

Combined Written Testimony in Support of Substitute HB 2170

March 11, 2015

Submitted by the Following Organizations:

Big Tent Coalition of Kansas
Interhab
Kansas Governor's Commission on Autism
Autism Speaks
Shawnee Mission Special Education PTA (Parent Teachers Association)
Alliance for Childhood Education (business leaders advocating for education)
Johnson County Developmental Supports (JCDS)
Association of Community Mental Health Centers of Kansas
Autism Society for the Heartland (ASH)
Down Syndrome Guild of Greater Kansas City
Self Advocate Coalition of Kansas (SACK)
The Center for Child Health and Development at University of Kansas Medical Center
Kansas Mental Health Coalition
Kansas Council on Developmental Disabilities
Kansas Association of Centers for Independent Living
Down Syndrome Society of Wichita
Keys for Networking
Puzzle Piece Ranch
Topeka Independent Living Resource Center (TILRC)
The Arc of Douglas County
Skills to Succeed
Inclusion Connections, Inc.
Breakthrough House, Inc.
Easter Seals Capper Foundation
University of Kansas Center on Developmental Disabilities (UCDD)
Kansas Appleseed
Kansas Developmental Disabilities Coalition
Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council

Chairman Abrams and Honorable Members of the Senate Education Committee:

We the above organizations are providing written testimony in support of Substitute HB 2170. We understand that your Committee meeting lasts only one hour, and there are several parents who wish to testify. In order ensure that the Committee has adequate time to consider this important bill and hear from these parents, we are offering written testimony. However, please know that having our organizations provide written testimony does not diminish our strong support of Substitute HB 2170. We are doing so out of respect to the Committee to ensure you can work this important bill.

The use of restraint and seclusion has the potential to be dangerous and, unfortunately, possibly even deadly. This is why having effective protections in law are so important. We appreciate that the current policy is well intentioned. However, you will hear from parents today about problems with the current policy. In fact, substitute for HB 2170 incorporates the current regulatory policy into the bill, in order to provide the statutory framework to support the regulations. The regulations are only supported by the Constitutional powers of the State Board, which some have argued that such power is inherently limited without a statutory basis. The bill then takes that statutory framework and improves upon the current policy by addressing gaps and problems to ensure Kansas children will be safe in school.

Important Points in Support of Sub. HB 2170:

- USDE Recommendations – The bill incorporates many of the 2012 recommendations from the United States Department of Education (USDE) in order to improve the current policy in Kansas and to better ensure the safety of children and teachers in public schools.
 - The USDE recommendations are minimal standards. The USDE acknowledges in its report that schools and states “may choose to exceed the framework set by the 15 principles” which make up its recommendations (see pages 12-13, “Restraint and Seclusion: A Resource Document,” USDE, 2012).
 - One key USDE recommendation the bill includes is standard of use for restraint and seclusion. The bill clarifies the currently nebulous standard by adding the USDE language of threat of “serious physical harm to self or others.”
 - This “serious physical harm” standard is critical to the bill. Please maintain this standard in the bill.
 - In fact, the USDE recommends that two standards be met prior to restraint and seclusion: 1) “serious physical harm” and 2) that other less restrictive interventions be ineffective. Sub. HB 2170 only includes one of these two standards. That makes the policy in Sub. HB 2170 weaker and less protective than even the minimal USDE recommendations. This standard in Sub. HB 2170 is already a compromise.
- Compromise – Substitute HB 2170 is a compromise. It passed the Kansas House 122-1. It is a “substitute” bill because many changes and compromises were made to address concerns raised by the Kansas Association of School Board (KASB). KASB is for the first time neutral on this policy change.
 - KASB said in writing to its members that they “worked with proponents of the bill to make a number of positive changes in the substitute bill, with compromises on both sides. We believe this [Sub. HB 2170] is a much improved proposal.”
 - Sub. HB 2170 does not even incorporate all of the minimal standards and recommendations of the USDE report. Again, it is a compromise.
- Fair Bill, but not the “Advocates” Bill – We support this bill as a fair compromise, however, please understand that this is not the “advocates” proposal. We frankly wish the bill was stronger. The underlying policy is mainly composed of two sources, neither of which are work products of disability advocates:

- The existing regulations, written by Kansas State Department of Education (KSDE) staff in 2013, and
- The proposed policy written by KSDE staff under the leadership of then-Chairman of the Kansas State Board of Education, Steve Abrams.
 - We would note had that policy passed back in 2006/2007, that the problems you hear about today would not be occurring.
- Provides for an independent complaint process that treats parents fairly.
- No added fiscal cost.

Waiting for Over Ten Years – Many of our organizations have been involved in advocating for these standards for well over ten years. We have gotten close to having an effective policy many times. This is the year to finally address this problem. Again, Substitute HB 2170 is a compromise, but it is an effective policy which will hopefully address these problems once and for all. We would note that the Senate Education Committee has directed the Kansas State Department of Education on two different occasions to resolve this issue by passing a sufficient policy. Substitute HB 2170 will finally resolve this issue and ensure an effective policy, based on the best-practice recommendations of the U.S. Department of Education, prevails in Kansas.

Thank you in advance for your thoughtful deliberation of our testimony in support of Substitute HB 2170.