

Verbal Testimony in Support of HB 2444

By

Kris A. Ehling



Senate Education Committee

March 8, 2012

My name is Kris Ehling. My partner, Bart Flickinger, and I are parents to our son, Ike. We are both educators, live in Wichita, and are proud to call Kansas our home. Our families live nearby in Sterling, Abbyville, and Hutchinson. We came late to the idea of children as I was 40 and Bart 39 when we adopted Ike in July of 2000 when he was just 7 months old. He came with two teeth, a beautiful smile, chubby cheeks, and an indomitable spirit! Like any new parents, we were excited, scared to death, and proud beyond belief.

Over the course of the next 10 and ½ years Ike has grown and we have learned of his multiple challenging diagnoses. These challenges were not always understood by us or others. Yet, he continues to excite us, scare us and make us proud beyond belief. He loves dressing up in costumes to act out the most recent story or movie. We thought this creativity would be a great advantage to him when he began school. But beginning school was the start of the tale that brings me before you today. In March of 2007, when Ike was in 1st grade, the Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities were implemented. The rest of the events of my story occurred after the Guidelines were placed in effect. Schools were following the Guidelines on a voluntary basis. However, it was not our experience that schools actually followed them.

The incredible teachers in 1st grade had decades of experience. But the Special Education teacher was replaced with a teacher NO teaching experience, but had been a foster parent claimed to know how to use restraint.

During the fall semester of 2nd grade year (2007-2008), after the Guidelines were implemented in March 2007, I arrived to pick Ike up from school; the principal had suspended him, and the new special education teacher was beginning to restrain him in the main office. She took him to the floor and was on top of him while two other teachers were holding his arms to the ground. I told them to release him to me. I removed him but it took more than 30 minutes to calm him. None of these teachers had any training in de-escalation or restraint.

A second time, I picked him up from latch-key. The teacher in charge of the playground gave him a directive and he refused to comply. She demanded compliance. I did not want to usurp her power, so I stepped back. She made him stand against the wall, grabbed his hands, and held him against the wall, knee between his legs. I then removed him from the

playground. She too had no training in de-escalation or restraint. In November 2007 the school staff reported they were restraining him multiple times a day. In December 2007, Ike was transferred from this regular education elementary school to a special education center for children labeled as Emotionally Disturbed. The school included three full-time security personnel who manned a large time-out room and, most worrisome to us, two seclusion rooms.

Within a month our son was being placed in seclusion without our knowledge or permission. Between January 22 and February 5, 2008 Ike was placed in the seclusion room nine times.

- On January 22, 2008 3 times; 5, 7, 10; 22 minutes total.
- On January 29, 2008 1 time; 7 minutes total.
- On February 1, 2008 3 times; 5, 10, 10; 25 minutes total.
- On February 5, 2008 2 times; 5, 10; 15 minutes total.

Each of these seclusions was without our knowledge and without our consent.

On February 5, 2008 the teacher-in-charge called us to ask what we recommended in order to change Ike's very disturbing behavior, since the seclusion was not changing his behavior. He was in the isolation room and an older student was taunting Ike to misbehave. Ike misbehaved. Shocked that seclusion had been used and used multiple times, we requested documentation for all of Ike's seclusions in writing. In two days we had not received the documentation and requested a meeting with the principal to present a list of concerns, reiterating our request that seclusion not be used at all with our son and again requested the documentation.

When the principal provided the documentation several weeks later, we were given a list of dates on which Ike was placed in seclusion and for how many minutes. We wanted to know what the antecedent behavior was for each incident and requested that information as well. It was not until March 26, 2008 that we received that information.

In mid-August 2008 after only seven days of school Ike had been restrained at least five times. School personnel requested to use seclusion. We adamantly refused. In late August 2008 the principal again requested to use seclusion as restraining had become reinforcing.

We again declined to give our permission and we had never received documentation as the Guidelines state.

In response, we met with the district's Due Process Officer, the Assistant Director of Special Education, and a Special Education Coordinator. Our discussion that day in late August 2008 centered on the research saying Seclusion and Restraint were treatment failure and should only be tools of last resort for safety reasons.

On September 4, 2008 we attended a scheduled meeting to develop a safety plan at school. The conversation was cordial and collaborative. Bart and I attempted to understand why the school wanted to use seclusion. What would it look like? Under what circumstances would seclusion be used? What kind of documentation would we receive? When and how would we receive it? We were attempting to understand their position, but had not given our permission to use the seclusion room.

After school that day we received an email from the principal telling us that she had placed Ike in the seclusion room twice that day for an unknown amount of time. She claimed that she somehow thought we had given our permission to proceed.

In December 2008, we presented written parental input to the IEP team, which, among other things, asked that the Kansas Guidelines for the Use of Seclusion and Restraint on Children with Disabilities be attached to Ike's IEP. We wanted to ensure that the school would now be legally bound to follow the guidelines.

At a meeting on September 29, 2009 the IEP team and a new principal brought a proposal to the table requesting the use of seclusion as a method to teach a student to calm down. Each time Ike hit, kicked, scratched, or threatened, he would be placed in the seclusion room as often as necessary and as long as necessary until the seclusion changed Ike's behavior. We called the Director of Special Education inviting him to our next IEP team meeting on October 12, 2009 to continue the discussion. We presented written parental input that expressed our considerable concern about this issue and the research supporting our position. This long and contentious meeting ended shortly after the Director clearly stated that the district would no longer be using seclusion and restraint as a behavior management tool. The only acceptable use would be in an emergency or crisis in

which a student was so out of control and unable to calm, that their safety and the safety of others was in jeopardy.

With this clearly stated expectation the school began to change its practice. The principal recently told us that from December of 2009 to January 1, 2011 the seclusion room had only been used two times and seclusion is no longer needed.

This is indeed good news. However, this has only happened because a new principal has been pushing and pushing his staff to behave in this way. What happens when this principal leaves? What happens if a new principal uses seclusion inappropriately? Must parents fight this fight every time a principal changes? Because of these potentialities, the Guidelines remain, in fact, voluntary and up to the knowledge, skills, or whims of whoever is a school's leader.

So, what next? Revise the Guidelines to remove the implication that seclusion and restraint are tools to change behavior. Seclusion and restraint are tools of last resort to protect the safety of the student and of others in danger. Never should it be used to try to change behavior. According to many mental health organizations, "The use of seclusion and restraint is treatment failure!" As such, Bart and I urge this committee to revise the state guidelines on seclusion and restraint and turn them into law.

Thank you.

Kris A. Ehling

February 10, 2011

APPENDIX A

Timeline of Events

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Figures 1-7

February 2, 2012

Hearing for the House Committee on Families & Children

TIMELINE OF EVENTS

- **March 2007**
 - The Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities was adopted by the Kansas state department of education.
- **August, September, & October 2007**
 - I witnessed my son being restrained at his elementary school. One adult had him face down on the floor. She was over him. Two other teachers were holding his arms and legs.
 - I witnessed my son being restrained on the playground during latchkey after his school day. The teacher had him backed up against the outer wall of the building. She had her knee between his legs and his arms held out and pressed against the wall.
 - None of these teachers had been trained in de-escalation strategies.
 - No documentation was provided to explain any portion of these experiences.
 - The Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities were in place.
- **November 2007**
 - Staff at his school informed us that Isaac was being restrained up to five times a day.
 - CIP training had occurred for a team within the building.
 - No documentation was provided to explain any portion of these experiences.
 - The Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities were in place.
- **December 2007**
 - Isaac was transferred to a special day school that was a “therapeutic educational setting.”
 - On our initial tour we expressed our concern that we were deeply troubled by the potential use of the seclusion rooms.
 - Between January 22, 2008 and February 5, 2008 Isaac was secluded 11 times.
 - Each of these seclusions was without our knowledge, without our consent, and without proper documentation.
 - The Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities were in place.

- The complete documentation of these events was delivered 11 weeks after the events. The *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* say:
 - This documentation should be completed no later than the school day following the day on which the seclusion room or physical restraint is used, and a copy of the documentation provided to the parent of the child when the documentation is completed.
- **August 2008**
 - We were informed Isaac was being restrained at least five times a day.
 - We received no documentation of these events.
 - The *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* were in place.
- **December 2008**
 - We attached the *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* to Isaac's IEP so they had the force of law.
- **August 2009**
 - A new principal arrives who is opposed to the use of seclusion on children with disabilities.
- **October 2009**
 - A contentious meeting with the Child Study Team ended when the Division Director of Special Education Services clearly stated that Seclusion and Restraint will no longer be used as a behavior management tool. It's only purpose would be to serve as a safety measure when there was imminent danger of doing harm to self and/or others. With this expectation clearly stated the use of seclusion would be used rarely.
 - The new principal turns the seclusion rooms into storage closets.

DATA ON SECLUSION IN THE YEARS 2009-2010 AND 2010-2011

- There is no data about the use of seclusion and restraint at my son's school before August 2009. The previous principal had security officers document the name of a student, when they entered & exited the TIME OUT area, but not if they were secluded.
- It is my understanding the seclusion rooms, prior to the 2009-2010 school year, were used up to 400 times per year with a student population of approximately 65 students.

- **Figures 1, 2, & 3**
 - These charts show the number of **students** who were secluded in each of three schools during each quarter of the 2010 & 2011 school years.
 - On Figure 2 there was no data available for quarters 2, 3, & 4 in the year 2010.
 - Notice the difference in numbers of **students** in each school secluded over the course of these two years. School 4, my son's school with a new principal, has the fewest number of students being secluded.
 - The Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities were in place.
 - The Division Director of Special Education Services for the district had clearly stated that Seclusion and Restraint will no longer be used as a behavior management tool.
 - The seclusions continued at an alarming rate in School 1 and School 3 even though the Guidelines were in place and a clear expectation had been stated by the Division Director.

All data was obtained from my district's Special Education department through the Open Records Act. Data was collected from district reports to KSDE.

Figure 1

Number of Students Secluded by School 1 in School Years 2010 & 2011

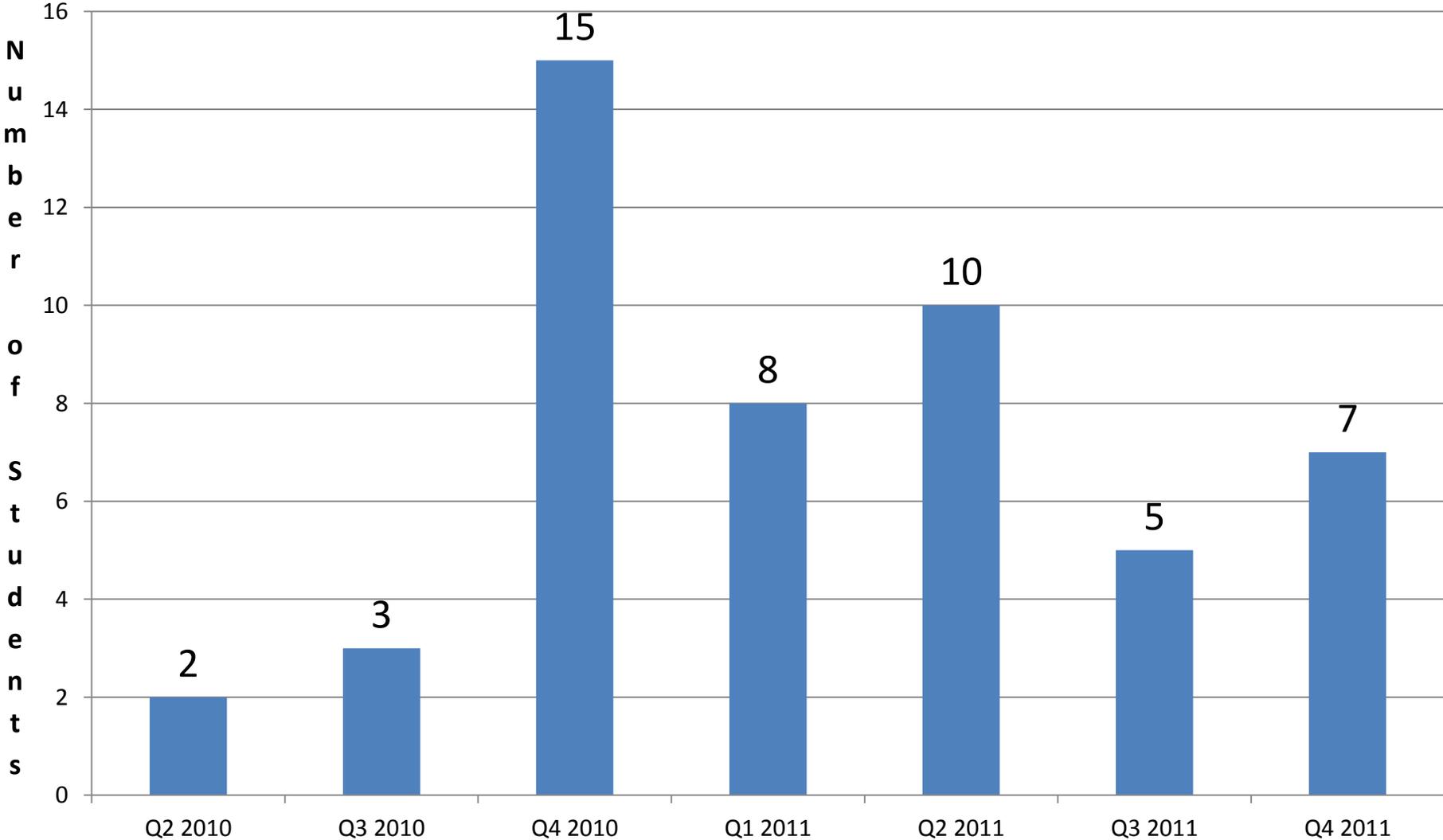


Figure 2

Number of Students Secluded by School 3 in School Years 2010 & 2011

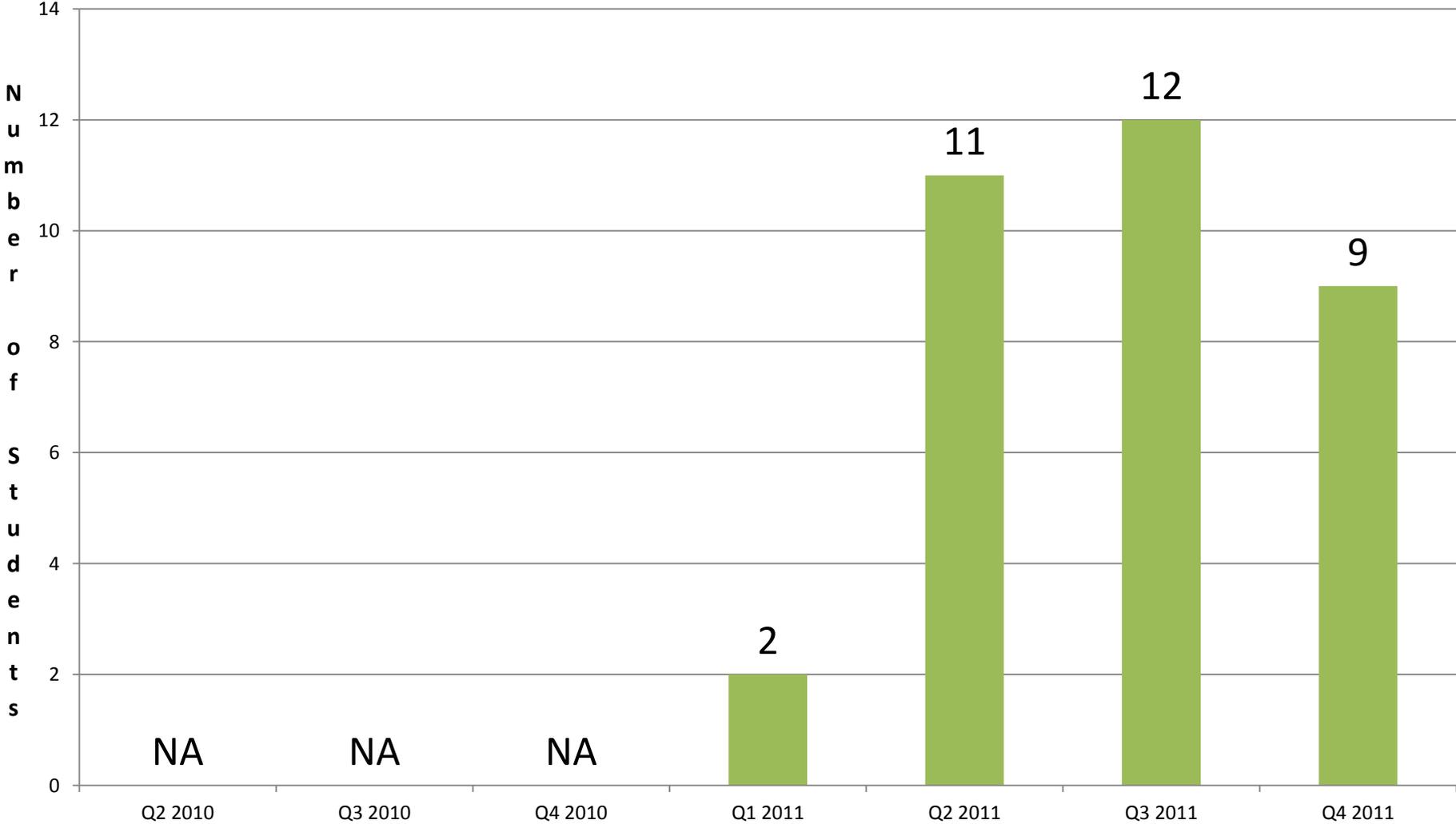
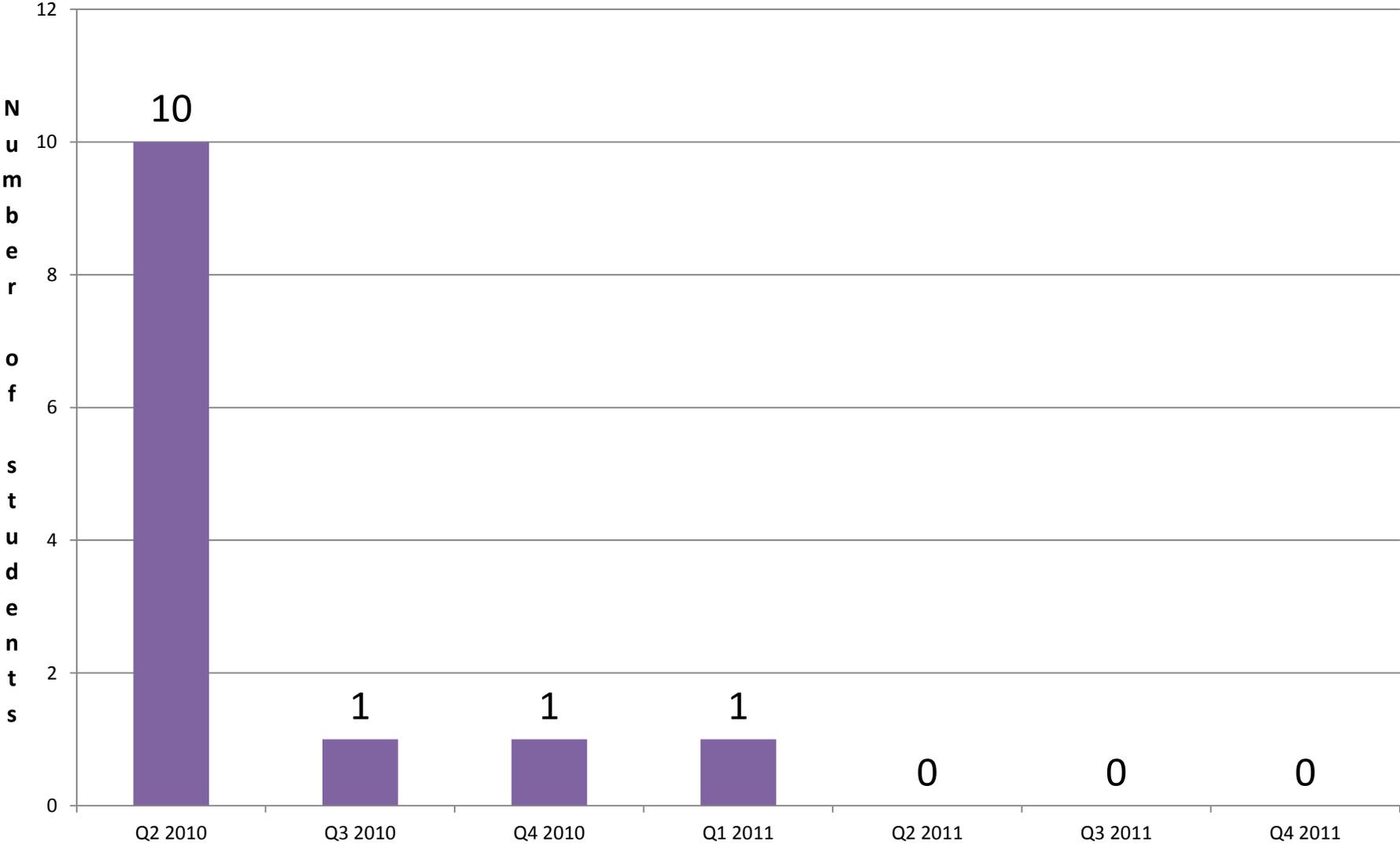


Figure 3

Number of Students Secluded by School 4 in School Years 2010 & 2011



- **Figures 4 & 5**

- Figure 4 shows the total number of Seclusion Incidents by School. 791 seclusion incidents in a single Kansas school district are hardly rare. Even if KSDE were to show seclusion was used on less than 1% of the state's student population and make the claim that there is no problem, for those students secluded, invisible emotional scars make this a very real problem.
- Figure 5 shows the number of Seclusion Incidents by year, quarter and school.
- Of note: School 4 has eliminated the use of seclusions. Other schools maintain or increase the number of seclusions during these time periods.
- The *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* were in place.
- The Division Director of Special Education Services for the district clearly stated that Seclusion and Restraint will no longer be used as a behavior management tool.

Figure 4

Total Seclusion Incidents By School 2010 & 2011

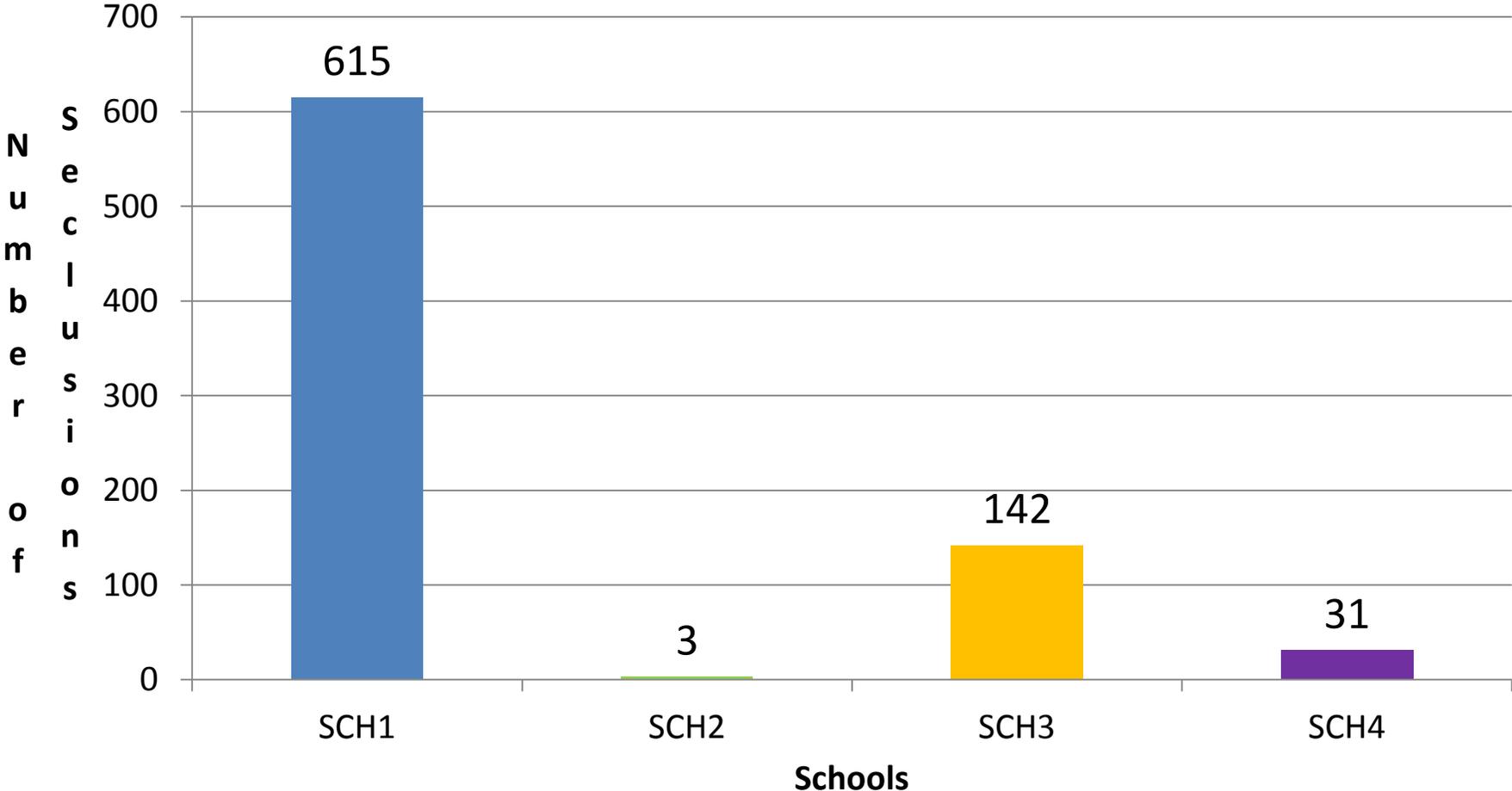
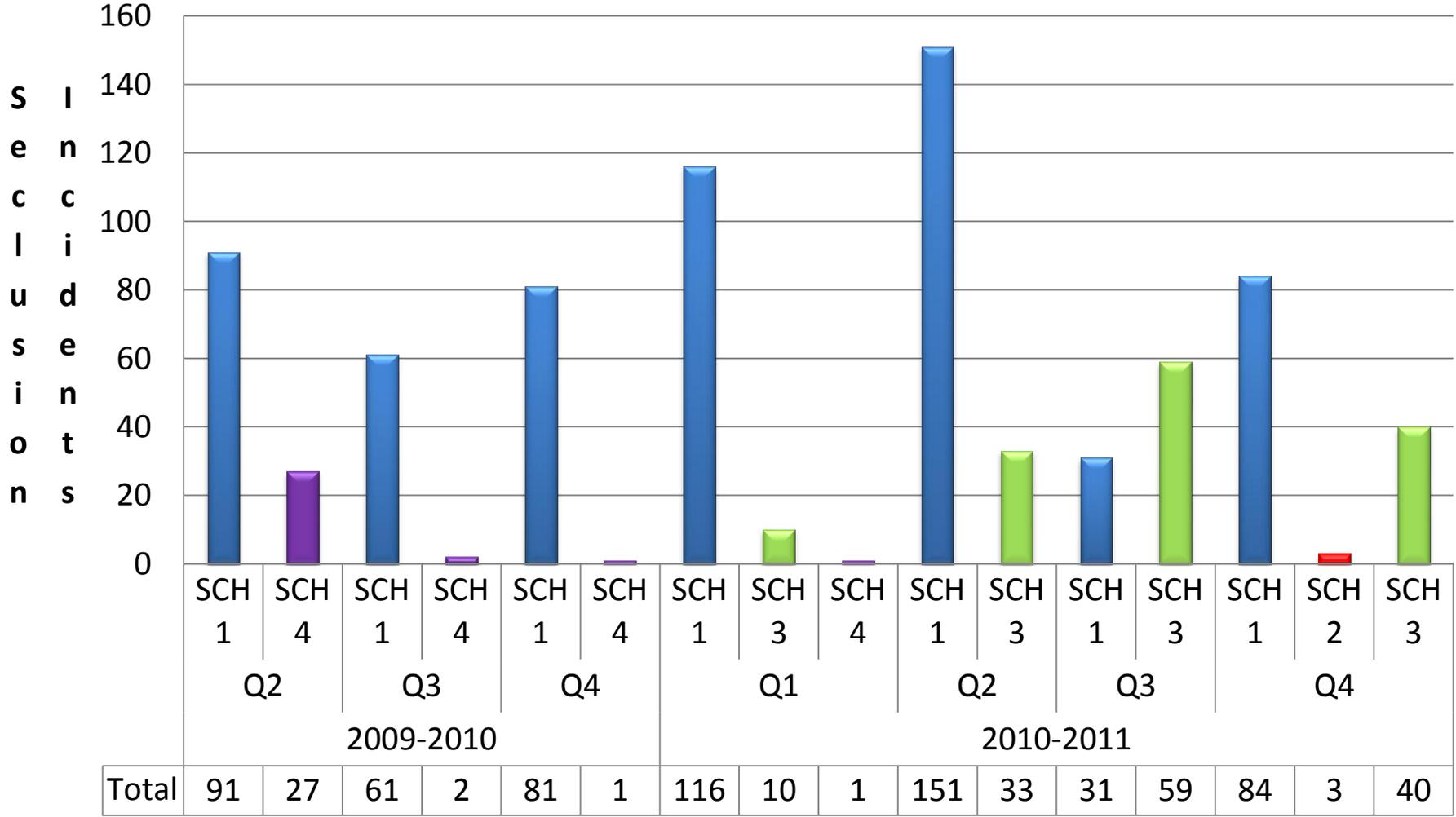


Figure 5

Number of Seclusion Incidents by Year, Quarter & School



- **Figures 6 & 7**

- Figure 6 shows the minutes spent in seclusion by each secluded student in the 2009-2010 school year.
- Figure 7 shows the minutes spent in seclusion by each secluded student in the 2010-2011 school year.
- In 2010 student 6 was secluded for 1256 minutes. That is nearly 21 hours.
- In 2010 Student 5 was secluded for 546 minutes. That is over 9 hours.
- Again in 2011 Student 5 was secluded for 515 minutes. That is nearly 9 hours.
- In 2011 students 22 & 30 were secluded for 748 minutes and 777 minutes respectively. This is nearly 13 hours each.
- Finally, in 2011 student 41 was secluded 511 minutes. This is nearly 9 hours.
- The *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* were in place.
- The Division Director of Special Education Services for the district clearly stated that Seclusion and Restraint will no longer be used as a behavior management tool.

Figure 6

Annual Minutes of Seclusion Per Student in 2010

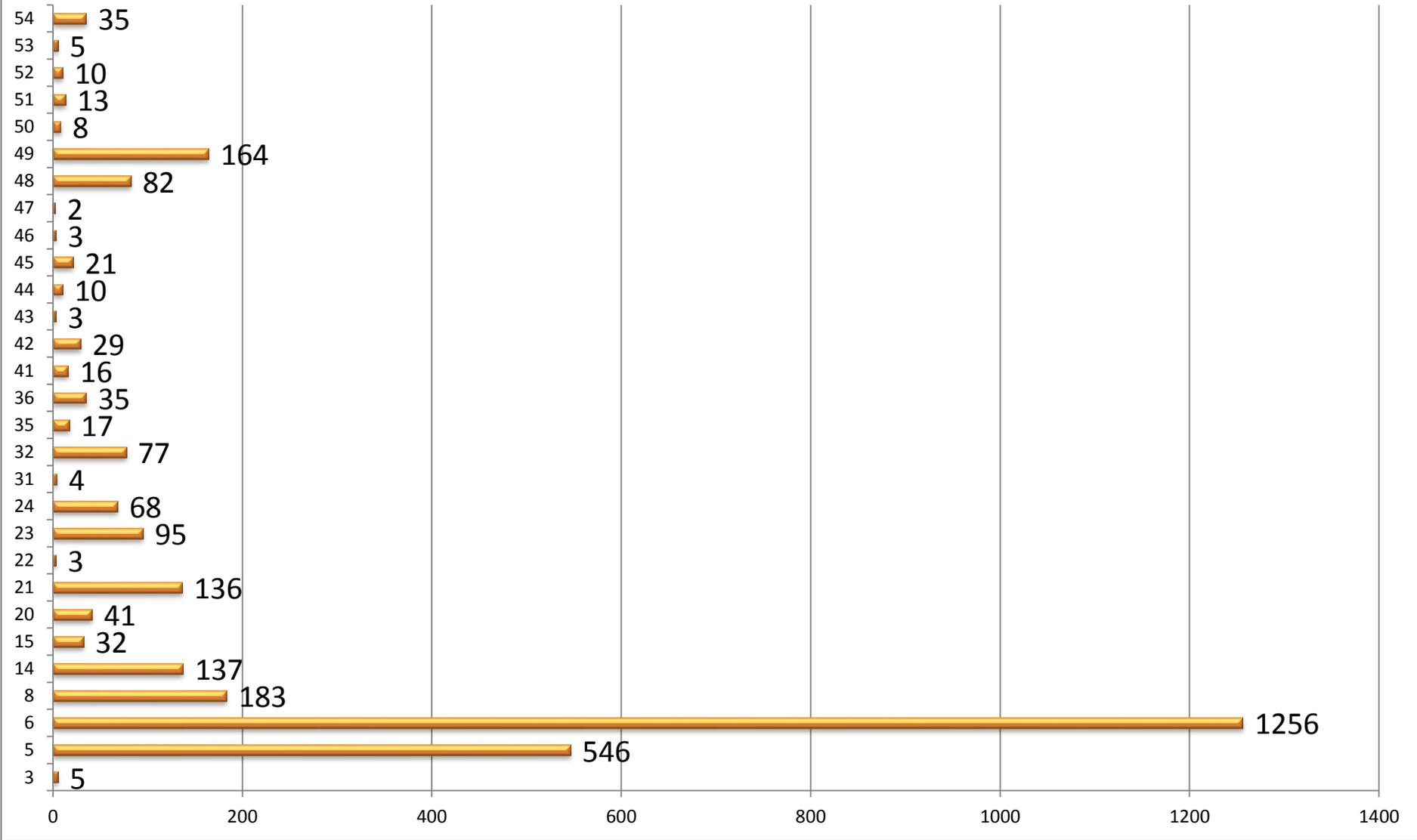
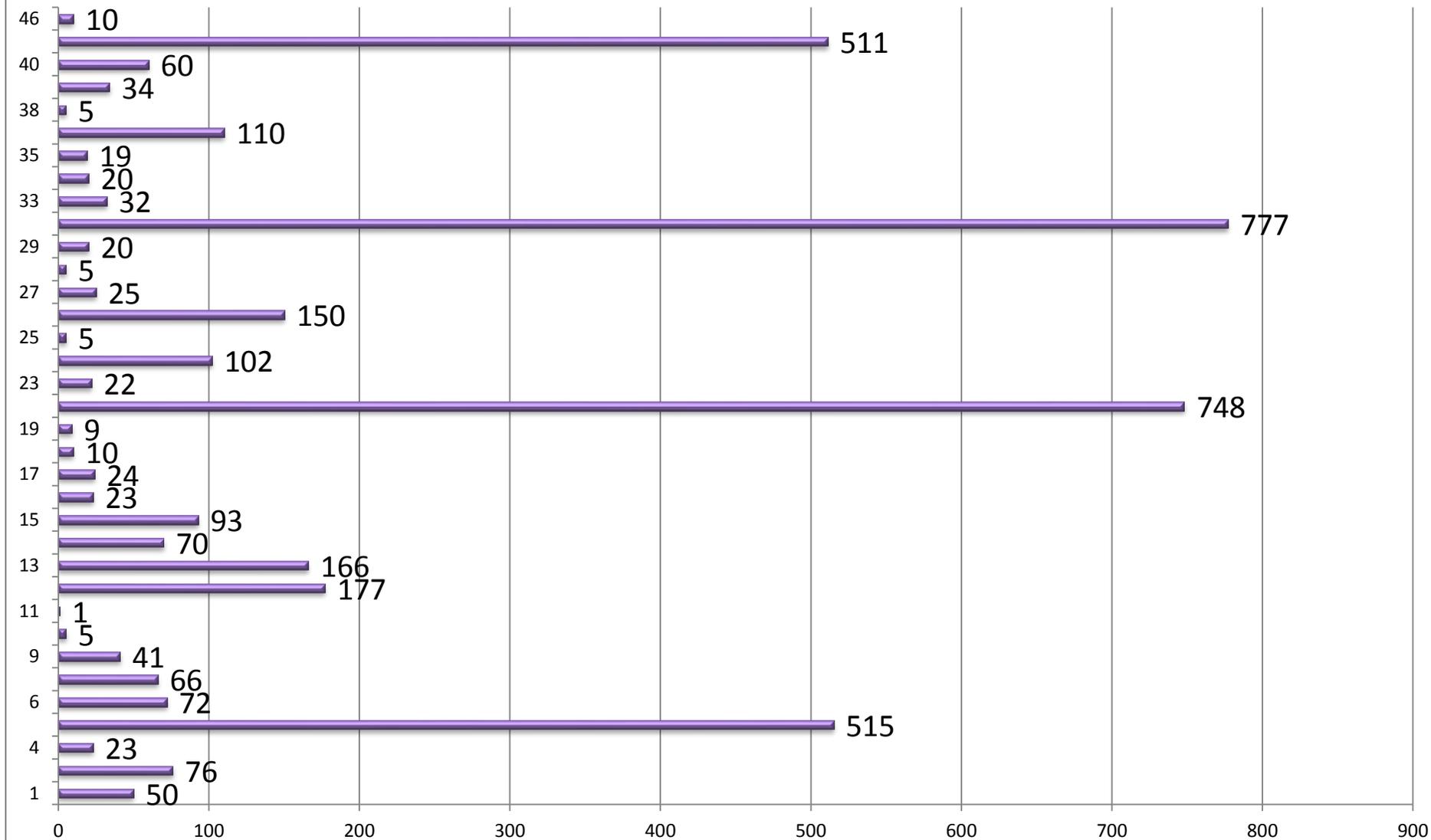


Figure 7

Annual Minutes of Seclusion Per Student in 2011



- Conclusions

- My district has nearly eliminated the use of seclusion in my son's school.
- The leadership of the principal and Division Director was the key to this reduction.
- But the use of seclusion and restraint should not be left up to the knowledge, values, philosophy or even the whims of a building principal or district official. Even with clear directives about the use of seclusion and restraint in my district, there is a wide discrepancy of the use of seclusion from building to building! And the discrepancy remains today.
- Additionally, the existence of the *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* was not compelling enough to significantly reduce the use of seclusion and restraint before 2009. In fact, when we questioned the use of seclusion and insisted the district follow the Guidelines, two Special Education leaders from my district emphasized on more than one occasion that the *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* were mere **suggestions!** Students should not be subject to the capricious whims of district officials eager to avoid accountability for the use of seclusion.
- Accountability is best gained by making the *Guidelines for the Use of Seclusion Rooms and Restraint on Children with Disabilities* into law.
- Therefore, I stand before you today as a proponent of HB 2444.

APPENDIX B

Barriers to Parents Attempting to Use Procedural Safeguards

Figures 8 & 9

March 8, 2012

Hearing for the Senate Education Committee

Barriers to Parents Attempting to Use Procedural Safeguards

The Text of Parental Rights is a Barrier.

1. The text of the Kansas State Department of Education Parent Rights in Special Education (Procedural Safeguards) document is highly technical.
 - a. *Most parents are not trained in reading the technical language included in the Procedural Safeguards.*
2. The ease of reading and comprehending this text on the first read is estimated to be beyond the skills of most college undergraduates.
 - a. *See Figures 8 & 9 for specific readability test results which range from the first year beyond a high school diploma to beyond the beginning of graduate work.*
3. According to the U.S. Census Bureau's Table 233: Educational Attainment by State in 2009, approximately 30% of the population of Kansans over the age of 25 has a college degree.
 - a. *Combining items two and three leads to the conclusion that 70% of the population in Kansas over the age of 25 would have difficulty reading and comprehending this document with ease.*

The Bureaucracy of Schools is a Barrier.

4. Schools are systems filled with bureaucracies with rules and procedures that govern how work is accomplished. Most of these rules and procedures are invisible to the public including parents of children with IEPs.
 - a. *Parents rarely know the system or how to navigate it to get what they need for their children.*
5. I have a Master's in Ed Leadership and my partner has a teaching license. Both of us are college educated and work for the school district in which our son is attending school.
 - a. *We felt steamrolled by the system and the process, and we are INSIDERS!*

The Complexity of the Law is a Barrier.

6. *Special Education Law*, a text by Peter and Pamela Wright, includes the text of Individuals with Disabilities Education Act of 2004, Section 504, NCLB, FERPA & the McKinney-Vento Act, U.S. Supreme Court Decisions, Commentary, Analysis and Interpretation of Special Education law fills a book that is 442 pages long!
 - a. *To successfully shepherd a due process complaint through the process parents must know much of what is in the book, Special Education Law.*

The Cost Associated with a Due Process Claim is a Barrier.

7. A Due Process action requires an attorney as it is a legal proceeding most usually called a trial.
 - a. *The cost of retaining an attorney with expertise in Special Education law is prohibitive to most parents.*
8. If a Due Process complaint is deemed to be frivolous, parents may have to pay the district's legal fees.
 - a. *With no federal standard by which to judge the merits of a seclusion and restraint complaint, it is likely that the complaint would be deemed frivolous!*

The Adversarial Nature of the Due Process Complaint is a Barrier.

9. The process for resolving conflicts between parents and the IEP Team is adversarial.
 - a. *As employees of the school district, a due process complaint puts us in an adversarial position with our employer.*
 - b. *Parents must consider if the school will retaliate against their child.*
10. The formal and legal nature of the Due Process hearing is inherently intimidating to parents.
 - a. *The Due Process proceedings are formal and unfamiliar to all but a few parents.*
11. The school district has an attorney, a compliance officer, and district officials who have experienced Due Process multiple times.
 - a. *The scales are tipped in favor of the district.*

Figure 8

The Readability of the Document
KSDE: PARENT RIGHTS IN SPECIAL EDUCATION

Readability Calculator http://www.online-utility.org/english/readability_test_and_improve.jsp

This free online software tool calculates readability : Coleman Liau index, Flesch Kincaid Grade Level, ARI (Automated Readability Index), SMOG. The measure of readability used here is the indication of number of years of education that a person needs to be able to understand the text easily on the first reading. Comprehension tests and skills training. This tool is made primarily for English texts but might work also for some other languages. In general, these tests penalize writers for polysyllabic words and long, complex sentences. Your writing will score better when you: use simpler diction, write short sentences. It also displays complicated sentences (with many words and syllables) with suggestions for what you might do to improve its readability.

Number of characters (without spaces) :	80,130.00
Number of words :	15,901.00
Number of sentences :	699.00
Average number of characters per word :	5.04
Average number of syllables per word :	1.76
Average number of words per sentence:	22.75

<i>Indication of the number of years of formal education that a person requires in order to easily understand the text on the first reading.</i>	
Gunning Fog index :	15.65
<i>Approximate representation of the U.S. grade level needed to comprehend the text :</i>	
Coleman Liau index :	12.56
Flesch Kincaid Grade level :	14.05
ARI (Automated Readability Index) :	13.68
SMOG :	14.88
Flesch Reading Ease :	34.87

FLESCH-KINCAID GRADE LEVEL TEST

This test rates text on a U.S. school grade level. A score of 8.0 means that an eighth grader can understand the document.

FLESCH READING EASE TEST

This test rates text on a 100-point scale. **The higher the score, the easier it is to understand the document.**

Figure 9

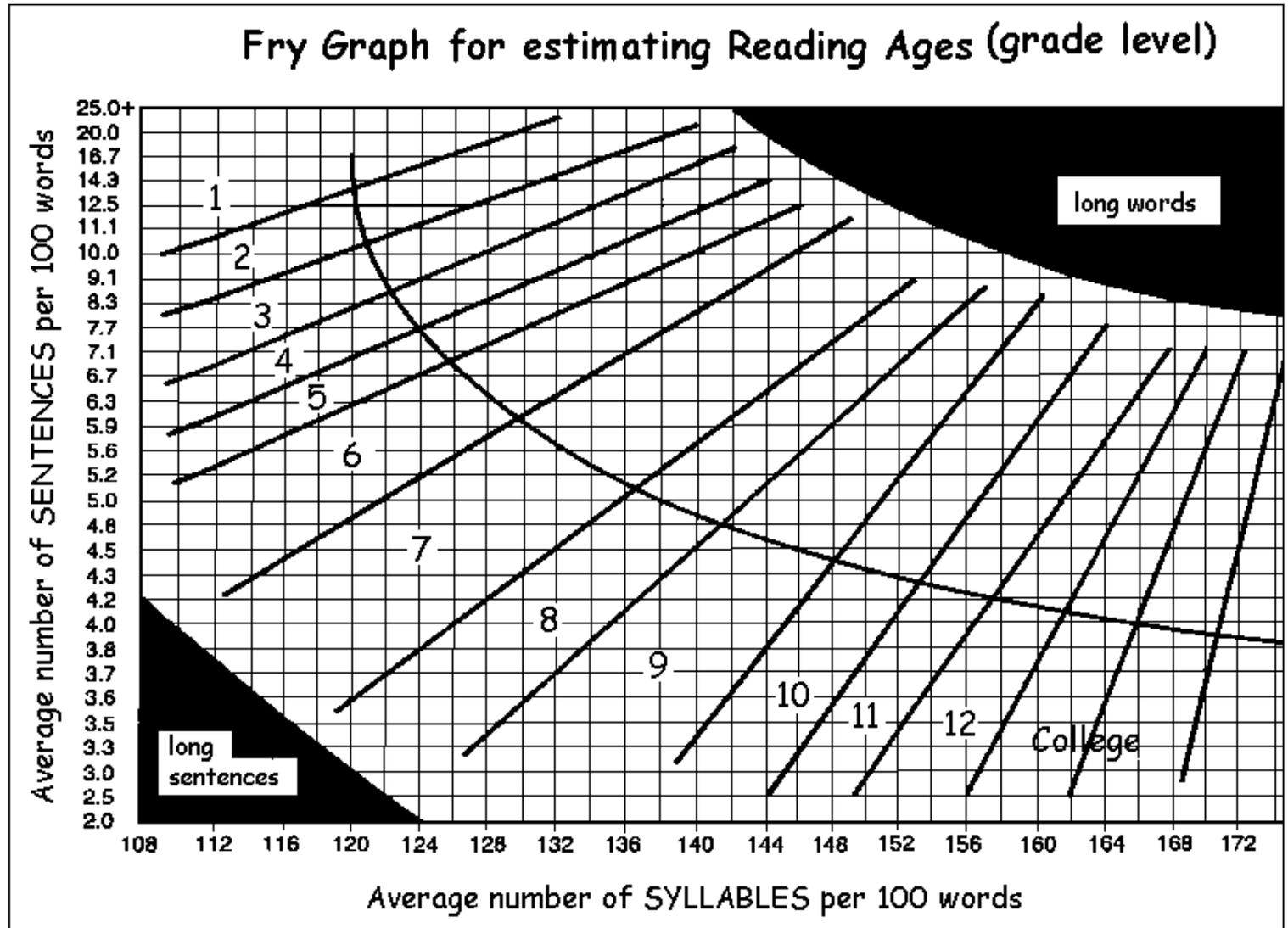
Readability of Text

3 100-word samples from
KSDE: Parent Rights in
Special Education

1. Page 1, 3rd paragraph
2. Page 12, start with #1 under **Time Extension**
3. Page 30, start with **Conditions That Apply**

Average Scores

Sample	# of sentences per 100 words	# of syllables per 100 words
1	2	174
2	1.5	176
3	2.3	180
Average	1.9	177



The average of the three samples cannot be placed on the Fry Graph as the text is more difficult than can be graphed. This indicates the text is more difficult than what a typical 3rd year undergraduate can read.