Coalition to Protect Children from Unnecessary Seclusion and Restraint

In Support of Substitute HB 2170 – March 11, 2015

Chairman Steve Abrams and members of the Senate Education Committee. My name is Rocky Nichols. I am here representing the Coalition to Protect Children from Unnecessary Seclusion and Restraint, a collection of 31 different Kansas disability and education organizations fighting for common sense protections to prevent children and teachers from being harmed by the dangerous and deadly tactics of seclusion and restraint in public schools. I am also the Executive Director of the Disability Rights Center of Kansas.

The current regulations on the use of restraint and seclusion in Kansas unfortunately fail to adequately keep both Kansas children and teachers safe. The examples you will hear today from parents and a comparison of the bill versus the existing policy makes this clear.

First, a little back ground on what we are talking about. Under the bill …

Physical Restraint is the use of bodily force to substantially limit a student's movement (think of a MANDT or CPI-type restraint hold). A restraint hold applied inappropriately or unnecessarily can result in harm to the child, teacher or both.

Seclusion is forcing a student into an enclosed area, isolating them from others, and preventing them from leaving the enclosed area.

Time-out or other redirection or de-escalation techniques are <u>not</u> seclusion or restraint. There are numerous interventions school staff can utilize which do not constitute or rise to the level of restraint or seclusion.

To see examples of the use of these tactics and national news reports go to: http://www.drckansas.org/videos/SRvideo

Parents, the Disability Community and Members of this Committee have tried for 10 Years to Fix the Problem of the Unsafe Kansas Policy on this Issue:

- Senate Education Committee deferred action on this policy and instead directed KSDE and the State Board of Education to adequately address this problem TWICE over the past 10 years – 2005 & 2012.

    - The problems are still not addressed.
- You will hear about some serious problems from parents today. These fundamental problems have been shared with KSDE and the State Board for the last two years.
    - The types of concerns you are hearing today were shared before the ineffective regulations were passed. They have been shared for the two years since passage – yet the problems are still not addressed.
- The attached timeline shows the reasonable actions parents and disability community have taken to address this legitimate problem.
- We are not here to cast blame. We are here to fix this legitimate problem.
- We are respectfully asking that this Committee not defer action on this a third time.

Ample time has passed since 2005 and 2012 to allow others to address this problem. In 2012, the Kansas House passed a policy similar to this bill (HB 2444). Instead of passing that bill, the Senate Education Committee again directed KSDE to fix this problem through regulation. Instead of enacting the langue in HB 2444, that policy was set aside and a different policy was enacted into regulations by the Board in 2013. If the policy in 2012's HB 2444 would have been enacted as the regulations in 2013, you would not be hearing these concerns today.

Seclusion and physical restraint CAN still be used under Substitute for HB 2170, and used more permissively and liberally than other standards dictate:

- In fact, the standard by which Kansas schools can use restraint and seclusion under this bill is actually weaker and more permissive than the recommendations from the United States Department of Education (USDE).
- The standards in this bill are weaker than the recommendations in President George W. Bush's New Freedom Initiative Commission Report:
    - The Bush report stated restraint and seclusion be used only when "no other safe, effective intervention is possible."
- This bill is weaker than US Department of Health and Human Services standards under both Republican and Democrat Presidents alike (Bush, Clinton and Obama).
- This bill is weaker than these standards, and clearly a compromise.

The Stakes are High.

- The US Department of Education was crystal clear in its 2012 report that: "the use of restraint and seclusion can, in some cases, have very serious consequences, including, most tragically, death. There is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques."

- The Government Accountability Office (GAO) minced no words about restraint deaths in America's schools. The GAO stated that many of the children from its case study, including 4 preschoolers, were "clearly abused and tortured." I want to be clear, Kansas has not yet had a death due to restraint or seclusion. Let's keep it that way. We cannot wait until a tragedy happens in Kansas in order to pass a sufficient policy.

Compromise – Substitute HB 2170 is a Compromise in Several Different Ways

- Sub. HB 2170 passed the Kansas House 122-1.
  - The reason why it is now a "Substitute" bill is because of compromises on both sides between the disability community and the Kansas Association of School Boards (KASB). KASB testified to the House as being neutral on this bill.
    - KASB told its members on Feb. 25, 2015: "KASB worked with the 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."

Compromise by Combining Policies Written by KSDE staff

- Almost all of the underlying language of Sub. HB 2170 is from two sources, none of which are disability advocates:
  - #1 – The existing standards in the regulations are incorporated into the bill. These regulations were written by Kansas State Department of Education (KSDE) staff in 2013,
  - #2 – The proposed 2006/2007 regulations written by former KSDE legal counsel Rod Bieker, under the leadership of then-Chairman of the Kansas State Board of Education, Steve Abrams.
    - I want to thank Chairman Abrams for his leadership on this issue. I should note that if a single vote would have changed from "no" to "yes" back then, that more effective policy would be law today. If that would have happen, the problems you are hearing about today would have been prevented.

- Almost every word of Sub. HB 2170 comes directly from the two policy versions written previously by KSDE staff. The only exceptions:
  - Adjustments made because of compromises and discussions with the Kansas Association of School Boards
  - Language requested by House members
  - Section 5 creating an independent parent complaint process, because the current proposed "appeals" process is ineffective and treats parents unequally.

- This is not the advocates work product. We are supporting the combined work of KSDE staff because it's good enough to address the problems.

- See the attached chart comparing Sub. 2170 to the past two KSDE policies and USDE recommendations – which are minimal standards.

Compromise by incorporating only some, but not all, of the USDE Recommendations

- Sub. 2170 includes many, but not all, of the recommendations from the United States Department of Education (USDE). The USDE recommendations greatly improve the current Kansas policy and better ensures the safety of children and teachers.
  - USDE Recommendations = MINIMAL Standards
    - The USDE states upfront in its report that the recommendations are basically a floor and that States "may choose to exceed the framework set by the 15 principles" which make up the USDE recommendations ("Restraint and Seclusion: A Resource Document," USDE, 2012, pages 12-13).
    - Again, this is a compromise. It does not even include all of the USDE recommendations.

- One <u>CRITICAL</u> US Dept. of Education recommendation contained in the bill is the standard of use for restraint and seclusion.
  - The current regulation uses the vague and generic "immediate danger" standard. The bill clarifies this by vague standard by adding the USDE recommended language of threat of "serious physical harm to self or others" (page 1, lines 28-29)
  - You will hear several parents who have serious concerns the current unclear standard. You will hear how that lack of clarity is harming Kansas children.
  - Why is the Kansas standard vague and generic? KSDE says that they "intentionally" chose this more general standard of "immediate danger" because "nationally recognized training programs use language very similar" in their training manuals (Jan. 22 letter from KSDE).
    - A nationally recognized training program, CPI, clarified to KSDE that that Kansas should not use this "generic" definition from its manual.
    - CPI pointed out that the fatally flawed logic of Kansas using the "generic" language for its training manual. CPI is an international training company. They want to print one training manual with purposefully generic language.
      - CPI told Kansas to not use its generic training manual language.
      - CPI encouraged Kansas to instead "add specificity to what exactly entails an emergency situation," suggesting that Kansas add clarifying language

such as “serious bodily harm” or “serious physical harm,” the latter of which is in this bill (Oct. 17, 2014, CPI letter to KSDE & State Board)
        - CPI recommends this more specific standard because it “adds more clarity to the decision-making in the moment.”
    - Using the USDE standard of “serious physical harm” is the cornerstone of the bill. Please maintain this standard in the bill.

- Even the use of the USDE “serious physical harm” standard is COMPROMISED!
    - Based on a compromise with KASB, there are TWO blanket exemptions where this standard does not have to be followed – for an altercation or for instruction.
    - The overall standard is also a Compromise – USDE recommends a TWO PRONGED TEST before restraint and seclusion can be used:
        1) imminent threat of “serious physical harm to self or others”
        2) other less restrictive interventions (such as positive behavioral supports) are ineffective.
    - Sub. HB 2170 only includes ONE prong of this TWO pronged test.
        - This means that the policy in Sub. HB 2170 weaker and less protective than even the minimal USDE recommendations.
        - This “serious physical harm” standard in Sub. HB 2170 is already a compromise. Please retain it.

Proposed “Appeals Process” Continues to Fail Parents and Children

- See attached for a detailed explanation of problems with the proposed “appeals” process. This process:
    - Limits what parents can appeal
    - Limits the authority of the KDHE staff member hearing the appeal
    - Structures the administrative review like an appellate Court, confusing parents

Sub HB 2170 addresses the problems in the proposed “appeals process” by ensuring an effective, independent complaint process where parents are treated as equals.

Thank you for your time and attention. I will stand for questions at the appropriate time.

Kansas Policy Fails to Protect Children
Please Vote "Yes" on Sub. HB 2170

Ian's Story

"What happened to Ian proves that the so-called regulations on seclusion and restraint are inadequate. On Sept. 10, 2013, my 11-year-old severely autistic, nonverbal son sustained injuries while attending a self-contained classroom. These injuries happened AFTER the so-called regulations were in effect. 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. The next day I followed up with the school and found them to be extremely hostile and uncooperative. I sent him to school without injuries, and they returned him with injuries. I was not informed about the regulations supposedly protecting Ian. There was no accountability. I have been forced to home school Ian for his own safety." – Shawna Hinkle, Parent

Mick's Story

"Our son Mick is a 10-year-old child with multiple disabilities, including a high functioning form of Autism. We live in Johnson County, Kansas. Mick lost two months of his childhood during the 2013-14 school year. You see, two months is how long Mick was forced into seclusion rooms that year, even when he was not a danger to himself or others. The current regulations failed to protect my son from this abuse. This occurred after the current regulations went into effect. He was also secluded for discipline and staff convenience. According to the US Dept. of Education, seclusion should never be used that way. Being in seclusion has harmed Mick. He can no longer concentrate. Mick now often runs away from school because he doesn't want to be forced into seclusion. The current Kansas policy is failing our children. Sub. for HB 2170 fixes these flaws." – Holly and Andrew Ruble, Parents

Kaliya's Story

"My daughter Kaliya was forced against her will into a scary, tiny box smaller than 3 feet wide, made out of materials from a hardware store. The box was more fitting for a dog than a child! Because of my daughter's severe Autism, she was unable to communicate effectively. Being forced into that horrific box has forever scarred my daughter. When I came to her rescue, my daughter was lying naked on a cold, hard floor. Her pupils were dilated. She was crying, sweating and trembling. She was so traumatized I had to take her to the Emergency Room at the KU Med Center. I will never forget that day. When I convinced my school to tear down the box, I mistakenly assumed that Kansas policy had changed statewide. It had not! Boxes like the one my Kaliya was forced into are still allowed. When I found out that the policy was inadequate in multiple ways, I swore I would not rest until this problem was fixed. HB 2170 will prevent the horrific boxes, establish better protections for children, and ensure parents are treated fairly." – Tonia Wade, Parent

- Even though this occurred in 2008 prior to the current regulations going into effect, what happened to Tonia's daughter is STILL ALLOWED by state policy! This particular school tore down the structure years ago. The legislature needs to build up the right policy to prevent future problems.

Rachel's Story

"Rachel's Speech Language Therapist (SLP) restrained her inappropriately not once, but twice in a five minute period. The SLP stated that Rachel was NOT an immediate danger of causing serious physical harm to herself or others. Even though my example happened before the current regulations went into effect, I have talked to numerous parents who tell me that the regulations failed them.

The current regulations did not protect their children. Unfortunately, these parents could not testify. The protections of HB 2170 are absolutely needed to both correct and support the current regulations. Secondly, the argument that the status quo is fine and you should not change the current policy is the same argument the education lobby has made on this issue for the past several years." – Jawanda Mast, Parent

Sub. HB 2170 protects both children & teachers
Please Vote "Yes" on Sub HB 2170

Timeline on Kansas Restraint and Seclusion Policy

2005 – Senate Education Committee unanimously directs regulations be adopted – The Senate Education Committee directs the State Board and the Kansas State Department of Education (KSDE) to adopt regulations on the issue of restraint and seclusion. This motion passed unanimously in *February of 2005*.

2006-2007 – Regulations Proposed by State Board, but NEVER Adopted –
After working with the disability and education communities over a two-year period and publishing in the Kansas Register proposed regulations, the State Board set aside those regulations and instead adopted "voluntary guidelines." . ONE additional vote would have resulted in the regulations passing. Those proposed, but never adopted, regulations are basically the policy contained in HB 2170. This happened in *February of 2007*.

2012 – House Passes HB 2444 by 82-41 vote – Parents patiently tried for five years to make the "voluntary guidelines" work. They did not.

- Thankfully the Kansas House responded in *February of 2012* by passing HB 2444, which if you recall was the policy written by KSDE staff and almost adopted by the State Board in February 2007.
- The Senate was asked by the State Board of Education to not pass HB 2444. Instead, the State Board promised to pass effective regulations.
- Because HB 2444 was heard by the Senate and was the same policy proposed by KSDE's staff just a few years earlier, everyone thought that meant the Board would adopt the policies in HB 2444, but in regulation form. That is not what happened.

2013 – State Board Passes DIFFERENT Regulations than HB 2444 – Even though the House passed HB 2444 by a 2 to 1 margin, and even though that policy was written by KSDE staff as the proposed solution in 2007, KSDE and the State Board SET ASIDE that policy. Instead, they passed an entirely new set of regulations, written largely by new KSDE staff.

- Parents and the disability community testify about the gaps and problems in the regulation as written. They foretold of how children would be harmed.
- *February of 2013* – State Board of Education adopts the regulations.
- In spite of parent testimony and disability community concerns expressed ever since Feb. of 2013, the only change proposed by the Board since the reg's passage has been the proposed "appeals process," which treats parents unequally from schools.

2015 – Hearings on Sub HB 2170 – Hearings held in *February of 2015*. Passed House 122-1. Outcome in Senate is pending.

Restraint and Seclusion (R/S) Policy Comparison

New Sub. HB 2170	Current Regulation (KAR 91-42-1 and 92-42-2)	2006/2007 Regulation Proposed by the State Board	KASB Testimony	Sub HB 2170 supported by US Dept. of Education Recommendations?
Applies to all children.	Applies to all children.	Applied to children with disabilities.	Apply to all children.	US Dept. of Education Principle 4
	Sec. 2 – Definitions			
(a) "Altercation"	Silent.	Included. This exemption was added to provide schools an exception to be able to use restraint and seclusion due to the stronger standard "substantial physical injury."	Supports adding this exception.	NOT supported by the US Dept. of Education recommendations, but when combined with the other changes in (f), etc., it would be.
(b)(c)(d)(g)(h)(i)(k)(l)(m)	Included in regulations	Included, but with slightly different language. Same basic policy.		
(e) "Emergency safety intervention" – adds "if property destruction poses an immediate danger" to add clarity. Adds language clarifying use of R/S for discipline or staff convenience does not meet standard	Silent on the two additions.	Included. Language on discipline and staff convenience was stronger. Had additional prohibition against "unreasonable, unsafe and unwarranted" use of restraint and seclusion.		US Dept. of Education Principle 3 and 6
(f) Defines "Immediate danger" to provide clarity – defines it to mean the USDE standard of "serious physical harm to self or others"	Silent. Regulations do not define "immediate danger," which is a huge concern for parents.	Included. Had a stronger standard of "substantial physical injury" to use restraint and seclusion.		US Dept. of Education Principle 3. USDE also has a second test that must be met before R/S can be used. This second test is NOT included in this bill. This makes the bill a compromise from the USDE recommendations. R/S is more permissive under this bill than USDE standards.
Adds exception to (j) "Physical restraint"	Silent, but this exemption was added because of the clarified	Included.	Supports adding this exception.	

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	"immediate danger" definition.			
	Sec. 3 – Policy Provisions			
(a)(b)	Included in regulations (as only a requirement for creation of a policy).	Silent.		US Dept. of Education Principles 2 and 7
(d) ESI can be used if meets the standard of immediate danger	Included.	Included (but with a higher standard & more protections than HB 2170)		US Dept. of Education Principle 3
(e) employees must be trained prior to using interventions, unless altercation	Board members and KSDE have said the regulations require this training; regulations do not have the altercation exception.	Included.	Supports altercation exception portion of this section only.	US Dept. of Education Principles 5 and 10 (note, altercation exception not supported, but rest of it balances out)
(f) medical contraindication for students with certain conditions	Silent.	Included.	Supports for students who have a condition that could put the child in mental or physical danger.	
(h) see and hear student at all times	Silent.	Included.	Supports.	US Dept. of Education Principle 11
(i) lock automatically disengages	Silent.	Included.	Supports.	
(j) safe and proportional room	Silent.	Included. This was added to eliminate the "boxes."	Supports.	US Dept. of Education Principle 5
	Sec. 4 – Documentation and Reporting			
(a) creates a balanced process that is far more parent friendly – same day notification, additional info such as policies, rights, and process no later than school day following.	Written parental notification within two school days.	Included. Slightly different language (did not have to attempt to contact parent the same day as the incident; was next school day).		US Dept. of Education Principles 12 and 13

Restraint and Seclusion (R/S) Policy Comparison

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(b) Districts required to submit data to KSDE.	Similar process exists in current regulations. 2170 has more specificity.	Included.		US Dept. of Education Principles 14 and 15
(c) Reports on compiled data provided to public, Governor, and education committees. Data protected in accordance to FERPA	Reports are currently only prepared for the state board of education.	Included.	KASB preferred reference to FERPA over standard set in HB 2170. KASB wanted "reasonably" to be deleted. Both of these changes were made.	US Dept. of Education Principle 15
	Sec. 5 – Rules and Regulations			
(a)(1)&(2) Independent Complaint Process developed by State Board of Ed. Can only be completed by parents and only after completion of local dispute resolution process. KSBOE will not be reviewing or overturning local board decisions.	The Board has proposed an "appeals process" regulation. This process treats parents unequally and shows unneeded deference to schools. Parents are very concerned about that "appeals process." It also has potential constitutional issues.	Silent. However, the understanding with KSDE legal was that all parent would have to do is file a complaint, and it would be investigated. KSDE legal has a different interpretation now.	Modification was made per KASB recommendations to limit it to parents and to allow complaint only after completion of local dispute resolution process.	US Dept. of Education Principles 14 and 15
(a)(3) treat parents and schools equally in complaint process	See above	Silent.		US Dept. of Education Principles 14 and 15
(a)(4) & (5) Board develops a process for written reports, findings of fact, corrective action and a process for sanctions if corrective action is ignored	See above	Silent.		US Dept. of Education Principles 14 and 15

31 Kansas Disability and Education Organizations Support Sub. HB 2170

Coalition to Protect Children from Unnecessary Seclusion and Restraint
Kansas Governor's Commission on Autism
Disability Rights Center of Kansas
Big Tent Coalition of Kansas
Interhab
Autism Speaks
Shawnee Mission Special Education PTA (Parent Teachers Association)
Alliance for Childhood Education (business leaders advocating for education)
Johnson County Developmental Supports (JCDS)
National Alliance on Mental Illness – NAMI Kansas
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
Breakthrough House, Inc.
Skills to Succeed
Inclusion Connections, Inc.
Kansas Developmental Disabilities Coalition
University of Kansas Center on Developmental Disabilities (UCDD)
Easter Seals Capper Foundation
Kansas Appleseed
Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council

K.S.A. 91-42-4: ADMINISTRATIVE REVIEW: FAILS TO ADDRESS PAENTS CONCERNS WITH SECLUSION AND RESTRAINT PRACTICES. INDEPENDENT COMPLAINT PROCESS PROVIDED IN SB 2170 IS NECESSARY.

The proposed administrative review fails to provide parents with the ability to file complaints related to improper use of seclusion and restraint, fails to provide relief to parents on issues of their concern, and it creates an empty complaint process impossible in practice for a parent to use.

HOW ADMINISTRATIVE REVIEW PROCESS FAILS PARENTS:

1) Administrative Review Process: treats parents unequally

- **Limits parents ability to file complaint to 9 identified issue listed below: Creates unequal treatment for parents.**

K.A.R. 91-42-4-(a) (b):

(a) Any parent or eligible student, who filed a complaint with a local board of education (local board) pursuant to K.A.R. 91-42-2(a)(6)(c) may request an administrative review by the Kansas state board of education (State Board) of the local board's resolution of said complaint.
(b) A request for administrative review shall allege one or more of the following:
(1) the school district does not limit its use of seclusion or restraint to those circumstances described in 91-42-1(d) ;
(2) the school district uses prone, or face-down, physical restraint; supine, or face-up, physical restraint; physical restraint that obstructs the airway of a student, or physical restraint that impacts a student's primary mode of communication;
(3) the school district uses chemical restraint when not prescribed as treatment for astudent's medical or psychiatric condition and/or by a person appropriately licensed to issue such treatment;
(4) the school district uses mechanical restraint other than safety equipment used to secure students during transportation when not ordered to do so by a person appropriately licensed to issue the order for use of a mechanical restraint or when such use is not required by law;
(5) the school district does not have written policies pertaining to the use of emergency safety intervention;
(6) the school district's written policies pertaining to the use of emergency safety intervention is not accessible from a school's website and a code of conduct, a school safety plan, or a student handbook;
(7) the school district does not train school personnel as required by K.A.R. 91-42-2(a)(2).
(8) written parental notification is not provided within two school days of the use of

emergency safety interventions; or
(9) the school district does not have procedures for a local dispute resolution process as required by 91-42-2(a)(6).

- Fails to permit parent to file complaint outside of these issues. Complaints that do not alleged a violation of the identified issues, will most certainly be dismissed.

- This treats parents unequally in the complaint process. Parents that file complaints outside of the 9 identified areas will be dismissed by the district. Identifying only nine issues deemed appropriate for complaints, prevents Parents from filing a complaint on unique issues. It prevents parents from having the ability to file complaints that allege disagreements with the districts on whether their student was secluded or restraint, or disagreements with how their student was treated while in a seclusion room, disagreements with the amount of time a student spent in a seclusion room.

- Common examples of complaints that would be dismissed under the Administrative Review process of K.A.R. 91-42-4

    - Complaints of seclusion and/or restraint where school district's position is that the student was not secluded or restraint. Consequently, the parent does not have the right to file a complaint. For example, a parent might want to file a complaint alleging that their student was placed alone in a cool down room for hours and not permitted to return to their classroom.

    - Teacher placed hand on student' shoulder preventing student from leaving their desk.

2. *K.A.R. 91-42-4(h): Limited authority of Hearing Officer treats parents unequally*

(h) The hearing officer shall determine whether:
(1) the local board appropriately resolved the complaint pursuant to their local dispute resolution process; or
(2) the local board should re-evaluate the complaint pursuant to their local dispute resolution process with suggested findings of fact; or
(3) the local board should comply with the hearing officer's recommended corrective action to ensure local board policies comply with K.A.R. 91-42-2.

- The Hearing Officer is limited in their determination to rendering an opinion on whether the local district complied with its local dispute resolution process and/or policy.

- The Hearing Officer is prohibited from concluding that the local district violated a student's rights by improperly secluding or restraining that student.

- Such limited authority creates an imbalance of power between schools and parents. The parent will not be able to obtain the relief they seek of the being told they were right – their child was improperly restrained and/or secluded by district personnel. All the Hearing Officer can do is determine the local district complied with its policies and procedures. This fails to treat a parents concerns regarding their child equal to the schools policies and procedures.

- This failure speaks directly to the importance of creating an independent complaint process which permits parents to file complaints relevant to their child and to receive relevant determinations on the facts of their complaints.

3. Structures the Administrative Review process like an appellate Court, K.A.R. 91-42-4(e):

"*Upon receipt of a request for administrative review, the hearing officer shall review the results of the local dispute resolution process and may initiate its own investigation of the complaint. Each investigation may include the following:*

(1) A discussion with the parent during which additional information may be gathered and specific allegations identified, verified and recorded'
(2) Contact with the local board or other school district staff against which the request is filed to allow the local board to respond to the request with facts and information supporting the local dispute resolution; and
(3) An on-site investigation by Department staff."

* The purpose of an appellate court is to make a determination on the validity of the lower or original decision. Appellate courts by their nature grant deference to the lower decision. Structuring the administrative review process as an appellate court, grants deference to the local school board's decisions. This process does not treat parents and schools equally in the complaint process as the school district already has an "advantage" by the nature of the appellate process.

* The administrative review process is discretionary - the term "may" is used instead of "shall." This creates a situation where the Hearing Officer may defer to the District's determination, instead of a mandate for the Hearing Officer to initiate its own investigation, have a discussion with the parents, where additional facts and evidence are gathered and conduct an independent investigation. The Administrative Review process grants the Hearing Officer complete discretion to accept the local districts' results without any further investigation. The Hearing Officer does not have the same authority to accept a parent's complaint as valid and determinative without conducting an investigation.

* The typical school district has attorneys available for consultation on complaint issues. The typical parent does not have access to an attorney for review of a complaint. Treating parents and schools fairly in an investigation process requires that the individual investigation the

complaint discuss the issues with the parent, gathered the relevant facts, documents, etc. from the parent directly.

4. K.A.R. 91-42-4(f): Permits further discretion and deferment to school districts:

"*The hearing officer shall determine whether the school district is in violation of 91-42-2 based solely on the information provided by the parent seeking administrative review and the local board during the local dispute resolution process. If the hearing officer receives information not previously made available to both parties during that local dispute resolution process, the hearing officer may remand the issue back to the local board.*

- On its face this section appears to treat parents and schools equally. In practice, this will create an undue burden and delay for parents in filing of complaints. School Districts by their nature keep voluminous and organized documentation. Parents of students with disabilities often struggle to complete their daily tasks. Locating documentation, copying documentation, determining relevant documentation will be time consuming and difficult for parents. A primary reason for parents wishing an independent review of their complaint is to address the requirement of attaching documentation to the complaint without being assessed a penalty of remand to the local school board for further review. Treating parents and schools equally requires that parents are permit the opportunity to submit additional documentation to the investigator without being subjected to delay in their complaint.

5. Requires parents file complaints with all supporting facts and documentation. K.A.R. 91-42-4(c)

Each eligible student or parent seeking administrative review shall set forth in the request the following information:
(1) the name, address of residence, or other contact information of the student,
(2) the name and contact information for all involved parties including teachers, aides, administrators, and/or district staff, and
(3) the basis for seeking administrative review with all supporting facts and documentation. Documentation should include a copy of the complaint filed with the local board and any written findings of fact given by the local board.
The request shall be legibly written or typed and signed by the parent or eligible student seeking

administrative review. Relevant written instruments or documents in the possession of the parent shall be attached as exhibits or, if unavailable, referenced in the request for administrative review.

- Locating documentation, copying documentation, determining relevant documentation will be time consuming, difficult for parents and potentially financially difficult for parents. Treating parents equally to schools requires that parents are given the ability to include documentation after submission of the complaint.