KANSAS STATE BOARD OF EDUCATION
ADMINISTRATIVE REVIEW
PURSUANT TO K.A.R. 91-42-5

COMES NOW, as Hearing Officer designated by the Kansas State Board of Education, R. Scott Gordon to conduct an administrative review of USD 229's final decision regarding its November 16th, 2021 use of emergency safety intervention(s). For purposes of this review, the Hearing Officer conducted the following investigation:

1. In-person interviews with the following Oak Hill Elementary School staff members;
    a. Principal Megan Maresh
    b. Paige Cott, Resource Teacher
    c. Tara Ratzlaff, Interrelated Resource Teacher
    d. Ashley Raymer, Registered Behavior Technician
2. Phone conversation with [redacted] ("Parent")
3. Review of Emergency Safety Intervention Administrative Review Request submitted by Parent.
4. Review of Request for Investigation of Emergency Safety Intervention dated December 7, 2021 filed with USD 229.
5. Review of additional information/documents submitted by Parent in support of her request for administrative review.
6. Review of information/documents from school staff such as correspondence between staff and Parent.
7. Review of Crisis Prevention Institute training materials.

The Hearing Officer's investigation has been sufficient to issue appropriate findings of fact and conclusions of law. Prior to stating any such findings, it is important to clarify the purpose and the scope of this Review. When the Kansas State Board of Education ("State Board") adopted Article 42 of its regulations, the goal was to equally inform parents and school personnel of their respective rights and responsibilities regarding the use of emergency safety interventions. During that regulatory adoption process, the State Board's intentions were clearly stated; there are to be no situations in which a procedural snafu would cause a parent to lose her or his ability to be heard, and there are to be no situations in which a school district receives preferential treatment over a parent – both parties are to be treated as equals. Treating both parties as equals means *holding each to the same procedural standards*.

One such procedural standard is the requirement of a school to provide written notice to a child's parents whenever an emergency safety intervention has been used. That notice shall include

information on the parent's right to file a complaint through the school's local dispute resolution process as well as the parent's right to request an administrative review following the conclusion of said process. Another procedural requirement is for the parent to *follow* the local process before taking her or his concerns to the State Board. Here, Parent raises a wide range of concerns, but K.A.R. 91-42-5 only allows this Hearing Officer to consider matters originally raised with the local school board as part of that board's local dispute resolution process. Within her request for an administrative review, Parent attaches documents pertaining to events which occurred after December 7, 2021 – the date on which she filed her Request for Investigation with USD 229. Because no subsequent Request for Investigation has been filed with the school district and the school has not had the opportunity to investigate and respond to any allegations raised after December 7th, 2021, this Hearing Officer makes no findings pertaining to them or to the January 31st, 2022 Notice provided to Parent.

Findings of Fact

1. During the 2021-2022 school year, [redacted] ("Student") was enrolled as a 5th grade student at Oak Hill Elementary School. Oak Hill Elementary School is a part of USD 229, Blue Valley Schools.

2. The Overland Park Police Department assigns commissioned law enforcement officers to USD 229. These school resource officers ("SRO") are available whenever Oak Hill Elementary School administration requests them to assist during emergencies.

2. On November 16, 2021, Student was in a resource room of the school. Student working in the resource room is not unusual. Student was not responsive to staff, despite their efforts to offer water or other options for the student[1].

3. Student's behavior escalated quickly, and he started to throw and kick furniture while staff were in the room with him. In accordance with district policy and their emergency safety training, additional staff were called to the resource room to assist in de-escalation. While some staff members worked together to remove furniture and other objects from the room, others took turns blocking Student from being able to strike their co-workers. Staff have received training from the Crisis Prevention Institute on how to appropriately block strikes from students.

4. Most of the school staff were able to leave the resource room, but Student had ahold of at least one staff member who was unable to pull her arm completely out of the doorway without hurting Student. At some point, that staff member's arm became numb due to her injuries caused by Student.

5. Because school staff were not able to safely leave the resource room, the SRO entered the room to assist. The school resource officer restrained the student by holding his arms. Eventually

[1] During the interviews, staff discussed Student's desire to play a video game that was not available for him to play at school. Student became agitated when he was not allowed to play that particular video game. It is not clear whether this is what led to his behavior on Nov. 16th or if that occurred on a different day but it is demonstrative of what may have been a triggering event for Student.

Student calmed down enough for school staff to re-enter the room and then walk with the student to Parent's car.

6. The school emailed Parent the morning of November 16, 2021, to provide written notification of the use of an emergency safety intervention. That email was originally sent to a work email address. The same email was forwarded to Parent's personal email address later the same day.

7. Parent filed a Request for Investigation of Emergency Safety Intervention using the school's form. The form is dated December 7, 2021, but it is not known exactly when the form was actually submitted to the school.

8. On January 12, 2022, Assistant Supt. Mark Schmidt provided a report summarizing the findings he made in response to the December 7th request. Dr. Schmidt's report does not allege that Parent's request was untimely. Parent's request for an administrative review does not allege that Dr. Schmidt's report was untimely.

9. On or about February 9, 2022, the Kansas State Department of Education's Office of General Counsel received a request for an administrative review.

Analysis

Question 1: Was student subject to any unlawful use of emergency safety interventions?

In Kansas schools, emergency safety interventions shall only be used when 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[2]. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student's behavior before using any emergency safety interventions[3].

Over the years, I have had the opportunity to speak with dozens of potential witnesses, victims, and suspects of a variety of allegations. On May 5th, I spoke separately with multiple Oak Hill Elementary staff members over a period of almost three hours. I find their statements to be sincere, forthcoming, and heartfelt. I also find their statements to be consistent not only with prior written statements but with each other.

On the morning of November 16, 2021, Student not only presented a reasonable and immediate danger of physical harm to others he actually succeeded in harming at least one adult staff member after attempts at positive behavior interventions failed. Given the circumstances faced by the staff that morning, I find the effort of removing furniture as well as staff from the resource room to be appropriate and necessary. One may wonder, as Parent does, what triggers a student to escalate to the

[2] K.A.R. 91-42-2(a)
[3] Id.

point of hurting themselves or others. Unfortunately – as parents and school staff everywhere know – there is often no easy answer to that question. One day it could be a video game a child wants to play and, on another day it could be because of something the child heard while walking down a hallway. The only thing to be asked of school staff is that care is taken and efforts are made to avoid such triggers, if known. Here, I have no doubt that staff made every viable effort to help Student de-escalate before needing to resort to emergency safety interventions. The November 16th use of seclusion by school staff was not unlawful.

Curiously, in the Nov. 16 written notice to Parent this effort is appropriately labeled as a seclusion. However, in his January 12th report, Dr. Schmidt writes "[e]ven though they were not able to successfully complete the seclusion, they reported the incident to parent as a seclusion." Less there be any later risk of confusion or misinterpretation I provide the following clarifying interpretation of state law – if a school makes an effort to engage in either seclusion or restraint, that effort shall be reported to parents *regardless of whether the seclusion or restraint has been '*completed*'*[4].

Another concern raised by Parent is the school's reliance on local law enforcement, and law enforcement's use of restraint on Student. Kansas law limits the forms and purposes for which a child may be restrained by school staff, but that law does not require staff to be subject to physical abuse from the hands of a child just because the child happens to be a student. There is nothing within the State Board's regulations that dictates when a law enforcement officer should or should not become involved.

As for the use of restraint by the SRO, the school district's position is that such officers shall be exempt from the requirements of ESI when engaged in an activity with a legitimate law enforcement purpose. This is an accurate statement of the law. Concerns of whether actions such as restraining a student after the student is known to have violently struck others are to be taken up by the officer's appointing authority – in this case the Overland Park Police Department[5].

Question 2: Was Parent appropriately informed of the use of restraint by a law enforcement officer or school resource officer?

Schools are not required to provide as much written documentation to parents following an SRO's use of seclusion or restraint as they are if school personnel engage in those interventions, but schools *are* required to provide same day notification any time the school is aware that an SRO has engaged in an emergency safety intervention on school grounds or during a school-sponsored activity.

The Parent Notice of Emergency Safety Intervention dated November 16, 2021, says nothing about an SRO being involved. The email from Principal Maresh to Parent sent on November 16th at 11:18 a.m., to which the formal notice was attached, says nothing about the SRO's restraint of Student. In her written

[4] Kansas State Department of Education staff will include this clarifying interpretation in forthcoming guidance.
[5] K.A.R. 91-42-6(a)(4) defines "Legitimate law enforcement purpose" as a goal within the lawful authority of an officer that is to be achieved through methods or conduct condoned by the officer's appointing authority.

request for an investigation, Parent raises a concern about the SRO's restraint of Student which was addressed in Dr. Schmidt's final report as follows:

> "The school met the requirements of informing the parent of the SRO's involvement as the principal followed up with the parent with an email at 1:38 PM on November 16, 2021, which informed the parent that the 'school resource officer from Oxford Middle School came over to help maintain safety as the (student) continued to escalate.'"

This, however, is not entirely accurate. The email sent by Principal Maresh at 1:38 p.m. forwards the same information that was originally sent earlier that morning, with the following additional information:

> "Also, per your phone call request, here is a write up of what transpired on *Thursday, November 11th'*…. The school resource officer from Oxford Middle School came over to help maintain safety as [Student] continued to escalate."

So while there was mention of the SRO's presence at the school, it is not clear what "help maintain safety" means. Additionally, the email specifically references what had occurred on the 11th, not what had occurred on the 16th. Clearly a phone conversation took place at some point on the 16th, but because the school's position is that it informed Parent of the SRO's use of restraint by way of email I find that USD 229 was not in compliance with K.A.R. 91-42-4(e).

Conclusions and Suggested Corrective Action

It is the opinion of this Hearing Officer that although USD 229 did not violate the standards for the use of seclusion, the school district violated Article 42 of the State Board's regulations by failing to appropriately notify the complaining parent that an SRO had restrained her child on November 16, 2021. As a remedy, USD 229 should review and revise the manner in which parents are informed of law enforcement's use of emergency safety interventions. In circumstances where a parent will receive formal notification of an intervention anyway, such as the formal notification provided on November 16th, I cannot think of any reason why the district shouldn't just include information about an SRO's use of restraint on the same document. Just because the regulation does not *require* schools to provide the same written documentation to parents if the intervention is done by an SRO, the regulation does not *prevent* the school from including that information in documents it has to provide anyway[6].

Included in Parent's request for an administrative review is the concern that Parent was not adequately informed of why seclusion was necessary on November 16th. That morning, staff were basically beat up by one of their students and they spent a significant amount of time working to safely de-escalate him. No fault is found in the actions of those involved. As to the documents provided to Parent afterward, I'm reminded of this sentiment from prior administrative reviews - 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. If the school believes they have done everything appropriately, there is no reason to not thoroughly describe

[6] This suggestion to include information about SRO use of an intervention in otherwise-provided documentation is merely a suggestion and is not to be taken as precedent which must be followed.

– in writing – what transpired. Here, the description of the student behaviors that led up to and eventually necessitated the emergency safety interventions was reduced to five sentences. School staff shared much more information than five short sentences during our in-person discussions. This is mentioned here merely as a request to be mindful of details which may help parents more completely understand what transpired. The Notice provided to Parent on January 31st, 2022 is a good example of providing additional, specific details.

Additionally, USD 229 should be mindful of the following guidance previously included in administrative reviews: K.A.R. 91-42-3 specifically requires a final decision to 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. Here, it is unknown whether the locally-elected school board was ever made aware of the complaint and pending administrative review. The locally-elected school board has a responsibility to be involved in resolving these formal complaints, and should probably hear about them from their own administration rather than by way of the board's clerk receiving this administrative review after the fact.

This Administrative Review shall be provided to Parent, Principal Megan Maresh, the district superintendent, USD 229's board clerk, and the Kansas State Board of Education.

Signed,

Scott Gordon

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