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Education Committee
January 26, 2010

[LB898 LB929 CONFIRMATION]

The Committee on Education met at 1:30 p.m. on Tuesday, January 26, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a confirmation hearing and a public hearing on LB929 and LB898. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Brad Ashford; Bill Avery; Abbie Cornett; Robert Giese; Ken Haar; and Kate Sullivan. Senators absent: None. []

SENATOR ADAMS: And while you're moving around, would you also turn your cell phones off and put them away. Let me initiate the hearing by welcoming you all here. And we have three topics of business today. The first is a gubernatorial appointment to Educational Lands and Funds; the second is LB929; and then the third bill that we will hear today is LB898. Now as we proceed through all of these bills today, you know that you are welcome to testify on any of them, and we welcome your testimony. I would ask, though, that if you choose to testify, that you come up here to the table, and prior to your testimony you need to have filled out a testifier form. There are forms back there by each of the doors where you came in. And I would appreciate it if you'd already filled that out, so that when you come up here to the table you can hand them over to Becki Collins, our committee clerk. I also would like for you when you initiate your testimony to state your name and spell your last name for the record so that we can transcribe and have everything correct. We are going to use the light system today, and you'll be able to see when your time is up. The yellow light will come on when you have a minute left; when the red light comes on, we ask you to end your testimony. And I don't want to stifle anyone from testifying today, but for the sake of the committee, if there has been a lot of testimony on the same subject and you really don't have anything new to add, think about it. Not that we won't let you testify, but think about it. In light of that, let me introduce the committee, those who are here. Becki Collins is our committee clerk. Next to her is Senator Brad Ashford. Senator Bob Giese from South Sioux City. Senator Cornett will be here in a few moments; I believe she's introducing a bill in another committee. Kris Valentin, our committee research analyst. I'm Greg Adams, representing the 24th Legislative District. Next to me is the Vice Chair of the committee, Senator Howard. Senator Sullivan will be here very soon. Senator Avery from Lincoln, Nebraska. And Senator Haar from the 21st District. With that, we will begin first of all with our gubernatorial appointment. And Martin Demuth, if you could come forward, please, and state your name and spell it for the record. []

MARTY DEMUTH: (Exhibit 1) Marty Demuth. [CONFIRMATION]

SENATOR ADAMS: Could you go ahead and sit down, Marty, and speak there into the microphone. [CONFIRMATION]

MARTY DEMUTH: It's Marty Demuth; last name is spelled D-e-m-u-t-h.
[CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Great. Thank you, Marty. Marty, what is typical in these kinds of confirmation hearings is this--if you would give us a little background on yourself and how you arrived at this point and then field any questions the committee may have for you. [CONFIRMATION]

MARTY DEMUTH: Okay, very good. I'm from Hastings, Nebraska. I hail from David City, Nebraska, originally; and I've been in Hastings for 20 years. I sell insurance for Farm Bureau, been doing that for a little over 18 years, and I also grew up on a farm and am involved in some farming businesses. I own some farm ground--row crop--and also own some cattle and basically just very interested in farming, cattle, etcetera. [CONFIRMATION]

SENATOR ADAMS: All right. Thank you, Marty. Committee, are there questions for this appointee? Senator Avery. [CONFIRMATION]

SENATOR AVERY: Mr. Demuth, I would be interested in knowing what your view is of the sale of some of these lands that are in the trust. I know that there is kind of a debate going on about whether we need to hold on to these or whether we need to sell them and at what rate. Could you just share with us your philosophy on that and what you think about the current state of the land in trust. [CONFIRMATION]

MARTY DEMUTH: Okay. Well, I'm kind of into the learning process and have learned a little bit about this. And, you know, I'm on this board to, hopefully, fulfill the best interest of these school districts; and, you know, I'm a fiduciary for these school districts, and I just want to make sure that we do the proper thing, whether it would be selling or whether it would be continuing to hold on to the ground. [CONFIRMATION]

SENATOR AVERY: Well, the question really, though, is...you defined the issue, really. There is a debate about whether we should be selling the land or whether we should be holding on to the land for lease. I was wondering what your position is on that dispute or that issue. [CONFIRMATION]

MARTY DEMUTH: I guess it would come down to, you know, what particular piece of ground it potentially may be. And, you know, I just want to do what is right for the best interest for the school districts. [CONFIRMATION]

SENATOR AVERY: In general, do you think that it's in the long-term interest of the trust and the state and the schools if we continue to lease or if we were to more aggressively market those properties? [CONFIRMATION]

MARTY DEMUTH: Yeah, okay. You know, for right now, I think, you know...things change, but for right now it seems like it's in the best interest to lease the ground,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

because it's valuable, and...instead of selling that ground, going into the permanent fund, you know, where things maybe are not so secure right there or, you know, are not as solid as, you know, farm ground is right now. Farm ground is very--you know, brings in income and, you know...whereas the permanent fund you'd be in stock and bond market, where it may not be such a solid thing. [CONFIRMATION]

SENATOR AVERY: We have--just a different question here--we have two bills before this committee--actually, I think one is already on the floor, and one is before the committee--that would authorize the lease of these lands--some of these lands--for wind energy development, and it also involves some carbon sequestration issues. [CONFIRMATION]

MARTY DEMUTH: Um-hum. [CONFIRMATION]

SENATOR AVERY: What do you think about that issue? [CONFIRMATION]

MARTY DEMUTH: Okay. [CONFIRMATION]

SENATOR AVERY: Do you think this is something that the land in trust ought to be involved in or not? [CONFIRMATION]

MARTY DEMUTH: Well, you know, the wind thing--it sounds like there's very great potential there to bring in income for the state of Nebraska and school districts. So, you know, if it's on the school lease ground, then I'm definitely in favor of, you know, progressing with the wind. [CONFIRMATION]

SENATOR AVERY: And using the land to generate additional income. [CONFIRMATION]

MARTY DEMUTH: Yes. [CONFIRMATION]

SENATOR AVERY: Thank you. Thank you, Mr. Chairman. [CONFIRMATION]

SENATOR ADAMS: Are there other questions? Seeing none, thank you, Martin, for coming in today. [CONFIRMATION]

MARTY DEMUTH: Okay. [CONFIRMATION]

SENATOR ADAMS: Appreciate it. [CONFIRMATION]

MARTY DEMUTH: Thank you. [CONFIRMATION]

SENATOR ADAMS: And with no more questions, that will end that portion of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

hearing. And we will now transition into the hearing on LB929. Will the introducer, Senator Ashford...? [LB929]

SENATOR ASHFORD: (Exhibit 2) Thank you, Chairman Adams and members of the Education Committee. My name is Brad Ashford; I represent District 20 in Omaha. And I'm here to introduce LB929, which, simply put, asks school districts to make certain that parents are given every responsible and prudent option in regard to hard-of-hearing children in their district. It is a simple bill, simple concept, and I think what we're going to hear is that school districts do, in fact, provide information to their parents and their children, but in some cases, some of that information could be better supplemented with information that is more current about options that are out there. This summer I had the opportunity to visit the Omaha Hearing School, which is located in my old legislative district, number 6. And I think you're going to--believe you're going to hear from representatives of the hearing school today. And they demonstrated to me and talked about really wondrous things that are going on at the hearing school and at the Boys Town institute regarding new and innovative ways to help children hear and learn. It was just amazing to watch the work that was being done. And I think these individuals will tell you that they have good relationships with the school districts, but they feel that if more information were provided on a current basis, that children would have, and their parents would have, an opportunity to access these really incredible advancements in hearing loss. I have what is an excellent, I think, summary of the advancements in these fields--a World-Herald article by Doug Thomas that outlines these advancements, many of which are utilized by the Omaha Hearing School and other institutions that deal with deaf children or hard-of-hearing children. So with that, I'm going to defer to the experts who are here, and I believe some children as well are also going to testify. So with that, I'd be happy to answer any questions, Mr. Chairman. [LB929]

SENATOR ADAMS: Are there questions for Senator Ashford? Senator Howard. [LB929]

SENATOR HOWARD: Thank you. Thank you, Mr. Chair. I, too, have had the opportunity to go over there this summer and visit the facility, and I want to thank you for bringing this bill in. I think this is important to point out that parents of special-needs--any special-needs children deserve the opportunity to have all the information that's available so that they can choose the best option for their child. And as you know, I co-signed on this bill with you. And, again, thank you for bringing this in. [LB929]

SENATOR ASHFORD: Well, and thank you for co-signing, Senator Howard. And we do that often, so... [LB929]

SENATOR HOWARD: Yes, we do. [LB929]

SENATOR ASHFORD: ...but some people who are not here every day don't realize

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that, so I'm glad you brought that up. But...no...thank you, Senator Howard. And I think we'll have some good information today. [LB929]

SENATOR ADAMS: Senator Avery, did you have a question? [LB929]

SENATOR AVERY: I do. Thank you, Mr. Chair. Senator Ashford, who would prepare these materials and determine the content and pay the cost? [LB929]

SENATOR ASHFORD: Those are all issues--cost and...but these materials would be prepared by the--in the case of the Omaha Hearing School--would be prepared by the school. And they do have materials that they do distribute to schools, so they would have that...the Omaha Hearing School has been around awhile. And so they have quite a bit of experience in working with the children. [LB929]

SENATOR ADAMS: Other questions? Senator Giese. [LB929]

SENATOR GIESE: Thank you, Chairman Adams. Senator Ashford, IEP process--when we talked about this last week... [LB929]

SENATOR ASHFORD: Yes. [LB929]

SENATOR GIESE: ...on another bill and then also access to the information...I don't quite...how are they not getting it now and...? [LB929]

SENATOR ASHFORD: Well, I don't think it's that it's any sort of effort to not get them the information; I don't think that's the case. I'm sure the school districts want the parents and children to have the best information possible. I don't think that's the point. I think, though, that--I think what you may hear is that some of the communication could be better and that the districts--all of them, not just any one in particular--if they would simply provide the information on a more real-time basis--at the beginning of the year, for example, or when the children are starting school, whenever the most appropriate time. I think there are many, many parents and children who come to the Omaha Hearing School who weren't aware of some of these options and that they could, in fact, be made available through the IEP process. So I think it's really kind of a little bit of a kind of jabbing people to be a little more prompt and comprehensive in getting this information to the parents. But it does have relevance to the IEP process, and it could be relevant. But right now we're not asking for that. We're asking simply that the information be...anything to do with IEP...we're asking that the information simply be provided in a timely, comprehensive manner to the parents and children. [LB929]

SENATOR GIESE: Thank you. [LB929]

SENATOR ADAMS: Are there other questions? Thank you, Senator. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ASHFORD: Thank you. [LB929]

SENATOR ADAMS: May I see a show of hands of how many proponents we have on this bill that would like to speak. Proponents? How many opponents? Okay, then, Becki, let's go with the five-minute rule on this. And we would hear proponent testimony now. Good afternoon. [LB929]

MARILEE KELLY: Hi. [LB929]

SENATOR ADAMS: Whenever you're ready. [LB929]

MARILEE KELLY: (Exhibit 3) Sure. I'm ready. My name is Marilee Kelly, K-e-l-l-y; the first name is M-a-r-i-l-e-e. And I am the interim director of the Omaha Hearing School. I have been involved in teaching deaf and hard-of-hearing children for over 30 years using auditory-oral techniques. We strongly, the staff and I at the school, support this bill, because we believe it is critical that parents should be the ones who make the decision for their children and that they be aware of the auditory-oral option when choosing an educational path for their children with a hearing loss. You might ask: What is the auditory-oral option for deaf and hard-of-hearing children? The auditory-oral option is a program in which deaf and hard-of-hearing children are taught to speak, to understand when they are spoken to, and be trained to listen. Auditory-oral programs feature teachers with specific skills to teach oral-language comprehension and expressive-language skills. We, in a program like ours--we feature training of children to continually improve listening skills when using their assistive devices. For example, we take them through a hierarchy of hearing skills, training them to use their hearing aid or their cochlear implant. By listening alone, they can tell ending sounds--for example, bite from bike--and to follow three-step auditory directions with only auditory information. Auditory-oral programs also feature small classrooms that serve only deaf and hard-of-hearing children, and we try to group children with similar language skills. Why is this bill important? Because hearing loss is a serious issue. Hearing loss is one of the most common birth defects in America. About 3 in 1,000 babies are born with permanent hearing loss. Studies show that if hearing-impaired children are either not identified or do not receive appropriate early intervention, special education can cost schools an additional \$420,000 in the school life of that child--from kindergarten through 12th grade. Research shows that advances in assistive technology--that means improved hearing aids and cochlear implants--tend to be most effective when classrooms emphasize a rich speech and language environment. Parents of children that use these devices should know that, in the classroom, not only that these devices are worn but that the children are trained in listening to them. Parents' decisions, in fact, have changed over time when they are presented with clear programmatic alternatives. In 1995, 40 percent of parents chose spoken-language options; and in 2005, 85 percent chose spoken-language options. The Omaha Hearing School would like parents to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

the decision makers and be presented with information about their auditory-oral options so they can make an informed decision. Thank you for letting me testify. [LB929]

SENATOR ADAMS: Thank you, Marilee. Let's open it up for questions. Anyone? Senator Avery--or Ashford, I'm sorry. [LB929]

SENATOR GIESE: Thank you, Chairman Adams. Ms. Kelly, I'll ask you about it. Is there an IEP process now involved in what...? [LB929]

MARILEE KELLY: Yes. For every child that we serve, there is an IEP. [LB929]

SENATOR GIESE: And how does--just briefly--how does that go? How many parties are involved? Who's involved in that? And who has the ultimate decision? [LB929]

MARILEE KELLY: Okay. Um-hum. For every deaf and hard-of-hearing child, an IEP is mandatory to have been written. And the people involved in that meeting would be a school district representative, the teacher or any other teacher of that service that the child needs, and the parent. [LB929]

SENATOR GIESE: So there's usually three... [LB929]

MARILEE KELLY: School district...? Yes, sir. [LB929]

SENATOR GIESE: Okay. And just a comment, I guess, on the bill. I mean, actually, I don't know that the bill...I mean, it's just asking for information to be provided. I mean, I don't...does the bill go far enough in providing the services needed? I mean, the bill only asks for information to be provided. [LB929]

MARILEE KELLY: And that's helpful. It would be very helpful to us to be known--or auditory-oral programs to be known to parents as one of the options they can choose. So we're finding--and this is through history, when we go back and see how many parents or families have been through the hearing school, say, in the last five years, it's one or two families. That message to us is that perhaps the families haven't been given the information about all their options when they choose what kind of program they want. [LB929]

SENATOR GIESE: Have you ever been involved in the IEP process? [LB929]

MARILEE KELLY: Often. [LB929]

SENATOR GIESE: Often. [LB929]

MARILEE KELLY: Yes. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR GIESE: Okay. Well...and I guess I don't understand, then... [LB929]

MARILEE KELLY: Well... [LB929]

SENATOR GIESE: ...Senator Ashford's comment about providing real-time information. I mean, what is the...? [LB929]

MARILEE KELLY: I think maybe the difference that you're thinking about is between placement meetings and IEP meetings. And so, oftentimes, as you know...I'm not telling you anything new. [LB929]

SENATOR GIESE: Yes, you are. [LB929]

MARILEE KELLY: No. In the state of Nebraska, the school district is responsible for every child who has a special need. So they are in the driver's seat, so to speak, as to who the parents and the family have to contact first when they have a--when their child is identified with a hearing loss. At that time, whoever comes in contact with the family is the one who says: This is what the school district can offer, or this is where we think that your child should go. And we're not sure at that placement time whether all the different...they are--the parents are given all the different options of the programs available in the Omaha area. Does that answer your question a little better? [LB929]

SENATOR GIESE: Yes. Yes. Thank you. [LB929]

MARILEE KELLY: Sure. [LB929]

SENATOR ASHFORD: Just briefly, Marilee... [LB929]

SENATOR ADAMS: Senator Ashford. [LB929]

SENATOR ASHFORD: How many children do you have at the school right now? [LB929]

MARILEE KELLY: Deaf and hard-of-hearing children--we have 37. [LB929]

SENATOR ASHFORD: And is that somewhat of a constant number? Does it vary? [LB929]

MARILEE KELLY: It varies. I think there are dips and rises in children with--that have a hearing loss. But what we have found is that...you asked how many deaf and hard-of-hearing children; we anticipated having so many more because so many--many more children are being implanted with cochlear implants or who are using hearing aids.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

And that enrollment has not happened--that increase in enrollment has not happened. And with these technologies, the opportunities for kids to be able to talk and understand, we thought, would be needed and chosen by the families. I guess the concern is: Are the parents getting all their options? Did I answer your question? [LB929]

SENATOR ASHFORD: Yeah. Sure. And is there other information that you would share with the committee about that process, where--regarding the information not being provided, necessarily, to parents? Are you--have you had occasion to talk to the school districts about providing information? Has that occurred? [LB929]

MARILEE KELLY: Yes. Not with every school district--excuse me for putting my back to you all the time--not... [LB929]

SENATOR ASHFORD: It's hard not...I mean, you know, it's kind of a... [LB929]

MARILEE KELLY: I know. But that was so rude. [LB929]

SENATOR ASHFORD: ...the way we--the way we're sort of...yeah. [LB929]

MARILEE KELLY: Right. We have expressed concern to some school districts, but I can't say that, yes, we have talked to every one. We're in the process of telling school districts that we would like to partnership with them and serve students that they have decided--or that they encourage to have--be able to talk and to listen. So, yeah, we are--either have established or would be... [LB929]

SENATOR ASHFORD: Or they're in that phase where...they're in that position where talking and listening are the appropriate place for them to be. [LB929]

MARILEE KELLY: Right. We're not, as a contracting agency, invited to that meeting... [LB929]

SENATOR ASHFORD: Right. [LB929]

MARILEE KELLY: ...so I think that's something else that we'd like, is just to have the parents, who need to make the decision, have all those options. [LB929]

SENATOR ASHFORD: Thank you, Mr. Chairman. [LB929]

SENATOR ADAMS: Um-hum. Are there other questions? Senator Haar. [LB929]

SENATOR HAAR: Yes. Thank you. Without naming the name of the family, do you have a student from near Malcolm in your school right now? [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

MARILEE KELLY: Malcolm? [LB929]

SENATOR HAAR: Nebraska. [LB929]

MARILEE KELLY: No. [LB929]

SENATOR HAAR: Because I have a neighbor who's got a very hard-of-hearing child, and they've been driving to Omaha every day. Very satisfied with the program. I'm not sure if it's your program or not. [LB929]

MARILEE KELLY: Right. Yeah. And I...that...oh, it was; it was. Okay, I didn't know Malcolm was near Lincoln; that's how bad my Nebraska geography is. (Laughter) Yes, we serve that little girl. [LB929]

SENATOR HAAR: Um-hum. [LB929]

MARILEE KELLY: Is it a little girl? [LB929]

SENATOR HAAR: Yeah. [LB929]

MARILEE KELLY: ...for the past three years. And currently this year she is being mainstreamed into a normally--a preschool with normally hearing peers. [LB929]

SENATOR HAAR: Because she was a premature birth and because of the drugs that she was given, it's really made her hearing impaired. And they were just so happy to find your school, I know. [LB929]

MARILEE KELLY: And she's a talker and a listener... [LB929]

SENATOR HAAR: Yeah. [LB929]

MARILEE KELLY: ...and can understand. [LB929]

SENATOR HAAR: And we were amazed, too, to see the progress. [LB929]

MARILEE KELLY: Yeah. [LB929]

SENATOR HAAR: So thank you very much. [LB929]

MARILEE KELLY: You're welcome. [LB929]

SENATOR ADAMS: Senator Avery. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR AVERY: Thank you, Mr. Chair. Ms. Kelly, we heard a lot of testimony a few days ago about children with sight impairment. And there seemed to be a significant issue in that community in developing these IEPs in cases where many students were not recommended to learn Braille, for example. And Braille is a pretty standard means of communication among people who are sight-impaired. Do you have a preferred method of communication for children who have hearing difficulties? [LB929]

MARILEE KELLY: We certainly do in our school, and it's what I've been doing for the last 30 years and have seen really successful results. We feel that with this advanced technology, that if a child can speak and can understand when spoken to and can listen, that they have many more opportunities in a hearing world, where 99 percent of us are hearing and can talk and understand. So we think...I have a preference--yes, it's what I do and what I believe in--that many deaf and hard-of-hearing children can learn and then can be mainstreamed back into their neighborhood schools more quickly perhaps, at less cost, than some of the...and there are other options for teaching and educating deaf and hard-of-hearing kids. And I'm not saying this way--the auditory-oral way--is the best for all deaf and hard-of-hearing children, but it is an option that parents should have the information so they can make the decision for their family. [LB929]

SENATOR AVERY: So in developing these IEPs, you don't have a dispute in your community about the recommendations you're making? [LB929]

MARILEE KELLY: Oh, yeah, we do. (Laugh) [LB929]

SENATOR AVERY: Oh, dear. [LB929]

MARILEE KELLY: Yeah. [LB929]

SENATOR AVERY: So we'll hear about that probably today. [LB929]

MARILEE KELLY: But I don't think that's the intent of Senator Ashford making--or proposing this bill. I think it was to allow families to know of all their options. I think sometimes people who aren't in the field are amazed to know that if you have a profound hearing loss, that you can talk and learn to listen and can go to school with your regular hearing peers and can go to college and can have a honorable job and can talk to the man behind the counter at McDonald's and say: I want french fries, Coke, and a hamburger. But it's not for every deaf and hard-of-hearing child. It is my way of teaching and the way that the school--what we advocate...is one of the options. I don't think this bill is a debate about what's best; I think it's more just to give the parents the information that they need so that they are the decision makers for their child. [LB929]

SENATOR AVERY: And some of these devices, I was just looking at here, are quite

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

expensive. [LB929]

MARILEE KELLY: Yes, they are. [LB929]

SENATOR AVERY: And don't work for everybody. [LB929]

MARILEE KELLY: Well, I think that almost every deaf or hard-of-hearing person can be helped by a digital hearing aid, and certainly they can be helped with the surgery that is involved with having a cochlear implant and then being trained in order to listen with that device. So, yeah, I think that hearing aids or cochlear implants are beneficial for almost all deaf and hard-of-hearing children. [LB929]

SENATOR AVERY: So sometimes your IEP could actually recommend investing in one of these expensive devices. [LB929]

MARILEE KELLY: Well, no. The only--the school district has the responsibility of providing any, what's called, FM amplification in the classroom. They have the responsibility for providing a hearing system that they use in the classroom. But the decision and the purchase of a hearing aid or to have the cochlear implant surgery is the parents', and it's parent-pay and insurance-pay. [LB929]

SENATOR AVERY: Thank you. [LB929]

SENATOR ADAMS: Other questions? Marilee, if you don't mind... [LB929]

MARILEE KELLY: No. [LB929]

SENATOR ADAMS: ...I'm going to follow up on Senator Avery's line of questioning. And I don't want you to misinterpret my questions. They're going to seem a bit cynical, but I'm trying to get at the root of the problem. And maybe I'm digging far too deep--it's right here on the surface. Is our IEP process inadequate? Is that what I'm hearing today? Are teachers that are at the IEP and work with these students inadequately prepared? I'm trying to very specifically identify the problem to see if this bill does anything for it or if something else needs to be done. Can you help me out? [LB929]

MARILEE KELLY: Yeah, I think so. I think the IEP is not the problem. It could be the problem, in that it should dictate where the child goes and how he learns. And it should be something that the parents have a lot of input in the process of writing those objectives for the IEP. The problem is that there may be a certain bias that a school district has toward one of the methods over another and would recommend that. And parents maybe that don't know all their options would say: Well, they're the professionals; they know what is best--and go along with what those professionals at that meeting recommended. Also, I think that--I hope this...yeah, I can--school districts

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

are very concerned, as they should be, about saving money and using money as best they can for all the students in their special ed programs. So they may feel that the program that they offer within a district, say, is adequate. And that is their responsibility. You know, the law says that school districts are responsible for providing the opportunity for an appropriate education for all the special-needs children. And that can be interpreted different ways. So it is more expensive to contract with an agency like the Omaha Hearing School than it is to put a deaf and hard-of-hearing child maybe in a classroom with hearing children or in a what we call a multi-categorical classroom, where a deaf and hard-of-hearing child would be in with other special-needs children that don't have the same needs as a deaf and hard-of-hearing child. So we're just not sure that the parents, who should be a big part of writing the IEP and being part of that process, have the information on all the options for their deaf and hard-of-hearing children before, prior to, saying: This is fine; this is what I want. Does it...? Ask me something else, and I'll do it better. (Laughter) [LB929]

SENATOR ADAMS: No. No, I...like I say, maybe I'm digging deeper than what I need to on this bill, but...all right, do we have specific school districts that are more problematic than others? Is this a statewide issue? Is this something you're trying to be proactive on? [LB929]

MARILEE KELLY: We're trying to be proactive. Maybe...one of the people who are going to testify today is a parent of one of the children that has gone through the IEP process and made the choice for her daughter, and maybe she can tell you about that process. But we're just saying there are many, many ways to educate a deaf and hard-of-hearing child--do the parents have all the information to make a good decision on programming? [LB929]

SENATOR ADAMS: Okay. All right. You're not saying that any one particular method should be the default method. [LB929]

MARILEE KELLY: No. I'm not. [LB929]

SENATOR ADAMS: Okay. Thank you. Yes, Senator Howard. [LB929]

SENATOR HOWARD: Thank you. Thank you, Chairman Adams. This might help. [LB929]

MARILEE KELLY: Good. (Laughter) [LB929]

SENATOR HOWARD: Well, it's a shot. But what's...? [LB929]

SENATOR ADAMS: You're going to have to take me aside. [LB929]

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Transcriber's Office

Education Committee
January 26, 2010

SENATOR HOWARD: Thank you. No... [LB929]

MARILEE KELLY: No. No, no, no. [LB929]

SENATOR HOWARD: I think this is one of those... [LB929]

MARILEE KELLY: It's complicated. [LB929]

SENATOR HOWARD: What's the capacity at your school? How many children can you accommodate if you were at full enrollment? [LB929]

MARILEE KELLY: Oh, my heavens. I think around 80. [LB929]

SENATOR HOWARD: Have you been at that point in the past? Have you had 80? [LB929]

MARILEE KELLY: Never. [LB929]

SENATOR HOWARD: What's the most, approximately, that you've had in your school? [LB929]

MARILEE KELLY: We have had...I told you that there were 38 right now there. [LB929]

SENATOR HOWARD: Right. [LB929]

MARILEE KELLY: I think we've been up closer to around 50 at other times in our history. [LB929]

SENATOR HOWARD: Okay. Have you in the last few years seen a steady decrease in the number of children that have enrolled? [LB929]

MARILEE KELLY: Yes. Not from one specific school district, but just as a whole our enrollment has dropped in the last 5 to 10 years. [LB929]

SENATOR HOWARD: And that's kind of precipitated the concern that maybe the information isn't available regarding your school. [LB929]

MARILEE KELLY: Right. [LB929]

SENATOR HOWARD: Okay. All right. Thank you. [LB929]

MARILEE KELLY: Sure. [LB929]

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Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Are there other questions? Thank you for your patience, Marilee. Next testifier. [LB929]

ANN HOSFORD: Good afternoon. [LB929]

SENATOR ADAMS: Afternoon. [LB929]

ANN HOSFORD: My name is Ann Hosford, A-n-n H-o-s-f-o-r-d, and I want to thank you very much for allowing us to come today and to stand before you on behalf of LB929 and for Senator Ashford and Howard to put this bill forward. Even though you're looking at me, I am actually going to be giving the remarks from Dr. Britt Thedinger, who is an ear, nose, and throat physician in Omaha. He's the one who did the first cochlear implants and has been doing cochlear implants longer than anyone else in Omaha, particularly on children. But he had surgery this afternoon, and so he didn't want to put those people off, unfortunately. I'm also president of the board of the hearing school and have been involved with it for about 12 years. In the early 1990s, technology greatly advanced so as to reliably determine if a child had a hearing loss at birth. The tests were quick and inexpensive. The importance of these newborn testings through multiple studies show that the earlier the intervention and the treatment with either hearing aids or, in the case of severe-profound hearing loss, a cochlear implant would help ensure these children could potentially obtain relatively normal speech and language. Obviously this would give the hearing-impaired child greater opportunities but would require less services, less expense from both schools and school districts and the state. In the late 1990s, professionals and families saw the need for Nebraska to develop its own hearing screening program. Thanks to Senator Byars of Beatrice and others, the Infant Hearing Act was passed in 2000. This bill has been extremely successful. In the last five years, more than 98 percent of live births in Nebraska have been screened. Every state now in the country does this screening. However, we are not so successful on the follow-up, on the educational side. As a physician whose entire practice and training has been dedicated to helping children and adults hear better, the educational component is the most important. It's relatively easy for me to fit an infant with a hearing aid or cochlear implant, but it is the early educational intervention which is the key factor. If we are going to spend significant amounts of money on screening, hearing aids, and cochlear implants, we need to ensure that these children are given the opportunity to enroll in an auditory-oral program starting as early as possible. Unfortunately, parents are not given this educational option or told of the importance of this option. If we are going to the trouble of all this screening--and the expense--then we should expect to have these hearing-impaired children hearing and speaking. If early intervention teams and school districts don't support this concept, then we should stop the screenings. I would encourage you to support this bill. Let's give parents all the information on auditory-oral education as quickly and as early as possible so as to enable them to make the right decision for their child. Give these children the gift of speech and hearing. [LB929]

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Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Thank you. Are there questions for this testifier? Guess not. Going to let you off the hook. Thank you. [LB929]

ANN HOSFORD: Well, that was easy. Thank you. [LB929]

JILL McGRANE: Hi, I'm Jill McGrane, M-c-G-r-a-n-e, and I am the parent of Abby (phonetic). She's deaf and was diagnosed at 18 months. I just wrote out this story of just one of many encounters that I've had regarding this issue that happened this summer. I met a woman while taking Abby to swimming lessons. Her son and Abby were signed up to be in the same swimming group. Everyone was really excited about it, because they were both 7 years old, both going into first grade, both deaf, both wore bilateral cochlear implants and were implanted around the same age. Theoretically they should have been at about the same communication level. When Abby started talking, his mother just stared at her and got tears in her eyes and asked me: How does she speak so well and so clear? What have you guys done? How have you gotten so successful? And when her son was identified at 18 months old as being deaf, she was told that he would have to learn sign language. She was told that with cochlear implants he would eventually develop some speech, but she was never given a choice on anything else. Abby was identified also at 18 months as being deaf. And when she was identified, we were living in San Antonio, Texas. We were presented with all three deaf education options, which is auditory-oral, American Sign Language, or total communications. And we were given the pros and cons to each. And then our family was allowed to decide what the best option for us was. The little boy's mother told me after we talked that she wished she would have been given options back then. Now the window is closed. By the time children reach 6 years old, their ability to form the neural pathways necessary to develop speech decreases significantly. After age 3, the process is progressively more difficult. It wasn't because Abby was identified earlier or had better hearing or was smarter or her cochlear implants worked better, because we had also talked--his mother and I--and they had the same detection levels in the sound booth for just detecting levels of sound. And it wasn't because of any of that that she could communicate verbally so much better. There was only one difference, and that was because she was trained to use her cochlear implants through oral deaf education. She received oral training in Texas until age 3 and continued through preschool at the Omaha Hearing School. There are only 50 option schools in the U.S., and Nebraska is lucky enough to have one of them, the other closest one being in St. Louis, Missouri. The cochlear implants are only a tool. It's what you do after receiving them that determines the outcome. Abby has been mainstreamed since kindergarten; she doesn't qualify for any support services, including speech therapy or anything--resource--nothing, because she tests too high. And she's testing at almost a third-grade level for reading. She has above-average scores in every other subject and has too many friends to count. I am so grateful that we were given the chance to let her show us her full potential and can't imagine what greatness is in her future. She knows she is deaf and will explain it to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

everyone, but she also knows that she has no limitations. The first step is early identification, which is getting so much earlier and so much better. The second step should be getting all of the deaf education options to the parents. This should not be subjective information given because of a doctor's personal preference or due to certain facilities wanting to make money for their own cause. It should be objective information of all available options given to the families for them to decide what is best for them. [LB929]

SENATOR ADAMS: All right. Thank you. Are there questions? [LB929]

JILL McGRANE: And then, I don't know, I mean, and then Abby...I don't know if you guys want to talk to Abby. She's completely oral. She, actually, she doesn't do any signs. She really--I mean, nothing. Maybe this. Do you know what this means? [LB929]

ABBY McGRANE: I love you. [LB929]

JILL McGRANE: That's probably it. But... [LB929]

SENATOR ADAMS: Senator Avery. [LB929]

SENATOR AVERY: I would like to speak to Abby. [LB929]

JILL McGRANE: Okay. [LB929]

SENATOR AVERY: Abby, how old are you? [LB929]

ABBY McGRANE: Six. [LB929]

SENATOR AVERY: Six. [LB929]

ABBY McGRANE: I mean seven and a half. (Laughter) [LB929]

SENATOR AVERY: Seven and a half. What grade are you? [LB929]

ABBY McGRANE: First. [LB929]

SENATOR AVERY: First grade. What's your favorite thing to do? [LB929]

ABBY McGRANE: Play outside. [LB929]

SENATOR AVERY: Play outside. In this weather? (Laughter) [LB929]

ABBY McGRANE: Sometimes. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR AVERY: You're very pretty. Thanks for coming. [LB929]

ABBY McGRANE: You're welcome. [LB929]

SENATOR ADAMS: Do any of the rest of you have questions? Senator Giese. [LB929]

SENATOR GIESE: Thank you, Chairman Adams. Ms. McGrane, the initial process--your three choices you were given--can you just tell us briefly how you arrived at your decision on which... [LB929]

JILL McGRANE: Yeah. I actually wrote just at the bottom of...I think it's in you guys' folders--but just the different education options and kind of the pros and cons that as a family we were presented with at identification. And we were talking a lot about school districts presenting this information, but for us it was at the doctor's office. I mean, it was...you know, she had an ABR done--a sedated hearing test--and it was there that we were presented with, you know, the three options. And then from there, they were further discussed in the school district. So I think not only parents being presented within the school district but also just, you know, through the identifying doctors. But oral deaf education--the auditory-oral approach, which is what we did--the pros are that the children...this is the pro. (Laugh) I mean, she's completely mainstreamed--no limits. I mean, she...I'm trying to think of one limit. We've even found a way to swim with them on. (Laugh) So we--so this is the pro. The cons of oral deaf education is the lack of availability, because there are only 50 option schools in the U.S., and fortunately there's one in Omaha. And a very strong family commitment is a must. If you...you know, we did a lot of therapy, and we knew the commitment that we were going to have to make, from age 2 until 6, because that was the critical window. And we knew--I knew that every minute of my day had to be, you know, like, reinforcing all of the things that we had gotten from the school--from her education. And a lot of people might not have that time. I mean, if people have six other kids and are given this option, it might not be an option for them because of that. But she was our first, and it worked out well for us. And then we were also given American Sign Language as our option. Pros were that it was highly available and people have always known it. Cons were it was hard for families and parents to learn, and it limits social relationships--and it's just more limiting. We chose not to do that. No one in our family is deaf or hard of hearing. I just couldn't imagine my dad, you know, in Tea, South Dakota, having to learn, you know, sign language, you know, in his 60s. I just...for many reasons, it just was not going to be the right choice for us. I didn't want her to be limited in anything. And then total communications, which is...this approach is...it brings in a bunch of different methods together. So signing and oral and cued speech, which is what that family that I had met this summer had been told about, was total communications. It's, again, highly available and very adaptable. I mean, if a child, you know...however a child learns best, they can, you know, use that easily. The cons are, though, that it limits children's language

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

experience, because they're never exposed to a complete language. You know, we were forbidden to do any sign language with Abby, because it would be so easy for her, because deaf and hard-of-hearing kids are so visual, and so we--so doing that would have been a crutch for her to fall back on, and she wouldn't have worked so hard to get her auditory and verbal skills up. So--because their exposures through all these different methods, for lack of a better term, dumbs down both of the different languages--English and ASL--preventing the children from attaining fluency in either language and getting at a really high level in either one. And there's been many studies shown that the total communications approach is more limiting on an educational level. [LB929]

SENATOR GIESE: Thank you. [LB929]

SENATOR ADAMS: All right. Very informative. Senator Sullivan. [LB929]

SENATOR SULLIVAN: Thank you, Senator Adams. You indicated that Abby is mainstreamed... [LB929]

JILL McGRANE: Yup. [LB929]

SENATOR SULLIVAN: ...and that you receive no special services. You don't have an IEP in... [LB929]

JILL McGRANE: We do have an IEP, because every...she'll always...through 12th grade, we'll always...we actually had our IEP yesterday. And...but we go in, and the only service she requires is she wears an FM--a \$700 FM--every day. And that's just the little microphone that the teacher wears, and then the boot goes on the back of her...she just clips on a little boot to the back of her implant. And that basically kind of drowns out some of the background noise. And just...because she doesn't...cochlear implants don't have the ability--well, really, hearing aids don't either--to filter out...like, you know, we can kind of filter out what's important and what's not--the sound coming in. So, yeah--so she'll always have an IEP for the reason of...while in school she'll always need an FM. But she doesn't need speech and language and resource and interpreters or...she's completely inclusion in the classroom. [LB929]

SENATOR ADAMS: Are there other questions? Abby, are you selling Girl Scout cookies in my hearing? (Laughter) [LB929]

JILL McGRANE: Oh, do you have a question? (Laugh) [LB929]

SENATOR ADAMS: Thank you for your testimony. [LB929]

JILL McGRANE: Thank you. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Any other proponents to the bill? If not, then we'll move to opponent testimony. Are there opponents to the bill? [LB929]

PETER SEILER (through interpreter): (Exhibit 4) Thank you, Senators and members of the committee here. I appreciate you letting me share my thoughts--this bill, LB929. My name is Dr. Peter Seiler, S-e-i-l-e-r, and I'm currently the executive director for the Nebraska Commission for the Deaf and Hard of Hearing. There is a concern in regard to this bill that was shared with me from members of our board, and this would be by deaf and hard-of-hearing people. And it's really hard to follow that beautiful young lady that was here previously, especially when I grew up in a similar situation. I grew up in an oral program and then converted to sign language. So I can remember my youth when I look at her, and, hopefully, I was, hopefully as cute as she is now. (Laughter) Basically, we're not disputing or opposed to the bill in regard to parents having information, having those options that they can choose. We are aware that parents who have all that information, all those options--they do make better and wiser decisions in regard to their children. The problem with this bill, as shown, is it indicates oral education; it doesn't include sign language. Sign language is a visual language, and it has already been proven through excessive research to be a effective way for deaf and hard-of-hearing children to learn language. Also...and I think that you're already aware that the current state law that already provides for the requirement that the schools are supposed to inform parents of their options--they can't avoid...or if they don't believe a certain philosophy, they can't withhold that. If you feel that we're requiring this necessity, I suggest that in line number 8, after the words "auditory-oral," that you would insert "sign language." That way you'll have "auditory-oral and sign language and spoken language." All three are a value in regard to an option. The Nebraska Commission for the Deaf and Hard of Hearing will be glad to sit down with you and work with you on developing language that would satisfy the needs of all deaf and hard-of-hearing children in the state of Nebraska. Thank you for your time and for listening to me. [LB929]

SENATOR ADAMS: Thank you, Doctor. Are there questions for this testifier? I guess not. But, again, thank you and your offer for help. [LB929]

PETER SEILER: You're welcome. [LB929]

SENATOR ADAMS: Next opposition testifier. [LB929]

LINSAY DARNALL (through interpreter): Hello. My name is Linsay Darnall, Jr., and the last name is D-a-r-n-a-l-l. And thank you for giving me this opportunity to sit here before this Education Committee. In regard to the proposed bill, it is the same as what Dr. Seiler had mentioned, and I agree totally with what he said, and I support inserting the sign language included into the bill. Today I sit before you, and I represent the Nebraska Association of the Deaf. The membership, the board, and I have discussed, and we feel

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that parents really do have the right to be aware of all the options that are available for their children so that they can make the wisest and best choice for their children. For the mother that was recently here in explaining how she did have those opportunities to make a decision--she had those options, and they were all presented to her at that time, and she was able to make the decision that was the best decision for her. And that is our goal for all parents, that they receive all information and all options possible, whether auditory-oral, sign language, speech, or so forth. ASL itself--American Sign Language--is basically a growing trend: more and more people are learning sign language. And as babies themselves who have normal hearing--you see a rise in them learning sign language. Also it's a paradox that, you know, I don't understand, is that we are allowing hearing children--those babies with normal hearing--we teach them sign language, but we limit that access to children who are deaf and hard-of-hearing. I'm currently an adviser to the Junior National Association of the Deaf, and its membership is in the middle school- and high school-age kids for kids who are deaf and hard of hearing in Omaha. And a lot of these members are probably...I'd say 80 percent of this membership has a cochlear implant. And all of those children can speak. They can hear, normally use a phone, and so forth. But that 80 percent also know how to sign, are fluent in sign language. You know, we have opportunities, and we want those opportunities for our children who are deaf and hard of hearing in Nebraska. If they can speak, if they can hear, we give them that opportunity. We also want to give them the opportunity for signing, because signing is a beautiful thing. For me personally, ASL--American Sign Language--is a value to me. I was born to parents who themselves were deaf, and I myself was born deaf. I have a deaf brother who is younger than me. We all grew up with a language that was rich in our environment and culture. We went to the Nebraska School for the Deaf. I grew up there; my parents had gone there, my brother, myself. And the language was there. And while I was there at the Nebraska School for the Deaf, I also received oral and auditory training myself. And I am able to speak; I am able to do that. And then after I graduated, I decided that, hmm, I chose the option of sign language, because of the fact that that was really my primary language in growing up. My mother said, you know, that's the way it is...or I should say Mother's hands did--I should probably say it that way. (Laugh) I have friends in various backgrounds that...I have deaf friends who themselves were oral; I have friends who themselves are ASL--American Sign Language--and those who did receive the total communication. And all of them are doing very well and very fine in the world. You know, there are some that have some negative problems, and there's all pros and cons to both. So I basically want to say that there just can't be one-sided information presented to the parents and then just that way in regard to that. You know, I think that we should give them all the options, because it's an individual choice. Those who receive their skills, you know, they're...basically there's not one cure for one person or for all. You know, we need to sit back and give them that information, so then that way they can consider their options and also include in those options sign language--you know, much as the parent that was here had those options. Thank you very much in regard to allowing me to testify. Thank you. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? Senator Avery. [LB929]

SENATOR AVERY: I have a comment. You have very expressive language. And I've seen a lot of people sign but never seen anybody so expressive. (Laughter) [LB929]

LINSAY DARNALL: Thank you. [LB929]

SENATOR ADAMS: Are there any other questions for this gentleman? [LB929]

LINSAY DARNALL: And that's the kind of thing that, you know--we want our deaf children to be exposed to that, to give them that option also. [LB929]

SENATOR ADAMS: Are there any other questions? Thank you, sir. [LB929]

LINSAY DARNALL: Thank you. [LB929]

SENATOR ADAMS: Other opposition testimony? [LB929]

AMY DUVAL CARLSON: Good afternoon. My name is Amy Duval Carlson. Some of you may have received an e-mail from me this morning. You spell that Duval, D-u-v-a-l, Carlson, C-a-r-l-s-o-n. And I am here to testify in opposition to LB929 for some of the similar reasons as the other opponents to this bill. I think that parents should be given information about all of the options available to them. I myself am a parent--I wish I would have brought my son with me--of a 5-year-old little boy who is deaf. He was diagnosed with his hearing impairment at the age of 9 months and received his first cochlear implant when he was 18 months old. He now has bilateral cochlear implants and is doing well. We have also encountered many people who talk to him and can't believe that he has a hearing impairment. We strongly support his oral education. He receives speech therapy through the public school system, and we also pay out of our own pocket for private speech therapy once a week. However, sign language is also a very valuable tool for our family. We were given the options when my son was identified as to what communication mode we would choose for our son. We determined that the total communication method would be best for him. If we would not have chosen to use any sign, we really wouldn't have been able to communicate at all with our son for the first two years of his life. Because while he got his first implant at 18 months, he had never heard before. So the process of getting that cochlear implant to work for him required teaching him to listen, similar to the ways that you teach an infant to listen--to hear things, to recognize sound, to know that when the water goes on, that means the bathtub is getting ready for you to get in. He didn't know that when he was 18 months old. Sign is incredibly important to us. It's still important. While we don't sign as often with him, because he is very good at listening when he wants to, although he's 5 and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

has, you know, selective hearing losses...every other 5-year-old boy, I think. When he's in the bathtub, he has to take his device off; he cannot hear us. When he's at a swimming pool, he cannot wear his device, so we rely on sign. It's very important. It's important for us as a family, too, because we want him to be proud of himself, and we want him to know that he is deaf and that's okay. Sign language is important to the deaf community. We have no family history of hearing loss. My husband and I are both hearing, but we want our son to know that if he wants to be part of that community, he can be. I would never judge another parent for the choices they make for their child. Excuse me, this is a very personal issue. I don't think that there's any room for that in this process. We should be giving out information about all of the communication modes and education options for our children. We should not be selecting one school over all the other options that are out there for our children in the state of Nebraska or anywhere else. I think that every parent who loves their children will do the best thing for them and try to make the best choices for them. For us, it was the total communication option. And he's doing great. He is in...I should give you a little history about him. He was in a hearing-impaired classroom in the Lincoln Public Schools for two years. Luckily--we got lucky; his birthday is at the end of October, so he misses the cutoff date for kindergarten. So he was eligible for a third year of preschool. This year he's in a mainstream preschool classroom through LPS and is doing great. He uses an FM system as well. And next year he will be enrolled in a mainstream kindergarten. He will always, because of his hearing impairment, be eligible for an IEP and resources if he needs it. I do think that he'll continue to need some speech therapy. But, again, testing right now, he's testing at appropriate age levels. He's, you know, rapidly making up the difference in the time that he couldn't hear, with his peers. So, again, as I said in my e-mail, I would just urge you to amend this bill to require distribution of information of all communication modes and educational options for our children. And I'd be happy to take any questions. [LB929]

SENATOR ADAMS: Great. Thank you. Are there questions? Senator Ashford. [LB929]

SENATOR ASHFORD: Just for the record, I mean, that's obviously our intent. We have no interest in that...I think, if anything, we were trying to highlight this third option and not excluding the others. And the testimony that's been given is very profound and compelling--yours as well as Dr. Seiler's and the other gentleman's. So, obviously, we're going to take that into consideration. So thank you for... [LB929]

AMY DUVAL CARLSON: Thank you. [LB929]

SENATOR ASHFORD: ...coming. [LB929]

AMY DUVAL CARLSON: Thank you. And I don't...I want you to know I think it is important. As a parent who didn't have a family history of hearing loss, learning that my child was severe to profoundly deaf was overwhelming--a day that I will never forget but

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Transcriber's Office

Education Committee
January 26, 2010

a day that is kind of a blur. So more information would have been nice. But if I were to have been given information about only one mode of communication, I have to say that at that point in time, being fairly vulnerable to what everyone was telling me, I would have been swayed one way--I more than likely would have been swayed one way and maybe wouldn't have evaluated all of my options. [LB929]

SENATOR ADAMS: Fair enough. Yes, Senator Sullivan. [LB929]

SENATOR SULLIVAN: Thank you, Senator Adams. First of all, you've done a great job with your testimony. [LB929]

AMY DUVAL CARLSON: Thank you. [LB929]

SENATOR SULLIVAN: Thank you very much. Can you then tell me right along the lines of your--just--your comment: At what point and by whom and where did you have the discussion on all the available options for you and your family? [LB929]

AMY DUVAL CARLSON: I think initially I was with the other parent. The initial information was probably given to us by our doctor's office, and all of our services are through Boys Town National Research Hospital. I know that they gave us all of that information. Then at our initial IEP meeting, when early intervention started for us, we were given the options of total communication, sign language, and oral education for our son. [LB929]

SENATOR SULLIVAN: And what age was your son at that point? [LB929]

AMY DUVAL CARLSON: He was 9 months old. [LB929]

SENATOR SULLIVAN: Thank you. [LB929]

SENATOR ADAMS: Are there other questions? Thank you, then, for your testimony. [LB929]

AMY DUVAL CARLSON: Thank you. [LB929]

SENATOR ADAMS: Appreciate it. [LB929]

AMY DUVAL CARLSON: Thank you very much. [LB929]

SENATOR ADAMS: Is there any other opposition testimony? [LB929]

BRIAN HALSTEAD: (Exhibit 5) Good afternoon, Senator Adams, members of the Education Committee. For the record, my name is Brian, B-r-i-a-n; my last name is

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Transcriber's Office

Education Committee
January 26, 2010

Halstead, H-a-l-s-t-e-a-d. And I'm here to present to you a letter from the State Board of Education indicating their opposition to LB929. I'd be more than happy to answer any questions you might have on the bill or the letter. [LB929]

SENATOR ADAMS: Thank you, Brian. Senator Avery. [LB929]

SENATOR AVERY: Would you mind telling us: What is the source of your opposition? [LB929]

BRIAN HALSTEAD: Sure. Number 1...Yeah. [LB929]

SENATOR AVERY: Besides your board, I mean--the reasons. [LB929]

BRIAN HALSTEAD: The board...no, the board's position was...as you can see from the letter, we have the special ed advisory committee that is made up of parents, special ed providers--required both under federal and state statute to advise the State Board of Education. Their concern is because this only requires distribution of a specific type of program in that regard... [LB929]

SENATOR ASHFORD: I'm sorry. You know, because I...that...obviously, we're not intending that. [LB929]

BRIAN HALSTEAD: And Senator, I'm just... [LB929]

SENATOR ASHFORD: Yeah. [LB929]

BRIAN HALSTEAD: ...trying... [LB929]

SENATOR ASHFORD: Yeah. [LB929]

BRIAN HALSTEAD: ...number 2, the spectrum of what is available under I.D.E.A.--the federal disability law that we have to comply with--and Rule 51: school districts are already required to provide the information to parents about all of the alternatives for the children. The concern I think some of the board members may have also is, as the body who's responsible for making sure we comply with I.D.E.A., making sure that Rule 51 meets the...they had never been presented with the concerns or the issues that were here. I think they'd love to hear from the very people that have not only the auditory, the sign language, and all of that. So I think that was primarily...and then finally, this is just one of numerous disabilities under I.D.E.A., and I suspect they're wondering: Okay, so are you going to enact a statute about every one of the disabilities and get into all of the details that go with all of that? The information you've received today should be information every parent should get--whether that's from their medical doctor, whether that's from their school district. They need to be informed on what the options are for

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Transcriber's Office

Education Committee
January 26, 2010

their children. So they're not opposed to the ideas that Senator Ashford had about making sure the information is out there. They're going to be right with you making sure parents are informed. The way the bill is currently drafted, we're only focusing on one of three current methodologies, and I think that would be the reasons for the opposition, Senator. [LB929]

SENATOR AVERY: Well, we went through this in the discussion we had a few days ago about visually impaired students. And the point they were making then and the point that's being made today is that perhaps more information provides parents with more alternatives that they may have not known about before. [LB929]

BRIAN HALSTEAD: Absolutely. [LB929]

SENATOR AVERY: And it seems to me that what we're asking here--and what Senator Ashford is asking for--is not very much. [LB929]

BRIAN HALSTEAD: No, and I don't... [LB929]

SENATOR AVERY: And I don't think you're going to open up a flood of requests or a flood of legislation that you couldn't deal with. [LB929]

BRIAN HALSTEAD: Oh, and I think the whole point is if a school district isn't doing this right now, that is a problem under Rule 51. We have the authority to investigate and compel the school district to do that. There are already procedures and mechanisms in place for doing that. [LB929]

SENATOR AVERY: Oh, so I see your argument is that Rule 51 covers this and that the complaint ought to go there and not to the Legislature. [LB929]

BRIAN HALSTEAD: And again it...the bill as drafted is about one--it's a great program; you don't have to have understood even this to understand its value. It is a valuable thing for parents to have all the information. And again, I think from the state board's perspective, this is already covered under federal law; it's already covered under state law. So if there's a problem or a concern, the state board is going to be just like this committee. Come to us. If we've got a school district that is not providing this information to parents of children who have auditory problems, we need to know about it, and we need to address it. [LB929]

SENATOR ASHFORD: I don't want to belabor this, but the bill has been out there for a couple weeks. I didn't... [LB929]

BRIAN HALSTEAD: Sure. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ASHFORD: No one from the...I apologize for having to be specific; you got me, okay, but obviously we don't intend to make it that way. And it's easy to change, and we didn't hear from the department on that, but...and I do agree with you that it is mandatory to provide the information. It's not being provided in the metro area in a consistent manner, so we will come to you with that information. And if...my understanding...well, that's fine. So we'll deal with that. And before we have a discussion about this bill... [LB929]

BRIAN HALSTEAD: Absolutely. [LB929]

SENATOR ASHFORD: ...we can get more specific information for you, and you can make some inquiries. And if it's not needed, it's not needed. [LB929]

BRIAN HALSTEAD: Sure. [LB929]

SENATOR ASHFORD: You know. [LB929]

BRIAN HALSTEAD: Absolutely. [LB929]

SENATOR ASHFORD: But... [LB929]

BRIAN HALSTEAD: And I guess just for the record, Senator Ashford, the state board meets next Monday and Tuesday. [LB929]

SENATOR ASHFORD: Okay. [LB929]

BRIAN HALSTEAD: And they held their legislative retreat yesterday morning. [LB929]

SENATOR ASHFORD: Okay. [LB929]

BRIAN HALSTEAD: So in the sense of...I understand the time constraints and all of that. [LB929]

SENATOR ASHFORD: Well, I mean, I understand that we--I fully understand that we...we're trying to address an issue we have. We have only one facility that's licensed or that's one of... [LB929]

BRIAN HALSTEAD: Sure. [LB929]

SENATOR ASHFORD: ...in Nebraska that does this sort of thing. And there's only 37 people there. Obviously the need is far greater than that. And the conversations that these people have had with school districts are that that information is not consistently being gotten out there. But that's okay; we're not here to...I'm not debating you about

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that, because you agree with me. [LB929]

BRIAN HALSTEAD: Absolutely. [LB929]

SENATOR ASHFORD: So we'll do some more due diligence on it and talk to you about it. [LB929]

BRIAN HALSTEAD: Absolutely, Senator. The state board is in the same position you are. [LB929]

SENATOR ASHFORD: Right. [LB929]

SENATOR ADAMS: Other questions for Brian? Well, Brian, it would seem that you've brought forward some pretty valuable information, and certainly for the record and everyone in the room I hope that people have heard that there is another option, and I will with Senator Ashford help in any way is necessary from this perspective... [LB929]

BRIAN HALSTEAD: Absolutely. [LB929]

SENATOR ADAMS: ...to work through the state board. [LB929]

BRIAN HALSTEAD: Absolutely. If there's anything this committee needs to know about I.D.E.A., about special education, feel free to contact us at the department. The staff who work in this every day, the people who travel to Washington to be briefed on it--we'd be more than happy to provide whatever information you need on the subject. [LB929]

SENATOR ADAMS: Great. Yes, Senator Howard. [LB929]

SENATOR ASHFORD: How many times do they travel to Washington to be briefed? [LB929]

BRIAN HALSTEAD: Unfortunately, Senator, with the budget cuts... [LB929]

SENATOR ASHFORD: Not very many. [LB929]

BRIAN HALSTEAD: ...we're learning how to be briefed by Webinars now. [LB929]

SENATOR ASHFORD: There you go; that's a better option for you, I think. [LB929]

BRIAN HALSTEAD: So we are trying as best to save money. [LB929]

SENATOR ASHFORD: Okay. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Senator Howard. [LB929]

SENATOR HOWARD: Thank you, Chairman Adams. A question: How is this information--how do you expect the information to get to the families? Is it...because I haven't participated in this particular aspect of it. I've been involved in a lot of IEPs, but prior to the family selecting a school I don't recall a case. But is it generally presented by the school district that they live in? Is it their responsibility? Or does the, say, the Omaha School for the Deaf provide the information--or the Omaha Hearing School--provide the information in a brochure form? Or do they come in? Are they available to speak in person? What usually happens? [LB929]

BRIAN HALSTEAD: Well, it...probably depending on the circumstances...but just taking one of the testifiers here, when they went to their medical doctor, they received the information. There's also in place in this state the early childhood education programs, for which from birth if there are potential disabilities, medical doctors, health professionals, health departments, the Department of Health and Human Services, and the Department of Education all work together to make sure parents, when they're made aware of it, have the ability and the resources to access services. School districts from birth are required to provide services to children who have identified disabilities or potential disabilities. My wife is going to kill me, because she set up the early intervention system, and I cannot remember for the life of me what an IFSP stands for, but it is the precursor to the IEP, which you get at the school-age program. So there's a whole number of services. Here in Lincoln, Lancaster County, Nebraska, the health department handles training parents, connecting parents to providers, connecting them to the school system. The school districts provide services and all of those things that are going on, and I'm sure the parents who were here can tell you about those experiences. And if you need more information, you can talk to somebody who knows more about it than the little I know about it. But there are a wide array of services that are available. They are supposed to be coordinated. One part of the early intervention is to train the parents on how to be their own advocates for their children--to understand the laws and how they work for special education, so that they don't have to have a support worker help them through it; they're trained on that process. So, again, that's more information we can provide to this committee if there's a need for it. And I'm sure I... [LB929]

SENATOR HOWARD: Well, I think that's how, ideally, that should work. And I'm sure your very capable wife, who I know very well and is certainly an advocate for people that have special needs...but I think in this particular case, there's been a breakdown that I think we can all successfully work to address. [LB929]

BRIAN HALSTEAD: Absolutely. If there is lack of communication going on in an area in Nebraska, we need to address it. [LB929]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Thank you, Brian. Appreciate it. Is there any other opposition testimony? Is there any neutral testimony on this bill? And Senator Ashford waives closing, so we will end the hearing on LB929, and we will begin the hearing on LB898. Senator Haar, before you start, let's take just a minute and see if we can't clear the room and...so we can avoid background noise. [LB929]

BREAK []

SENATOR ADAMS: Before we begin the hearing on this bill--so that I can judge time--may I see a show of hands of how many wish to testify, both pro or con, on this issue? Then I'm going to limit the testimony to three minutes, and we will use the light system. And let me repeat again, I don't want to stifle anyone's testimony, but if you feel like what you have to say is in essence a repeat of what's already been said, maybe you just come to the microphone and say: I agree with those that have been here; my name is...and we can get it into the record. Something like that might help us out. Senator Haar, the stage is yours. [LB898]

SENATOR HAAR: (Exhibit 6) Thank you very much. Senator Adams, members of the committee, I usually don't come forward in just a T-shirt, but you'll see the purpose in a few minutes. First a really brief summary of this bill, because it has some important sections in it. By the way, I think Tammy did a really nice job of summarizing the bill for reference in the future. This is the Student Expression Act. Section 2 talks about the "obligation to protect the First Amendment rights of public school students"--and this is really important to me--(1) "in order to instill in students the value of democracy and" (2) "to prepare students for informed and active civic participation." Section 3 talks about protected expressions, including creating, writing, publishing, performing, disseminating views and also the right to peaceful assembly. Section 4 talks about what is prohibited, including obscene language, expression that's defamatory or "which creates a clear and present danger of unlawful acts." Section 5 is an important one as well: It says no student expression made in the execution of a First Amendment right shall be deemed to be an expression of school policy; and then also, "No public school, school district, teacher, administrator, or school board shall be held responsible or liable in any civil or criminal action for any student expression." Section 6 talks about that no one can be "fired, transferred, reassigned, or removed," again, because they respected the Student Expression Act. And then Section 7 requires each school board to adopt a written statement about free expression. I want to talk just for a minute about the First Amendment. I left it in my coat. Be right back. (Laughter) The Constitution itself is such an incredible document because in so few words it sets forth so much. And here's the First Amendment. It's only one sentence. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances." The First Amendment--one

sentence. The First Amendment, though, is pesky and always has been; and it always will be. It'll always need to be debated, because in that one sentence it doesn't define everything in detail what we can and can't do, what we're protected...and, really, we learn about the rights case by case, Supreme Court case by Supreme Court case. Now LB898, the Student Expression Act, addressed the First Amendment rights of students, teachers, and administrators in the context of schools. I think we all realize that students, teachers, and administrators don't leave the First Amendment at the door, at the school door. However, case law from the Supreme Court does tell us that schools may limit some school expression. So what? So why do we need a policy? Well, first of all, students, teachers, and administrators are at risk of unfair punishment. And you're going to hear some testimony today about that. By the way, I didn't arrange for everybody to be here. I'm pleased to see the turnout, but...I should take credit for that, maybe. The second reason I think it's important to have a clear school policy is because it's a chilling effect on teaching of democracy if we don't know what our First Amendment rights are within the school context. I want to talk just briefly, then, about...and I'm going to...if you could pass these out, please. I'm going to contrast my next remarks to something that really troubles and disturbs me. And I just sat here all afternoon sort of getting angry about it. And I want to read from the Nebraska Association of School Boards, from their statement in their January 23, 2010, issue. And I started on your copies. And it says: "We believe, in our role of preparing students for the workplace, that to give them rights to express themselves which far outstrip any they will enjoy should they eventually gain employment as a professional journalist may be akin to doing them a professional disservice by instilling unreasonable expectations. The benefits of the First Amendment always accrue to the people who own the ink and paper"--in other words, the publishers. Reporters for the newspaper are always working at the whim of the publisher and editor. In the case of school publications, the school board is the publisher. I also want to share with you a statistic. The John S. and James L. Knight Foundation in 2002 polled 100,000 American high school students, and 49 percent of those students surveyed believe commercial newspapers--commercial newspapers--should not be allowed to publish freely without government approval of stories; 49 percent of the students believed that censorship by the government is appropriate. That highly disturbs me. And it seems, though, that maybe we're just preparing students for that role to live in a real society where the First Amendment doesn't really work. That's the way it sounds to me. Well, I strongly believe that the duty of schools is enumerated in Section 2 of this bill, when it says, "The state of Nebraska has an obligation to protect the First Amendment rights of public school students." And here are the reasons: "in order to instill in students the value of democracy"--not of the workplace, where they can't do it anyway--"and to prepare students for informed and active civic participation." I believe that the school itself is a message. And if it punishes legitimate expression, if it discourages expression, if it puts a chill on expression, then the message that the public schools are teaching is censorship. And I think censorship does not belong as a goal of public schools. Again, 49 percent of American high school students believe commercial newspapers should not be allowed to publish freely without

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

government approval of stories. Wow! That doesn't sound like America. In my opinion, we should err on the side of free expression, not censorship. I'm finally, before you hear some interesting testimony, going to give you some examples of what we feel are some good and some bad school policies. Lexington Public Schools--this is a good policy. Quote, the board of education recognizes that democratic values can best be transmitted in an atmosphere--again, democratic values can best be transmitted in an atmosphere which is free from censorship and artificial restraints upon free inquiry and learning and in which academic freedom for teacher and student is encouraged. The board of education shall not impose unreasonable limitations upon the study, investigation, presentation, and interpretation of facts and ideas concerning humans, human society, the physical and biological world, and other branches of learning. And then it concludes by saying: Teachers should provide competent instruction in an atmosphere of freedom from bias and prejudice and permit students to form and express their own opinions on controversial issues. And I won't tell you which school this comes from, but here's an example of a bad policy. This is a quote: Criticism of school officials is prohibited. Another quote: The school shall prohibit the distribution of all printed materials and petitions within the restricted categories of the district's rule. Actually, according to the Supreme Court, that's illegal. Here's another example of a bad policy, and again I'm not going to tell you where it comes from at this moment, but: Prior to publication of these materials, a faculty adviser, principal, or designee shall review them to determine their acceptability for publication. Now here: Publication may be restricted, edited, or prohibited when any portion of the publication is determined to be highly controversial. And then there's another one in which it even forbids e-mails that are detrimental, extending--at least in one board's policy--the policy to students outside the school, when it says: It's a violation of district policy if any prohibited student expressions are contained on a bulletin board, printed material, poster, e-mail, class assignment, or any other written or electronic medium. To me this seems to step totally outside the boundaries of the school and says that school officials may control any expression made anywhere by a student. So having said that and having read the policy earlier saying that, really, we have to prepare students for the workplace, don't bother with teaching them about things they're not going to experience anyway. So the testimony you're going to be hearing is very interesting and very thought-provoking. And so with that, I will answer any questions now and certainly like to close at the end. [LB898]

SENATOR ADAMS: All right. Questions? Senator Sullivan. Hands are going up. [LB898]

SENATOR SULLIVAN: Thank you, Senator Adams. Senator Haar, do you have any idea--you read Lexington Schools' policy--do all schools have and are they even required to have policies with respect to student expression? [LB898]

SENATOR HAAR: No. No. And that's part of the problem, that then it can become very

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Transcriber's Office

Education Committee
January 26, 2010

subjective and just simply: Well, that's not acceptable. And you'll hear some examples of that--the testimony that follows. [LB898]

SENATOR SULLIVAN: Do you know how many schools have policies in place? [LB898]

SENATOR HAAR: No, I don't. And this bill would require a policy. [LB898]

SENATOR ADAMS: Senator Avery. [LB898]

SENATOR AVERY: Thank you, Mr. Chair. Senator Haar, do you believe that free speech is absolute? [LB898]

SENATOR HAAR: No. [LB898]

SENATOR AVERY: No. I hate to put you on the spot, but... [LB898]

SENATOR HAAR: No, go ahead. [LB898]

SENATOR AVERY: ...would you... [LB898]

SENATOR HAAR: Go ahead. [LB898]

SENATOR AVERY: Would you tell me what is your definition of free speech in the American context? [LB898]

SENATOR HAAR: Well, I think you start with the assumption of free speech, and then you say what you can't do. To me, that makes the most sense. And, for example, in this bill, talking about the forms of student expression that are prohibited, you know, beyond crying--beyond yelling, "Fire!" in a crowded room: "student expression which is obscene, student expression which is defamatory, student expression which creates a clear and present danger of unlawful acts, causes material and substantial disruption of the orderly operation of the school, violates the privacy rights of others, or is otherwise unprotected by the First Amendment." [LB898]

SENATOR AVERY: And these three prohibitions... [LB898]

SENATOR HAAR: Um-hum. Four, actually. [LB898]

SENATOR AVERY: ...are not currently a part of the code of conduct--the rules governing free speech in schools today? [LB898]

SENATOR HAAR: Well, as I was saying, part of the problem is that the Supreme Court basically tells us what we can't do, and so there is no clear and easy guidebook to what

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

can and can't happen in schools. And so what this is proposing--that within the context of each school we need to have a policy that clearly defines that, so that, you know, if there's a question about what's going on, students can't be summarily expelled or teachers reassigned or principals fired. [LB898]

SENATOR AVERY: When you defined free speech, you used the "clear and present danger" doctrine... [LB898]

SENATOR HAAR: Um-hum. [LB898]

SENATOR AVERY: ...I think it would be called, because you used the example of yelling, "Fire!"... [LB898]

SENATOR HAAR: Right. [LB898]

SENATOR AVERY: ...in a crowded theater where there is no fire... [LB898]

SENATOR HAAR: Um-hum. [LB898]

SENATOR AVERY: ...and there's not enough time to debate the issue and to decide whether there really is a fire--you get out. [LB898]

SENATOR HAAR: Right. [LB898]

SENATOR AVERY: So you don't have the right to do that. I've always thought that that was a pretty good ruling the Supreme Court has made on clear and present danger, that you have free speech until you reach that point where your speech presents a clear and present danger of harm to others, and you must stop there, and the state has the right to restrict you. But in schools, it might be a little bit different. The Supreme Court used to have a doctrine--I think they called it the "grave and probable" doctrine, which was a little bit looser, because you didn't have to have a clear and present danger of some harm, but it could be a grave, probable danger but not clear and present. It seems to me that schools might fall into that second definition of free speech. And I'm wondering if what you're doing here is taking the schools closer to the stricter definition of freedom of speech and--where the Supreme Court used to be--and, say, I'm suggesting that maybe schools might need to have some authority to manage or to restrict the speech of students in those grave and probable circumstances and not restrict it to clear and present danger. [LB898]

SENATOR HAAR: Yeah, and we will...I'm not a scholar on the First Amendment, but we will have at least one person testify about some of the decisions from the Supreme Court about student rights. So I think the kind of points you're bringing up and the terminology I'm not familiar with...that you may want to ask that question later. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR AVERY: I--just for the record--I am a co-sponsor on this bill; I'm not opposed to it. (Laugh) Thank you. [LB898]

SENATOR ADAMS: Senator Howard. [LB898]

SENATOR HOWARD: Thank you, Chairman Adams. I have a real concern about this. I...when does your right to free speech get into the territory of disrespect and possibly even danger to other people? A few years ago I was successful in getting an anti-bullying bill passed down here. And that included cyber-bullying, which, I hope you will agree--that can be very dangerous to a young person, when that's--when that happens. And I wonder how your bill interfaces with that. [LB898]

SENATOR HAAR: Well, I think that bullying fits right into that, that that's very harmful in a school context and fits right into this kind of a school policy we're talking about. I would think that would be part of the policy. [LB898]

SENATOR HOWARD: So you would see this as reinforcing the anti-bullying... [LB898]

SENATOR HAAR: Yes. [LB898]

SENATOR HOWARD: ...policy. [LB898]

SENATOR HAAR: Yes. [LB898]

SENATOR HOWARD: Okay. [LB898]

SENATOR HAAR: Yes. [LB898]

SENATOR HOWARD: All right. Thank you. [LB898]

SENATOR ADAMS: Anyone else? Senator Giese. [LB898]

SENATOR GIESE: Thank you, Chairman Adams. Senator Haar, just for a point of reference, I'll read you this sentence out of this article I got, and then you can say yes, no: [LB898]

SENATOR HAAR: Sure. [LB898]

SENATOR GIESE: Administrators at Millard South High School suspended the 23 students last year after they wore T-shirts bearing the phrase: Julius, R.I.P. The administrators said the shirts violated the school's dress code because they could be disruptive. Yes? No? [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR HAAR: That's the T-shirt I'm wearing, by the way. [LB898]

SENATOR GIESE: Yes? No? [LB898]

SENATOR HAAR: And you'll hear from some of those students today how they felt about that. [LB898]

SENATOR GIESE: What's your thoughts? [LB898]

SENATOR HAAR: I...in my opinion, in that situation it is a violation of free speech to say: You can't wear that. [LB898]

SENATOR GIESE: Thank you. [LB898]

SENATOR HAAR: Yeah. And these aren't all simple, easy decisions, but I think we have to take them on. [LB898]

SENATOR ADAMS: Other questions for Senator Haar at this point? Seeing none, thank you, Senator. [LB898]

SENATOR HAAR: Thank you. [LB898]

SENATOR ADAMS: First proponent. Do you need a page? [LB898]

PEGGY ADAIR: (Exhibit 7) Senator Adams and members of the committee, for the record my name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters of Nebraska. The history of the United States is one of evolving democracy and expanding civil rights for citizens. For the past 244 years, civil rights have expanded for women, for people with disabilities, for ethnic minorities, for the elderly, for the mentally ill, but there's one group of citizens for whom civil rights have diminished. And that group of citizens is public school students. From 1943 to 1969, a majority of major appellate court decisions involving public school students ruled in favor of the civil rights of students. The landmark Tinker decision of 1969 ruled that indeed students are citizens, whose First Amendment protection does not stop at the schoolhouse door. But that protection began to erode in the 1970s as courts ruled more and more in favor of the school district, the government, rather than the student, the citizen. This erosion culminated in the Hazelwood decision of 1988, wherein the Supreme Court said it is okay for school administrators to censor student-initiated speech for a variety of vague and broad reasons. Since that protective bar has been lowered, an entire generation of public school students has been told to sit down, shut up, don't talk about controversial issues, don't write about them, don't discuss them, and, for Pete's sake, don't put on plays about them. Yet school is the very place where young people should be learning

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

how to discern truth from lie, how to think, how to reason, how to solve societal problems, how to work together for the common good, how to discuss complicated social issues in a respectful and thoughtful manner. They have a trained professional right there in the room to lead and guide the discussion. Students learn to read by practicing reading; they learn math by practicing math problems. In the same way they learn what democracy means by practicing democracy, by speaking and writing and drawing and performing without unwarranted governmental censorship of their ideas and their beliefs. The First Amendment was written into law not to protect one group of citizens--in this case, adults--from another group of citizens--and in this case, children. The First Amendment was written to protect all citizens from an overreaching government. One would hope that in a state such as Nebraska we would demand and require and celebrate the protection of all of our citizens, young and old, from an overreaching government. I ask on behalf of the League of Women Voters that you rule in favor of the young citizens in this case and that you send LB898 to the floor for full debate and eventual passage. And I welcome any questions. [LB898]

SENATOR ADAMS: Thank you, Peggy. Are there questions? Peggy, you and I could probably debate this forever... [LB898]

PEGGY ADAIR: Indeed we could. [LB898]

SENATOR ADAMS: ...but I'm going to throw it out here, because you opened the door up. [LB898]

PEGGY ADAIR: But you're the teacher, and I'm not an attorney, so go for it. [LB898]

SENATOR ADAMS: I'm not an attorney, and...rights of students have diminished. [LB898]

PEGGY ADAIR: Yes. [LB898]

SENATOR ADAMS: I know this will date me a bit, but I recall when my sideburns could not go down below my earlobe; I had to wear a belt or be expelled; women had to wear a dress and not slacks. We're nowhere near that today. [LB898]

PEGGY ADAIR: Yeah. What I'm discussing here is Supreme Court and appellate court cases where they have actually dropped in favor of government and in opposition to young citizens. In fact, between the years of 2003 and 2008, 81 percent of the appellate court cases ruled in favor of the government versus the young students. [LB898]

SENATOR ADAMS: But are we rolling... [LB898]

PEGGY ADAIR: So I'm talking about... [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR ADAMS: Are we rolling rights back, or are we simply confronted with more different forms of expression and cultural change which may have precipitated the government to respond to a variety of different things? [LB898]

PEGGY ADAIR: There have been four different things. There's been expression; there's been drugs and alcohol; there's been weapons; and there's been children with disabilities. Those have been the four basic issues that have been looked at, and so those issues continue, I think, to be the same. And, you know, you're talking about evolving...oh, I don't know--different kids wear different guns or whatever. But the issues are the same. What I'm seeing is that the solution to the issues is to silence students rather than to solve the issues. [LB898]

SENATOR ADAMS: So if a school district says: We're going to have a policy that says no text messaging in school--has the school stifled free speech or have adjusted to a brand-new media phenomenon that could be deemed a form of speech? [LB898]

PEGGY ADAIR: I think what educators need to do is to embrace new technology rather than to fight it. There was a really good article in the newspaper, I believe--what was it? Yesterday--talking about--I don't do this, so I don't know--tweeting--twittering, whatever the short stuff is. And it was talking about how educators actually need to embrace this, because what it does is it teaches children how to write concisely. So there are good things and bad. And if they will simply embrace that new technology instead of be afraid of it, I think it can be a win-win for everybody. [LB898]

SENATOR ADAMS: So that "because" is spelled "c-u-z"? I'm sorry. (Laughter) Are there other questions? Yes, Senator Howard. [LB898]

SENATOR HOWARD: Thank you, Chairman Adams. So you feel that people should be able to express via the cell phone and...that shouldn't be restricted, that shouldn't be limited, there shouldn't be parameters on that? [LB898]

PEGGY ADAIR: Well, I absolutely agree with you about cyber-bullying; that's a very dangerous thing. I would like to note, though, that schools can bully too; the administrators can bully students. And this has happened. [LB898]

SENATOR HOWARD: Well, thank you for that endorsement, but that's not where I'm going right here. [LB898]

PEGGY ADAIR: (Laugh) Okay. So where are you going? [LB898]

SENATOR HOWARD: I'm talking about the texting... [LB898]

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Transcriber's Office

Education Committee
January 26, 2010

PEGGY ADAIR: Um-hum. [LB898]

SENATOR HOWARD: ...and the tweetering and the twittering and the e-mails and the things you do with your thumb on your cell phone. Do you think that that should be completely up to the individual that's using that mechanism, or should there be parameters on it? [LB898]

PEGGY ADAIR: Within the school or outside of the school? [LB898]

SENATOR HOWARD: I'm just asking what you think. [LB898]

PEGGY ADAIR: What do I think? I think within the school, I think there definitely need to be some parameters, simply because the teachers need to be able to teach; the students need to be able to learn. And so certainly there need to be some parameters. And, you know, I speak to a lot of classes, and there will be, you know, things up on the bulletin board, you know: Please turn your cell phones off--you know--in my class. If they want to, you know, use their cell phones in the hallway, fine, after--you know, between classes. So definitely, there need to be some parameters so that the schools can teach. [LB898]

SENATOR HOWARD: I'm glad to hear you say that, because I think it's a real serious problem when people, whatever your age is--it's when you're using something like that, a device like that that distracts you from what you need to be doing. And I specifically think of driving. [LB898]

PEGGY ADAIR: Yes. [LB898]

SENATOR HOWARD: Thank you. [LB898]

PEGGY ADAIR: You're welcome. [LB898]

SENATOR ADAMS: Are there other questions for Peggy? Thank you, ma'am. [LB898]

PEGGY ADAIR: You're welcome. [LB898]

ALAN PETERSON: Chairman Adams, members of the Education Committee, I'm Alan Peterson. I'm an attorney in the First Amendment area--of all places--and have for about 40 years been the lawyer for the news media in this state. I represent Media of Nebraska, which is a coalition on free speech, free press, access to news, those kinds of issues. So I'm a lobbyist. This bill has come before the Legislature before, never in quite as clean and good a condition. Let me make just four quick points. And I understand the lights; I'll do the best I can. Number one, status quo of the law: The case mentioned from 1969 was Tinker v. Des Moines Community School District and said

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that limitations on student expression which is not disruptive to the school is free speech, and they don't lose their right to that--the U.S. Supreme Court so said. As was indicated, things bopped along for a while. And then in 1988, the key case, their status quo case, is Hazelwood out of St. Louis. And in that case, the U.S. Supreme Court says: Well, yeah, you have some rights; but unless the newspaper--as it was in that case, was involved--is a public forum for everybody to talk, then the school can censor all it wants to on the vague standard that anything that is not, quote, consistent with its pedagogical purpose, unquote--its educational purpose--can be censored. And it was considered a horrible blow to the freedom of young people to express themselves. So those are the extremes. But that's still the law. However, the court made clear that each state may modify that and add to the freedoms by setting its own policy. So even if the First Amendment doesn't protect all of that speech, states can; they can go a little further. And that's what a number of states have done already--Kansas, Iowa, Colorado, California, Oregon, Massachusetts, a couple of others--bills just like this. And they've been successful, because what they say is one of the big educational purposes--one of the pedagogical purposes, if I can use that word twice in a day--is to teach people citizenship--to teach young people you can debate peacefully, like the hearing you had today between what appeared to be two sides of how to work with young hearing-impaired people. It was beautiful. A hearing--it was a hearing, what an irony that that's what we called it. Well, young people need to start learning to do that, and high school is a great place. The school paper, the annual--there are other expressions. So that's the status quo. You have a right, like some other states, to slightly extend. The next point I'd make is that this bill protects the school districts against liability. It makes the kids still responsible, and it says a number of things they can't do--obscenity, things leading to violence, and so forth. But it protects the school districts; it has a specific provision in there. Then...let me just say, the question about tweeting and so forth...my time is up, and I... [LB898]

SENATOR ADAMS: I'm going to let you finish your comment. Go ahead. [LB898]

ALAN PETERSON: I appreciate that. Thank you, Senator. The sixth section of this bill provides specifically that restrictions on the time, place, and manner of communication should be part of the policy. So tweeting during class, for example, may well be prohibited. It disrupts education, arguably, probably. And there's no...this bill would not prohibit controls on that in any way. So my last sentence would be, you know, by the time kids are beyond their first set of teeth and they've finished having trouble getting those teeth to pierce through, it's time to take the pacifiers out of their mouths. Let them express their thoughts; they're valuable. And it's really valuable to them to learn that we expect them to think and talk and participate. Thank you very much. [LB898]

SENATOR ADAMS: Thank you, sir. Are there questions? Guess not. Thank you, though. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

ALAN PETERSON: Thank you, Mr. Chairman. [LB898]

SENATOR ADAMS: There's a paper there by your foot that might be yours. [LB898]

ALAN PETERSON: Pardon? Oh, it is. Thank you. [LB898]

SENATOR ADAMS: Next testifier. [LB898]

_____: This ain't (inaudible) going back and forth. [LB898]

SENATOR ADAMS: Pardon? [LB898]

_____: Are you just doing proponent? [LB898]

SENATOR ADAMS: No, we're doing proponents right now. [LB898]

JEANNE KUHR: My name is Jeanne Kuhr; you spell it K-u-h-r. Thank you very much, Senator Adams and committee, for hearing me today. What brings me here today is my children had an incident at Millard South High School. My children designed the T-shirt that Senator Haar is wearing. These are my children. You'll notice they're not thugs; they're not gang members. They're your average, everyday children. My son is 20, getting ready to go into the Army to serve his country; my daughter has a 3.5 G.P.A.; my son has all A's and B's. This is my youngest daughter, who's Kirsten (phonetic); she has all A's and B's in school. Everyone's on the honor roll, does very well at school. I'll try to keep everything kind of concise, because I know that we're under a time constraint. In the summer, June 2008, my son's friend was shot and killed, and they wanted to do something to help his family, because his family could not afford to bury him, and they came up with a series of fund-raisers and different things. And one of the fund-raisers they had was they made these T-shirts. My youngest son was wearing one of these T-shirts, walking down the hallway at Millard South--no problems, no disruption, had worn it many, many times at school--and was pulled out of the hallway, pulled into the office, and I was told to come get him, because he was wearing inappropriate attire. I came up to the school, thinking: What's he wearing? You know. And I got there, and they basically told me that he either had to take the shirt off or go home. I asked for an explanation as to why the shirt was disruptive; you know, he'd worn it many, many times; we went through it all. And they basically told me there was no answer, I didn't deserve an answer. That was it. Take off the shirt or go home. That did incite the kids to get rather upset, because all of the children wanted to know why; it brought the children to ask questions. And it was very difficult for all of the children, not just mine, but there was many, many children that were involved in this. And I kept going back to the kids, that there's a right way for us to handle this, that, you know, just because they're big and we're little--that we would go through the process. And that's part of the reason I'm here today, is that, you know...it was bad enough that the children had to lose their good

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

friend, but to not be able to go through it and grieve the way they wanted to and support the family...and the school basically, you know, just kind of went over the--they can't wear it because the shirt was disruptive. The shirt...they really couldn't give me a reason why they couldn't wear the shirt. And the more that we went through it all, the harder and harder this got to us. And, you know, we would support this bill--I'm sorry, my time's up--we would support this bill, because even some of the teachers and staff members that came to me privately and said: I'd love to speak out on your behalf, but I can't, because I'm afraid I'll get fired. We had the police officer at the school and several of the administrators that came to me privately and said: I understand, but I can't help you. It was very difficult. And if this bill had been in place, then they would not have been able to punish our children, and other people in the administration would have been able to help us and to speak out. If you have any questions, I'll be happy to answer them. [LB898]

SENATOR ADAMS: I'll open it up to questions from the senators. Are there any? Senator Giese. [LB898]

SENATOR GIESE: Thank you. Ms. Kuhr, the...any other examples of any other shirts--and maybe you might not have any specific, but if anybody is coming up to testify that has any examples--other shirts that have been...? [LB898]

JEANNE KUHR: I know there were other shirts that were allowed to be worn, and our shirt wasn't; but I don't have an example with me. [LB898]

SENATOR GIESE: Okay. Thank you. [LB898]

SENATOR SULLIVAN: Senator Adams? [LB898]

SENATOR ADAMS: Yes, Senator Sullivan. [LB898]

SENATOR SULLIVAN: How do you account for the inconsistency in that you had said your son had worn the T-shirt to school many times and then suddenly was not allowed to? [LB898]

JEANNE KUHR: I asked the school for the same reasoning, and they basically just said they hadn't noticed before. And he had worn it many--I mean--many, many times, because he liked it because it matched all of his clothes. [LB898]

SENATOR ADAMS: Are there other questions? Senator Avery. [LB898]

SENATOR AVERY: Am I right that the school never gave you a satisfactory explanation as to why--just that: We say so, and that's it? [LB898]

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Transcriber's Office

Education Committee
January 26, 2010

JEANNE KUHR: Well, that was in the beginning. They--eventually they did...that was their first: Just because we said so. Then I went to--I appealed it; I went to the board meetings. And the only responses I ever got from them were in letters. And, really, they just kept quoting out of their student handbook that basically said that it was...they had a quote out of there, and I am sorry I don't remember it exactly--but that it was disruptive. [LB898]

SENATOR AVERY: But without saying how it was disruptive... [LB898]

JEANNE KUHR: No. They... [LB898]

SENATOR AVERY: ...connecting the decision to... [LB898]

JEANNE KUHR: And the...if you'll look on the shirt, it says--the "R.I.P." on the front of it... [LB898]

SENATOR AVERY: Um-hum. [LB898]

JEANNE KUHR: ...they decided that was gang slang. "Rest in Peace" they decided was gang slang. [LB898]

SENATOR AVERY: Um-hum. [LB898]

JEANNE KUHR: That was the only thing that they ever gave us. [LB898]

SENATOR AVERY: But they didn't have a general prohibition against message T-shirts. [LB898]

JEANNE KUHR: No, they did not. They also...we have a key chain and a bracelet that had, "Julius Robinson, in loving memory," with his football number on it. The children were also not allowed to wear or carry the key chain or the bracelet at any time. And my daughter was actually sent home one day because she had an order form for the T-shirts on the front of her binder. You know, I mean, you know, she wasn't even wearing anything. She just had an order form for it; it wasn't even...she couldn't even be allowed to have it on her body at the school. [LB898]

SENATOR AVERY: And they didn't even attempt to connect their actions to any probable action in the school or probable disruption. I don't know, Julius might have been a student there and... [LB898]

JEANNE KUHR: He was a...he was killed in the summertime; he was a student there that previous year. And they basically said that his shooting was gang-related, because he was shot by a gang member; so it was gang-related. And they said they were fearful

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that it was all gang-related. [LB898]

SENATOR AVERY: And so any message T-shirt could be seen as either promoting or trying to challenge the gang? [LB898]

JEANNE KUHR: Yeah, basically just that they were worried that it would see as a gang affiliation. [LB898]

SENATOR AVERY: I see. [LB898]

JEANNE KUHR: Because, you know, the children all look very, you know...and there were a...this wasn't just my students; this was...one day there was 23 students that were suspended, and I...there was many, many students...all in one day. They had a principal that stood at the door and just--immediately, if they walked in and if they had anything written on their hand, a T-shirt...some of the kids didn't have T-shirts--they made their own T-shirts that were in support...they sent them straight to the office and then straight home. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: One of my feelings is that it's not only what is taught in the schools, in terms of books, but the school itself is a message. [LB898]

JEANNE KUHR: Um-hum. [LB898]

SENATOR HAAR: What message did you and your children take away from that? [LB898]

JEANNE KUHR: The hardest thing for me was, you know, the children felt like the school was big, we were little--that was it. And I told them, you know, there's a procedure for this; there's a way that we can work on this and work to change the laws. And so that's, you know, that's kind of where we're at now. Really, the message we took away from that was that the school was bullying us, that they didn't have to give us a reason, they didn't have to give us the answers, and they didn't have to treat the children as if they had their own thoughts or opinions or that they deserved to be able to express them. [LB898]

SENATOR ADAMS: Are there other questions? [LB898]

JEANNE KUHR: Thank you for your time. [LB898]

SENATOR ADAMS: Sounds as though you have your own Tinker case in Millard. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

JEANNE KUHR: Thank you. [LB898]

SENATOR ADAMS: Thank you. Next proponent. [LB898]

DAVID MOSHMAN: (Exhibits 8 & 9) I have copies of the testimony. You can also distribute these books to the senators. Senator, hi. My name is David Moshman; that's M-o-s-h-m-a-n. I'm a professor of educational psychology at UNL. I'm a developmental, cognitive, and educational psychologist who specializes in adolescent development and in the role of intellectual freedom in education, and I've written about many of the issues that we've been discussing here. I'm the author of a adolescent development text and, in addition, two books related to student free speech; one is called Children, Education, and the First Amendment, which was published by the University of Nebraska Press, and the other, Liberty & Learning--which is being distributed--Academic Freedom for Teachers and Students, which is published by a publisher named Heinemann. In Nebraska, I have to clarify it has no relation to Governor Dave Heineman. The publisher Heinemann has two n's; that's how to tell. I just have seven points that I will make briefly. They are listed on the handout, and I'll be happy to take any questions about any of them. I do want to say, in addition to the books I've written, I've served as an expert witness in several cases involving these sorts of issues of student rights and student competence, including a case some of you may be familiar with--the case of Mergens v. Westside, which was a case that came out of Omaha in the late 1980s and was decided by the Supreme Court in 1990. This was a case involving the free-expression association of Christian students, and I testified on behalf of the students, and the Supreme Court ultimately upheld that. In support of LB898, I want to make these seven points. First, student expression and discussion are crucial to learning and development at all ages, and schools that respect student freedom of expression provide better education. And I think that's the main and most important point I want to make, that, aside from all the other issues, purely on the grounds of educational quality, promoting intellectual freedom in schools is, I think, the single most important thing you can do to provide a high-quality education. And student freedom of expression is critical to that. Second, given the importance of identity formation in adolescence, freedoms of belief and expression and self-definition are at least as important in secondary education as at any other level. So this is not just something for college students. Third, I think legislatures should always be careful to respect the autonomy of local schools, but they must require the basic conditions of education. And I would argue that freedom of speech is, in fact, a basic condition of education. This does not in any way prevent the formulation of a curriculum; it doesn't permit students to disrupt instruction. On the contrary, I think it dramatically enhances the quality of education. Fourth, Nebraska schools should educate their students, not indoctrinate them. Respect for the right of students to think for themselves, to say what they think, and to discuss their ideas with each other marks the distinction between an educational institution and a center for indoctrination. Fifth, considerations of educational quality provide sufficient reason to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

support student expression. First Amendment guarantees of individual rights reinforce the conclusion that student speech merits respect and protection, as many have already noted. But I would add that this bill, in my opinion, is well justified for purely educational reasons, independent of any consideration of law or rights. [LB898]

SENATOR ADAMS: Sir, your time is up. So, quickly, if you would, sum up. [LB898]

DAVID MOSHMAN: I'll just...the last two points is that, six, students detect hypocrisy, and schools should promote democratic values in what they do. And seven, there are actual cases in Nebraska, across the nation, and around the world that show that unjustified restrictions on student speech are common and take a variety of forms. And LB898 is much needed. [LB898]

SENATOR ADAMS: Thank you. Are there questions for this testifier? Senator Haar. [LB898]

SENATOR HAAR: Yes, thank you. I read earlier from a document from the Nebraska school boards in which they said that the role of the schools is preparing students for the workplace and that to give them rights to express themselves is really going to be doing a disservice. And I'm wondering how you would react to that as an educator. [LB898]

DAVID MOSHMAN: Well, I think preparing students for the workplace is one of many aims of education. But schools should also prepare students for democratic citizenship; I would say that's even more important. And then I would also add that not all workplaces, necessarily, restrict expression, and students shouldn't get the idea that when you work you just do what you're told. I think there's good reason to give students the idea that you should think for yourselves, you should say what you think, you should discuss things with others in respectful and positive manners but you're not going to be punished simply for not going along with the flow. [LB898]

SENATOR HAAR: Okay. Thank you. [LB898]

SENATOR ADAMS: All right. Other questions? Thank you, sir. [LB898]

DAVID MOSHMAN: Thank you. [LB898]

SENATOR ADAMS: Next proponent. [LB898]

LINDA BECKSTEAD: (Exhibit 10) My name is Linda Beckstead, and that's B-e-c-k-s-t-e-a-d. I am here today in support of the Student Expression Bill, LB898. I retired from Bellevue Public Schools last May after 21 years as a newspaper adviser, 18 of those years as a yearbook adviser. As a former journalism teacher, I can share my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

experiences of witnessing unfair administrative censorship that determined, restricted, and removed content from student publications. Let me begin by empathizing with school districts during this age of choice and learning communities and the desire to protect the district's image in order to retain and encourage student enrollment. However, it's my opinion that controlling student voices and only allowing them to publish positive, promotional stories about their schools is a bad marketing campaign. There are stories that routinely cause administrators to shudder and that students find fascinating: sex, drugs, alcohol, divorce, dating, and, curiously, school lunch. After all, these topics are some of the common threads of the teenage experience. Unfortunately for my newspaper students, two stories in the first two issues of their paper in 2007 caused heavy-handed censorship that resulted in two additional prior-review checkpoints. Now, upper-level administrators reviewed student work prior to going to press and then reviewed the printed version of the newspaper before distribution. Additionally, the principal would need to sit in on future-story meetings, and specific topics were now off limits, including stories about personal relationships and information related to biology. The offending stories included one about two students who became engaged while in high school. The concern was that they were lesbians, and a picture showed the two girls sitting close, looking at each other. The second story was about a teen couple who became pregnant in high school but lost the baby due to a miscarriage. The couple then chose to get married and planned a second pregnancy. It was difficult to break the news to my students; the stories had been approved prior to going to press. The stories were well written and utilized a variety of sources. When I pressed two administrators about the number of complaints about the articles, I was told there were a few, but they were primarily the transportation department and food service department employees. This bill allows students to be educated about their First Amendment freedoms by experiencing these freedoms. And it calls for student responsibility. But there are a few that can understand what it might be like for a district to have to deal with students who are thinking freely. And I understand that this fear can cause a district to begin to fear what students may say if they are not controlled in some way. Censorship, however, outside the boundaries listed in this bill elevates one value system over another, and in the case of public schools it typically publishes stories that reflect an administrator's values or perceived community values. Thank you. [LB898]

SENATOR ADAMS: All right. Are there questions? Guess not. Thank you, though, for your testimony. [LB898]

LINDA BECKSTEAD: Thank you. [LB898]

SENATOR ADAMS: Next proponent. [LB898]

FRANK EDLER: (Exhibit 11) Thank you. My name is Frank Edler; that's Frank, F-r-a-n-k, Edler, E-d-l-e-r. I have a Ph.D. in philosophy from the University of Toronto. I've been a full-time faculty member at the Metropolitan Community College for 16

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

years. I also--I have a daughter who's a senior at Lincoln High and a son who just is a recent graduate. I'm always amazed when I ask my students in my critical reasoning classes whether the majority can do whatever it wants to in this country, and most of my students give the quick response that, yes, the majority in this country can do whatever it wants to do. There is an almost innate belief that because a majority believes something, it must be right simply because a majority believes it. And so basically I want to keep this very short, but my point here is that the exercise...is the right of free expression has to be practiced; it is something that has to be learned. And I think at times we think about rights as though they're labels that automatically attach to people. These are things that are really things that have to be practiced and learned. And I think they must be learned and practiced in public school. I think one of the reasons--very briefly--one of the reasons I think why Hitler was able to get to power was precisely because the German people after World War I, after the collapse of the monarchy, did not have time enough to learn the democratic practices and the democratic institutions to be able to stand up enough to say, you know, when professors were--Jewish professors were fired en masse, to say: No; this is...we will not tolerate this. One thing I did want to say very quickly in terms of Senator Avery and Senator Haar talking earlier about, actually, clear and present danger, which is Oliver Wendell Holmes. And I think, Senator Avery, you brought up the issue of the bad--what's called a bad tendency. And so you brought up the question of, well, should we go...is clear and present danger too tight or too hard of an interpretation of free speech? And you thought that maybe it should go towards bad tendency. Is that...am I correct? [LB898]

SENATOR AVERY: Actually, it was the reverse of that. [LB898]

FRANK EDLER: I'm sorry. [LB898]

SENATOR AVERY: It was the reverse of that. [LB898]

FRANK EDLER: Okay, I would agree with you. I think this is...what you were referring to, really, is that the whole bad tendency versus clear and present danger goes back to World War I, as you know, where, basically, the Espionage Act, which was established in 1917, was read in such a broad way that any criticism of the United States constituted treason. And so we've had this before, and it's--this has been played out in a...I guess, I just want to say I think we should...I'm very much for LB898, and I think we should err on the side of the practice--that students need to learn this, the practice of the right of free speech. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: If you teach at Metro Tech...by the way, I have a son who teaches there. [LB898]

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Transcriber's Office

Education Committee
January 26, 2010

FRANK EDLER: It's Metro Community College. [LB898]

SENATOR HAAR: I'm sorry. Metro... [LB898]

FRANK EDLER: I'm sorry, it's not Metro Tech anymore. [LB898]

SENATOR HAAR: Okay, I'm sorry. [LB898]

FRANK EDLER: That's all right. Just one of those things. (Laugh) [LB898]

SENATOR HAAR: Okay. You know, the idea of community colleges was sort of expressly to teach--prepare students for the workplace, and so when...why are you talking about, you know, things like student expression if you're preparing... [LB898]

FRANK EDLER: We are a community college. We are, you know, we are not a college that prepares students, you know, to become automatons in the workplace. I'm sorry, I don't mean...I know I'm pushing that a little bit. But I think, though, that Moshman also brought up the point that we balance this. Yes, there are really important things one learns: loyalty, one learns to be on time in business, and so on and so forth. But that doesn't mean that you give up critical thinking when you become a member of a corporation. Loyalty doesn't mean always saying yes all the time. Loyalty at times means saying no, just as that...you know, you talk about whistle-blowing or whatever that...anyway. [LB898]

SENATOR HAAR: Do you leave...when I walk in to a corporation, to a corporate job, do I leave the First Amendment at the door? [LB898]

FRANK EDLER: No. [LB898]

SENATOR HAAR: Just talk just real briefly about that. There seems to be that impression. [LB898]

FRANK EDLER: I think when you're in the armed forces, you don't leave your critical thinking at the door either, because if you obey a command that is ultimately against the military code of justice, you are...look, German soldiers, you know, at the Nuremberg trial didn't say--we didn't accept them saying: Well, I was just carrying out orders. We did not accept that. [LB898]

SENATOR ADAMS: Senator Avery, did you have a question? [LB898]

SENATOR AVERY: Yeah. I just want to clarify something I said earlier, which I think others might have misinterpreted. What I was saying is that the clear and present danger doctrine of the current Supreme Court is a broader interpretation of free speech

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

rights than the previous doctrine of grave and probable, and you call that... [LB898]

FRANK EDLER: Bad...yeah, the bad tendency? [LB898]

SENATOR AVERY: ...bad tendency. But I was suggesting that perhaps schools might have some special circumstances that would allow them to move toward a bad tendency doctrine in the application of rules in the schools and not be quite as broad in their interpretation of First Amendment rights, because schools are special environments where bad things can happen to kids. And Senator Howard brought that up with the bullying issue. [LB898]

FRANK EDLER: I agree, but I think there's also the, you know, something that's immediately labeled as disruptive behavior or is seen immediately as having a bad tendency towards disruptive behavior, without really saying: Well, here are the reasons why, and this is why we're convinced that this is so...can immediately say no, identify it, and then it's eliminated, just like with the T-shirts. [LB898]

SENATOR AVERY: Yeah. [LB898]

SENATOR ADAMS: Senator Cornett. [LB898]

SENATOR CORNETT: Dr. Edler, at what point do you feel that the guidelines should be set for First Amendment rights? And I'm not weighing in pro or con here; I'm listening. But freedom of expression has to be weighed against the feelings that the other students have that are surrounding those students that wish to express themselves. And one of the first things I learned in diversity training or sexual harassment is: You may tell me a joke that I think is funny, but someone overhearing it may feel that it's inappropriate and feel threatened by it. So while you may be limiting the freedom of the person to wear a T-shirt, are you also protecting the person that feels threatened by that T-shirt? Where do we need to set those guidelines? [LB898]

FRANK EDLER: It may well have to go on a case-by-case basis. I mean, there are... [LB898]

SENATOR CORNETT: Do you see what I'm coming from? [LB898]

FRANK EDLER: ...you know, student expression which is obscene, for an example...there are--there's even, you know, the violation of privacy rights of others, for an example, certainly is included here. But I agree. I--you know, I guess my interpretation would be to try to...in order for the right of free expression to be practiced, we should try to err on that side rather than to err on the side of clamping down and not permitting it. [LB898]

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Transcriber's Office

Education Committee
January 26, 2010

SENATOR CORNETT: And I understand what you're saying. It's just...schools have to be a safe environment for all children to feel safe in and to feel that they can go to and learn. And I'll just use the T-shirt as an example. Because I have a police department background, what you said about the military is very correct. You...just because someone gives you an order--if it violates a law, you are under no... [LB898]

FRANK EDLER: Exactly. [LB898]

SENATOR CORNETT: ...no obligation to obey that order, legally or morally. You have to make that decision for yourself. But if you look at the T-shirt, it does have writing that can be construed as gang-type writing. Now, does that threaten or make other students feel threatened? And that is where the question comes in, is where do you draw the line of providing an environment where children can learn without restricting the expression of the other students? [LB898]

FRANK EDLER: I would say, then, have this as a school moment that's teachable. That is, get the students involved in it and ask--bring those students in and say: Do you see--I mean--when you read this as objectionable, what does that mean? And so on. [LB898]

SENATOR CORNETT: And why do you feel it's objectionable? [LB898]

FRANK EDLER: Yes, exactly. And I think rather than immediately clamping down and saying, oh, this...you know, I mean, the interpretation is made; the decision is made: No; remove them; remove the student. [LB898]

SENATOR CORNETT: And I agree that I don't necessarily feel this situation was handled necessarily in... [LB898]

FRANK EDLER: Yeah. I... [LB898]

SENATOR CORNETT: ...I don't want to say in an inappropriate manner but in a manner that was a little rough-handed towards the students. [LB898]

FRANK EDLER: But I think you're absolutely correct in terms of being sensitive to those students who... [LB898]

SENATOR CORNETT: Because you have to be sensitive to all students. [LB898]

FRANK EDLER: Exactly. [LB898]

SENATOR CORNETT: Okay. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

FRANK EDLER: I meant those students who were taking offense in some way...
[LB898]

SENATOR CORNETT: Um-hum. Yes. [LB898]

FRANK EDLER: ...at the T-shirt. [LB898]

SENATOR ADAMS: Other questions? Thank you, sir. [LB898]

FRANK EDLER: Thank you. [LB898]

SENATOR ADAMS: Next proponent. [LB898]

JAZMOND GOSS: Hello. My name is Jazmond Goss, J-a-z-m-o-n-d G-o-s-s. I'm a former student, a journalism student, of adviser Linda Beckstead and Kim Bultsma at Bellevue West High School. I was a reporter for the West Wind newspaper when it was first censored for its content in 2008--I graduated in May 2008. And it was for two stories that were censored based on content. And our principal and none of our administrators came and spoke to us about why we were being censored. Our adviser told us that it was...we couldn't talk about any stories that involved relationships--which covers sex, pregnancy, and homosexuality and even affected the advertisements that we could publish. We had an STD testing ad that we had to drop. And we had to find another way to supplement--to pay for our printing. Neither of the stories--that had been printed previously--contained material that was vulgar nor inappropriate, in my opinion. And I support this bill, because I feel that it's important that students be taught to handle true journalism maturely. If journalism students and their advisers are not trusted to decide on appropriate content and how best to convey sensitive ideas to the public, students are being taught to present journalistic material with fear. If we allow our journalism students to fear and be forced to comply with censorship, they are left without the strength to print truthful stories in the face of great controversy. And that is a skill that I believe is very vital for any journalist entering the working world. I know that by allowing censorship, we crush the true spirit of journalism. Thank you. [LB898]

SENATOR ADAMS: Um-hum. Are there questions? Senator Avery. [LB898]

SENATOR AVERY: Very quickly. Thank you, Mr. Chair. Your testimony reminds me of something that happened to me when I was a student. I was editor of my school newspaper. And I, too, was censored, because I published a story based upon a student survey of the quality of the food in the cafeteria. You can imagine what the results of that survey was, and that's why I was censored. So I definitely can identify with you. [LB898]

SENATOR ADAMS: Thank you. Are there other questions? Very quickly--my own

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

curiosity. The article that you wrote and was censored--were there any mention of student names in the article? [LB898]

JAZMOND GOSS: It wasn't an article that I had written. I believe there was mention of the student names in the articles. [LB898]

SENATOR ADAMS: There was mention of student names. [LB898]

JAZMOND GOSS: I'm sorry? [LB898]

SENATOR ADAMS: Okay. You say you did mention student names? [LB898]

JAZMOND GOSS: It wasn't an article that I wrote, but I do believe that it had mentioned student names. [LB898]

SENATOR ADAMS: Okay. That's all right. Thank you. Senator Giese has got a question for you. [LB898]

SENATOR GIESE: Thank you. Ms. Goss, then taking that just one step further, it was the school newspaper, right? [LB898]

JAZMOND GOSS: Yes. [LB898]

SENATOR GIESE: And my question would be--although I see the significance and importance of the school newspaper--but with Facebook and things like that now, it was probably available to anybody that wanted to know it before it even came to the school newspaper. So I just--I understand your concerns, but I don't know what the...and if there were names there, I don't know; I just have a problem having it be in the school newspaper with names, considering today's technology. [LB898]

JAZMOND GOSS: I'm sorry, I'm not sure what you're asking. The articles were--one of them was...I was a former student with Ms. Beckstead; she was talking about them before, about a couple who were talking about their plans after high school and a mother who had lost her child and her plans with her...she got married to him afterwards. And their...I believe, because they had interviewed the students, that they had had the names in the paper. But I'm not sure what you're asking; I'm sorry. [LB898]

SENATOR GIESE: That's fine. That's fine. Thank you. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: What was the lesson you learned? [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

JAZMOND GOSS: That I was small and the school was big. I remember being really upset about it and feeling that there was nothing I could do. I wanted to write to the administrator, but what could I say? I was, you know, one of many students without much power at all. [LB898]

SENATOR ADAMS: Maybe that becomes the theme for your next article. Go ahead, Senator Cornett. [LB898]

SENATOR CORNETT: Tell me how you'd feel different if you were working for a newspaper and you'd spent weeks researching an article and they decided not to print it. What is the difference there? And with no explanation, just told you: No, you're off the story. Would you be dealing with those same feelings? [LB898]

JAZMOND GOSS: Yes, I would feel, as with anything that you put a lot of work into...and particularly I feel, as a journalist, that you tend to write stories that you care about. And so when you're trying to make a point and you're conveying ideas to people, and they just say: No, I don't like that idea; you can't do that; sorry. I don't think that that's right, and I feel very crushed by that idea that I'm not allowed to say what I have to say. [LB898]

SENATOR CORNETT: But you... [LB898]

SENATOR ADAMS: Any other questions? [LB898]

SENATOR CORNETT: I was going to say, but you see the parallels between... [LB898]

JAZMOND GOSS: Between... [LB898]

SENATOR CORNETT: ...what happened in school and what could happen if you go to work for a newspaper. [LB898]

JAZMOND GOSS: Yes. Yes. [LB898]

SENATOR CORNETT: Okay, thank you. [LB898]

SENATOR ADAMS: Thank you for your testimony. [LB898]

JAZMOND GOSS: Thank you. [LB898]

SENATOR ADAMS: Next proponent. How many more proponents do we have? Okay. How many opponents? I'll tell you what I'm going to do. I'm going to say that we're going to go another ten minutes on proponent testimony, and then we'll move on to opponent testimony. Go ahead, sir. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

JOHN BENDER: (Exhibit 12) Okay, I'll be very brief. My name is John Bender; I'm a professor at the College of Journalism and Mass Communications at the University of Nebraska-Lincoln. I teach courses in news writing, reporting, media law, media history, and controls of information. I'm also the executive director of the Nebraska High School Press Association, and I've been that for at least 16 years now. And that's given me the opportunity to work with Linda Beckstead and a couple of the other teachers whom you're going hear. And what I want to focus on is what kind of people these advisers are. These people work tremendously hard; they work long hours into the evening, on weekends--working with their students to meet deadlines for their yearbooks, for their newspapers; coaching these students on writing, editing, design, photography; teaching them the principles of good journalism. Many of these advisers enjoy the support and respect of their supervisors, their students, their peers. But occasionally they run afoul of administrators who think that the only thing that should come out of a school journalism program is public relations, information that is entirely favorable to the school district. So these people are people who are trying to teach their students good journalism; they're not bomb throwers; they're not radicals. They're trying to prepare their students to do good journalism. And that is their focus. And I want you to understand, as I say, how good these people are. When they run into these kinds of censorship situations, some of them are able to survive, outlast the administrator. Some of them are not that lucky. Some of them have to, or decide to, quit teaching journalism; some of them quit teaching in Nebraska and go to other states; some of them quit teaching altogether. And because of the quality of the work these people do, that's a great loss to the students and schools of Nebraska. [LB898]

SENATOR ADAMS: Thank you, sir. [LB898]

JOHN BENDER: Any questions? [LB898]

SENATOR ADAMS: Are there questions? Thank you, then. [LB898]

JOHN BENDER: Thank you. [LB898]

SENATOR ADAMS: Next proponent. [LB898]

LAUREL MARSH: (Exhibits 13 & 14) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today on behalf of ACLU Nebraska in support of LB898. And I would like to pass out both our "Know Your Rights" brochure--a short booklet that's written at the middle school level; this is on our Web site--and some specific comments. I will make one point that I think has not yet been made, and that is that in our research in preparing for this bill we have yet to find a case in which a school, a school district, or a school publication has been sued for a piece published by a school paper. And yet my letter will show you several examples of times when the ACLU has intervened in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

incidents where the school has censored activity or expression. And we feel that this bill would motivate boards to spend the time on developing a good policy and it would be to the benefit of the situations that we have described. I'd be pleased to answer any questions. [LB898]

SENATOR ADAMS: Thank you. Are there questions for this testifier? Thank you for your brevity. Appreciate it. [LB898]

ANGELA ROLSTON: (Exhibit 15) I'm Angela Rolston from Bellevue East High School; it's R-o-l-s-t-o-n. I am the co-editor in chief of my newspaper. I've been writing for my high school newspaper for almost three years. My experience on the Tom Tom staff has been nothing short of perfect, hysterical, amazing, and revealing. The people are perfect; the deadlines are hysterical; the results are amazing; and the news is revealing. My staff takes the time to research their work, get all the facts, and cover the opinions and experiences of true people. We've worked diligently to make our paper one of the best in the Omaha metro area and to become a less censored source for students and teachers to learn about what's happening in our district. Within the past few years, the censorship at my school and in my district has become overbearing. It has dominated too much of our time and consumed too much of our energy. Prior review seems to be forever lurking around the next corner, and censorship stays in the front of our minds. I've had a few experiences with censorship but only one which really affected me. It was October 2009, and a lot had been going on within my district involving teacher pay increase negotiations. I had initially planned to co-write a story about the stimulus funds and interview the superintendent, who had made some disrespectful comments about his employees to a local professional newspaper. However, after interviewing him and going over the interview, I decided to publish it in a Q&A format so as to not misquote him. After cutting out some of the most harmful quotes and sending it to my principal for prior review, it was still entirely censored. My Q&A was then taken to my district's director of secondary education, who proceeded to mark what he thought were errors all over a very rough design of our paper. Allegedly, he and my principal then took the copy to my superintendent, who rewrote his answers to my original questions from the initial interview and sent it back to my adviser to publish. We declined to run the rewrite. After a month of getting the attention of our local paper, the ACLU, and the SPLC, we finally received permission to print the original Q&A with only one administrative revision. Nevertheless, in a simple effort to reveal what was happening in our own district, we were completely shut down before anyone could read the news. Honestly, there is some benefit from the struggle my staff and I went through. It taught us how to fight for our beliefs and just how important it is that we do. Then, again, it wasn't the censorship that taught me how to fight against censorship, it was my basic right to free speech which gave me that ambition. Until this past year, I had never felt so strongly about my rights as not only an individual but a student. These rights are nothing new, and it makes me sad to know that Nebraska is so far behind in reform that when controversy arises students are still hushed and bound by things such as prior review. It is important to me

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

and to every other student whose expression has been suppressed by people who have no right to do so that LB898 be passed. [LB898]

SENATOR ADAMS: Thank you, ma'am. What school did you say? [LB898]

ANGELA ROLSTON: Bellevue East. [LB898]

SENATOR ADAMS: Are there questions for this testifier? Thank you. [LB898]

ANGELA ROLSTON: Thank you. [LB898]

SENATOR ADAMS: Next proponent. [LB898]

ROBERT BROOKE: (Exhibit 16) Good afternoon. I'm Dr. Robert Brooke; that's spelled B-r-o-o-k-e. I work at the university English department, and I am the director of the Nebraska Writing Project. In that role, I work with writing teachers across the state. And the one thing I'd like to add--I sent around my statement, but the one thing that's substantive which we haven't talked about yet is the fuller range of issues of censorship of material that comes up across the writing curriculum. Writing teachers that I work with--and we represent 2,500 writing teachers across the state--routinely face issues of student expression difficulty at three moments in the curriculum. You've heard about the biggest one, which is the high school journalism context. The other two are, I think, equally important. One of them is creative expression in literary magazine and performance. And constantly teachers find themselves being confronted with cases where student creative work raises issues for someone in their community. And what I think LB898 helps all of us do--both student, teacher, and administrator--is to identify some of the reasons by which you can speak back to community members that might be uncertain about how to treat student work and to see how it's located within the work that you do. So creative work...if you think about poetry...two cases I can think of that show the spectrum of this issue: a school in mid-central Nebraska refused to publish in a literary magazine a set of prayers written by one student out of the Christian faith tradition because of the potential of controversy in that area; in a similar school--just about 50 miles down the road, a school refused to publish a fictional short story written about a gay couple in small-town Nebraska, again because of feared community response. Both of these would be handled under LB898 with some clear directive for student, teacher, and administrator to move on up. The second category that has been shown...oh, my goodness, now I'm losing my train of thought. Besides...oh, it's persuasive essay writing, which is now the 11th-grade prompt. And what I hear constantly from teachers is that in the classroom when you're dealing with helping students come to express persuasive opinion on controversial subjects, that this runs into huge issues. And many teachers across the state are so scared about this issue and the response by community members that they have a list that they've produced on their own, that administrators have given them, of topics which are off-limits for young

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Transcriber's Office

Education Committee
January 26, 2010

people to write about. And obviously those same topics are the ones which are probably most controversial in our body politic and are the topics that in some ways young people need the most help training to think about in a pluralistic way. And those then become off-limits for the kind of program they've got. I made time just perfectly; I'll stop there. [LB898]

SENATOR ADAMS: Good timing. [LB898]

ROBERT BROOKE: Thank you. [LB898]

SENATOR ADAMS: Thank you, sir. Are there questions? Senator Sullivan. [LB898]

SENATOR SULLIVAN: Thank you. Do you--in addition to working with secondary teachers, do you also teach students at the University of Nebraska? [LB898]

ROBERT BROOKE: Yes, I do. [LB898]

SENATOR SULLIVAN: Do you believe that there should be different parameters on student expression at the high school level as opposed to the postsecondary and college level? [LB898]

ROBERT BROOKE: Well, there certainly are different parameters, and I think there are so for some good reasons. So, yes, I do think there are some differences. [LB898]

SENATOR ADAMS: Senator Haar, you had a question? [LB898]

SENATOR HAAR: I'd like to just briefly hear what those parameters are and if we could get a...I'd like to see that list of topics, by the way, if I could... [LB898]

ROBERT BROOKE: Oh, you'd like to get to the list of topics for... [LB898]

SENATOR HAAR: No, not today. [LB898]

ROBERT BROOKE: Okay. [LB898]

SENATOR HAAR: But I'd like you to send it if you could. [LB898]

ROBERT BROOKE: Oh, that would--yeah, that would be interesting to see. The difficulty is that at the university level, students are fully adult, and they are operating as adults in a world of other adults. And there are some issues at the public school level on down, where students are minors. And there are some issues where parental--the place of the school in relation to the parent plays a much bigger part. And I think those are worth having each school system set its own policy for, so that there is a clear and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

directive laying-out of what those issues are. I think that would be a very good idea to something that is intended by the bill before you today. [LB898]

SENATOR ADAMS: Any other questions? Thank you then. [LB898]

ROBERT BROOKE: Thank you. [LB898]

SENATOR ADAMS: Well, it seems a bit uncomfortable at a free expression hearing to say we're done hearing from proponents, but in light of the fact it is free expression, let's hear from the opposition for a while. We'll begin with opposition testimony. Sir. [LB898]

SENATOR HAAR: Senator, can we ask people, though, who have not been allowed to testify to write us--to send us testimony that they were going to make? [LB898]

SENATOR ADAMS: Right. I made that statement early. So, yeah. [LB898]

ALAN POTASH: (Exhibit 17) Good afternoon. I'm Alan Potash, P-o-t-a-s-h. I'm the regional director for the Anti-Defamation League out of the Omaha office. The ADL is one of the nation's oldest civil rights and human relations organizations, combatting hatred, bigotry, discrimination, and anti-Semitism. Due to the mandatory nature of public education and the impressionability of schoolchildren, we are particularly concerned about the appropriate role of religion in our nation's public schools. This is a complex issue, and clear standards are often elusive. LB898, likely unintentionally, is written in such broad language that it would implicate student religious speech in ways that it would threaten the religious liberty of the school community. It is for this reason that we oppose LB898 as it is written. Section 3, as written, would leave students unconstitutionally subject to religious coercion because it would prohibit Nebraska schools from intervening when students subject their peers to unwanted proselytization. Because the proselytization would be expression from the viewpoint of the speaker, the policy would disallow the school from stopping the unwelcome speech. The United States Supreme Court has continually emphasized the danger of the religious coercion of students in public schools resulting from peer and public pressure. Lee v. Weisman; Santa Fe. Coercive religious speech, in particular, is troublesome in the school setting, because students are a captive audience and are subject to peer pressure and may not be comfortable requesting support from school administrators. Proselytizing might make student-listeners deeply uncomfortable. Moreover, if schools failed to protect unwilling listeners from religious harassment, those listeners would have a cause of action against the school district. In Section 5--we also looked at this, and perhaps unintentionally Section 5 would permit student-initiated religious messages at school-sponsored forums or events. It would thereby be inconsistent with the United States Supreme Court's ruling in Santa Fe. In that case, the court invalidated a school policy permitting student-initiated prayer at school-sponsored sporting events. The court found that the policy violated the Establishment Clause because it endorsed religious

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

speech. The court explained that the school's promotion of student-led prayer threatens the imposition of coercion upon those students who do not desire participating in that religious exercise. I'm a former journalism student, went to Central High School, went to Southern Illinois University, and feel strongly about freedom of speech, so this isn't so much about freedom of speech but about protecting students' rights who are subjected to things that could be abusive in nature and challenging. And I think that both Senator Howard and Senator Cornett brought up questions that are in line with how we look at this situation, that it's potentially problematic for both students and the school district if some of these issues aren't looked at. Thank you. [LB898]

SENATOR ADAMS: Questions? Senator Haar. [LB898]

SENATOR HAAR: Well, I'd like to talk with you further about your objections and maybe strengthen the bill. [LB898]

ALAN POTASH: Okay. I'm happy to do that. [LB898]

SENATOR HAAR: Okay. [LB898]

SENATOR ADAMS: Other questions? How do we balance, sir, free speech--even if it does have a religious topic--with time, place, and manner restrictions within the school and at the same time the Establishment Clause? [LB898]

ALAN POTASH: Well, I think that's part of the challenge of how we look at this legislation--is that it isn't so clear, that we have to find ways to provide students an opportunity for free expression but also protecting the religious liberties that the First Amendment also protects us with. [LB898]

SENATOR ADAMS: Very good. Other questions? Thank you, sir. [LB898]

ALAN POTASH: Thank you. [LB898]

SENATOR ADAMS: Next opponent. [LB898]

GREG PERRY: Good afternoon. My name is Greg Perry, P-e-r-r-y. I'm a school attorney, and I have three points. The first is the expense; there is expense carried with adopting a policy as well as then publishing it in the student handbook each year. And as relates to expense, most schools already have a student discipline code drafted by me. Our firm represents a large number of school districts; and every year, when you're done with your work, then I prepare policies for schools throughout the state. A majority of schools have a student discipline code that incorporates the specific language and situations where the Supreme Court has recognized that limits may be placed on student expression, with the concept that if the conduct doesn't fall within that scope,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

then, yes, all speech is free if it conveys a meaning. So the first point is expense. The second point is redundancy and local control. When I first read this, I see the provision that says: or is otherwise unprotected by the free speech. And I think, well, is it just saying that we can do whatever is permitted under the current case law? But as I listen, I see that's not really the outcome that people are looking for with this legislation; they're wanting to restrict speech to a greater extent than the Supreme Court has determined. So there's...when I go through...I get calls from superintendents: Can I discipline a student or stop a student from wearing that particular T-shirt? I go through my little chart. The first is Fraser: Is the message vulgar, lewd, indecent, or plainly offensive? You've got parts of that in this bill but not all. Then you go through the Morse test, which was established just recently: Is that advocating illegal drug use. Well, this bill does not limit students from advocating illegal drug use. Next is the Hazelwood case, which really addresses school publications. It's...the court recognized that no matter what this bill says, people think that their school newspaper is being endorsed by their school. And so when the court was faced with an article that had been censored by an administrator that discussed three kids in school that were pregnant, the court said: We've got to establish a new rule, because it's not an invasion of privacy--everybody knows that the girls are pregnant; it's not defamatory--it is what it is. And so they set a rule that said when it's a school publication, we can limit it. And what will happen is, to the extent that school publications...those who are putting on the program aren't allowed to control it. Kids come home with their paper; parents see an article about pregnancies or sex--the school is not going to publish the paper; it's done; it's cancelled. That would be the outcome in some communities. A lot of communities have very open school newspapers; some don't. I'm done. But those are the points, if you have any questions. [LB898]

SENATOR ADAMS: All right. Are there questions? Senator Giese. [LB898]

SENATOR GIESE: Thank you. Mr. Perry, so, in your opinion, the schools, in dealing with this T-shirt issue now, or the one that we talked about earlier that Senator Haar has, are...they're okay in that regard or...? [LB898]

GREG PERRY: Yeah, when I read the article, what, a year ago or so, I go: Oh, I don't think I would have agreed with the response that the school had. But the thing is, is that that's not fair, because there are a lot of criteria, specific facts, that have to be known, because what the school was applying there is the Tinker standard--is would a reasonable person, a reasonable administrator, predict that this is going to cause a substantial and material disruption in school? If not, the kids have a right to wear it. And in the first paragraph of a newspaper article, I can't tell; my first blush is no, but there are so many facts that I would need to know in order to be able to actually decide whether it's...was...should have been allowed or not. [LB898]

SENATOR GIESE: And also what was mentioned earlier was that they should handle it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

on a case-by-case situation, which it sounds like they're doing now. [LB898]

GREG PERRY: And you have to. I have spoken dozens of--hundreds of times on student speech, and I have these two cases. They both involve students that wore T-shirts that said--one said: Homosexuality is a sin; one said: Homosexuality is a shame. Both schools disciplined or told the students they couldn't wear it. In one case the school lost, and in one case the student won. It's all about the specific facts that are going on in that school. So you can put out a policy--and maybe it's just a little chart like what I do to help administrators understand the law--but without getting into the particulars and specifics of what's going on at that school, you can't just say: This is protected; this is not protected. [LB898]

SENATOR GIESE: What if it said: Homosexuality is a right? [LB898]

GREG PERRY: And there have been those cases too. And is that going to cause a substantial, material disruption in school? It depends. Is there straight/gay violence going on in the school? Have there been very significant incidents such as death? There's some of the cases involved where kids have recently been killed over these kinds of disputes. It depends. And you can't just project it based upon the words, you have to know the entire school atmosphere to be able to make that prediction. And so sometimes school administrators are going to err, guess it wrong, and, hopefully, most times they get it right. I'll tell you, though, that the immunity that's provided in a statute isn't very effective, because there's nothing that's going to immunize schools from Title IX lawsuits for failing to protect people on the basis of gender--students on the basis of gender--from being bullied, from students with disabilities suing because they've been bullied and the school didn't stop it, being sued under section 504. That immunity is a false security blanket. [LB898]

SENATOR GIESE: Thank you. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: Mr. Perry, do you believe that schools should give people reasons? We've heard quite a number of times here today that people are expelled or whatever, whatever, with no reason whatsoever. [LB898]

GREG PERRY: Well, of course, you cannot expel a student. You have the Student Discipline Act. [LB898]

SENATOR HAAR: Or send them home, yeah. [LB898]

GREG PERRY: If send them home, obviously there should be a discussion, and you are required to give a short statement--if it's a suspension--of the reason why, explain

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Transcriber's Office

Education Committee
January 26, 2010

the conduct and what school rule they violated. You go to the activity code: Where is the rule that says I can't do this?--or the student would go. And so, yes, they get the reason. Now, sometimes...I don't know the particulars--you have 23 students; you have less than 23 assistant principals to address the 23 and their parents. And so in those kinds of scenarios, what I see is--we have to get the basic message of: You can't do this; you're going to have to go home and come back with a different shirt. And then--but later on, there typically is discussion. Now, sometimes you have parents that aren't willing to listen, they aren't willing to dialogue, they're too upset. Sometimes the conversation...about: Well, work with us; don't you see that this isn't really good for your child's school? It's not good for him. Sometimes that dialogue needs to occur later, and some parents it never can occur. [LB898]

SENATOR HAAR: Well, we talk a lot in government about transparency. And schools are also an arm of government, and I think transparency of rules and so on does fit here. And what you described is best practice, but is that required anywhere? Can schools just say: Go home and change your shirt--no reason? [LB898]

GREG PERRY: Well, you go through the chart. [LB898]

SENATOR HAAR: Okay. [LB898]

GREG PERRY: And I get calls from schools--I remember this one boy who every day wore a challenging T-shirt. And every day we had to assess: Is this going to cause a substantial, material disruption? Okay, he's making a play on "jackass." Is that going to cause the other middle school students to not be able to pay attention to their studies? Not that one. He comes in with something that's "sex." Is that going to get kids to be talking about that rather than math? Yeah, that time he goes home. So it's...every situation has to be specifically, separately analyzed. [LB898]

SENATOR HAAR: But are schools required to give reasons and answers to kids, or is that just--is that also arbitrary decision? [LB898]

GREG PERRY: For a short-term suspension, yes; for a long-term suspension or expulsion, yes. For a--just stop that conduct, no; although the courts do require, where the area is vague, the courts do require a first warning. So for example, there's a case named Stoppkotte, where a student wore a bandanna on his head, and the school had a no-hats policy, and the court said: Well, the first time you do anything to Mr. Stoppkotte, you have to first tell him: Okay, we consider a bandanna to be a hat, so don't wear it again. Well, then when he wears it again the next day, then he's been given the one warning. [LB898]

SENATOR HAAR: Um-hum. So is that in Nebraska law, though, or is this a result of case law? It sounds like somebody was sued in this case, or something. [LB898]

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Transcriber's Office

Education Committee
January 26, 2010

GREG PERRY: Well, yeah. It's a matter of constitutional law, in the sense that if the rule can't be understood or if a reasonable student could not understand that this conduct would violate this school rule, then the warning is required to get beyond a void-for-vagueness concern. [LB898]

SENATOR HAAR: Nebraska or U.S. Constitution? [LB898]

GREG PERRY: Well, the case I was citing was Stoppkotte; there's also 8th Circuit Court of Appeals case involving a tattoo on a hand of a particular design. It's the First Amendment... [LB898]

SENATOR HAAR: Okay. [LB898]

GREG PERRY: ...and the Fourteenth Amendment. [LB898]

SENATOR HAAR: Okay. [LB898]

SENATOR ADAMS: Other questions for this testifier? Thank you, sir. [LB898]

GREG PERRY: Okay. Thank you. [LB898]

LARRY RAMAEKERS: Senator Adams and members of the Education Committee, my name is Larry Ramaekers; that R-a-m-a-e-k-e-r-s. I am superintendent of schools for the Aurora Public Schools, and I am representing the Nebraska Council of School Administrators as a member of the legislative committee. I fully understand and appreciate the rights of student expression in schools and the need to prepare students to be informed and to be active civic participants. However, I also strongly believe such expression needs to be determined by the school district and not placed into state statute. Maintaining discipline is a very timely and demanding task of school administrators. In preparing for this testimony, I met with one of our building principals, a couple assistant principals, two guidance counselors to discuss the effects of LB898 should it be passed. I immediately heard numerous statements from these individuals about situations where student expression, if allowed as stated in LB898, would significantly disrupt a school setting. The greatest concern expressed is the definition of the terms used in the bill. Who defines "obscene," "defamatory," something which creates a "substantial disruption"? Is it the principal, the teacher, the student, the parent? Individuals hired as teachers and administrators are often a reflection of what the community espouses. A conservative viewpoint may be what the patrons and parents of a community or school district desire. Stated succinctly, is this eroding local control, with a bill such as LB898? What responsibility do we have to the rest of the student body if one or more students is allowed to express themselves? Are we, quite frankly, infringing on the rights of some and allowing others the right to freely express

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

oneself? Currently, the school district I represent has policies and rules and regulations that address body piercing; students' wear--or the clothes that they wear; the types of dances, even, if they dance at school dances. Will there be a need to abandon or change such policies and rules if schools are mandated to allow student expression as stated in LB898? The guidance counselors cited several examples of having to counsel students who were negatively affected by statements or symbols from other students. Their fear is that this piece of legislation may exacerbate the problem. My final concern relates to the false sense of liberty of expression that may be an unintended consequence of this bill. In reality, each of us are restricted by what we can say and do. A student, upon graduation, will learn very quickly that freedom of expression has definite boundaries and consequences. Schools are currently governed by Supreme Court cases such as the Tinker case and the Constitution, which affords the students the right to expression. I feel those are more than adequate parameters for schools in handling student expression and makes it unnecessary to have additional regulations in the form of state statute. [LB898]

SENATOR ADAMS: Thank you, Larry. [LB898]

LARRY RAMAEKERS: Thank you. [LB898]

SENATOR ADAMS: Are there questions? [LB898]

SENATOR HAAR: Yes. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: I want to refer back to the--your publication of January 23, because, as I expressed earlier, frankly, I just could hardly believe I read this. And I'm going to quote it again: "We believe, in our role of preparing students for the workplace, that to give them rights to express themselves which far outstrip any they will enjoy should they eventually gain employment as a professional journalist may be akin to doing them a professional disservice by instilling unreasonable expectations. The benefits of the First Amendment always accrue to the people who own the ink and the paper." Could you comment further on that statement? [LB898]

LARRY RAMAEKERS: Well, first of all, Senator, I am representing the Nebraska Council of School Administrators, not the Nebraska Association of School Boards. [LB898]

SENATOR HAAR: Oh, I'm sorry. I had the wrong group. Then, you don't need to answer that. Yeah. [LB898]

LARRY RAMAEKERS: I do think there is an individual that is following here that is from

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

that organization... [LB898]

SENATOR HAAR: I will ask him. [LB898]

LARRY RAMAEKERS: ...that may better answer that. I have read that article, by the way, and there are some things that are stated prior to and after that statement that I think bring some clarity to that. But I will let that individual from that association respond to your question, if that's okay. [LB898]

SENATOR HAAR: Um-hum. Um-hum. [LB898]

SENATOR ADAMS: Senator Sullivan. [LB898]

SENATOR SULLIVAN: Thank you. Is there a process in school districts for grievances on the part of students? [LB898]

LARRY RAMAEKERS: Yes, there is. I can only speak for ourselves, Senator, in the school district that I represent. And the answer to that question is yes. We do provide the answers to the students--those questions that if they do have: Why can't we do this? Why can't we do that? And, yes, we do answer those questions. I feel they have the right to have the answer to those questions. I can't speak for all school districts. I've heard many things that have been stated here throughout this testimony, both as those who have made statements about those school districts. I can't respond to what they have done there. As Mr. Perry--prior to me speaking here--mentioned, I don't know all the circumstances, all the situations that are related to that. And until doing so, I can't respond to those. I hope that makes sense. [LB898]

SENATOR SULLIVAN: Sure. Thank you. [LB898]

SENATOR ADAMS: Larry, you know, in your testimony, the way that you said it struck a note with me that goes to the core of this, probably. You as a superintendent, your board, the folks that work for you--you have to, in some respects, be reflective of your community--the culture, the attitudes of your community. And I can only imagine--but almost every day, as the kids walk into the building, your administrators are wondering: What are they wearing? What are they texting? What are they saying? What are they doing in the rest room? What's going on in the parking lot? And you're held by that board and that community responsible for those standards--an extraordinary responsibility. And as a result, I could see where you would choose to say these are things that, based on our community standard, we're not going to allow. But wouldn't you maybe agree that therein lies the problem? That is, the majority of the community runs right; should we have free speech to protect those who want to run left? And there, somewhere in the nexus of all of that, we have to strike a balancing point. And that's...you've got a tough responsibility, and...you don't need to respond; I'm thinking

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

out loud more than anything else. So if you want to, have at it. [LB898]

LARRY RAMAEKERS: And I fully agree with the assessment that you have of that. I also want to agree with what Senator Cornett had stated here a little bit earlier, that schools are a place where parents send those children to school knowing that that should be a safe environment. In the decision making that we are confronted with--that is, number one in our priority--is that that environment has to be a safe place, the parent knowing full well that that child is going to come home at the end of the day and not have been subjected to whether it be verbal or physical abuse. And sometimes those decisions that we make are taking all of that into consideration, that--is this going to cause a problem that could be an unsafe environment for students? And, quite frankly, there are things that we have stopped, if you will--I'll use those terms--knowing full well that it could become an unsafe situation. And I will tell you, those decisions have been made because of the understanding of the community. So to come out with something saying this is for all school districts, to me that is eroding--again, as I stated in my testimony--of local control. I'm a very strong proponent of local control. Who knows better what's going on and what should be done for that community than that board of education, who has been voted in by the patrons, the constituents that they have there within that school district? So the people who voted those individuals in, I guess, are trusting them to make the decisions that is then passed on to the administrators, to the teachers of what's going to happen in that school system. [LB898]

SENATOR ADAMS: Other questions for Larry? [LB898]

SENATOR HAAR: Yeah. [LB898]

SENATOR ADAMS: Go ahead, Senator Haar. [LB898]

SENATOR HAAR: Tell me again, for my education, what organization, then--you're the Nebraska Council... [LB898]

LARRY RAMAEKERS: Of School Administrators. It is an umbrella organization... [LB898]

SENATOR HAAR: Okay. Gotcha. [LB898]

LARRY RAMAEKERS: ...that represents principals, special ed directors, and superintendents. And, again, there's...it's an umbrella organization, of which it covers all of those. [LB898]

SENATOR HAAR: I've got the administrators crossed over with the boards, and I'll fix that in a minute. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

LARRY RAMAEKERS: Okay. [LB898]

SENATOR HAAR: Do you actually have a written policy in your school? [LB898]

LARRY RAMAEKERS: Yes, we do. [LB898]

SENATOR HAAR: Would you mind just sending it to me? [LB898]

LARRY RAMAEKERS: I'd be more than happy to, Senator. [LB898]

SENATOR HAAR: Okay. Which school, again, are you from, sir? [LB898]

LARRY RAMAEKERS: I'm with the Aurora Public Schools. [LB898]

SENATOR HAAR: Aurora. Thank you very much. [LB898]

SENATOR ADAMS: Thank you, Larry. [LB898]

LARRY RAMAEKERS: Okay. [LB898]

SENATOR ADAMS: Next opponent. [LB898]

DAVE BYDALEK: Chairman Adams, members of the committee, my name is Dave Bydalek. For the record that's B-y-d-a-l-e-k. I'm executive director and legal counsel for Family First, which is an education and research organization located here in Lincoln. First, I would like to commend Senator Haar and the co-sponsors for bringing this bill, as the issue of student expression and free speech is an important issue to our organization and to me personally. To that end, I am a graduate of the National Legal Academy of the Alliance Defense Fund, which is a leading national organization protecting religious free speech. And I do want to qualify my testimony by stating that while we currently oppose this bill as drafted, it might well be a bill that we could support if just a couple changes are made. So what I'd offer today, really, is a very quick critique of the questionable and the good elements, I believe, of LB898. And I'd like to start with Section 3 of the bill, which I think is good language and comports very well with the law, and I especially like the fact that it appears to include speech during instructional time and class assignments. I really can't tell you how many calls I've received from parents whose kids had been chastised for making merely a religious reference in an assignment in a class project. Most of the problems I see are located in Section 4. Subdivisions (1) and (2), I think, are really good or are okay. The biggest problem, I think, lies in subdivision (3). And that is the phrase: "violates the privacy rights of others." The Tinker case, which has been referenced before, really doesn't use that term but rather the term "invasion of the rights of others." But how do we know what privacy means, really, that's not defined in the bill? It's true that students enjoy certain

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

rights of privacy, but that cannot be used to prohibit unpopular speech because it conflicts with their private beliefs. For example, does this prohibit a pro-life student from sharing their pro-life views or a religious student from expressing a traditional view about sexuality? This would be viewpoint discrimination, which is almost always found to be unconstitutional. So, as drafted, this is very vague and could create a constitutional violation. I would guess what the drafters were actually getting at--and I totally understand it--is that students should not be permitted to disclose private matters about classmates. For example, a student accidentally sees a confidential record about Joe or Jane, which is subsequently disclosed and is embarrassing to Joe and Jane. If that is what this clause is supposed to mean, I would suggest that you amend the language to say something like: Student expression is prohibited if it results in the public disclosure of private information about another person protected from such disclosure under the law. Finally, with regard to language in Section 2, I came here not knowing whether the real goal of the folks that brought this bill was to overturn cases like Hazelwood and "Bong Hits 4 Jesus." Clearly, that is the case. And states are free to expand the rights of student expression beyond that which is required in the Constitution. And I think the current wording of Section 2, I believe, will do that. So what this committee has to decide is if it wishes not to expand Hazelwood, the bill should probably read that students' rights should not be abridged, except in accordance with First Amendment jurisprudence. So in conclusion, our primary concern is that this is a bill purporting to protect student expression and that it's not used as a shield...excuse me. This is my big line, and I waited all day to give it; and I'm blowing it. So our primary concern is that a bill purporting to protect student expression is used not as a shield to protect these rights but as a sword punishing free expression--specifically religious speech or specific viewpoint discrimination. With that, thank you. [LB898]

SENATOR ADAMS: Questions for this testifier? Thank you, sir. [LB898]

SENATOR HAAR: Thank you. [LB898]

DAVE BYDALEK: Thanks. [LB898]

SENATOR ADAMS: Next opponent. [LB898]

SENATOR HOWARD: Welcome, if you're ready. [LB898]

BRIAN HALE: Yes. Senator Howard, members of the committee, my name is Brian Hale, and I represent the Nebraska Association of School Boards. So I'll be ready to engage you in that. I come to you on a couple of levels. First, I am, myself, many years ago, a student journalist--high school and college--managing editor of my college paper, spent about six years as a professional journalist before getting into the education business, and even today I have found ways to be very concise in inciting people's emotions, apparently. So with that, I'd like to say that the Nebraska Association of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

School Boards--our delegate assembly in November adopted a position which says: NASB supports the authority of local boards of education and school administration to regulate the content of school-sponsored publications and curriculum. I don't think that that excludes us, necessarily, from working with Senator Haar and proponents in adopting a statute that requires some sort of policy adoption addressing the issue, but where we part company with the bill as written is the apparent opportunity that the school and the adults--the teachers in the school--sometimes won't have the authority to do the teaching with the students who are learning. And so I understand the First Amendment is a right that all of us adults appreciate; it's a very serious right and responsibility. And both the right and the responsibility need to be taught to students in the school setting; that's really the perfect opportunity for that. Oh, was that...I went back to green? Sorry. (Laughter) [LB898]

SENATOR HOWARD: We're very versatile. [LB898]

BRIAN HALE: Schools and school boards, school districts have the responsibility to maintain order in the learning environment, to prevent bullying and undue harm to other students, and to advance their educational mission or, as Mr. Peterson said earlier, their pedagogical purpose. And the environment of the school is key to learning. And creating an environment where there is tension, where there is things going on that distract from the job of learning is something that is not in the best interest of kids, not in the best interest of the people running the school. Certainly, school boards and school districts have many issues relating to the First Amendment, relating...when this discussion first started more than a decade ago, we didn't have as many publishers in the world as we do today, through the Internet, through text, through blogs, through other sorts of things. And so schools, by and large, I would say, have wrestled with the issue of the First Amendment and how to manage both the ability of people to express themselves and the security and safety of the environment in which they're trying to conduct an education for kids. And so my major concern is if we make it difficult, make it ominous for schools to have a journalism program...that you're requiring a lot of things of schools these days, and as an elective--there's a lot of pressure on electives; this is not something schools have to do. I don't want a reduction in the number of opportunities that kids have to express themselves, to do the work of a journalist, to ask the questions, to express themselves in that way. And so to me, and I think to many of the members of our organization, we want to make sure there's a broad opportunity and not chill that, by telling school districts that they have to stand somehow muted in controlling what is distributed on their ink and paper. Thank you. [LB898]

SENATOR HOWARD: Thank you. I was afraid you didn't notice the red there for a minute. (Laugh) Committee, do we have any questions? [LB898]

SENATOR HAAR: Yeah. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

SENATOR HOWARD: Senator Haar. [LB898]

SENATOR HAAR: I have a number of questions. I'm going to ask you about this... [LB898]

BRIAN HALE: Um-hum. [LB898]

SENATOR HAAR: ...paragraph, of course. [LB898]

BRIAN HALE: Yes. [LB898]

SENATOR HAAR: Could you explain it somewhat when you say the "role of preparing students for the workplace"? So we--basically we don't give them the wrong impression of what life is like; that's the way I translate it. [LB898]

BRIAN HALE: My experience as a professional journalist--my first job out of college was at the Vallejo Times-Herald in California. I was chasing police cars and fire trucks, writing the stories that I found when I got to the end of the line. One day I found a story where the president of the chamber of commerce in Vallejo got a DUI. The sheet is right there, the facts pretty indisputable. He was arrested, booked; all the facts were there. I came back to the office and dutifully typed in the story. About 45 minutes later I was called into the general manager's office. The general manager is the vice president of the chamber of commerce. And he suggested that that story wasn't going to run. We didn't need to embarrass that person any further; he's had enough. And I think it was a very factual story; it wasn't in any way nyah-nyah-na-nyah--but a very factual story. And we had a discussion; the story didn't run. Nothing was wrong with the story; nobody disputed the facts. But the publisher, the general manager, ran the paper, and I was the reporter. Many instances that I've come...and I worked in Aspen, Colorado, then; I came back heading this way, worked there for a year and wrote a column that suggested there were an awful lot of people in Aspen who didn't really seem to be contributing to the advancement of mankind. They were there having fun--it was winter and a whole bunch of people in the bars and on the slopes but not many people really working to advance mankind. After some discussions from that, I was dismissed from that paper for writing that article, not that anything was necessarily unfactual about it, but that's the way it was, and I had no appeal. If a student graduates and gets a job at the Lincoln Journal Star, at the Omaha World-Herald, at the Grand Island Independent, you name it, and pens an opinion or comes up with some article that runs contrary to the view of the publisher of those papers, chances of it seeing the light of day are not very good. I don't know that that's right, but the truth is, as an employee, the boss makes the decision about what goes in. My freedom of speech certainly exists; I can go on Facebook and communicate what I want to communicate. Even my job, there are things I see in my position of doing that newsletter on a weekly basis that I think are somewhat preposterous. But it's not in the best interest of my association to express sometimes

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

what I truly believe. And I don't think that's true with your bill. But the First Amendment exists, and certainly I have a right to say that, but there's a consequence for everything you say. And that's what the First Amendment really is all about. [LB898]

SENATOR HAAR: So this paragraph really refers only to kids on the student newspaper, whatever. [LB898]

BRIAN HALE: Well, that's my experience. But I think that there is a consequence for every expression, whether you march up and down the hallways of this Capitol or anything else you choose to do--you get on the radio, anything else you want to do. What you say has...there's choices, decisions, and consequences in the world, my dad always taught me. [LB898]

SENATOR HAAR: Um-hum. So censorship, then, is an important lesson for these kids, or...I'm still trying... [LB898]

BRIAN HALE: No. No. No. I think that if you own...and in high school, I was an eager journalist; I really wanted to get...I wanted to press the envelope a little bit. Me and my friends got together in the basement of a friend's house, and we did an--sort of an underground newspaper, back in the days of mimeograph and that sort of thing. And we distributed it; of course, we did get the administration's permission to distribute that publication. But we didn't use names; we used sort of fake names; some of them you could kind of glean who they might be talking about. But we did that--we bought the paper; we bought the ink; we had more freedom to say what we wanted to say. Now distributing it in the school halls was something we needed permission to do. But that gave us the ability to have the full First Amendment ability. But when you're working for someone else, be that in a school environment or in the private sector, those are different...I mean, the First Amendment applies to the people who are signing your paycheck. [LB898]

SENATOR HAAR: Um-hum. Now, words are really important, and you said at one point that adults have the First Amendment right. At what age do you think people have First Amendment rights, or is that an adult kind of thing? [LB898]

BRIAN HALE: Well, there's a lot of rights we retain from people who are not of age: voting--18, I think, is what we decide that appropriate age is. [LB898]

SENATOR HAAR: But the First Amendment--do you think that applies to children or just adults? [LB898]

BRIAN HALE: For the full, unfettered publication into the public airwaves, I think it's at a point at which they have been properly educated about the consequences of that. Obviously, different people come to a different...18 is--19--what is the age of majority?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

That's probably a good place to start. That's when we generally conceive that our children are adults enough to participate in many other of the rights that are afforded them. [LB898]

SENATOR HAAR: Um-hum. And then do you feel--do you think your organization feels that schools can tell students what they can and can't do outside--for example, participate in a demonstration off the school, you know, or it could be the Walk for Life or the walk for cancer awareness... [LB898]

BRIAN HALE: Off the school, you said? [LB898]

SENATOR HAAR: Off the school. [LB898]

BRIAN HALE: I don't...as long as it doesn't interfere with the school day. If everybody left the school and went off to some remote location, that might be disturbing (laugh) to the administrators in running an education program. [LB898]

SENATOR HAAR: So a school policy that would...and there was an example of where students could be censored for e-mails they sent that criticize the school if it was done from their own computer. Do you think that's--is that...? [LB898]

BRIAN HALE: That is an area that's just emerging. Certainly school board members are held to that standard. I think there's a lot of discussion about whether school board members who e-mail from their home computer using their Yahoo address--if that's still a public record or not. And so there is a lot of pressure, because the lines between where school ends and starts are getting very blurry these days. And students take the opportunity to bully each other, to talk about each other, to talk with each other as soon as they get home from school, at night, before they go to school, in between classes. You can do it on your phone now; you don't have to wait till you get to a computer terminal; you can do it in the bathroom. Where does the school's responsibility start and end? The courts haven't fully decided that yet. But if it interrupts the business of educating kids, school boards are concerned. [LB898]

SENATOR HAAR: Interesting. Okay, thank you. [LB898]

SENATOR ADAMS: Other questions? Thank you then. [LB898]

BRIAN HALE: Thank you. [LB898]

SENATOR ADAMS: Any other testifiers? [LB898]

BRIAN HALSTEAD: (Exhibit 18) Good afternoon, Senator Adams, members of the Education Committee. For the record my name is Brian, B-r-i-a-n, my last name

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

Halstead, H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. I'm making my appearance here today so that the letter from the State Board of Education can be noted on the record. Yesterday the state board met to consider legislation. They voted to oppose this bill, not because they don't support the First Amendment; they fully support the First Amendment. They believe the court system is the best place to define what the First Amendment rights are and are not. And to attempt to codify that into statute as to what we think those First Amendment rights are today is most certainly going to change tomorrow and in the future. So with that, I'd end my testimony; it's been a long day. I'd certainly be more than happy to field questions. [LB898]

SENATOR ADAMS: Senator Haar. [LB898]

SENATOR HAAR: Thank you. What about...? I mean, there's Supreme Court case law, but it's not--doesn't cover all instances and so on. So what happens if there's not Supreme Court case law? [LB898]

BRIAN HALSTEAD: I suspect in our world we will have opportunities and there will be challenges and eventually there will be Supreme Court law or case law on it. I think if you just go to any court search vehicle and type in "First Amendment," sometime, probably by the end of this year, Senator, you will have an opportunity to read every one of those cases. It is a area of law that has been litigated extensively. And I think this whole discussion here today has been a perfect example of the First Amendment. I support your right, Senator, to introduce the bill, to want to promote free speech. You've heard the concerns, the issues: bullying, texting, all of those issues--protecting religion--my gosh, this area is so full. It is so rich. This whole exercise, I would suggest to you, goes on every day in public schools in Nebraska. The word "public" is up on that wall because in some ways it is a mirror reflection of our society. And trust me, the discussions that we don't think kids are having--they're having them. We just may not know about it. [LB898]

SENATOR HAAR: But the Supreme Court, for example, has not ruled on this T-shirt I am wearing. So how do we deal with that? It's not been ruled on yet. [LB898]

BRIAN HALSTEAD: If there's a pending case, give it the opportunity for them to rule on it. And tomorrow, as I think Mr. Perry mentioned, the student who comes every day with a different T-shirt is prepared to test the limits of everybody. It's out there. I don't know. I don't...I'm not offended by a lot of things. My wife is offended by a great deal of things; I respect her rights; she respects mine. I understand. [LB898]

SENATOR HAAR: But I guess I'm just really questioning whether just by looking at the First Amendment and then the case law, you know, that's connected with it we can make all these decisions. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
January 26, 2010

BRIAN HALSTEAD: Well, but that's for the individual. And one of the greatest rights about free speech, if you look at our Constitution, the mere fact that I have it doesn't mean I have to exercise it. The government cannot compel me to speak under that Constitution either. And sometimes not speaking sends a clearer message than trying to verbalize it. The very act of doing something is speech. It is such a huge field. I think, in the sense of what the state board is saying, we want to support students' ability to have free speech; we want to have that done. But for us to try to write a statute to enumerate and try to give guidance to...is going to change tomorrow, just as you've heard the court cases have changed--the Tinker case, recognizing students do not shed their First Amendment rights at the schoolhouse door, and then the case of the late '80s going the opposite direction. Guess what, the courts can't define it clearly either. It is an evolving situation, because we as human beings are changing--how we communicate, how we express ourselves changes every day. It is an ongoing exercise for all of us to understand what our First Amendment rights are and our ability to respect that others may disagree with us. [LB898]

SENATOR ADAMS: Any other questions? Thank you, Brian. [LB898]

BRIAN HALSTEAD: Sure. [LB898]

SENATOR ADAMS: Any more opposition? [LB898]

DON UERLING: (Exhibit 19) Good afternoon, Senator Adams and other members of the committee. My name is Don Uerling, spelled U-e-r-l-i-n-g. I live here in Lincoln, Nebraska. I'm currently an associate professor of educational administration at the University of Nebraska-Lincoln. I have my law degree, and I have a Ph.D. This particular bill and its predecessors from ten years ago and, I think, another one about five years ago have always been of considerable interest to me, and so I have followed this. And I am here to state my opposition to this. What's coming around in a paper to you at some point--much of that is simply sort of a affirmation of much of what Greg Perry said some time ago. And I want to focus on just a couple of things in the paper. This first thing I would note is that state statutes do not protect rights afforded by the First Amendment. The First Amendment--the power of the First Amendment does not need to be bolstered by any state statute. What state statutes can do is provide additional statutory protection. And I believe that Alan Peterson, one of the proponents, alluded to that earlier. Now, my concern about this bill--one of my big concerns is that the text of the bill implies that there are not adequate protections for students' First Amendment rights. And the bill simply doesn't acknowledge what's out there in terms of constitutional law, as expressed by the Supreme Court and by numerous federal courts at different levels. Now, I would note that another point that's been raised a couple of times are, what do we mean by First Amendment? The way I explain this in my classes--like any other constitutional rights, the First Amendment protects our rights as individuals against the power of all of us taken collectively as government. And when we

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Transcriber's Office

Education Committee
January 26, 2010

say that, we're talking about public schools; we're talking about state legislatures. We're not talking about the Lincoln Journal Star or Pius X High School or other private entities like that. And I never heard that clarified. The United States Supreme Court had rendered four major decisions involving student freedom of expression. Tinker--that's the black armband case that's been mentioned. One that I have not heard mentioned is Bethel School District v. Fraser, which came along in 1986. This had to do with a student who used sexual innuendo in speech at a school assembly. He was dismissed, and the Supreme Court said that the school was within its constitutional authority to do that. Hazelwood v. Kuhlmeier has been referenced a number of times. [LB898]

SENATOR ADAMS: Excuse me, sir. I'm going to have to ask you to sum it up for us. [LB898]

DON UERLING: All right. I shall sum it up immediately. My bottom line is that, as I tell my students: You need to have a justification when you exercise some regulation of student freedom of expression. If you're going to restrict a student's expression, think in terms of the "day after" rule. Are you ready to be interviewed in your office the next day on television? If you feel good about that, you probably are okay with the justification for whatever rule that you have done. Thank you. [LB898]

SENATOR ADAMS: Great. Are there questions? Thank you, sir. Any more opposition testimony? Okay. How many more after this person? Okay. Come on up, sir. [LB898]

DAVID GRIMES: I'm David Grimes, last name spelled G-r-i-m-e-s. I'm a farmer in northern Lancaster County, the father of two University of Nebraska students and two students at the Raymond Central Public Schools. I'm also a board member on the Raymond Central school board. First of all, I'd like to state that I fully support the First Amendment; it's by those rights that I'm able to speak here today. I wish I had jumped up and talked quicker, because I really admire the young people that came and spoke about their experiences. And I'm saddened to hear about the bad experiences they had at their school. I think the most important role for public schools is to prepare students to become knowledgeable, active, functioning citizens in our democracy. The most important responsibility for a public school is to provide a safe learning environment, and that's why I'm here. I learned of this bill the other day, and I have some concerns that this might affect an individual school's ability in providing a safe environment for those students, and that's why I'm here. In this day and age of e-mailing, texting, rumors, things pass pretty quick amongst kids in school. Senator Haar asked a question that alluded to my thoughts when I heard this. In our state and every state in the United States, we recognize that there's a point in time in a person's life when they're mostly ready to do certain things. You have to be 16 to get a driver's license; there's a minimum age to get married, a minimum age to consume alcohol. We recognize that to receive all the full rights of a citizen, that you have to attain a certain maturity. Of course, not everybody actually becomes mature at the same exact age. And I believe

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Transcriber's Office

Education Committee
January 26, 2010

this bill would diminish the ability of school administrators to use their judgment in dealing with children, because students are children. You know, we need to let our students spread their wings and learn about what it will be like and what it is like to be a citizen in our democracy. Then at the same time, sometimes we have to hold them back a little bit so they aren't harmed, so that when they are able to fly, they can fly straight and be safe. If there's any questions, I'd be happy to try. [LB898]

SENATOR ADAMS: All right. Are there any questions? Thank you, sir. [LB898]

DAVID GRIMES: Thank you. [LB898]

SENATOR ADAMS: Is there any more opposition testimony? Is there any neutral testimony? Senator Haar, you can close. [LB898]

SENATOR HAAR: Probably didn't expect any neutral testimony. (Laugh) [LB898]

SENATOR ADAMS: But it all sounded like neutral testimony: We all support the First Amendment, but... [LB898]

SENATOR HAAR: Well, I want to thank everybody and especially people who came some distance--and students in particular--to testify today. I guess I would go back to the fact that at least I believe that students don't become citizens simply when they leave school in the 12th grade. And none of us leave our rights at the door when we go to a job--and not just when we become adults. We always have First Amendment rights. There's no set of criteria set in the Constitution that says: Here's what you need to have First Amendment rights. Now, again, looking at Supreme Court decisions, there's some ability for schools to censor in some cases and so on. I don't disagree with that. But I strongly believe that schools should be not just book-teaching citizenship, and that's what I'm afraid of. Schools should be a living laboratory. And, again, there's reason to control and all of those kinds of things, but that poll showing--taken in 2002--that, of 100,000 students, 49 percent felt it was okay for commercial newspapers to be censored by the government. That says that we're failing. That's just not right, and students should not have that feeling; we're failing in some ways. Teaching is not easy. I was a teacher for 15 years, and I taught at Tech High School in Omaha when it was a tough inner-city school, and we had some interesting challenges from the student body. But I think challenging students is necessary; I think that reacting to their challenges is necessary. I agree to a large extent a lot of this has to be case-by-case, but I believe we do need guidelines. I think there need to be guidelines from schools in the same way--giving transparency to the rules of the school in the same way that we expect other parts of government to be transparent. There are some things, of course, that I think are unacceptable that sound a bit like the Star Chamber--and that was the court, of course, in medieval times where the judges were all cloaked and you never got to see who your accuser was or what really you were being accused of. Certainly

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students, anybody in this situation, deserve answers. And I think they deserve answers and reasons based on policy. And I think a lot of what I heard from students was that they didn't see any policy. It seemed, at least talking to students outside as well, that they feel that often these are subjective decisions that are made on the spot. And I think that's censorship, and I think that's not a lesson that public schools should be teaching. So with that, I appreciate your time and thank you so much. [LB898]

SENATOR ADAMS: (See also Exhibits 20, 21, 22, 23, 24, and 25) Thank you, Senator Haar. And that will end the hearings for today. Now, do you think we ought to exec? [LB898]