

**Testimony in Support of Substitute HB 2170
(Freedom from Unnecessary Restraint and Seclusion Act)**

**By Shawna Hinkle
March 11, 2015**

Dear Chairman Abrams and the members of the Committee. My name is Shawna Hinkle. I am a parent of Ian, a happy, bubbly, 11-year old with severe autism. What happened to Ian proves that the so-called regulations on seclusion and restraint are inadequate. They are regulations in name only.

On September 10, 2013, my severely autistic, nonverbal son sustained injuries while attending a self-contained classroom. Ian was injured AFTER the current regulations were in effect. The current regulations and current policy of the State of Kansas FAILED to protect my child, Ian. Upon arriving home on the school bus on that day, I noticed Ian had severe bruising and abrasions on both of his wrists. The teacher had communicated to me via email, and there was no mention of any injuries in Ian's communication notebook that day. I immediately took Ian to the ER for x-rays, and medical care. The bruising was so extensive I feared his wrist might be broken. You can see a picture of the bruising in the flyer included with my testimony.

The next day I followed up with the school and found them to be extremely hostile and uncooperative. I was not informed about the regulations supposedly protecting Ian. The school never gave me a straight answer regarding what happened to my son. I sent him to school without injuries, and they returned him with injuries. There was no accountability.

I want to stress a couple of things. Because my son is nonverbal and has profound autism, he was not able to tell me what happened. I am now wondering how many other times had Ian been harmed by the school do to inappropriate use of restraint or seclusion? If there were no marks, how would I know? Ian is non-verbal, so he cannot tell me. Also, Ian was in a self-contained class room where it was just Ian and his teacher. This was supposed to be a safe place.

My example proves that the current policy on restraint and seclusion in schools is woefully inadequate. The current regulations failed me and my child, Ian. For his own protection, I was forced to pull my child out of school. I now home school Ian. As detailed below, in my case the regulations were either inadequate or ignored. The current regulation only requires a local school to have a "policy" with certain words written down on paper. It is then basically left to the schools to police themselves.

The worst part about all of this was that I was powerless. I had exhausted all avenues available to me. You should know that I mailed the Kansas Department of Education staff a detailed document about what happened including supporting documents such as photos and doctor's notes. The answer I received was that what had happened to my son was wrong, but unfortunately there was nothing they could do about it.

I went to the State Board of Education and asked them to fix the many problems in the current regulations. The State Board has not acted to address these problems. Please, I hope that you will act and pass this bill. I think 10 years is long enough to wait for the education agencies to act. They

did not act to pass an effective policy. I really hope you do.

My case refutes a false claim made by opponents of this bill. Opponents claim that parents are not filing complaints through the so-called “local dispute resolution process.” Here is why that is a bogus argument. In my case the school did not even let me know about this process. I asked if there was a complaint policy, but the school said it was not necessary, refusing to give the policy to me. This refusal violated the school’s own policy and the regulations. This is a perfect example of why the current regulations are flawed. The current regulations are not a uniform standard. They are only a requirement that local schools have a “policy” which must include certain things. Schools are left to police themselves.

When I finally found out about the so-called local dispute resolution process. It turns out that the local school controls the entire dispute resolution process. That explains why parents are currently not filing complaints. First, the schools don’t tell parents about it. Secondly, the entire process is stacked against parents. No wonder parents do not file through the local dispute resolution process – it is rigged against them.

The State Board of Education’s response to this has been to develop a proposed “appeals process.” The Board’s proposal is totally inadequate because it treats parents differently than schools, limits what parents can appeal, provides deference to schools, and limits what the state can do about it. Additionally, because parents must “appeal” the decision of the school, it puts the burden on the parent.

That is why the language in this bill requiring an independent complaint process is so important. This would require “a process for ensuring that complainants and schools are treated equally in the complaint process.”

I want to highlight one really important part of this bill. The bill provides a definition to the vague standard of “immediate danger.” This definition mirrors one aspect of the US Department of Education recommendations on when restraint and seclusion can be used. Specifically, that these dangerous techniques be used when the student poses an immediate “danger of causing serious physical harm to self or others.” That provision is the heart of the bill. Please keep that standard recommended by the US Department of Education intact.

If anything, I would ask this committee to make this bill STRONGER. Keep the “serious physical harm” standard and add the second USDE standard that other less restrictive interventions, like positive behavior supports, must be proven ineffective before restraint and seclusion can be used. The bill would then more closely follow the best practice recommendations of USDE. This would better ensure that restraint and seclusion were truly a last resort measure.

Thank you for the opportunity to appear before the committee. Again, 10 years is a long time to wait to have this issue effectively addressed. Please act to protect Kansas kids. At the end you will see a chart that details how the current regulations were either inadequate, ignored or undermined by the school. I will be happy to stand for questions.

“Requirements” in the So-Called Regulation	What Actually Happened
The regulations state that “Each district shall develop and implement written policies ... [including] written parental notification whenever any incident of emergency safety intervention [like seclusion and restraint] is used ... within two school days.”	I was never provided written notification of the incident. The school was hostile and uncooperative.
The regulations require schools to have policies that supposedly limit use of seclusion and restraint to only when a “student presents an immediate danger to self or others.”	The school provided no explanation or justification on the incident or how Ian’s behavior matched this limitation. They ignored this completely.
The regulations require schools to have policies for a “dispute resolution process” as well as a “complaint investigation procedure” and a “procedure for parents to present written complaints to the local board of education”	The school did not tell me about a dispute resolution process. I asked about filing such a complaint, but I was refused. I was told that it was not necessary.
The State Board has proposed (but not adopted) an amendment to allow for under limited circumstances a parent to appeal a complaint to the State Department of Education.	This is moot in my case, because no such process existed. However, you should know that the current proposal made by the State Board of Education would not have helped me. The State Board’s proposal unfortunately grants great deference to schools and treats parents unequally from schools. This bill would not allow this unequal treatment.