

## HOUSE BILL No. 2339

By Committee on Appropriations

2-8

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9 AN ACT enacting the special education seclusion and restraint modern-  
10 ization and parental support act; requiring certain annual  
11 appropriations.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act shall be known and referred to as the special  
15 education seclusion and restraint modernization and parent support act.  
16 The purpose of this statute is:

17 (a) To ensure that every student receiving special education and re-  
18 lated services is free from the unreasonable, unsafe and unwarranted use  
19 of restraint practices; and

20 (b) to encourage the use of positive behavioral support methods in  
21 schools and to develop a well-trained staff in order to reduce the emer-  
22 gence of unsafe situations in which seclusion and restraint practices may  
23 be used.

24 Sec. 2. As used in this act:

25 (a) "Locked seclusion room" means a locked box, locked closet,  
26 locked room or any other locked structure.

27 (b) "Seclusion room" means a room that is unlocked and monitored  
28 but is designed to isolate a person and is at least 50 square feet, free of  
29 any condition that could be a danger to the student, well ventilated and  
30 sufficiently lighted.

31 (c) "Extended seclusion" means use of a seclusion room for a period  
32 longer than one minute for every year of the student's age.

33 (d) "Timeout" means a behavior management technique that involves  
34 removing a student from sources of reinforcement following an inappro-  
35 priate behavior for a limited period of time that does not involve the use  
36 of a seclusion room.

37 (e) "Restraint" means any physical method of restricting a person's  
38 freedom of movement, physical activity or normal access to the person's  
39 body.

40 (f) "Mechanical restraint" means the use of any device or object, in-  
41 cluding, but not limited to:

42 (1) Tape;

43 (2) blankets;

- 1 (3) tiedowns; and
- 2 (4) body carrier; which limit a person's body movement, except that
- 3 protective or stabilizing devices ordered by a physician shall not be con-
- 4 sidered to be a mechanical restraint when used in the manner in which
- 5 the device is prescribed.
- 6 (g) "Physical restraint" means the use of bodily force to limit a stu-
- 7 dent's freedom of movement or action, except that consensual, solicited
- 8 or unintentional touching shall not be construed to be physical restraints.
- 9 (h) "Extended restraint" means a physical restraint, the duration of
- 10 which is more than five minutes, or the use of restraint more than once
- 11 in a school day.
- 12 (i) "Chemical restraint" means the administration of medication for
- 13 the purpose of restraint.
- 14 (j) "School day" means any day or partial day that students are in
- 15 attendance at an accredited education program for instructional purposes.
- 16 (k) "Human rights committee" means a committee each school dis-
- 17 trict board shall establish that reviews documentation of the use of seclu-
- 18 sion rooms and restraint which is composed of family members of stu-
- 19 dents with disabilities who receive special education and related services,
- 20 advocacy representatives and school district employees.
- 21 (l) "School employees" means teachers, administrators and support
- 22 staff employed by a school or special education cooperative.
- 23 (m) "Positive behavior support" means a school-wide approach to
- 24 preventing and responding to problem behavior that:
- 25 (1) Is proactive and instructional, rather than reactive and punitive;
- 26 (2) operates on the following three levels:
- 27 (A) Individual;
- 28 (B) group or classroom;
- 29 (C) and the whole school; and
- 30 (3) includes a system of continual data collection;
- 31 (4) utilizes data-based decision-making; and
- 32 (5) applies research-validated positive behavioral interventions.
- 33 Sec. 3. (a) Every student who receives special education and re-
- 34 lated services has the right to be free from unnecessary seclusion or
- 35 restraint.
- 36 (b) No student shall at any time be placed in a locked seclusion room.
- 37 (c) The use of a seclusion room is permitted only if:
- 38 (1) The student poses an imminent risk of substantial physical harm
- 39 to self or others;
- 40 (2) there is no medical contraindication for its use;
- 41 (3) staff using seclusion has been trained to safely implement the
- 42 intervention;
- 43 (4) the space is unlocked and there is no physical impediment to the

- 1 exit of the room;
- 2 (5) school staff is in visual contact with the student at all times, not  
3 to exceed a distance of two feet from the room;
- 4 (6) the duration is limited to one minute or less per year of age of  
5 the student. Durations greater than this amount shall be considered ex-  
6 tended seclusion and are permissible only by following the requirements  
7 of this act;
- 8 (7) prior written parental consent has been obtained including the  
9 specific behaviors that will result in use of a seclusion room; and
- 10 (8) use of a seclusion room is expressly included in the child's indi-  
11 vidual education plan (IEP).
- 12 Any other use of a seclusion room is prohibited.
- 13 (d) Use of extended seclusion requires:
- 14 (1) Additional written documentation and justification that includes  
15 the alternatives to extended restraint that were attempted, the outcome  
16 of those efforts, and the justification for administering the extended re-  
17 straint; and
- 18 (2) if the extended seclusion is used more than two times in a month,  
19 the IEP team will be convened. This team meeting will examine changes  
20 to the behavioral intervention plan to prevent the need for future ex-  
21 tended seclusion and potential referrals to mental health or outside pro-  
22 fessionals and agencies to help address the behaviors that led to use of  
23 extended seclusion.
- 24 (e) (1) The use of chemical restraints is prohibited in public educa-  
25 tion programs.
- 26 (2) The use of mechanical restraints is prohibited in public education  
27 programs.
- 28 (3) The use of physical restraint is limited to times when:
- 29 (A) The student poses an imminent risk of substantial physical harm  
30 to self or others;
- 31 (B) there is no medical contraindication for its use;
- 32 (C) the staff applying restraint have been trained to safely implement  
33 the intervention;
- 34 (D) a person administering a physical restraint shall use the least  
35 amount of force necessary to protect the student or others from physical  
36 injury or harm. It must be performed in a manner that is safe, propor-  
37 tionate, appropriate to the severity of the behavior, and the student's  
38 chronological and developmental age, size, gender, physical, medical, psy-  
39 chiatric condition and personal history including any history of emotional  
40 trauma, physical abuse or sexual abuse;
- 41 (E) supporting documentation is completed within 24 hours; and
- 42 (F) use of restraint is on the student's behavior intervention plan,  
43 noting specific behaviors that will warrant the use of the seclusion room

1 and it is incorporated into the individual education plan.

2 (4) Physical restraint is prohibited as a means of punishment or as a  
3 response to:

4 (A) Insubstantial property destruction;

5 (B) disruption of school order;

6 (C) a student's refusal to comply with a school rule or staff directive;

7 or

8 (D) verbal threats that do not constitute a threat of imminent, serious  
9 physical harm.

10 Sec. 4. (a) Only school personnel who have received training pur-  
11 suant to this section may administer physical restraint on students.

12 (b) The administration of a restraint shall be witnessed by at least one  
13 adult who does not participate in the restraint.

14 (c) This section does not preclude school staff from using reasonable  
15 force to protect students, other persons or themselves from assault or  
16 imminent, serious, physical harm.

17 (d) A person administering physical restraint shall use the safest  
18 method available and appropriate to the situation subject to the safety  
19 requirements set forth in this statute.

20 (e) No restraint shall be administered in such a way that a student is  
21 prevented from breathing or speaking.

22 (f) During the administration of the restraint, a staff member who is  
23 not involved in the restraint shall monitor the physical status of the stu-  
24 dent and teacher, including skin color and respiration.

25 (g) The restraint shall be immediately released upon a determination  
26 by a staff member that the student is no longer likely to cause imminent  
27 physical harm to self or others.

28 (h) Restraint shall be administered in such a way so as to prevent or  
29 minimize physical harm. If, at any time, the student demonstrates signif-  
30 icant physical distress, the student shall be released from the restraint  
31 immediately, and medical assistance shall be sought.

32 Sec. 5. (a) Circumstances under which a physical restraint or seclu-  
33 sion was used must be reported to the parent. Program staff shall report  
34 the use of any physical restraint or extended seclusion to the building  
35 administrator or designee, immediately.

36 (b) The building administrator, or designee, shall immediately con-  
37 tact the student's parents to inform them of the intervention and mail  
38 written follow-up notification within 24 hours that includes a specific  
39 person to contact for more details.

40 (c) A form documenting the use of a seclusion room or physical re-  
41 straint must be completed and sent to the building administrator, the  
42 parents and the human rights committee within 24 hours of each incident.  
43 The documentation shall include:

- 1 (1) The names and job titles of the staff who administered the re-
- 2 straint, any witnesses, and the name of the administrator or designee who
- 3 was informed following the seclusion or restraint, and time contacted;
- 4 (2) the date of the seclusion or restraint, the time of initiation, ending
- 5 time, duration and location of the intervention;
- 6 (3) a description of the antecedents that immediately preceded the
- 7 use of seclusion or restraint and the specific behavior being addressed;
- 8 (4) the alternative methods used to de-escalate the situation prior to
- 9 the use of the seclusion or restraint;
- 10 (5) how the restraint ended, including physical or mental injuries, to
- 11 the student, staff or both, and any medical care provided;
- 12 (6) suggestions for strategies to be used in future incidents to avoid
- 13 the use of seclusion and restraint;
- 14 (7) the signature of the person initiating the action and a witness of
- 15 the intervention technique used;
- 16 (8) the date and time that parental notification took place;
- 17 (9) information regarding future opportunities for the student's par-
- 18 ents to discuss with school officials the administration of the restraint or
- 19 seclusion; and
- 20 (10) the names and phone numbers of the protection and advocacy
- 21 system designated by the governor pursuant to federal law, the designated
- 22 Kansas parent training and information center for children with disabili-
- 23 ties and the designated Kansas statewide family network for children with
- 24 serious emotional disabilities.
- 25 (d) For extended seclusion or physical restraint, the supporting doc-
- 26 umentation must include:
  - 27 (1) The outcome of the alternatives attempted and the justification
  - 28 for administering the extended seclusion or restraint;
  - 29 (2) documentation of the time the building administrator authorized
  - 30 the use of the extended intervention; and
  - 31 (3) documentation of the results of the IEP meeting convened to
  - 32 identify the need for behavioral therapy or mental health services if the
  - 33 use of extended seclusion and restraint exceeds two times in one month.
- 34 Sec. 6. On a quarterly basis, the state department of education shall
- 35 collect and compile the data regarding the use of seclusion and restraint
- 36 and report the data to the state advisory council for special education
- 37 established pursuant to K.S.A. 72-964, and amendments thereto. This
- 38 information must also be made readily available to the public. The council
- 39 shall use this information to report to the state board of education with
- 40 recommendation on systemic change needed to reduce the use of seclu-
- 41 sion and restraint in public education programs. The state board of ed-
- 42 ucation shall use these recommendations as well as the data, documen-
- 43 tation and reports to annually recommend to the legislature strategies or

- 1 policies to reduce or eliminate the use of seclusion and restraint in  
2 schools. The data and documentation shall include at least:
- 3 (a) The number of incidents involving the use of these interventions;
  - 4 (b) the location and duration of each incident, identifying both spe-  
5 cific schools and districts;
  - 6 (c) any injuries or property damage that occurred; and
  - 7 (d) the timeliness of parental notification and administrative review.
- 8 Sec. 7. (a) Before using restraint and seclusion, school staff must re-  
9 ceive specialized individual training and demonstrate competency. This  
10 training shall include, but not be limited to:
- 11 (1) An understanding of the basis for rules governing seclusion and  
12 restraint;
  - 13 (2) the safe administration of seclusion and restraint practices;
  - 14 (3) addressing physical safety issues that may arise during the admin-  
15 istration of emergency measures;
  - 16 (4) identifying the effects of physical restraint on the person re-  
17 strained, monitoring physical signs of distress, and obtaining medical  
18 assistance;
  - 19 (5) simulated experience of administering and receiving physical re-  
20 straint and its effects on the person restrained;
  - 21 (6) instruction in documenting and reporting requirements; and
  - 22 (7) the proper use of positive behavior supports and techniques and  
23 strategies designed to minimize and prevent the need for usage of re-  
24 straint and seclusion.
- 25 (b) only school personnel who have received this training shall ad-  
26 minister physical restraint or use seclusion rooms with students.
- 27 Sec. 8. It shall be the policy of the state of Kansas that school districts  
28 are encouraged to implement positive behavior supports and other evi-  
29 dence-based practices to address the needs of students who receive spe-  
30 cial education and related services.
- 31 (a) The state board of education shall offer assistance to local boards  
32 of education with implementing plans. An effective positive behaviors  
33 support plan:
- 34 (1) Is developed in cooperation with administrators, teachers, and  
35 parents, and at their discretion, students;
  - 36 (2) establishes a behavior support team to direct the implementation  
37 of the positive behaviors support plan at each school and that the team  
38 include parents of students at the school as well as school employees as  
39 team members;
  - 40 (3) provides for an initial assessment of the status of behavior and  
41 discipline in the school;
  - 42 (4) clearly defines short and long-term goals for improving school  
43 behavior and discipline based on objective criteria;

1 (5) establishes implementation procedures based on the goals of the  
2 plan and the status of behavior and discipline as initially assessed;

3 (6) includes a timeline for comprehensive training of a sufficient  
4 number of school employees, beginning with members of the school-wide  
5 behavior support team, in the use of positive behaviors support by rec-  
6 ognized instructors in positive behaviors support;

7 (7) includes the selection of a data system that allows continual and  
8 efficient monitoring and evaluation of the effectiveness of the implemen-  
9 tion of the school-wide system of discipline.

10 Sec. 9. The Kansas state department of education shall annually  
11 grant \$400,000 each to the protection and advocacy system designated by  
12 the governor pursuant to federal law, the designated Kansas parent train-  
13 ing and information center for children with disabilities, and the desig-  
14 nated Kansas statewide family network for children with serious emo-  
15 tional disabilities. These entities shall use the appropriation to train  
16 parents on the rights and limitations of special education law, individual  
17 and group rights consultation, legal advocacy services, assistance with in-  
18 dividual education plan development and meetings, services and sup-  
19 ports, and proactive measures to inform parents and participate with par-  
20 ents and their children to make the special education process less  
21 adversarial.

22 Sec. 10. (a) Nothing in this act shall be construed to limit the pro-  
23 tection afforded publicly funded students under other state or federal  
24 laws.

25 (b) If anything in this act shall be deemed unconstitutional, the un-  
26 constitutional section shall be severed from the rest of the statute without  
27 affecting the constitutionality of the act as a whole.

28 (c) Authority to implement this statute is vested in the state board of  
29 education. Authority to implement other rules and regulations and poli-  
30 cies that fall within the confines of this act is also vested in the state board  
31 of education.

32 (d) The Kansas state board of education is authorized to make rules  
33 and regulations and implement them in order to ensure enforcement of  
34 this act.

35 Sec. 11. This act shall take effect and be in force from and after  
36 January 1, 2006 and its publication in the statute book.