



**Testimony on SUBSTITUTE HB 2170 Freedom from Unnecessary Restraint and Seclusion Act
to the House Children and Seniors Committee
March 9, 2015**

My name is Amy Allison and I am the Executive Director of the Down Syndrome Guild of Greater Kansas City. I have worked with people with developmental disabilities for the past 20 years. In my current role, I serve over 600 families living in the state of Kansas who have a loved one with Down syndrome. During my career I have attended hundreds of IEP meetings, performed classroom observations, offered peer presentations and trained school personnel in many school districts in the state of Kansas.

Please accept my written testimony on the vital importance of proper oversight, training, reporting and enforcement of Restraint and Seclusion techniques being used in Kansas schools. I have received dozens of phone calls in the last two decades from concerned parents who were shocked and saddened to learn their children with Down syndrome were being restrained or placed in seclusion rooms during the school day without parental consent or knowledge. Many of these instances were reported to parents by educators, students or other parents who wished to remain anonymous for fear of retaliation. The children involved in these incidents had their dignity compromised, they were ostracized from their peers and in many cases they were clearly not a danger to themselves or others.

With drastic budget cuts, overflowing classrooms and lack of appropriately trained staff, my greatest fear is that overworked educators without proper support will begin using restraint and seclusion with more regularity as they are exhausted. Depending on the research you read, it is estimated that 80% of people with disabilities will be abused in their lifetimes. Why? Because they have difficulty self-reporting or may lack intellectual capacity to understand that the abuse is wrong. They may also have sensory issues, lack of coping skills and difficulty managing transitions which can cause behaviors. If staff is not adequately trained, this is a recipe for disaster and it can result in the serious injury or death of a child.

I am asking you to support Substitute HB 2170 for the following reasons:

- Kansas parents have been waiting TEN YEARS for an effective policy to protect their children from the dangerous and deadly tactics of restraint and seclusion in public schools.
- This bill is a compromise. It passed the Kansas House 122-1. The underlying policy was originally written by staff at the Kansas State Department of Education.

- The bill is based on the current regulation, but it fixes the fatal flaws in that policy. It also includes the common-sense recommendations from the US Dept. of Education on restraint and seclusion.
- The bill is supported by 31 Kansas disability and education organizations, including but not limited to the Down Syndrome Guild of Greater Kansas City. Even the Kansas Association of School Boards is neutral on the bill. It ensures accountability and school safety in a reasonable and fair manner. It creates common sense standards to protect students and teachers alike from the dangerous use of restraint and seclusion. It has no fiscal cost.
- Kansas parents have sent a clear message that the current regulations, no matter how well intentioned, are not working. Parents and disability advocates have tried for the last two years to get the State Board of Education to fix this flawed policy. In total, parents have tried 10 years to correct this. The problem is not going away. Children are being harmed. Parents can't wait any longer. The time is now. Children deserve protections in law, not ineffective policies.

Shouldn't school be safe for everyone? It's imperative to remember that strong regulations with proper oversight, implementation and training will provide protection to school personnel as well as students. The proposed regulations need to be modified to ensure that is the case. On behalf of the 600 families I serve, I ask you to vote in favor of Substitute HB 2170 to ensure ALL STUDENTS will be free from unnecessary restraint and seclusion. Thank you for your time and attention.

Amy Allison

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Support HB 2170 – Freedom from Unnecessary Restraint and Seclusion Act

- **Compromise Solution Drafted by KSDE Staff** – HB 2170 WAS KSDE’s Proposed Policy on the seclusion and restraint issue in 2007. The policy contained in HB 2170 has been vetted by education policymakers. KSDE’s former legal counsel drafted this policy in 2007 as the solution. If passed back then, we would not have this problem today.
 - **Prior House Support** – The Kansas House was right when it voted by a 2 to 1 margin to pass a nearly identical bill in 2012.
- **Uniform, Effective Protection for Children** – HB 2170 creates a uniform and effective policy that will finally adequately address the problem of unnecessary use of seclusion and restraint against children with disabilities in Kansas public schools.
- **Superior Protection Against Dangerous and Deadly Seclusion and Restraint** – Because these tactics are so damaging and deadly, children and parents need the proper protections in Kansas Statute.
- **Fixes Fatal Flaws in Existing Regulations** – HB 2170 is far superior to the current flawed regulations on seclusion and restraint.
 - **Current regulations do not create an effective, uniform standard** – Regs only requires schools to “have a policy” with certain “magic words.” Whether that local policy is actually followed is left up to the schools.
 - **Proposed Regulation does not treat Parents as Equals** – HB 2170 ensures that the parents and student are treated equally in the complaint process. Even the proposed regulation provides an advantage and deference to schools.
 - **Parents don’t trust current regulations or proposed “complaint” process** –
 - Parents who complain now about inappropriate use of these tactics can only complain to their local school – a conflict of interest
 - Even the proposed regulation would treat parents unequally and unfairly by giving great deference to schools.
 - Is it any wonder that parent’s see through this façade and are not filing complaints when the system fails them?!?
- **HB 2170 Solves the Constitutional Problem** – The current regulations have been alleged by schools to be unconstitutional. HB 2170 fixes that by having the protections and standard appropriately in law, not simply in regulation.
 - **Seamless Integration** – Passing this law will fix the fatal flaws of the current regulations and ensure that they are both effective and constitutional.
- **HB 2170 Reduces Unnecessary Use; Prevents Litigation & More Expensive Interventions** – This is about protecting kids. HB 2170 has no “gotcha” consequences (no criminal, civil or other actions). In fact, if passed, it will help prevent litigation and other expensive and negative consequences in the future.

Summary Comparison of HB 2170 and the Current/Proposed Regulation

HB 2170	Current/Proposed Regulation
Creates a Uniform, Effectively Enforceable Standard in Kansas Statute. Protects children and schools from inappropriate use of these deadly tactics.	Only requires schools have “policy” with “magic words.” Does not create a Uniform Standard. Not effectively enforceable. Does not require staff to follow the reg. Enforcement basically left to the school.
Has effective protections for children against these deadly tactics: ○ Limits use to when behavior is an immediate threat of causing “substantial physical injury” to self or others. This is a superior standard, and one that is similar to other states and the recommendations of the US Dept. of Education. ○ Establishes in law the clear policy that children with disability shall not be subjected to unreasonable, unsafe or unwarranted use. ○ Establishes policy that these tactics are not for purposes of discipline, punishment or convenience of staff.	Has far weaker and fewer protections for children: ○ Uses generic terms allowing use when behavior is an immediate “danger” to self or others. A danger of “what”? A danger of a non-violent temper tantrum? CPI and other professional trainers have called out this deficiency. ○ Has no such protection
Can’t place a child in seclusion if there is a medical contraindication.	No such protection
Can’t place a child in restraint or seclusion unless trained to do so safely.	No such protection. Requires a training “policy” but does not require training before can perform these deadly tactics
Fixes Constitutional Questions – Assigns duty to the State Board of Education to promulgate rules and regs and ensure implementation. Passing HB 2170 fixes the problems in the regulation seamlessly.	Kansas has no statute on this issue. Schools have argued that the State Board is quite limited in the rules and regs it can pass without an enabling law.
A technical amendment by the Disability Rights Center would include the wording to the right in HB 2170, ensuring this policy would be protected in statute	Prohibits the most deadly forms of restraint (prone, supine, restriction of breathing, impacting communication, chemical)
Prohibits locking children in a seclusion	Silent on this matter
If passed, will maintain current regulations for all students; create enhanced protections for students with disabilities	Regulation applies to all students. [Note: DRC would support having HB 2170 apply to all students]