, pass out, or worse the staff used their hands as a buffer between Student's head and the desk and/or cement wall. This did not constitute a restraint because Student's movement was not restricted. Staff did not attempt to hold Student's head in place – he remained free to swing his head and body. Staff continued to talk to Student and gave him specific choices. The vocal directions described by staff are consistent with the CPI training materials. Student was given the choice to either stop hitting his head or he could take himself into the seclusion room. He refused to choose between those two options and suggested to staff and the SRO that they could place him in the seclusion room. Parents suggest Student should have been allowed to hit his head or to have been taken to the hospital if he was actually hurt.

[3] The actual weight of Student is not known by the Hearing Officer, but he was described by several staff members as being almost 6'0" and around 200 lbs.

Parents contend the seclusion should not have been used unless/until there was a risk of substantial physical harm. K.S.A. 72-6153 uses the same language as K.A.R. 91-42-2 in authorizing emergency safety interventions to be used when there is a risk of physical harm. When the current laws were first passed in 2015 and revised in 2016, there were discussions as to whether school staff should wait until the level of feared injury was "substantial." The Legislature determined, by using the language adopted by the Kansas State Board of Education, to not hamper educators' efforts to protect students.

Staff consistently described Student's level of agitation as high from the moment he walked into the room. This was not a child lightly tapping his forehead – this was a young man that at least appeared to be on the verge of harming himself. Use of emergency safety interventions was appropriate in that circumstance.

Parents also content that Student was placed in seclusion out of convenience to the school or to punish him. The evidence does not demonstrate how the time spent trying to calm Student, the time spent transporting him to the seclusion room, and the monitoring of the seclusion room was more convenient than it would have been to just let Student continue to beat his head against the desk and wall. Nor is there anything to support the belief that Student was being punished. Student was placed in a room with ample padding along the walls, and the use of seclusion was far less restrictive than alternatives. In this instance, the use of seclusion was appropriate.

That being said, this Hearing Officer did come across an issue while reviewing the CPI training materials. CPI materials include a slide that defines physical restraint as "[a] personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely." A bullet point on that same slide claims that it "[d]oes not include a physical escort (CPI: 2-person transport)." This claim is repeated on a later slide within the same training presentation. This does not accurately reflect Kansas law. In 2017 a hearing officer described the CPI 2-person transport as follows[4]:

> That technique meets the definition of a physical escort. But, more importantly, it also meets the definition of a physical restraint. Yes, staff used the technique to induce E.C., who was acting out, to walk to safety. And the position was temporary. But the "cross-grain grip" used exceeds the definition of mere touching or holding. The grip is describe (sp) in the guide as one that "better secures" the individual. It does this by using bodily force to substantially limit someone's movement. In this case, E.C. was physically restrained anytime the CPI Transport Position was used. While in the position he was unable to break free—it is clear from the video is attempting to do that—and unable to move his arms or shoulders freely. The State Board's amendment to K.A.R. 91-42-2(h) supports this conclusion.

[4] 2017-ESI-02

The description of Student's actions and statements immediately prior to and following his placement in seclusion, and the fact that two law enforcement officers were involved in moving Student from his desk to the seclusion room, leads this Hearing Officer to believe that Student was probably subject to restraint when he was transported from where he was seated to the seclusion room. This does not change the finding that emergency safety interventions were authorized by law, but it is hopefully given careful consideration in future training and reporting.

Were district staff appropriately trained prior to March 28th, 2019?

Parents believe the training was not appropriate because staff were unable to de-escalate Student. The assumption is that with better training, the situation would have never escalated to the point of Student being taken into police custody. Unfortunately, sometimes situations will escalate regardless of how much training personnel go through or how well staff may follow said training.

K.A.R. 91-42-3 requires school personnel training be designed to meet the needs of personnel as appropriate to their duties and potential needs. The training shall address prevention, de-escalation, and positive behavioral intervention strategies, and shall be consistent with nationally recognized training programs. Schools are also required to maintain written or electronic documentation on the training.

Crisis Prevention Institution, or C.P.I., is a nationally recognized training program. But for the issue pointed out above, the training complies with and is consistent with Kansas law. When requested by this Hearing Officer, the district was able to provide documentation that all involved staff members had received such training within 12 months prior to the incident. Staff were appropriately trained prior to March 28, 2019.

Were Parents provided with appropriate written documentation of the use of emergency safety interventions?

It is not surprising that Parents would want as much information as possible about what led to Student's placement in police custody on March 28th. Being told that your son had been taken by police to be processed at a juvenile detention center may well be one of the most

terrifying things any parent could ever hear. Parents requested quite a bit of documentation. Police reports and workers' compensation claims, however, are not specifically required to be provided by state laws pertaining to the use of emergency safety interventions. That is not to say Parents' requests for that information were inappropriate, they just aren't things remedied by this process.

School districts are required to provide quite a bit of documentation the first time an emergency safety intervention is used on a student. Said documentation shall include the date and time of the intervention, the type of intervention used, the length of time of the intervention, school personnel who participated in or supervised the intervention, events leading up to the need for the use of an intervention, student behaviors that necessitated the use of an intervention, steps taken to transition the student back into the educational setting, an opportunity for parents to provide feedback or comments, an invitation for parents to schedule a meeting to discuss the incident, and contact information for school personnel with whom the parents may meet to discuss the use of interventions. Additionally, schools must provide written standards of when interventions may be used, a flyer on the parent's rights, information to assist parents in the local dispute resolution process, information to assist parents in how to file for an administrative review by the Kansas State Board of Education, and contact information for parent-advocates. These requirements stem from the theory that parents need this information in order to understand and protect their rights as well as the rights of their children.

Page 2 of the parental information sheet was not provided until 5 days after the incident. This resulted in parents not receiving – in writing – any information as to what led to Student being taken out of the school by law enforcement.[5] There is no reason to believe this delay was anything but inadvertent. It was a delay nonetheless. The 2nd page of the information sheet provides space for the reporting person to describe the events leading up to the use of the emergency safety intervention, to describe the student behaviors that necessitated the emergency safety interventions, and to describe the steps taken to transition the student back into the educational setting. Out of the 26 pages of information provided to the Parents –

[5] Both parties acknowledge that some information was exchanged during a meeting/meetings immediately following the incident, and that Parents were informed of the incident as it was occurring since building staff called and asked them to come to the school. However, there are no exceptions to the requirements that such information be provided in writing just because events may have been explained in person.

necessary to comply with state law – the only documentation as to what specifically happened on March 28th consists of 13 words: "Self-harm, self-harm, worried about throwing desk, police matter; he was transported."

The issue of whether documentation is adequate is one of first impression for this Hearing Officer. A review of resources made available by the Kansas State Department of Education and the Kansas Technical Assistance System Network did not reveal any guidance as to how thorough such documentation must be, but the guidance documents and templates all give staff the opportunity to "describe" the events. Therefore, the following idea is for training, support, and legal interpretation purposes only: Describing the circumstances which led to and resulted in the use of an emergency safety intervention requires more of an answer than just a few words.[6] If the school believes they have done everything appropriately, there is no reason to not thoroughly describe – in writing – what transpired. This is especially true when there is a staff member present whose role is to take notes and document the incident. This Hearing Officer will not find a violation based on the amount/nature of the documentation itself due to there being no prior rules or guidance. However, USD 231 did violate K.A.R. 91-42-4(b) by not providing written documentation within the next school day as required in K.A.R. 91-42-4(b)(4), (5), (6), (7), and (8).

Do the district's policies regarding the use of emergency safety interventions comply with the requirements of state law?

The requirements for school district written policies are established by K.S.A. 72-6153(g) and K.A.R. 91-42-3. USD 231 uses a model policy relied upon by many if not most Kansas public school districts. This model policy essentially repeats the standards and requirements from those two bodies of law. For the most part, USD 231's written policy complies with the language and intent of state law.

One part of the written policy is of concern. The second paragraph of the Local Dispute Resolution Process allows parents to file an "informal complaint."[7] The third paragraph of the same section reads, "If the issues are not resolved informally with the building principal and/or

[6] The Kansas State Department of Education will take up this issue and include it in future guidance.

[7] "The board of education encourages parents to attempt to resolve issues relating to the use of ESI informally with the building principal and/or the superintendent before filing a formal complaint with the board. Once an informal complaint is received, the administrator handling such complaint shall investigate such matter, as deemed appropriate by the administrator." From GAAF-11.

the superintendent, the parents may submit a formal written complaint to the board of education ... within 30 days after the parent is informed of the incident." While the idea behind trying to negotiate a resolution is common in pretty much every form of legal dispute, to label and somehow distinguish between an "informal" and "formal" complaint can – and in this case has – result in unnecessary delays in resolving parental concerns. It also somewhat circumvents the requirement of K.A.R. 91-42-3 which requires a final decision to be made by the local board. The law does not provide for a decision to be reached by a building administrator or even the district superintendent instead of the board – it specifically requires the board of education to make decisions regarding the complaint filed by parents.

Although writing school policy is not the purpose of an administrative review, this Hearing Officer strongly suggests USD 231 (and any other district relying on this model policy) revise its local dispute resolution process and remove references to an "informal" complaint. Schools are always encouraged to work with families to resolve these types of disputes, and there is no reason administrators could not work out mutually agreed upon resolutions while simultaneously investigating a formal complaint. This is probably the intention of the current policy, but these do not appear to be simultaneously-occurring processes as it is written. Nor does it appear that the school board is the ultimate decision maker when the policy indicates the superintendent "will share the informal resolution with the board of education and provide a copy to the state department of education." *Id.*

It is the opinion of this Hearing Officer that schools could potentially remove any ambiguity as to whether future communication from Parents or any other parents are in fact "formal complaints" by developing a model form for parents to fill out. There is nothing within state statute or regulations preventing a school district from requiring parents to fill out a specific form for formal complaints. Adding such a requirement to the district's local board dispute resolution policy and publishing the same could go a long way toward removing ambiguity as to whether an actual complaint has been filed.

As for the documentation that was provided in support of the district's policies, some of the documents may actually be more confusing than they are helpful. Two documents in particular -- at least one of which was created by the Kansas State Department of Education -- were designed to show visual depictions of the local dispute process and the state administrative review process. Although the effort is admirable and goes beyond the

requirements of state law, at best the flow charts are confusing and potentially misleading. The Kansas State Department of Education will revise its guidance documents and will share them in future efforts to provide technical assistance.

Response from USD 231

The school district determined that since Parents' formal complaint was filed more than 30 days after the date on which the Parents were informed of the use of the emergency safety interventions it could not be considered a formal complaint. The school district requested this administrative review be dismissed for the same reason. The administrative review is not dismissed for the following reasons;

1. Parents were not informed in a timely manner – and have yet to be fully informed in writing – as required by state law;
2. The policies regarding the use of emergency safety interventions are confusing and potentially misleading;
3. The district was functionally on notice that Parents were displeased with how Student was treated on March 28th, specifically regarding the use of seclusion; and
4. An important purpose of any administrative review is for an unbiased, 3rd party to provide interpretation and guidance of state law. Given the concerns raised herein, it would be a mistake to not take this opportunity to provide said guidance.

Suggested Corrective Action

USD 231 staff and Parents have both been cooperative throughout this process. Although this administrative review did not reveal any intentional or flagrant violations of the Freedom from Unsafe Seclusion and Restraint Act, the following corrective actions are necessary to ensure that USD 231's local policies meet the requirements of law:

1. Staff should be trained that although CPI does not consider their two-person escort methods to be a form of restraint, it qualifies as a restraint under Kansas law. One way of differentiating an escort from a restraint is the ability of the student to remove/avoid/terminate the "temporary" touching. If a student can step away from or easily move their own body part to terminate a teacher's guiding touch, it is not a

restraint. If the student would struggle to make space between herself/himself and the teacher's hand, it is probably a restraint.

2. Staff need to anticipate the uses of the seclusion room. Staff should occasionally test the safety, durability, and usability of the seclusion room. Results of those tests should be shared with building and district administration.
3. District administration should use checklists whereby someone double-checks the work of whomever is responsible for reporting the use of emergency safety interventions to parents. The purpose would be to make sure no steps (or parts of necessary documentation) are missed.
4. Individuals reporting the use of emergency safety interventions need to provide at least a reasonable amount of information to parents – in writing – as to what lead up to and ultimately resulted in the use of said intervention(s). Answering as if it is a multiple-choice or a fill-in-the-blank question is not reasonable. Writing a full essay is probably more than what is necessary.
5. Give parents a specific form to fill out -- not unlike the form required by the Kansas State Department of Education when requesting an administrative review – for formal complaints. Tell parents the specific deadline by which that form must be submitted.
6. Remove references to an "informal complaint" from the local policy.

Signed,

R. Scott Gordon
Designated Hearing Officer
Kansas State Department of Education