KANSAS STATE BOARD OF EDUCATION

ADMINISTRATIVE REVIEW

On November 2, 2021, [redacted] [Parent] filed a formal complaint alleging the inappropriate use of emergency safety interventions when [redacted] [Student] was restrained by staff of Allison Traditional Magnet Middle School, USD 259 ["School"]. The district's findings, conclusions, and corrective action, were provided to Parent on December 9, 2021. On January 10, 2022, the Kansas State Department of Education received a request for an Administrative Review submitted by Parent. 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, this Hearing Officer conducted the following investigation:

1. An interview with Parent and her attorneys by telephone.
2. An interview with Joe Sechrist at the school.
3. An interview with Amy Johnson at the school.
4. An interview with Allen Teague at the school.
5. A review of videos of the alleged restraint provided by the school.
6. Review of documents provided by Parent including emails, district policies, and notices.
7. Discussion with staff members of the Special Education and Title Services team of the Kansas State Department of Education.

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

1. Student was restrained out of staff convenience rather than for any lawful reason.
2. School staff restrained Student longer than was necessary.
3. School staff were not properly trained.

To the extent there may be other concerns that fall outside the reach of related regulations of the Kansas State Board of Education, those concerns will not be evaluated.

Findings of Fact

The underlying facts of what occurred on October 4, 2021 are not really in dispute. Student had been enrolled in USD 259 for several years prior but this, his 7th grade year, was his first at the School. According to School staff, Student walked out of a math class upset about something and proceeded to the front administrative office area of the School. There, he'd asked to see Assistant Principal Allen Teague because he wanted to go home. Since Mr. Teague was not immediately available, Student was asked by Joe Sechrist to have a seat and wait for him. As the school counselor, Mr. Sechrist knew Student and had attempted to talk to him to find out what had him upset. Student ignored Mr. Sechrist and continued to play with / break his calculator. During an interview with this Hearing Officer, Mr. Sechrist indicated Student was fairly escalated at that point but he was unable to determine the cause.

Upon arriving at his office, Mr. Teague engaged with Student to find out what he needed. At some point either immediately prior to or while speaking with Mr. Teague, Student overheard a comment about the smell of a gas leak. Student became extremely concerned and felt the need to warn everyone in the building, in spite of staff efforts to assure him there was no need to worry. Mr. Teague was able to contact Parent, who succeeded in temporarily calming Student. While being followed by Mr. Teague, student walked to the second floor and on more than one occasion was thwarted in his attempt(s) to open a classroom door to warn people of a gas leak. A fire alarm is installed near the stairways found at each end of the second-floor hallway. Once reaching the far end of the hallway, Mr. Teague believed Student was trying to pull the fire alarm. In order to prevent Student from doing so, Mr. Teague restrained Student by holding him against a wall/in a corner near the stairs. Mr. Secrest arrived and attempted to assist in de-escalating Student but was not successful. Ms. Johnson also arrived and attempted to assist in de-escalating Student but was also not successful. The restraint continued for approximately 20 to 25 minutes until school security officers arrived on the scene, at which time Student stopped resisting and walked away with said officers.

Analysis

Did the school district appropriately address the concerns raised by Parent?

In Kansas, emergency safety interventions shall be used only when a student presents a reasonable and immediate danger of physical harm to themselves or to others with the present ability to effect such

physical harm[1]. Here, the only alleged form of intervention is that bodily force was used to substantially limit Student's movement in a manner that was not consensual, solicited, or unintentional. When asked, school staff acknowledged that Student was subject to such physical restraint. The district also acknowledged the use of physical restraint in its original findings. Here, the question of whether it was appropriate to initiate restraint of Student depends on whether the requisite reasonable and immediate danger of physical harm to the student or others existed prior to restraint[2]. This Hearing Officer generally does not question or doubt school staff members' perceptions of whether a student is at risk of causing themselves or others physical injury[3]. Mr. Teague indicates by his actions and by his explanation that he was concerned for the safety of all students in the building as well as the safety of Student had he not restrained him and prevented him from either running into classrooms or pulling on a fire alarm. Parent suggests in her written complaint, her request for a review, and during our discussion that school staff failed to use a variety of de-escalation techniques before resorting to physical restraint.

It is important to provide some historical context behind the Kansas State Board of Education's goals in adopting its Administrative Review process by way of K.A.R. 91-42-5. The State Board emphasized the importance of giving locally-elected school boards an opportunity to address any and all concerns over the use of emergency safety interventions *before* such matters ever come before it as a state-level issue. This emphasis can be gleamed from the requirement that parents first file complaints with their local school boards. The emphasis in locally-elected school boards first determining such matters for themselves may also be found in the requirements for the *local board's* final decision[4]. This is important because one of the three possible determinations to be made as a result of an administrative review is to find that a local board *appropriately resolved the complaint* pursuant to its dispute resolution process[5]. The other two options assume that a local school board/district staff did *not* appropriately resolve a parental complaint and to order appropriate corrective actions. The corrective actions available to a designated hearing officer include requesting the school district update a school's policies regarding emergency safety interventions, requesting the school district update / modify the training that it provides

[1] K.A.R. 91-42-2.
[2] K.A.R. 91-42-2(a).
[3] This position is consistent with previous administrative reviews which raised the same question.
[4] K.A.R. 91-42-3(a)(2)(C).
[5] K.A.R. 91-42-5(g)(1).

to staff (in cases of training not accurately reflective of state law), and/or requesting the school district require additional/corrective training of staff.

Within its findings, the school district indicates it believes that Mr. Teague's reliance on restraint was premature. Additionally, the school district indicates there were alternatives that could have been attempted prior to restraining the Student. Even if this Hearing Officer agreed with the Parent that less restrictive measures were not first attempted or that restraint in this circumstance was not appropriate, the school district has already conceded those points. Additionally, the school district indicates it will provide appropriate training to staff – not the least of which includes Mr. Teague, Mr. Sechrist, and Ms. Johnson[6].

To disagree with the conclusions reached by the school district essentially results in turning a 'win' for Parent (for lack of a better term to use here) into a 'loss'. Because neither party has requested such a result, and because the school district has already taken positive steps to remedy the situation, this Hearing Officer find such a result would be counterproductive and unnecessary. Based on everything reviewed, this Hearing Officer finds that the school district has appropriately addressed those concerns raised by Parent as it pertains to the use of physical restraint instead of alternative, less-restrictive measures.

Parent also raises the concern that school staff were not properly trained in the use of emergency safety interventions as required by state law. K.A.R. 91-42-3(a) requires school districts policies to govern the use of emergency safety interventions, and such policies shall include personnel training designed to meet the needs of personnel. The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies. The USD 259's policies have been reviewed, and the policy complies with state law. Unfortunately, the School failed to follow district policies. Apparently, the School's version of personnel training is to have staff members sign off on a form indicating they've read and are aware of the district policies. Checking a box on some form at the beginning of the school year is not training and yet when asked, each staff member gave some form of the following answer – "I sign off on the policy each year but I had not / do not recall / do not know if I'd ever actually received training

[6] When asked, all three individuals indicated they had already completed training on the use of emergency safety interventions in 30 days prior to my interviews.

until after October 4, 2021." This will be addressed further in Conclusions and Suggested Corrective Actions.

Additional Considerations

During the phone conversation with Parent, she shared a desire to have two specific issues taken into consideration and addressed. The first issue is Corrective Action #3 as stated in the school district's Findings of Fact and Conclusions of Law issued on December 9th. The school district indicates that its Human Resources department shall take corrective disciplinary action concerning District staff involved in the [restraint]. Parent seeks clarification of that Corrective Action. Neither the Kansas State Board of Education nor the Kansas State Board of Education have any authority over employment matters – that responsibility rests squarely on the shoulders of district administration and the locally elected school board. Any form of discipline imposed by school district administration is an employment matter and is generally not subject to public disclosure – even as a result of a formal complaint involving the use of emergency safety interventions[7].

Parent also raised the question of whether it is appropriate for the school district to suggest private tutoring services for Student as a corrective action. Such a corrective action appears as an offer for compensatory education which, if requested of the hearing officer involved in an administrative review under K.A.R. 91-42-5, would not be ordered because there is no jurisdiction for the hearing officer to do so[8]. Although compensatory education services are often ordered as a remedy for students who have been denied a free appropriate public education (FAPE), the question of whether a student has been denied FAPE is best answered by those other processes made available by state and federal special education laws. Therefore, although the school district offers the five months of tutoring, I give it no weight in this review.

The last issue is one this hearing officer has raised in the past and mentions here briefly. School district staff confirmed that USD 259's school board has designated by district policy that all complaints regarding the use of emergency safety interventions shall be filed with the Chief Human Resources Officer who will act as the complaint investigator. K.A.R. 91-42-3 specifically requires a final decision to

[7] There may be exceptions to this rule, such as for district-level administrators, that do not apply here.
[8] Available remedies available to a hearing officer reviewing the use of emergency safety interventions is limited. K.A.R. 91-42-5.

be made by the local school board. The intent of the ESI regulations is to ensure that school boards are not only aware of the formal complaint but that they are ultimately the responsible party. That's not to say district administration cannot conduct the investigation and prepare proposed findings for school board review. In fact, this hearing officer wishes to thank USD 259 staff for what he considers to be one of the most thorough set of findings and conclusions he's reviewed. That being said, the locally-elected school board has a responsibility to be involved in resolving these formal complaints.

Conclusions and Suggested Corrective Action

1. USD 259 agrees with Parent that Student was prematurely subject to physical restraint on October 4, 2021. The local board appropriately resolved this part of the complaint in its dispute resolution process.
2. Staff were not properly trained in the use of emergency safety interventions. USD 259 is to provide evidence to KSDE that every administrator, teacher, paraprofessional at the School has received training in the appropriate uses of emergency safety interventions. Because the school year is almost over, this training may occur just prior to or contemporaneously with the start of the 2022-2023 school year. USD 259 shall receive prior approval from the Kansas State Department of Education's Special Education team for any training it plans to use. The training will only be approved if it covers – at a minimum – the following:
    a. How to identify whether a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to affect such physical harm.
    b. Alternative/less restrictive measures that should be used if the student does not present a reasonable and immediate danger of physical harm to the student or others.
    c. Any other specific subjects deemed necessary by that team.

    Any training delivered since October 4, 2021 will be acceptable so long as the Special Education team determines all of the previously-listed subjects were appropriately and sufficiently covered. Although this Corrective Action is specific to the School, USD 259 is hereby put on notice that it is in the district's best interest to ensure such training is occurring at *every* school under its supervision.

A copy of this Administrative Review will be shared with the Kansas State Department of Education's Accreditation and Design team for accreditation review purposes. Therefore, it is strongly suggested that USD 259 provide documentation to the SPED Team that it has complied with these suggested corrective actions.

Signed,

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