



Testimony of Andrew Ruble In Support of Substitute for HB 2170

Mr. Chairman and members of the Committee. My name is Andrew Ruble. I am the father of McKale, who we affectionately call Mick. Mick attends elementary school in Johnson County Kansas, Gardner School District. Mick just recently turned 10 years old. Mick is a talented, loving, and incredibly caring son, who also happens to have Bipolar, ADD, ADHD, and PDD (Pervasive Developmental Disorder) which is a high functioning form of Autism.

You will hear about how Mick was secluded for a total of at least TWO MONTHS during the 2013-2014 school year. You heard that correctly. We added it up, and Mick was secluded at least two months in one school year. I want to stress that this happened AFTER the current regulations went into effect. **The current regulations failed to protect Mick.** They are failing other Kansas children. We are powerless to do anything about this, because there is no accountability and no effective protections in law and no enforcement.

Also, the education agencies have had two years to fix these problems in the current regulations and over ten years in total to create an effective policy. How many more children have to suffer before someone acts to finally fix this? Most of you were not on this committee back in 2012 when instead of acting they trusted the educational agencies to fix it. I am generally a trusting person. But I say trust, but verify. We can now verify

that the educational agencies have not fixed the problem. I hope you will learn from the past and act today.

Based on our understanding, the bill before you would be a big improvement over the current system and would address many of our concerns. We frankly wish the bill were stronger. We understand that this bill is a compromise. However, if you make any changes, we would ask you to strengthen the standards and protections in the bill.

A huge problem with the current regulation is that it has an extremely vague standard of when seclusion and restraint can be used. The current standard is that student must be “an immediate danger to self or others.” We believe that this flawed standard is why Mick was dramatically over secluded, for a total of at least two months in one school year. The standard is extremely vague – “an immediate danger.” Which begs the question, an immediate danger of “what”? That’s the problem. The regulations do not define the “what” the student has to be an immediate danger of. Apparently, you can be in an “immediate danger” of lots of non-threatening things happening to be secluded. Under this vague standard Mick was secluded because he was an “immediate danger of acting out” or an “immediate danger of throwing a non-violent temper tantrum.” Those are reasons Mick was secluded. Mick was secluded for staff convenience or discipline. According to the US Department of Education, those are illegitimate reasons for secluding a child. Our reaction at first was that the school had to be violating its own policy in secluding Mick in this manner. Now we know that the real culprit is the vague “immediate danger” standard.

This bill fixes this problem by providing a definition to that vague standard. Under the bill “immediate danger to self or others” is defined to mean a “threat of a student causing serious physical harm to themselves or others” (page 1, lines 28-29). Including this exact definition in the bill is incredibly important. Please, please, please retain this language. It will ensure that kids like Mick are not subjected to unnecessary restraint and seclusion. This definition comes directly from the US Department of Education recommendations limiting when restraint and seclusion can be used. In fact, the US Department of Education specifically recommends that two standards must be met before seclusion and restraint can be used. The first standard is “imminent danger of serious physical harm to self or others” – which is in the bill. According to the US Department of Education, the second standard that must be met is what is known as the “least restrictive method” standard – that other less restrictive interventions have been tried and found ineffective. This bill only requires that the first standard be met to use these potentially deadly tactics. So, the bill is actually more lax and offers fewer protections than the recommendations from the US Department of Education. Personally, I would ask that you include this second USDE standard in the definition – the “least restrictive method” standard. The

standard in the bill cannot be compromised any further. If anything, it should be strengthened.

Mick was secluded a staggering amount of time. When we added it all up, it was at least two months of the school year. That stunned us. Also, the school did not inform us of each time Mick was placed in seclusion. Mick was also subjected to in-school suspension. But when you do the math and figure up the amount of time they said he was in seclusion, then account for the fact that the school did not inform us each time he was secluded, even when you factor out the suspension time, we believe that two months is on the low end of the actual amount of time Mick was placed in seclusion that year. I shudder to think how many months Mick actually lost to seclusion. Those are months of Mick's childhood that he will never get back.

The overuse of seclusion has had a devastating impact on Mick. Being in seclusion has harmed my son. Mick isn't the same kid he was. Seclusion physically and emotionally drains him. He can't study. He can't concentrate. It makes him an emotional mess, and it's not his fault. Mick would often run away from school because he didn't want to be forced into seclusion. Mick would cry when we took him to school because of his fear of being forced into seclusion. He would be put into seclusion for hours on end for illegitimate reasons. Reasons which violate the standards and recommendations of the US Department of Education. The overuse of seclusion is harming my son. Mick is missing out on his education and his childhood. This abuse needs to stop.

Mick was often secluded in an area where he could not be seen by other school staff – basically a conference room. If Mick was being secluded because he was truly a danger to himself or others, why seclude him where he could not be seen? That is a recipe for something tragic happening to my child. It pains me to even mention this, but a child in Georgia hung himself to death in a seclusion room because he couldn't take it anymore. Staff were not watching him or keeping him safe. This bill would ensure if a child is in seclusion because they are a danger to themselves, then staff would have to observe them.

Because they did not always inform us of the use of seclusion, then they are not accurately tracking the number of times they have secluded children. Take this into account when you hear the supposed number of incidents of seclusion. Our experience says it's a deflated number.

The regulations require that schools have a "policy." But the schools basically police themselves. The policies were often ignored. Example, the regulation requires the school's policy be that they inform parents of the use of seclusion within two school days of the incident occurring. First, they often forced seclusion on Mick and did not inform

us at all. Secondly, when they did inform us, it was only because it was mentioned along with several other things in the weekly written communication logs we got every Friday from the school. If they were telling us about seclusion incidents only every Friday in the communications logs, they were clearly violating the requirement to inform us within two school days of the incident!

Here is another problem. When we finally found out our Mick was being secluded and restrained, it just didn't seem right. The school kept downplaying what they were doing and said they were "following their policies." So, we asked for a copy of their policies. We asked them to bring the policies to a meeting. It's a pretty simple request, right? Well, the school refused to bring their own policies to that meeting. They said they had to ask permission from the Director of Special Education to even give us a copy of the policies! Only later did they relent and finally provide us a copy.

We only recently found out that this omission violated both the regulation and Gardner's own written policy! The problem is the regulation only requires the school to have a policy, and then it's basically up to the school to police itself. That never works. The regulation specifically requires that "Parents shall be *annually* provided with the written policies" on the use of seclusion and restraint – see K.A.R. 91-42-2. They were treating their policies on restraint and seclusion like this big secret, yet the regulation said they had to provide it to us, which they did not. So you know, this bill fixes that problem. Page 3, starting on line 33 would require after each incident that parents be provided a copy of the standards, a flyer on their rights, and information to navigate the process.

Mick was also restrained at least three times. We were never informed of our right to file a complaint under the schools "dispute resolution process," even though the regulation and the school policy required them to do so. Again, that is the flaw of the regulation. It basically only requires the school to have a policy, and the school polices itself.

Finally, we have subsequently found out that if we would have filed a complaint for the numerous violations under the schools "dispute resolution process," that Gardner only gives parents 3 days from being informed to appeal that the incident violated the policy. How on earth is a parent supposed to figure out if the use of seclusion or restraint violated the policy in just three days?!?! When you are the parent of a special needs child there are so many time-consuming challenges. Making parents file a complaint within 3 days of being informed of the incident is not just unreasonable – it is ludicrous. Unfortunately, that is allowed under current regulation. That problem is fixed by the bill (see page 3, lines 39-42).

Thank you for your time.