



A nonprofit organization
dedicated to protecting children by
improving children's product safety

Testimony of Nancy A. Cowles
Congressional Field Hearing on the Consumer Product Safety
Commission and the Dangers of Magnetic Toys
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Linda E. Ginzl, Ph.D.
Boaz Keysar, Ph.D.
Co-Founders

Kristine Anderson
Molly Baltman
Leslie M. Batterson
Sonny Garg
Shawn S. Kasserman
Jill C. Rasmussen
Heather Shinn
Judy Sage
Steven W. Swibel
Robert R. Tanz, MD
Lisa Turano Solano
Board of Directors

Nancy A. Cowles
Executive Director

Good Morning Senator Durbin, Representative Rush, Commissioner Nord and panel members. Thank you for this opportunity to present our views on the children's product safety system and ways to better protect children.

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. We were founded in 1998 by Linda Ginzl and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and feebly recalled portable crib. Our mission is to promote the development of safer children's products, advocate for children and educate the general public, especially parents and caregivers, about children's product safety.

Starting here in Illinois, we have worked with states to implement the Children's Product Safety Act which prohibits the sale or lease of recalled or dangerous children's products or their use in licensed childcare. Currently seven states have such a law. We provide educational materials on children's product safety to childcare providers, health care professionals, parents and caregivers to alert them to the minefield of dangers facing children. We work with engineering programs at

116 W. Illinois Street, Suite 5E
Chicago, IL 60610-4532
312-595-0649 Phone
312-595-0939 Fax

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www.KidsInDanger.org
email@KidsInDanger.org

Universities including Northwestern to increase the knowledge of safety and standards that tomorrow's designers will bring to children's products. We are doing all we can to protect children and welcome this opportunity to speak to you about how we believe the Congress and the US Consumer Product Safety Commission could better protect our children.

KID first learned of the death of Kenny Sweet in December of 2005. Kenny had died on Thanksgiving Day from magnets attaching to each other and ripping through his intestines, creating a blockage and releasing toxins into his abdominal cavity – he was 20 months old. The magnets had fallen unnoticed out of a Magnetix construction set as his older siblings played with it and nestled unseen in the carpet until Kenny found them.

As a mother of three and a safety expert, I thought I had heard every possible way there was for a child to die from a dangerous product – but until Kenny died, I had never heard of the very specific and gruesome danger of swallowing magnets.

But as the Chicago Tribune series published in May revealed, both the company and the CPSC had heard of the potential injuries by the time Kenny died. They could have taken earlier action to prevent his death and scores of other injuries.

As soon as KID learned of Kenny's death, we brought it to the attention of the ASTM Committee on Toy Safety, the voluntary standard setting group for toys. Why CPSC or the toy industry didn't raise the issue when they first learned of it is a mystery. We raised the issue at the February meeting, the first Magnetix recall was the end of March, and ASTM began working on the issue in June after a task group was appointed. This spring, ASTM published a standard, a year and a half after Kenny's death and

almost two years after an Indiana child care provider called to warn the CPSC. And this is quick in the world of standards setting.

The new standard is voluntary. It includes a requirement that toys with swallowable magnets be labeled with a warning about the dangers of magnets and that all toys with magnets be tested to assure that the magnets do not fall out during use as was the case with Magnetix and Polly Pocket dolls. However, the standard does not require the magnet warning on toys with larger components and still allows toys with loose swallowable magnets to be sold. In my opinion, no toy that contains small magnets, accessible or not, should be sold without the warning for parents. And CPSC should weigh the dangers of small candy shaped magnets and consider a ban of particular shapes and sizes based on the large number of incidents.

Read the stories of the children who survived and you'll see what a devastating injury these little magnets cause. Most of the children injured were above the age limit on the toy. Those that weren't usually got the magnets when they broke loose from the toy – not from lack of supervision. In fact, the recent CPSC recall of more Magnetix sets documents at least 1500 reports of magnets coming loose – compared with one death and 28 injuries – luckily, parents are supervising their children. But supervision can't be the only line of defense between our children and defective products.

When CPSC finally took action, it was too little too late. They 'recalled' some Magnetix sets, but left the ones on the store shelves – even though they had no proof that there was any difference between the ones in homes and the ones on shelves. In fact, the

manufacturer never used the word recall – they called it a replacement program and said ‘*if* you bought it for a child under age 6 (it was marketed for 3 and up) and were *uncomfortable* with having it in your home, you could return it for another product – nothing to give the parent going to the site a sense of urgency about getting the product out of her home.

But CPSC apparently could do nothing more and that weak-kneed recall stood for a year, while children continued to get hurt from old Magnetix, new Magnetix, other magnetic toys and magnetic jewelry. The recall was announced on March 30, 2006. That fall, Jonathan Midgett from CPSC published *Gastrointestinal Injuries from Magnet Ingestion in Children – United States 2003-2006* in MMWR weekly of the CDC. And in November, 8 months after the initial recall and almost a year after Kenny’s death, magnets were mentioned by the CPSC for the first time in a general safety warning – not related to a specific product. Too long in our opinion – there was no restriction on CPSC announcing the general hazards of these strong magnets when it was first brought to their attention – but lack of staff or funding or will kept it on the back burner until a child had died and dozens more were injured.

The story of Kenny’s death and injuries from magnets in toys is horrific. KID urges parents to keep all toys with strong magnets away from children under six and from all children who have a tendency to mouth objects. In addition to Magnetix, CPSC has recalled 4.4 million Polly pocket dolls after 3 injuries requiring surgery and 170 reports of loose magnets, 40,000 Magneblock toys, 30,000 magnetic puzzles and almost 9,000

townhouse toys because of the hazards the magnets pose. Jewelry with magnets can also pose a real risk to any age child.

As Patricia Callahan of the *Tribune* put it; this is not just the story of one family's grief or the hazards of one type of toy, but "emblematic of how a weakened federal agency, in its myopic and docile approach to regulation, fails to protect children."

First, as highlighted in the Chicago Tribune article, early reports of dangers from the magnets were overlooked or ignored by CPSC and the manufacturer. So often I hear from parents that they report a problem to the CPSC and are never contacted again. As the injuries piled up, no effort was made to reach out to the public to highlight this emerging risk. Again, as someone who spends her days learning about and trying to prevent childhood injuries from nursery products and toys, I was unaware of this specific risk of swallowing or inhaling magnetic pieces. If I'm not aware of it, I can assure you that parents trying to supervise their children are even less aware of it. CPSC needs to take its mandate to protect the public from hazardous products more seriously and Congress needs to give them the funding and staffing they need to do a better job.

Secondly, when a recall was announced, the resulting release and replacement program was so confusing that it is amazing any parent took advantage of it. Parents could tell that the product they had in their home was no different than the ones still on the shelves of some stores – making them unsure about the need to return their product. The press release obfuscated the real hazard the toys posed, gave contradictory messages and downplayed the danger. Not because CPSC wanted it that way, but because Section

6B of the Consumer Product Safety Act creates a situation where the company has the upper hand. CPSC must have the power to draft their own press releases about dangerous products without the red pen of the manufacturer scratching out their every attempt to get the danger across.

Third and this is a strength of CPSC, the dedicated engineering and career staff worked hard to identify the danger and present information to the ASTM subcommittee to draft a strong voluntary standard. It was CPSC staff along with consumer representatives who, although vastly outnumbered on the task group, kept pushing to create a stronger standard. CPSC needs increased funding to keep these dedicated professionals and increase their ranks – we would then be able to identify more hazards prior to injury rather than waiting until someone gets hurt.

Finally – not enough was done to make sure the recalled products were off the shelves. Even after the *Tribune's* expose, the recalled items remained on shelves here in Illinois. The Illinois Attorney General, armed with the Illinois Children's Product Safety Act and her own commitment to keep children safe has taken a strong role in monitoring retailers here in Illinois. CPSC really should be taking the lead on this and making manufacturers take the steps needed to reach every retailer and every consumer possible. They know how to reach us when they want to sell their products, they can use those same methods to reach us to retrieve the dangerous recalled products.

So you ask, are children's products safe? My answer to parents is "we can't be sure." Most parents believe that children's products and toys are tested for safety before

they are sold and if there is a recall, the companies will make every effort to reach them – wrong on both counts. Here is our wish list to improve children’s product safety:

Manufacturers

- Test your products before they are sold. Make sure they meet all voluntary and mandatory standards before they are sold and test for likely hazards not yet addressed by a standard.
- If you can’t guarantee the safety of products you have manufactured overseas, then bring your factories back to the US. More than 30 years after lead paint was banned in the US there is no excuse for your products meant for children to be coated in lead. Just last week, Thomas the Tank Engine toys, a staple for millions of children, were recalled because of lead paint – it is unacceptable.
- Take human factors into account. Consider how the product is actually going to be used, not your ideal circumstances. Expect your designers and engineers to think safety from the start – as they develop a product, not as an afterthought when the product is almost ready for the market. KID would be happy to send you our Teach Early Safety Program for undergraduate engineers to use as a refresher course for your designers.
- Be open about product hazards and react quickly. Don’t dismiss incidents reported by consumers. Remove unsafe products quickly from the store shelves, spend money to retrieve recalled products effectively and look carefully at your other product lines to make sure more products don’t have the same hazard.

Retailers

- Get it off the shelves. When you are informed of a recall, make sure every unit of the product is removed and returned to the manufacturer. Products taken off the shelves, but left in the back rooms often mistakenly end up back on the shelves.
- Post notices online and in stores. Let your customers know that they can get up to date safety information from you.
- Contact as many consumers as possible. If you have contact information, use it to let your customers know they may have a dangerous product.
- Require your manufacturers to show proof of pre market testing. Every shipment of children's products you receive should have some certification that it was tested to all relevant mandatory and voluntary standards and additional certification that the paint or substances used are lead free.
- Report returns to the manufacturer and CPSC. CPSC often only learns of defects after the product has left the store shelves, be a reliable source of information on unsafe products to CPSC.

CPSC

- Advocate for your agency and your mission. Request the money needed to adequately protect consumers, especially children, from dangerous products. CPSC has a smaller budget to oversee more than 15,000 product types than the FDA has to oversee animal medicine.

- When the statutes under which you operate prohibit you from publishing information about a hazard and naming specific companies, don't miss the opportunity to warn parents about the general hazard.
- Take your obligations under the Freedom of Information Act seriously. Simply not responding or 'losing' the file is not acceptable. Investigative journalists, consumer advocates and even lawyers can be your allies in getting the message out about product safety – we are not the enemy.

Consumers

- Follow age guidelines and recommendations on all products. Don't take them as a challenge, as in "my 2 year old is as smart as an average 3 year old!" They are there for safety reasons.
- If you have a problem with a product that you believe could be unsafe, report it both to the manufacturer and the Consumer Product Safety Commission.
- Check all the products you use with your children at cpsc.gov and sign up for email alerts about recalls – either from the CPSC or monthly from Kids In Danger.
- Tell your friends and family about the need to check all products, especially hand me downs, for recalls. Find more information about keeping children safe at www.KidsInDanger.org.

Congress

- Give CPSC the funding it needs to keep our children safe. We need more dedicated staff members to participate in voluntary standard setting, investigate reports of dangers and enforce corrective actions.
- Remove the cap on civil penalties. Fines should be unexpected and painful – not something a company can write into its budget. Serious violations of safety laws deserve serious fines.
- Remove section 6B – don't censor public safety. If CPSC doesn't have the funding or mandate to take action against companies, arm consumers with the information they have so we can protect our own children.
- Ask CPSC for annual reporting on recall effectiveness, FOIA request fulfillment, investigations of death and more. Hold them accountable.
- Support pending legislation to require pre-market testing of durable children's products and the inclusion of product registration cards in new products.

Kids In Danger was founded by grieving parents who believed that the company who made the deadly crib and the CPSC failed to protect their son from death. I can't tell you how it adds to their grief to know that 8 years, almost 10 years later, more families are put through similar tragedies because of the inadequate response by manufacturers, retailers and regulators. Thank you for holding this hearing and we can only hope that with renewed public scrutiny, additional funding and staff and a renewed commitment to safety, CPSC can be effective in protecting children from harm.