Canterbury Infant Academy
Canterbury Elementary School
Canterbury Preparatory School
Canterbury Academy at Briarcliff
Canterbury Academy at Prairie Ridge
Canterbury Academy at Shawnee Crossings
(913) 339-6633

March 5th, 2012

Senator Schmidt and Committee Members:

Thank you for your time today, and for your attention to this matter.

My name is Sarah Vore, and I am mother to five children who attend childcare programs in Kansas. I have worked in Kansas childcare programs for the last 15 years. Presently I own and operate four child care centers and one private elementary school in Johnson County, along with another childcare center in Missouri. My schools represent the largest private preschool provider in Kansas, serving over 600 students, and my staffing company employees more preschool teachers than any other private company in the state. I graduated with my degree in child psychology and pre-medical studies from Yale University and I attended the University of Connecticut Medical School. My schools have received seven regional awards in recent years, including recognition for quality and innovation in programming. I have served as a legal consultant and an expert witness in a number of childcare related cases in Kansas. I am a past board member of SIDS Resources, and a three time past-chair for Synergy Services, two non-profit organizations which serve the health and welfare of children and families in the bi-state area. I live, work, and breathe childcare issues every day, and I love what I do. I am here to testify with regard to proposed changes to K.S.A. 2011 Supp. 65-506, K.S.A. 2011 Supp 65-508(c)(1), K.S.A. 2011 Supp 65-523 through (c), and K.S.A. 2011 Supp 65-524, all contained in HB 2660.

On behalf of the four programs which I serve, and two additional preschools, I oppose the revisions to the statutes listed above which would allow the limitation or modification of a facility's operational license prior to any hearing. I also oppose any change to statute and regulatory requirements which legislate maintaining a child's "comfort". I am requesting that these measures be removed from HB 2660 until further review maybe undertaken to examine these issues and develop a collaborative process to resolve them.

I. BACKGROUND

In 2007, the disheartening results of the NACCRRA survey of childcare regulations placed Kansas childcare laws as 35th in Oversight Compliance and 43rd in Standards Compliance nationally. The BEST Team was assembled by Secretary Bremby and

charged with making revisions to existing childcare statutes and regulations to improve our national standing. I have diligently served as a leader on this team since its inception. The Team consists of KDHE officials, childcare providers, children's advocates, parents, regulatory surveyors, and educators. The fifteen points addressed by the NACCRRA study were to be reviewed and statutory and regulatory recommendations were to be made. Listening tours were conducted across the state to consider input from a wider pool of parents and industry representatives. This team met extensively over the next four years and significant progress was made on this agenda. During this process, KDHE representatives added additional charges to the group's objectives. One of these was to increase the range and types of disciplinary measures which KDHE might utilize to respond to regulatory non-compliance in childcare facilities. Through the BEST Team process, consensus was reached on most of the issues raised by the NACCRRA study however, this additional topic of disciplinary measures proved more difficult. First, the committee determined that the disciplinary system was effective as it exists. Center based care, as opposed to in-home care, has not resulted in any devastating outcomes, and provisions already exist which allow for emergency orders of suspension should an extreme case occur. Second, the Team did not agree that the proposal by KDHE adequately addressed the details of how such a process would be managed. There were concerns expressed by providers, surveyors and advocates about the disruption in care these measures might introduce, and there were concerns about the survey process which these measures would rely so heavily upon. KDHE officials stood alone in their support of this proposal.

The BEST Team included among its participants Kim and Brian Engelman, parents of Lexie Engelman who had perished at an in-home facility. During the course of our work, Alecia and Steve Patrick lost their daughter Ava on her first day at an in-home day care in Olathe, Kansas. The Patricks had considered sending their daughter to my school where her cousin attended, but selected the in-home program instead. I felt great personal responsibility for Ava's death, and reached out to the family. I invited Steve and Alecia to the BEST Team meeting to express their concerns and hopes for the team's accomplishments. At the same time, KDHE officials faced increased public pressure to initiate legislative changes as a result of yet another in-home child care death. Indeed 2007 brought 14 childcare deaths in Kansas, *none* of which occurred in child care centers. KDHE initiated a number of House and Senate bills in the months that followed, but without the support and consensus of the BEST Team, none of these were successful. Frustrated, the Engelmans and Patricks sought their own solution. These bereaved parents, with help from some BEST Team members, held meetings with interested legislators and child care advocates. Eventually Kim, Brian, Steve and Alecia succeeded in passing Lexie's Law to improve supervision and safety for children. Lexie's Law passed because it addressed the relevant issues related to providing a higher standard of care, without adding other unsupported agendas.

In January of 2012, the BEST Team met to discuss implementation and outcomes from Lexie's Law. KDHE representatives presented the regulatory language which had been adopted for home and center-based care, and discussed some "unintended consequences" of the law. Specifically the overlap in definitions with foster care programs was mentioned. No other discussion regarding proposed revisions to Lexie's Law was

presented. After business hours on February 10th, KDHE notified BEST Team members that HB 2660 would be heard in committee on the next business day. This bill describes three revisions to Lexie's Law: (1) to rectify unintended confusion with foster care programs, (2) to remove the high school diploma or equivalent requirement for in-home providers, and (3) to give KDHE the ability to modify or restrict a facility's license essentially at will, and without hearing, appeal or review of the basis for such an act. This legislation was introduced in conflict with BEST Team recommendations, and with virtually no notice to the affected parties. It is my belief that the third objective -- authority to modify a facility's license without a hearing or review process -- represents the primary purpose of this bill. If this bill passes with this unrestricted power, consequences will be devastating.

II. SPECIFIC PRACTICAL CONCERNS

Any language in HB2660 which adds options to "restrict or modify" license terms, or adds the term "comfort" to objectives for childcare is problematic. These provisions are unduly broad, lack specificity, and functionally cannot be applied. At worst they will result in chaotic and arbitrary applications which are fundamentally against the best interests of children.

A. Problems Caused by "Restrict or Modify License"

An individual government employee (designated a "surveyor") could wreak havoc on a child care facility for minor regulatory infractions based on the language contained in this bill.

The current process of administrative discipline requires a history of non-compliance which is significant, relevant, and uncorrected. It also includes the responses of the facility to such notices of violations, and the proposed discipline measures are subjected to KDHE's own internal legal review process. A notice of intent to take action (penalty or suspension) is sent to the facility, and an appeal process may be undertaken by the facility. These measures are generally reasonable, regulated, predictable and effective. Changes to the existing process would create, rather than solve, problems.

Some examples of regulatory non-compliance which could result in a classroom, age group, or area of a facility being eliminated from a school's license demonstrate the danger. The three following examples are illustrative.

1. Stains and Snacks Solutions?

This example illustrates the absurdity this bill would create for minor non-compliance of correctable issues.

KAR 28-4-423(a)(12) violation: Carpet in toddler classroom has stain under table. (Regulation: "Carpeting shall be clean and in good repair.")

KAR 28-4-423(a)(18) violation: Toddler classroom has two ceiling tiles with water stains. (Regulation: The premises shall be maintained in good condition…")

KAR 28-4-434(b)(5) violation: Graham crackers were placed directly on toddler table for snack. (Regulation: "Children's food shall not be placed on the bare table.")

As this proposed law is written, one individual government surveyor could mandate that the noted classroom be stricken from the license. The consequences of these minor violations would be to expel all students enrolled in that room, and eliminate the positions of two teachers. The mandated elimination of the classroom would be triggered without further process, review of individual findings, or input from the provider. Children expelled, staff unemployed, parents angered, and businesses devastated by a lack of process, clarity and foresight would be the predictable consequences of this bill.

2. Cubby Care Correction?

This example illustrates the grave consequences spawned from a parental complaint about a teacher which resulted in a non-compliance finding.

KAR 28-4-427(b)(7) violation: A parent complains to KDHE that the teacher removed her child's cubby from him because he was filling it with water from the water fountain. This complaint is substantiated when the teacher agrees that this is what happened, and the facility is cited for regulatory non-compliance. (Regulation: "Each child shall have individual space for the child's garments, clothing, and possessions during the session attended.") Under the proposed bill, the classroom could be removed from the license. Functionally this teacher's job is eliminated because a parent protested her reasonable management of the child's behavior.

3. Food Fight Fiasco

This example illustrates how a co-worker at a childcare facility could use this proposed law to inflict chaos.

KAR 28-4-427 (d)(2)(D) violation: One teacher removes a child's nearly empty milk cup after he throws his drink onto another child's lap. The teacher says "you are all done with your milk", and her co-teacher complains that this amounted to "withholding food". (Regulation: Prohibited punishment… withholding or forcing foods.") KDHE rules that the facility is in violation for the teacher's behavior, and closes that classroom. Both teachers are now unemployed, as a result of the independent actions of one.

B. "Comfort" Objective Causes Problems.

Use of the word "comfort" and language attempting to legislate "comfort" as a childcare objective raises a host of problems. The wording of the proposed legislation allows for subjective interpretation to the degree that steps taken for the child's own safety could violate his "comfort."

How does a facility provide for the "comfort" of a preschooler? Or a toddler? Any parent who has dutifully buckled their angry two year old into a car seat has violated this premise. Shall we regulate these parents as well? If failure to provide comfort is a statutory violation for a childcare facility, should it also be a measure of neglect for a parent? Mandating comfort of a child places us on a slippery slope with grave unintended consequences.

As providers, we are charged with meeting the minute-by-minute daily needs of our students with regard to their physical, mental, cognitive, developmental, nutritional, medical, social, and emotional needs. Little about this process is "comfortable" to a child. Parents understand this, and our staff love taking care of children. Inserting vague requirements and punitive measures for non-compliance into our laws and regulations will chase capable, thoughtful providers out of this business. Where does our free-market get to cast its vote on quality of childcare? I doubt any parent would abandon a classroom for a single violation, and if they did feel this way, their right to leave a program is always protected. How will parents react when KDHE closes a facility's toddler units, and in order to pay the rent the facility must raise the preschoolers' rates? How will parents react when they are told that the teacher and classroom that they trust and that their child loves are gone "for their protection"?

III. CONCLUSION

The exhaustive process of reviewing, considering and evaluating our current administrative oversight protocols in childcare facilities has been completed. Surveyors, providers, and industry experts have determined that the current system is not broken. Only KDHE is seeking broad, sweeping, vague and punitive extensions of its power. These are not supported by any other party. This is why these changes are buried in otherwise innocuous legislature. Passage of HB2660 as it is written would cause upheaval in the childcare industry. It retracts the accomplishments of Lexie's Law, and it ignores the findings of a highly capable group convened for expressly this opinion.

Thank you for your time and for your attention to this matter.

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