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Education Committee
January 18, 2011

[LB18 LB59 LB123]

The Committee on Education met at 1:30 p.m. on Tuesday, January 18, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB18, LB59, and LB123. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Bill Avery; Abbie Cornett; Brenda Council; Ken Haar; Ken Schilz; and Kate Sullivan. Senators absent: None.

SENATOR ADAMS: (Recorder malfunction) ...research analyst in the committee again this year; Senator Haar from the 21st District, Malcolm area, will be here shortly and he's a returnee to the committee, as is Senator Avery from here in Lincoln; Senator Kate Sullivan from Cedar Rapids, a veteran to the committee, as is our Vice Chair, Gwen Howard, from Omaha. I'm Greg Adams from York. To my right is Tammy Barry, the legal counsel for the committee. And beyond her is Senator Cornett from Bellevue. Senator Council from Omaha joins our committee for the first time. We look forward to that, as does Senator Schilz, clear from the other end of the state out in Ogallala, comes to the committee. We have three bills that we're going to hear today and they are LB18, LB59, and LB123 that we will hear. And just as a reminder, and I think particularly here at the beginning of our committee hearings, to outline some of the rules. Most of you are familiar with them, but if you are new to all of this, we will have proponent testimony, opponent testimony, and neutral testimony, and you're welcome to join in that. If you choose to, we ask that you come up here to the testifier's table. We ask that you fill out a registration form and hand it to our clerk, Becki Collins, over there on the end. We need that for the record. If you have handouts that you wish to give to the committee, everybody on the committee gets one, and our pages over here can help hand those out. Typically we will use a light and at my discretion, we'll either go to three or five minutes for testimony on all sides. And I believe we'll start out with five minutes today on these first two bills, and we'll do something a little bit different on LB123. Something else that I want to reinforce to all of you--this is a hearing, which means everybody needs to hear. So I would ask that you shut off your cell phones. In fact, I'm going to go so far as to say if we review the rules of the Legislature, electronic devices of any kind are not to be used during a hearing. So the computers need to be shut down, cell phones need to be put on vibrate, and the testifiers and the committee need your attention up here, and the committee will do the same for those that are testifying. I'm sure that I've left something out in all of this, but I think we're about ready to begin. Oh, that's right. We'll make an exception to the press on the computers. If you're credentialed, we'll let you use your computers I guess, but nobody else can, privileges. Okay. Let's begin. We will start with LB18. Senator, I'm going to put it in your very capable hands.

SENATOR HOWARD: Thank you. Senator Adams, welcome to the Education Committee.

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SENATOR ADAMS: Thank you, Senator Howard. [LB18]

SENATOR HOWARD: If you'd like to begin with LB18. [LB18]

SENATOR ADAMS: I certainly would, and I will begin first of all by stating my name and spelling it for the record, as I hope all testifiers will as we continue through the hearing session, Greg Adams, District 24, A-d-a-m-s. LB18, ladies and gentlemen, is a simple bill. The Governor made the decision to make application for EduJobs money, and we made that application. And what this bill simply does, LB18, is to take the federal dollars, rounding up, which amount to about \$59 million, and integrate them into our current distribution formula. And the money will go out to those schools that typically will receive TEEOSA aid. Now in order to do that, what we'll do with this bill is simply take the current needs as they exist under the formula, as was certified, and we will inflate them by 2.23 percent, those needs, rather than manipulating any other elements. We just simply inflate the aggregate needs where we're at. And that will integrate the \$59 million into the formula going out to those schools that are equalized schools. There are federal guidelines that have to be followed all the way through this. The money is to be used for personnel-related costs, which could be salary, could be benefit, could be paras, that's up to the school districts. And the school districts, by the way, will be reporting. The reporting is nothing new or different than what they have been reporting for ARRA money. So in that sense, there's no new additional reporting for this. The school districts receive the money...will receive the money assuming that this committee moves it out and our colleagues on the floor give us a majority vote, probably in April that the money can be used. And it can be used in this school year or in next, as per the federal guidelines, for personnel-related costs. But we need to get it distributed during this current school year. That also is a federal guideline that we have to comply with. What we would anticipate is that as this money is going out to school districts access to it comes after they have already set their budgets, and it's got to be spent this school year or next. We anticipate that what school districts may do, unless they choose to amend their budget and refile and have different hearings again, would simply be to use this money as it is to be used. And there is language in the bill that would allow for them to carry balances forward from this year on into next. And in so doing, school districts will have that kind of discretion how they use this. And I would suggest to you in the school districts that I have spoken with since application for this that's what most of them will do. They'll simply carry over a balance into the next school year and begin again. But that's really the essence of the bill. There is one other key factor and an unpleasant one at that, I believe anyway. Every session when we're dealing with state aid, I've had to introduce bills periodically to change the state aid certification date. Now I say it's unpleasant because, like you, I hate to have school districts, school boards, superintendents into the business of wondering when is the Legislature finally going to decide what the state aid is going to be so that we can build a budget? This session we need to make an adjustment. I don't need to tell all of you the extraordinary revenue circumstances we face and that portion of it that state aid will play. We are currently

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scheduled to distribute aid on March 1. That isn't going to happen. It isn't going to happen. To be quite honest with you, we will be introducing the TEEOSA bills early, and I want to Exec on them early and get started work on those and get them up as quickly as we can. But for us to do our work is going to take time. For the department to do their work is going to take time. And we all know once things get to the floor it will also take time. So I'm suggesting also in this bill that we move the aid certification date to on or before July 1, which means that if we get our work done early, aid could be certified earlier. But in the meantime, we take it out to July 1. And that's a long way out. I know that it gives superintendents concern. I'm just trying to be realistic and not having during the session to go in two and three times up on the floor and say, well, we're not ready. Let's move it again. We're not ready, let's move it again. That's the essence of the bill. [LB18]

SENATOR HOWARD: Thank you. Do we have questions, committee? Senator Council. [LB18]

SENATOR COUNCIL: Thank you, Senator Howard, and thank you, Senator Adams. Just for purposes of clarification, in reading LB18 and some of the clarifying sections, there's reference to how the federal dollars, the expenditures of those will be considered in subsequent formula applications. And I'm speaking specifically to the poverty allocation and the limited English proficiency. So the effect of this is if those federal dollars are expended in the allowable categories and impact the poverty expenditures or the limited English proficiency expenditures of those districts, those amounts expended would be included in the allowances that those districts are entitled to under the current state aid formula. [LB18]

SENATOR ADAMS: Senator, you have interpreted correctly. Typically, we don't use federal funds to count towards those allowances, but in this case we will. [LB18]

SENATOR COUNCIL: Okay. So it would count toward the allowance. And in the wonderful primer you provided,... [LB18]

SENATOR ADAMS: Ah, you're too generous. [LB18]

SENATOR COUNCIL: ...particularly to the new members of the committee last week, in arriving at state aid for a particular district, those allowances are subtracted initially... [LB18]

SENATOR ADAMS: Um-hum. [LB18]

SENATOR COUNCIL: ...and then added back towards the end. So if that's the result of a district's receipt of these EduJobs funds, it increases the amount of the allowance withdrawn. That larger allowance will be taken into consideration in the formula. [LB18]

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SENATOR ADAMS: It can be part of that spending, yes. [LB18]

SENATOR COUNCIL: Thank you. [LB18]

SENATOR HOWARD: Senator Sullivan. [LB18]

SENATOR SULLIVAN: Thank you, Senator Howard. Senator Adams, in your explanation you indicated that, of course, these funds are being put through the aid formula... [LB18]

SENATOR ADAMS: Um-hum. [LB18]

SENATOR SULLIVAN: ...so that we have inflated the needs. [LB18]

SENATOR ADAMS: Yes. [LB18]

SENATOR SULLIVAN: However, as I understand it, then this only goes to equalized districts. Nonequalized districts, those who according to a showing that they have more resources than needs, aren't receiving any of these funds. Is that correct? [LB18]

SENATOR ADAMS: That's correct. [LB18]

SENATOR SULLIVAN: And secondly, do you anticipate because you're changing the certification date, does it create any hardships for school districts that you're aware of? [LB18]

SENATOR ADAMS: Well, I think that it...if I were in their place, it's that...the unknown. I have this deadline to build a budget, I have personnel issues to deal with, and the state hasn't told me what it's going to be yet. And so I think I would be amiss if I didn't say that if I were in the shoes of a superintendent, a school board, I wouldn't have some concerns. I do. I just don't know how we're going to be able to be ready to certify aid a whole lot earlier than that. I mean we can certainly try. [LB18]

SENATOR SULLIVAN: So then these dollars go into the General Fund operating expenditures for this upcoming year. So then that in a sense, in figuring the aid for the following years, that will be...the GFOE including these aid dollars will be included. Is that correct? [LB18]

SENATOR ADAMS: Depending on which year they're spent. A school district could spend these in the next school year too. [LB18]

SENATOR SULLIVAN: Which is what you're advising. [LB18]

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SENATOR ADAMS: Right. [LB18]

SENATOR SULLIVAN: Okay. Thank you. [LB18]

SENATOR HOWARD: Are there any other questions? I actually have a question, about the same question Senator Sullivan was asking. My concern is with the teachers. Do the teachers--and you know far more about this than I do--but it's my understanding the teachers make a commitment to the school district prior to the end of the school year. Do you see problems with this? Since you're proposing moving this certification date back to July 1, how do you think that will all work? [LB18]

SENATOR ADAMS: In the process of not developing this bill but simply working on TEEOSA in preparation for this extraordinary budget that we're facing, I've had discussions with both sides, NSEA as well as state school boards and administrators, about the April 15 personnel deadline. And there are sound arguments made on both sides of it. I'm currently leaning to the side where the April 15 deadline is in statute. It stays there. I'm not putting anything in to change that. And does it reduce the anguish of a teacher who gets a RIF notice? No, it does not. But it...April 15 is that deadline rather than pushing it out. If we set the certification date at July 1, then RIF would have to be somewhere out beyond that. And I don't know that that helps a teacher. [LB18]

SENATOR HOWARD: Oh, thank you for the information. Do we have proponents? Welcome. [LB18]

MIKE DULANEY: Thank you, Senator Howard, members of the committee. My name is Mike Dulaney, D-u-l-a-n-e-y. I'm the executive director for the Nebraska Council of School Administrators, and we are here to offer support to the committee. We understand. We had a good suspicion that this bill was coming or something like it. We had a feeling going into the session that a continuance or an extension of the certification date would happen. And that, of course, would buy time for the committee and the Legislature to do their work. We also recognize that you will need to listen to what the Forecast Board says at the end of February, at the end of April. And those are very important events for you because that...it could be good news and it could be bad news, but that's the way it is. And then your budget process will be grounded upon what happens with those numbers. So we understand fully what is happening with the bill. Naturally, it does create some anxiety among school administrators and school board members because of the unknown. They simply will not know how to formulate a school district budget. The RIF deadline that Senator Sullivan brought out also a concern, but these are things we know you are aware of and we'll simply have to deal with those the best that we possibly can. And, of course, the jobs creator or the jobs funds are a very important part of this bill, and we certainly support that as well. So we appreciate the situation you're in, and we offer our support. [LB18]

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SENATOR HOWARD: Thank you. Are there questions? You've answered them. Thank you. [LB18]

MIKE DULANEY: Thank you, Senator. [LB18]

SENATOR HOWARD: Other supporters? Welcome to the Education Committee. [LB18]

JON HABBEN: Thank you very much. [LB18]

SENATOR HOWARD: If you can state your name and spell it. [LB18]

JON HABBEN: My name is Jon, J-o-n, Habben, H-a-b-b-e-n, and I'm the new executive director of Nebraska Rural Community Schools Association. As Mike Dulaney pointed out, knowing that it was coming, knowing that something needed to be developed, knowing that, yes, it's time to deal with this money that has been brought to Nebraska, totally understand the circumstances. Coming off of 17 years as a superintendent, the realities that I faced, you are facing the same thing in terms of the time you need to make some decisions. We support all of your effort because everybody knows it's not wasted on school superintendents or school boards. Everybody knows this is not going to be easy. A couple of points I want to make: one, the July 1 certification deadline. You've left room for certification to occur earlier, but that's the deadline. The question was asked about how difficult this is for superintendents--extremely difficult--because what happens is when you have April 15 here, you know the decisions that you have to make early and you are making them on estimates. And that is difficult when it involves reduction in force. So we know that's a circumstance. I understand why Senator Adams is leaving it in statute or as it is in statute in place. You can start tinkering with those things and move them all over the place, and pretty soon annually you might be saying, well, because of this factor let's move it here; because of that factor, let's move it there. It is going to be a concern. I don't want to downplay that. Our members, 179 school districts, are going to struggle with that and they will worry about it and their teachers will worry about it. There's no question. But at the same time, there has to be a date and we have one in statute. The second point I'd like to make is I think the question was asked about nonequalized school districts. There are probably 60 or so and there may be more joining the list because of the increase in ag land valuation. They do express their concern at times that here is federal money, but it's going through the formula. Why not us? Those are difficult questions. They're at the beginning philosophical; at the end they're exactly who is getting the money. But we do hear that concern from our members at times, and it's okay for everyone to be aware of that. That's nothing new for Senator Adams. He's heard these kind of things many times. But we do applaud the effort of the committee to go forward, get this money out as quickly as possible, add at least a little bit of certainty to the uncertainty, and we simply appreciate everything you're doing. Thank you. Do you have any questions of me? [LB18]

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SENATOR HOWARD: Thank you. Are there questions from the committee? Oh, Senator Sullivan. [LB18]

SENATOR SULLIVAN: Thank you, Senator Howard. This perhaps is not totally germane to this bill, but since we've both brought up the nonequalized districts and you alluded to it, is it safe to say that there will be even more rural districts adding to that list of nonequalized districts in the future? [LB18]

JON HABBEN: Well, I think the answer would be yes because we're all witnessing increases in ag land valuation which, in the simplest format, increases a district's wealth relative to the state aid that they can get. That means less state aid. That means the chance for nonequalization is there. [LB18]

SENATOR SULLIVAN: The value increases. The ability to pay the taxes doesn't necessarily go along with it. [LB18]

JON HABBEN: Yes. [LB18]

SENATOR HOWARD: Have the good news, bad news at the same time. Are there any other questions? Thank you. [LB18]

JON HABBEN: Thank you. [LB18]

SENATOR HOWARD: Welcome. [LB18]

BRIAN HALE: Thank you. Senator Adams and Howard and members of the committee, my name is Brian Hale and I'm the old director of communications for the School Boards Association. [LB18]

SENATOR HOWARD: And that's spelled H-a... [LB18]

BRIAN HALE: B-r-i-a-n, which is the most confused, but H-a-l-e, the last name. We would like to add our support of this bill. Obviously, the \$59 million is going to be important money given the overall outlook for school funding over the next year. We understand, too, that certainly school boards is probably the least desirable thing is to send RIF notices to staff members when necessary. That, again, we'll be working with estimates by April 15. But I can't think of a situation by which you could come up with a tentative number. We have historically had an initial final certification of state aid started February 1 and then backs up as the situation warrants. And giving people numbers that don't mean anything really aren't helpful. So school boards are going to do everything they can to try to minimize the impact. But ultimately they have to sit back and look at the numbers of the revenue coming in and the obligations going out and try

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to figure out to the best of their ability what the best course is going to be for delivering a balanced budget locally and what some of the property taxpayers are willing to absorb in their increased valuations is also a very big issue given the state aid remaining stagnant from the state level. So not much more to add, just wanted to make sure you understood NASB is also supporting the approach here in LB18. [LB18]

SENATOR HOWARD: Thank you. Committee questions? Okay, thank you. Welcome to the Education Committee. [LB18]

JESS WOLF: Thank you, Senator Howard. [LB18]

SENATOR HOWARD: I know you're an old hand at this. [LB18]

JESS WOLF: (Exhibit 1) Getting to be I guess. Thank you, Senator Howard, members of the committee. My name is Jess Wolf, J-e-s-s W-o-l-f. I'm the president of the Nebraska State Education Association and its 28,000 members I'm representing today. LB18 is referred to as Education Jobs Funds. However, the allocation of these one-time federal funds is about protecting student learning in classrooms across Nebraska. We hold in common a core value that places student educational achievement and success as a fundamental responsibility of the state. LB18 supports that core value. We do seek clarification and make recommendations on two points in LB18. One has been alluded to several times here this morning or this afternoon. First, it calls for a certification date and allowable budget growth on July 1 rather than April 1 as provided under current law. School districts will know the amount of Jobs Fund they will receive probably by March 1, but they will not have a good understanding of what their equalization aid will be at that particular point for the 2011-12 year until the Legislature has reached some point where they decide how much funds are going to go towards equalization. That could be sometime before July 1, and so we would encourage that, as Senator Adams alluded in his comments, that it be as early as possible. And so if we're going to put an actual date in, we'd prefer that it be before July 1. But if, in fact, the Legislature completes its budgetary things before July 1, before the end of the session at least, that that certification date be set as early as possible. And several other people have alluded to the problems that it causes, not only for school districts, but also for their employees. Secondly, LB18 requires schools to include on the annual financial report expenditures for poverty and limited English proficiency programs. That is to show the source of the funding. Our concern is that the allocation of Education Jobs Funds using poverty and LEP allowance factors in the equalization formula will dilute the purpose of the Jobs Funds, which is to save jobs for all teachers. The poverty and LEP allowances measure program costs that may include nonstaff expenditures. So we would ask if modifications can be made to ensure that the Education Jobs Fund allocated in the poverty and LEP allowance will only support school employee job positions. I welcome any questions if you have any. Thank you. [LB18]

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SENATOR HOWARD: Committee, are there any questions? Senator Council. [LB18]

SENATOR COUNCIL: Thank you and thank you, Mr. Wolf, as I'm new to this committee and a little new to how expenditures are currently reported. And when you're talking about the poverty expenditures and the LEP expenditures, under the current reporting system, are they broken out? Are those expenditures broken out by personnel costs, equipment costs? Is that how it's currently reported or is it just reported in a lump sum fashion? [LB18]

JESS WOLF: Actually, you've gone beyond my level, but I believe that they are broken out, but they could be included as a lump sum. And what we're concerned about is the Education Jobs Fund that was passed at the national level is intended to preserve jobs, not to fund other avenues of the costs those particular programs might have. And that's what we'd be most concerned about is that it not alter the equalization formula in some fashion by diluting the amount of dollars available for jobs. [LB18]

SENATOR COUNCIL: I understand. But I guess my question goes to practically. I mean, hearing what the concern is, is there a way to practically address that in the way the reporting is currently conducted? Because what I don't want to hear is the flip side is that okay, in order to address your concern, you're going to require school districts to change their reporting programs and that will place an undue burden on school districts. You see the... [LB18]

JESS WOLF: Yep, I understand your question and, unfortunately, I don't have the exact answer for that. [LB18]

SENATOR COUNCIL: Maybe we can get that from the Department of Education. [LB18]

JESS WOLF: But I believe...it would surprise me if that information wasn't available. [LB18]

SENATOR COUNCIL: Okay, thank you. That's all. [LB18]

SENATOR HOWARD: Are there any other questions? Thank you. [LB18]

JESS WOLF: Okay, thanks. [LB18]

SENATOR HOWARD: Other proponents? Opponents? Neutral testifiers? Senator Adams. [LB18]

SENATOR ADAMS: Thank you, Senator. In summary, let me just simply say that we made the application. The monies are available to us. We have to follow federal guidelines on it. It has to be used for personnel-related costs. We had two choices. The

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Governor had two choices, I didn't, and that was for the money either to be distributed through the distribution formula for state aid or through Title formula. And the avenue of distribution through TEEOSA was the one selected, hence the 2.23 percent inflation in needs so that we can distribute it during this legislative session. And I don't know that much more needs to be said about the certification date. I certainly hope, and I know that every one of you that I'm looking at hopes, that we can be in a position that we can take that July 1 and go on the before part. But we need to give ourselves this shoulder room for now. Thank you. [LB18]

SENATOR HOWARD: Thank you. Are there any final questions from the committee? Thank you. Would you like to begin with LB59, Senator Adams? [LB18]

SENATOR ADAMS: Thank you. LB59 is in some sense a culmination and at the same time a beginning point. Without revisiting all of our discussions and history with community college funding, if you will recall, we ended the legislative session last year by terminating the formula that had been developed by the Legislature with the understanding that the community colleges would begin work immediately in developing the next generation of formula. In other words, if you didn't like what the Legislature had put together, we're going to give the six of you a shot to put one together yourselves, with certain principles recognizing...and some of you may recall that letter as a committee we developed. The presidents, excuse me, the CEOs of the community colleges have been meeting on a regular basis. They have kept me abreast of their work, their progress, and I'm very optimistic. They are six very professional people that understand the importance of the community college world. They also understand the importance of working together. And I think that there has been metaphorically, hopefully not literally, a lot of blood spilled over getting to this point. And very simply what this bill does, recognizing the economic situation that we're in and the probability that most likely aid appropriation to community colleges will not be increasing this year or next, it becomes very difficult to suddenly implement a new formula that may create winners and losers when you have depressed revenues. So instead, what this phase does, what this bill does is to set into motion an agreement that the six community college CEOs came to that in effect says this: Whatever the amount of the appropriation is in this biennium, we will split it this way. They have divided the pie up. They all agree as to how the pie will be divided. Now what that does is, in my opinion, it does at least a couple of things, maybe more. First of all, it recognizes that, in my opinion, that the six community college CEOs understand the importance of the community college system in getting this resolved and working with one another. They also understand that two years from now they will be coming forward with a different kind of distribution formula than just dividing the pie, and this committee will review that. I think reaching this point where we have six community college CEOs that have reached this point and agreed on how to divide a pie that may very well be a diminishing pie over the next two years, helps to...it helps to lower the emotional bar a little bit over this whole issue so that they can continue to work on into the next phase, which is finding a distribution formula they

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can all agree to and that we hopefully can agree to. So that really is the essence of this bill. It changes virtually nothing else. It just sets in the statute for the next two years what that distribution will be. If the appropriation is \$1 or if it's \$100 million, the pie will be divided as per their agreement and they move on to the next phase, which I think this bill, when we get it passed, gets that argument off the table so that they can begin to constructively look at what do we do next. That's the essence of the bill, Senator. [LB59]

SENATOR HOWARD: Very concise. Thank you. Does the committee have questions? Good job. Thank you. Proponents. Welcome. [LB59]

DENNIS BAACK: Thank you. Senator Howard, Senator Adams, and members of the Education Committee, for the record my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k. I'm the executive director of the Nebraska Community College Association, here to testify in support of LB59. I think that Senator Adams has done an excellent job of setting forth exactly what occurred within the CEOs council as we worked through that this summer. And I think I reported back to you, I think it was in October, that we talked about this. And we did as the CEOs council, and the CEOs council is made up of the six presidents who are the voting members of the council, and I am an ex-officio member of the council and sit in on their meetings but have no vote in what they do. But we did work through...we went back and we looked at old formulas. We tried to craft new formulas, and we did all kinds of things to come to some kind of agreement on how we might divide up the funds for the coming biennium. And when you're in a situation where you don't have any extra dollars, it's very, very difficult to write a new formula because you're going to have some winners and some losers. And it's going to be very difficult for those losers to handle that situation, depending on how much they lost, when you do a new formula. So we worked...we met about every two weeks from May clear through October. And we finally in October came to a consensus saying the only way we could see of dividing it up was to simply put in statute for this biennium percentages and said here's the percentages that each of the colleges is going to get, regardless of what size the pot is. This is the percentage they're going to get of the pot. And I know that that...the CEOs agreed to that and then that was all taken to each of the boards, and each of the boards of the six community colleges voted on this and every single one of those boards passed it unanimously. So it did pass by all the boards. Everyone was in agreement that that's what we ought to do for the next two years. We also and are very, very well aware that that does not end the discussion. We're going to have to continue those discussions. I met with the CEOs last Friday, and last Friday we said that starting February 4 is our next meeting, we're going to start doing it again. We're going to start working on a new formula and looking at the principles we have for a formula and start trying to develop a new formula so that we can bring you something in the next couple of years that hopefully will satisfy the community colleges and hopefully it will satisfy you, as a way that we can divide up the funds. I think the CEOs are very, very committed to working together as an entire group of all six of them. And I think that they're going to dedicate themselves to it, and we believe that we can get it done. I don't

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know if everybody believes that, but we believe we can get it done. I think that we've shown by just getting as far as we did this year that was not a whole lot of blood, but there was some let over this situation. But I think we're well on our way, and I think we have the ability to get this done. And with that, I would be happy to answer questions if there are any. [LB59]

SENATOR HOWARD: Thank you. Does the committee have questions? [LB59]

SENATOR AVERY: I do (inaudible). [LB59]

SENATOR HOWARD: No, go ahead. We'll let Senator Avery go. [LB59]

SENATOR AVERY: Thank you. I was looking at the distribution of aid, and I noticed that Metro is a couple of percentage points lower than Southeast Community College. And I find that surprising because Metro is growing so fast. I know that Southeast is as well, but Metro is a lot larger. Can you just give me a hint as to how that occurred? [LB59]

DENNIS BAACK: Well, they are...in the present situation, they're a lot closer than they were before that under the old formula. They're a lot closer because the formula also takes into account your ability for property tax. And you have to remember that Metro's property tax base last year was \$52 billion and Southeast's was \$35 billion. So we took that into account as to how much each one can raise locally. The ability of the Metro one to raise more funds is there because of their tax base, and that's why you see a discrepancy in those two. [LB59]

SENATOR AVERY: Are they levying up to their full authority, Metro? [LB59]

DENNIS BAACK: No. Neither one are at their full authority, no. [LB59]

SENATOR AVERY: Thank you. [LB59]

DENNIS BAACK: They both have more authority that they could... [LB59]

SENATOR AVERY: And these are some of the issues that caused the blood, I'm sure, right? [LB59]

DENNIS BAACK: Huh? [LB59]

SENATOR AVERY: These are some of the issues that caused the bleeding? [LB59]

DENNIS BAACK: Oh, absolutely. Absolutely it is. Absolutely is. And the growth factor. I mean we do have to be able to recognize that growth. Now Southeast is growing, too, but Metro's growth has been just phenomenal over the last few years. And as we look at

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any kind of new formula, we got to make sure we recognize that growth. And we also have to take into account the students that they serve, the kinds of students they serve, and what are the poverty levels. And there's a whole lot of factors that go into, same as...much similar to what you do in the school formula as factors. Some of those things are harder to identify for us because in the school, at least you have free and reduced price lunches that you can identify poverty. We don't have the ability to do that in the community colleges right now. So those are the kinds of things we're going to have to look at as we formulate a new formula. [LB59]

SENATOR AVERY: Are you only going to be dealing with the new formula? Are you not going to be looking at other things like perhaps consolidation? [LB59]

DENNIS BAACK: Oh, that...certainly that has been discussed. We have had discussions about that, and I think it will still be part of our discussions as we go forward. I can't imagine that won't be on the table. [LB59]

SENATOR AVERY: Okay. Good. I'm glad to hear that. [LB59]

SENATOR HOWARD: Senator Sullivan. [LB59]

SENATOR SULLIVAN: Thank you, Senator Howard. Denny, how do the percentages outlined in LB59 compare with the percentages that the individual community colleges were receiving prior to this bill? [LB59]

DENNIS BAACK: Well, you will find that the percentages show that the Metro percentage goes up, and I don't remember...I don't remember the exact amount, but theirs goes up and most of the rest of them go down just a little bit. And you'll see that, and you'll also find that Southeast goes down the most. Southeast is the one that gave up the most in state aid in this process. But all of the other areas also gave up state aid in order to push Metro's number up. [LB59]

SENATOR SULLIVAN: Is it safe to say--and maybe this is unfair to talk about what you might be looking at with this discussion of a future formula--but will equalization still be part of your discussion? [LB59]

DENNIS BAACK: I think it has to be. If we're going to have property tax in the situation, I don't know how you get away from having some kind of equalization. And if you...you know, we talked about, okay, well, maybe we ought to make each community college district have the same equalization in it, same amount of property in it, try to draw the lines. That becomes very, very difficult because of the size of the property tax base in Douglas County alone. You know, it becomes very difficult to get...if you're going to get a property tax base in western Nebraska that's equal to Metro's, you're going to have to take most of the state, over half of the state, to get there. So that's some of the

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problems we ran into. But I think we have also looked at, you know, moving counties around, changing the boundaries of community colleges. I think that's going to probably enter into the conversations as we look at this. [LB59]

SENATOR SULLIVAN: Thank you. [LB59]

SENATOR HOWARD: Any other questions? Thank you. [LB59]

DENNIS BAACK: Oh, I would say that I do have two of the presidents are here: Dr. Bill Path is here and Randy...Dr. Bill Path is from Northeast and Randy Schmailzl from Metro, but they don't plan on necessarily testifying, but they are here. [LB59]

SENATOR HOWARD: Okay. Other proponents. All right, any opponents? Any neutral testifiers? It looks like you can wrap it up. [LB59]

SENATOR ADAMS: I'll waive closing. [LB59]

SENATOR HOWARD: You're waiving closing. All right, thank you. That will conclude the hearing. [LB59]

SENATOR ADAMS: We'll waive closing and thank you for helping me out. And we'll move on to the next bill on our list, the last one for today, and that is LB123. As we are preparing for this, may I first of all see a show of hands of all of those who intend to testify in favor of this bill? How many in opposition? Neutral testimony? Okay. Here's what I think we'll do. I discussed this with the introducer of the bill and want to be fair to both sides. We're tentatively going to allow 45 minutes for proponent testimony, which means that if there is sufficient opponent testimony we'll do the same. And rather than use the light system, we'll just use an aggregate time period and hope that that can get everybody in. So with that, we will begin with...I guess we're looking for Senator Heidemann, aren't we? I'm not going to say let's sit at ease because this crowd will get crazy on me, and I don't want that to happen. Senator Heidemann, you're late for class but (laughter) we'll begin. [LB123]

SENATOR HEIDEMANN: Senator Adams and members of the Education Committee, I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB123. LB123 adds a definition of cyber-bullying to the statute and places cyber-bullying under the Student Discipline Act, thereby making it grounds for long-term suspension, expulsion, and mandatory reassignment if such conduct causes or is reasonably projected to cause substantial or material disruption of the school environment or threatens the safety and security of students or school personnel. Cyber-bullying is defined as a form of electronic communication on or off school grounds with the intent of causing harm or serious emotional distress to students or school personnel. By July 1, school districts

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would be required to develop and adopt a policy regarding cyber-bullying prevention and education. As of July 1, 2009, school districts were required to adopt a policy concerning bullying prevention and education. This bill expands the content of the policy to include cyber-bullying. Last May a constituent of mine, who is here to testify today, contacted me and asked me whether there was any legislation directed at Facebook and the bullying aspect of it that can be directed towards teachers. I won't go into her story as she will tell you about that later. I found out that there was a definition of bullying in state statute and it did cover electronic abuse. It only covers situations occurring on school grounds, in a school vehicle, or at school-sponsored activities. I realize that activity occurring off school grounds is a gray area. With the help of Education Committee staff, I worked on this issue over the interim. Now in our research we found many references to the 1969 Supreme Court case Tinker v. Des Moines Independent Community School District, which basically said that school officials may respond with formal discipline in cases where the off-campus speeches causes or threatens to cause substantial or material disruption at school or interference with the rights of students to be secure. In drafting LB123, we utilized the language that had been suggested by this prior court case. With the widespread use of the Internet by students, these issues are not going to go away, but will become more common. I feel strongly that we need to address the issue of cyber-bullying now. I also worked with the school counselors, school administrators, and the school boards association, who have been very supportive of my efforts. I would like to thank them for their assistance. If you have any questions, I'd be happy to answer them, but there are people that are following me that are far more knowledgeable in this. I will also at this time let you know I'm going to get back to Appropriations so I'm going to waive closing. Just briefly in my own words here, this is something that probably a year ago I would have been very leery about getting into. As we get into this legislative session and we realize that there's not funding to do a lot of the things that we'd like to do, and that will be passed on to everybody, I don't want to put any more mandates on anybody than we have to do. But in my mind as I learned, even as late as today, that school districts are going to have to deal with this because this is there now. And they may as well deal with it now versus later because it will be more difficult later. With that, I will take questions. But once again, there are many people that are going to be following me that can answer those questions probably better. [LB123]

SENATOR ADAMS: Fair enough. Thank you, Senator. Are there questions for Senator Heidemann? Yes. [LB123]

SENATOR HOWARD: Well, it's not so much a question. Thank you, Mr. Chairman. I want to thank you for bringing this bill. And as you know, I had the original antibullying bill passed I believe in 2007, that was LB205, and you were supportive of that bill and voted in support of it. I think the time has come that we take it a step further. My bill included electronic devices thanks to Virgil Horne, who was at that time the lobbyist for Lincoln Public Schools and a person who was thinking ahead. I commend you for this. I

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think, as you put it, the time has come we need to do this so thank you. [LB123]

SENATOR HEIDEMANN: Thank you. [LB123]

SENATOR ADAMS: Are there other questions for the senator? Thank you then. [LB123]

SENATOR HEIDEMANN: Thanks a lot. [LB123]

SENATOR ADAMS: And you're going to waive closing did you say? [LB123]

SENATOR HEIDEMANN: I'll waive closing. [LB123]

SENATOR ADAMS: Okay, fair enough. [LB123]

SENATOR HEIDEMANN: Thank you. [LB123]

SENATOR ADAMS: We do have a roster of people that Senator Heidemann's office delivered to us. If at all possible, I'd kind of like to follow that roster. Deb Kubik. And as we begin, I want to remind everyone, all the testifiers, to please state their name and spell it for the record so we have it for the transcriber. [LB123]

DEBRA KUBIK: (Exhibit 2) Dear Senator Adams and Education Committee, my name is Debra M. Kubik, K-u-b-i-k. I'm here today in support of legislation LB123 on cyber-bullying. I began teaching in 2000 and changed school districts last year. Through my ten-year teaching career, I was awarded the following honors: 2006-07 K-12 Nebraska Art Teacher of the Year; and I was nominated for the same awards in 2008 and 2009 and then again in 2010 and 2011; 2008 and 2009 I had the FFA Appreciation Award and was presented the Key to Pawnee City for Cooperation with the City and School through the Arts from the mayor. During my first and only year teaching at Nebraska City High School, I became one of three female teachers targeted specifically by three male students who created a Facebook group with the intent to cause mental and physical harm. Since I did not reside in the community but resided 20 miles away, my only association with the students who created this group was through the school system and teaching experience. One student I did not know or have in the classroom. One large fear I have is that I had no knowledge of the students that joined the group. I never met them. I had no idea who they were. I was now very much a target of their hate. It was an invisible intruder with the potential for violence. It was personally devastating and frightening for me and my family. There is a copy of the original e-mail if you want to contact Senator Heidemann's office to look at it. I am now turning to you to help the victims of cyber-bullying. It's real and it's ugly. There needs to be laws to help the victims and curb the content. The use of the Facebook and communication sources like this are a very high profile means of communication. Because of that, it is much more potentially dangerous mode of communication. It can change in a moment.

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New laws need to be developed to help schools protect not only the safety of the students, but for all employed staff members and volunteers. While there is freedom of speech, the acknowledgement that speech or cyber-communication that becomes threatening with the intent to harm or denigrate the targeted individual becomes more crucial to the situation when the possibility of violent or violent acts are part of the communication. The scope and intent of these groups intensify because the total amount of stable or instable individuals involved cannot be measured. Once these pages or forums become visible--and in my case the administration of the school takes no action to correct the situation--it dissolves the educational environment and it allows the bullies to take over the school environment with the possibility of violent actions. My Facebook cyber-bullying ordeal began with a warning from two very concerned senior girls coming to me during class on Monday, March 29, 2010. They warned me during class about a site that was developed that specifically targeted me, but would not elaborate on the content or who had originated it. At that time, I asked them to not bring the subject up again unless they provided me or the administration solid information. It created an uncomfortable undercurrent within the classroom. They were upset and wanted something done without being snitches. On Good Friday, April 2, 2010, I opened the e-mail that Senator Heidemann has and I became physically sick. I contacted the current Nebraska City High School principal about the e-mail and the content. My husband and I went to the Auburn Police Department with the page. From this link, they were able to determine that it was a crude, vicious Facebook group and I was the target. The police were able to determine which students created the page and the total number of students involved in the group at the time. I knew a handful of the students that were targeting me. During this time at the police station, the Auburn Police found two more pages targeting two more other female teachers at the Nebraska City High School with the same originators and contents. I gave my principal the information of the students involved that created the page and the other teachers' names and the contact information of the officer with the Auburn Police Department. At no time did the principal cooperate by contacting or returning the phone calls from the Auburn Police Department asking for parental contact information of the students. Two and a half weeks after the incident, the Auburn Police Department was able to obtain the parental information of the students involved with the creation of the page from one of the high school secretaries. The police contacted only the students involved in creating the page. One came in with his mother to apologize for his actions and involvement. One of the keys to this student's apology was his Facebook page was referenced and pictures of his involvement with drugs. The officer told them if charges were pressed this information would become public and other charges could also be issued. After the student came in with his mother to apologize and acknowledgement of the cyber-bullying, he was suspended only after I insisted on disciplinary action. The administration took no action with the other two boys involved, and at no time did the administration offer any type of personal support or condemnation of the incident. I am now turning to you to help the victims of cyber-bullying. It is a real concern and in many cases and in my case can be very ugly, potentially dangerous, and classroom

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disrupting. Without legislation, there are too many schools, administration, and union representatives which will not act unless there is a law used as a guideline. No action was taken on behalf of the other teachers targeted by the students by the Nebraska City administration. There were a number of parents that contacted the school board members about the concern with this incident and the possible harm to their child. Nothing was done. The parents found out about the incident and the site from their children. Parents and guardians look to the teachers and schools to help their children when bullying and cyber-bullying situations arise. I compel your group to add this legislation to the current law. The Internet, with all its great communication tools available out there to every student today, can be a very dangerous place for the kids and schools. This took a huge toll on me personally, my family, friends, coworkers, and students. The Internet is a powerful communication tool, and the scope of the Internet and ability of the individuals to reach even more individuals in a matter of moments is one of the reasons cyber-bullying laws need to be developed and enforced. That's it. [LB123]

SENATOR ADAMS: Thank you, Deb. We appreciate you coming in. This was difficult. Are there questions for the testifier? Anyone? Yes, Senator Howard. [LB123]

SENATOR HOWARD: Thank you, Mr. Chairman. How was this resolved? Are you still teaching at this school? [LB123]

DEBRA KUBIK: I resigned my position in July. I had some other personal issues. There was no resolution. [LB123]

SENATOR HOWARD: There was no resolution [LB123]

DEBRA KUBIK: And I went to the school board and president and I also went to the superintendent. [LB123]

SENATOR HOWARD: And you were not the only teacher that was targeted in this way. [LB123]

DEBRA KUBIK: Targeted, no. No. [LB123]

SENATOR HOWARD: Are the other teachers still there? [LB123]

DEBRA KUBIK: They are, but this school...I didn't go forward to them. I let the police and the administration. They never made an overture to alert them. [LB123]

SENATOR HOWARD: Okay. Well, thank you. Thanks for coming forward. [LB123]

DEBRA KUBIK: Thank you. [LB123]

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SENATOR ADAMS: So in essence the school board, the administration didn't do anything. [LB123]

DEBRA KUBIK: Nothing. In fact, when I talked to the superintendent, he was unaware of the e-mail, but he had general knowledge of it. They had never seen it, although I had given all the information to my school principal. And I gave all the information in a packet also to both the superintendent and the school board president, John Crook, and Dr. Edwards. [LB123]

SENATOR ADAMS: Thank you for that answer. Are there other questions for this testifier? Yes, Senator Howard. [LB123]

SENATOR HOWARD: Thank you, Mr. Chairman. Just basically they chose not to know about it. [LB123]

DEBRA KUBIK: I would agree with your statement. [LB123]

SENATOR HOWARD: Thank you. [LB123]

SENATOR ADAMS: Are there any other questions? If not, thank you for your testimony, appreciate it. [LB123]

DEBRA KUBIK: Thank you. [LB123]

SENATOR ADAMS: Next testifier, Greg Perry. [LB123]

GREG PERRY: Senator Adams, members of the committee, my name is Greg Perry, P-e-r-r-y. And I see LB123 as offering schools a tool and a responsibility. The tool is that currently we're under the School Discipline Act when a school has a cyber-bullying incident they call and say, Greg, can I expel this student for doing what he's done? He's hurt someone or she. And I go through a scenario that involves two points. One is, did the conduct occur on school grounds or in a school vehicle? No. Well, then you can't. If this bill were passed, I wouldn't ask that first question. Instead, I would go to the second question which is Tinker. Did this conduct cause a material and substantial disruption or is it reasonably projected to cause a material and substantial disruption to school operations? In most cases the answer is no. Two hours ago, I talked to a principal who had called about a cyber Facebook posting last night. One youngster threatened to kill another youngster. Was it a credible threat? No, he had already apologized before anybody heard about it. Under the Tinker standard, can I do anything? Could the school expel for that conduct or otherwise discipline? Probably not. They can do other things. They can talk to the parents, talk to the kids, report to police and then other avenues. But the expulsion or student discipline would not be authorized by Tinker. So the bill is

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fairly limited in that extent because we're not changing the First Amendment today. The responsibility piece comes in as it relates to the antibullying statute. And currently the responsibility of the school is only to deal with electronic bullying that occurs on school grounds, and this expands it to recognize that cyber-bullying, whether it occurs on or off school grounds, does, according to the experts, have an effect on kids in school and on school operations. And so schools will be required to adopt a...change their policy so as to have procedures to prevent and educate students about cyber-bullying, including that which occurs off school grounds, which is, of course, the majority of it. There's obviously any time there's a question of expanding the scope of a school's jurisdiction, there's always a question of do we want that authority? Do we want to have greater jurisdiction? Oftentimes we don't. In this situation, though, I think that the expanded jurisdiction is fairly limited because, number one, the Tinker standard. Number two, the bill does not require that schools have a Facebook police officer to search students' Facebooks. And I don't believe many schools will do so. They can control whether they do or don't because they're in control of creating their own board policy, and so it shouldn't add a burden in that regard. Thank you. [LB123]

SENATOR ADAMS: Senator Cornett. [LB123]

SENATOR CORNETT: Let me ask you if something reaches the level of a threat on a Facebook page or any type of e-mail communication or social network, is that not a criminal act? [LB123]

GREG PERRY: It may be. [LB123]

SENATOR CORNETT: Terroristic threats comes to mind. [LB123]

GREG PERRY: Yes. It depends upon how serious the threat is and the police then examine that to see is this a true threat. [LB123]

SENATOR CORNETT: Well, I guess that that's the kind of crux of the matter here. Where is the cutoff between kids being stupid kids and a criminal act? [LB123]

GREG PERRY: It's... [LB123]

SENATOR CORNETT: And where should that line be drawn for schools? And should it have that clear and bright line that you have for the police generally? [LB123]

GREG PERRY: There is not a clear and bright line. For example, in the true threat line of school cases, our Eighth Circuit Court of Appeals has adopted a test that involves seven factors I believe. And it's, okay, did the person making the threat make it directly to the other person or did it get to the victim in a roundabout way? A factor such as did the person really have the ability to carry out the threat if it's a third grader in a

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household with no guns? It's not a clear bright line. It's a seven-factor test for free speech analysis. And I believe police apply a similar kind of analysis. [LB123]

SENATOR CORNETT: Okay. So...and trust me, I'm not against the bill. I'm just working this through. What are school procedures when you have a student that has committed and convicted or has allegedly committed and is going through the process of a trial for a threat against another student? So if you've got two people in a school, one, you've reached the standard for a criminal act, whether it was in person or on Facebook, what do the schools do now to separate those students? [LB123]

GREG PERRY: I'm assuming you're talking about a threat that was off school grounds. [LB123]

SENATOR CORNETT: Threats off school grounds. [LB123]

GREG PERRY: Okay. They would...they don't have the authority to do a mandatory reassignment because that's part of the long-term suspension, expulsion, or mandatory reassignment. That's where this on school grounds requirement is found. And so they can't do a mandatory reassignment. All the best...the best they can do is get agreement for the one person, the student that made the threat, to go to a different building. Oftentimes, there is only one high school building. And so in that event, we sometimes will just do class assignments with both students having places they can and can't go so they don't meet up with each other. And sometimes we take the position that, golly, we have the authority to make an educational placement that's in the best interest of the student. And it's not...even the student who made the criminal threat it's not in your best interest to be in the same building or nearby the one that you threatened, you might get accused again, so we're going to put you here and hope to get parent approval to that. [LB123]

SENATOR CORNETT: And again, I'm not opposed. [LB123]

GREG PERRY: Yeah. [LB123]

SENATOR CORNETT: I'm just working this through in my mind. If you have something that doesn't reach the general level of a threat but is bullying, because bullying doesn't necessarily mean threat of physical violence, do you think the school should have the right to move one student? Or where does the rights of the student that is bullying but hasn't reached the level of a criminal act come into play? [LB123]

GREG PERRY: In many cases, the right to move doesn't really exist because there's only one building, but... [LB123]

SENATOR CORNETT: One school, exactly, but a lot of places there is that choice.

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[LB123]

GREG PERRY: And you look at the administrators...school administrators have to look at what is in the best interest of the students. Really you're looking at both the one who is accused of the threatening and the victim... [LB123]

SENATOR CORNETT: That's my point. [LB123]

GREG PERRY: ...and determine what is in the best interests. And it may be that because of the level, the nature of the threat that it's best for both of them to finish their high school senior year in the same building. Or it may be best for a freshman to go to a different school. It's a...there's no bright line test. It's what's best for kids...and teachers, sure. [LB123]

SENATOR ADAMS: Senator Council, did you have a question? [LB123]

SENATOR COUNCIL: Yes, and thank you. And thank you, Mr. Perry. I, like Senator Cornett, I'm supportive of the concept in the bill. In fact, I'm one of the cosponsors of the bill. I still have a couple of questions and one of them is grounded in a statement you just made that the schools don't have a Facebook police. And, you know, my concern is how do we address the situation where there may be numerous Facebook postings out there that could fall in these categories, but the only youngsters who are subject to discipline are those who are reported? I mean how do we strike this, you know, this balance? And kind of a follow-up question, Ms. Kubik was talking about how the Auburn police had to determine the source of the Facebook posting. I mean, are the school districts going to go into, you know, assuring that a particular post was placed by the avowed student? I mean, I tell people at the outset, I'm technology challenged. And I don't know whether somebody can post something on my Facebook page or not, but I've been told that people can. So I mean where is the level of protection that, you know, the student on whose Facebook page or whatever social media, how do we assure that that student did that? I mean is that through the hearing process or is there some way to...are we going to expect school districts to go through the cost of, you know, determining whether or not that Facebook posting came from a modem assigned to that student or their parents? [LB123]

GREG PERRY: One of the identified means of bullying is to make a posting that appears to be coming from a different person and that then makes that different person... [LB123]

SENATOR COUNCIL: The target. [LB123]

GREG PERRY: ...so it is possible. I'm like you. I wouldn't know how to do it, but students do. And so just like any student discipline matter, this school does have to

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figure out the truth. Did this student...was this the student who really did it? And usually that's discovered by talking to kids. As far as accessing Facebook, most...kids are getting wiser at least as far as making their profiles private and so that there's less access. Yeah, oh, I thought you... [LB123]

SENATOR CORNETT: I was just going to say but what about the fact that I could sit here right now from my phone and create a Facebook account with your name on it? [LB123]

SENATOR COUNCIL: That's the (inaudible) [LB123]

SENATOR CORNETT: I mean I don't need to set any privacy. It's not a matter of what you individually may have your privacy settings at. I can sit here right now and create a Facebook account with your name on it and sent a threat out to anyone in the room that's got a phone. I mean how is the school going to determine that? [LB123]

GREG PERRY: That who actually did that? [LB123]

SENATOR CORNETT: Yes. [LB123]

GREG PERRY: Well, the... [LB123]

SENATOR CORNETT: You wouldn't know who did it. [LB123]

GREG PERRY: No. And, you know, ultimately there is a procedure and that is to contact Facebook and get a subpoena, but you're not going to do that 99 times out of 100. [LB123]

SENATOR CORNETT: And then how are you going to prove you didn't do it? [LB123]

GREG PERRY: I'll say I didn't do it. I was in English class at that time. [LB123]

SENATOR CORNETT: Lie detector? What if you're at home? [LB123]

GREG PERRY: Well, you know, we have the issues of proof with...we've had them every day with school discipline issues. It's always a process of determining the best we can, did this student actually do that conduct? And what you're pointing out is with electronic issues there are some different hurdles with other types of conduct. [LB123]

SENATOR CORNETT: Well, and also having been a police officer for ten years, I know there are a lot of juveniles...you're assuming that sitting down and speaking to a juvenile that they're not going to be savvy enough to be able to lie well. I disagree with that (laugh). [LB123]

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GREG PERRY: One point--I better get down so other people have a chance--but there is the word "ongoing" in the bill. And I suggest that the word "ongoing" where it talks about definition of cyber-bullying because there may be some electronic postings that one posting of it rather than multiple would create a problem. Thank you. [LB123]

SENATOR ADAMS: May I ask one question quickly, and it may not be very articulate. There are--and I'm unfamiliar with this--are there federal guidelines for what is and is not an offense that would include bullying but would not...but those offenses would not be part of our discipline statute because that's our business? [LB123]

GREG PERRY: I know of no federal law that would define...you're talking criminal...would define bullying. [LB123]

SENATOR ADAMS: Anything related to schools. [LB123]

GREG PERRY: Well, about the best you can get is (inaudible) Title IX sex harassment; Title VII, racial harassment, but that's really not...they never use the word bullying. [LB123]

SENATOR ADAMS: Okay, fair enough. Thank you. Yes. [LB123]

SENATOR HOWARD: I just have a quick comment and I had to get out my original LB205 so I can go back and look at what we did put in. I think it's important that you're aware of this: It not only includes the school, the school building, or the school grounds. It also includes a vehicle owned, leased, or contracted by a school being used for a school purpose or a school employee or his or her designee or at a school-sponsored event or school-sponsored athletic event. So those things are all included in that. [LB123]

SENATOR ADAMS: Are there other questions for Mr. Perry? Thank you, sir. [LB123]

JANE STAVEM: Good afternoon, Senator Adams and members of the Education Committee. I'm Dr. Jane Stavem. I'm the superintendent of Blair Community Schools. My last name is spelled S-t-a-v-e-m. I'm here on behalf of the Nebraska Council of School Administrators, and I'm here in support of LB123. I appreciate your efforts to strengthen the existing law to continue to give us what we need to combat this and other things that continue to try and encroach upon our real purpose of educating students. And we continue to want to make our schools safe places for both staff and students. There are a couple of things that I would just like to bring up for consideration. Some of them have already been touched on and so I will try and keep those brief. But one thing that has just been discussed is that this is an issue that tends to flow from multiple places. It may start at home, flow through school during the course of the day,

end up at home. It may start at school, continue at home and erupt, and it's very difficult to point to a place of origin for some of these things. Regardless of that, it still often becomes our problem during the school day. However, you heard from Mr. Perry that it's very difficult, depending on the level of the offense or the threat that was given, is it a school issue? Is it a school discipline issue? Is it a criminal act? And often if it's determined to be a criminal act, then that goes in a very different direction than if it's something that's determined to be a school issue. It's very difficult for us as school administrators to know what that looks like until we begin consulting with our attorneys which, of course, is an expense to the school district, and we see this continuing to be a problem. I also wanted to touch on what Mr. Perry just mentioned. Bullying right now is defined as an ongoing and persistent situation. What we often deal with are much more isolated incidences and so that word "ongoing" may be something to consider. And we also heard earlier that case law isn't much help right now in trying to determine some of the courses of action that we take because it's kind of all over the board at this time. The other piece that's been brought up right now is regardless of where this stems from, the resources that it takes for time and energy and technology looking for documentation, looking at what's available to us maybe during the school day to see. We already have resources that are stretched very thin. We have technology people whose job it is to help with maintaining our educational technology for use in classrooms and for use by students. This begins to kind of erode those things and often takes people away from their primary duties to help us with some of these types of issues. One other consideration that hasn't been brought up that I think needs to be talked about just a bit is how this weighs out with what we're asked to do educationally. You hear and we see it all the time and are continually trying to integrate technology into what we're doing with teaching and learning. And when we look at placing more and more computers, iPods, iPads into the hands of students, we also know that that increases our risk each time that we do that. And so I think we need to consider the balance that this is when we add cyber-bullying into law and we're trying to consider those things alongside of bringing the latest and greatest to our children and to our teachers for classroom technology. And you begin to feel a real kind of a push-pull with those things coupled together. I think another consideration is cyber-bullying has kind of become a big term, but as you define that in law, we know that technology is moving at a rate we can't begin to keep up with at this time. And so this really needs to be something that continues to help us address those things as they evolve that we can't even foresee at this point in time, which can happen overnight literally in the world of technology. And the last thing that I want to bring about is just the consideration of how this looks within policy and procedures in a district. Right now all districts are required to have bullying policies. I think this is something that could be attached to those existing policies. As you further define that in law, we can do that with our existing policies, helping us to maintain things a little bit more efficiently, and that this would lead to districts being able to establish maybe more uniformly some of our practices that go along and support those policies. You're asking questions, Senator Cornett, that we wrestle with all of the time when we have these issues is how do we split hairs? How do

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we try and interpret these things? And if we can get some things in place in districts across our state that really help us to solve more problems than what we create, I think that's a good thing. And so again I want to say that I'm in support of this bill. And we all, unfortunately, know that no matter what is placed into law these types of things aren't going to go away. And so I think we begin to try and look for as many things as we can do to strengthen those policies and procedures and really help us combat this effectively so that we can continue to educate our children. [LB123]

SENATOR ADAMS: Are there questions for this testifier? Yes, Senator Cornett. [LB123]

SENATOR CORNETT: When you talked about the language of "ongoing," you are talking about expanding that to not just ongoing but maybe one- or two-time incidents? [LB123]

JANE STAVEM: Yes. [LB123]

SENATOR CORNETT: If it's a one-time incident and it doesn't reach the level of a criminal act, that doesn't really fit the definition of bullying, does it? [LB123]

JANE STAVEM: I think that would be up to interpretation depending on what was said or done. Is ongoing one night having 20 different entries or is that 20 days of ongoing comments? [LB123]

SENATOR CORNETT: I'm just afraid if we expand this out too broadly that we are overcomplicating what we're trying to do here. I mean given cyber-bullying is a new issue that this came about with the event of social networking and its, you know, its growth inside of our population, but one-time events or even two times doesn't typically fit what bullying was in the past or what the definition of bullying is. I'm having trouble with that. [LB123]

JANE STAVEM: Um-hum. I think that's for you as lawmakers to consider and wrestle with. I think we see things that are more isolated that may be defined as bullying or that parents may define as bullying or students may define as bullying, society defines as bullying but may not match what someone's interpretation is of an ongoing type of thing. And I think there are beginning to be numerous examples that are hard to define situationally, and I certainly can't do that. [LB123]

SENATOR CORNETT: No, and I understand your point. It's just that we all were young once. And I'm sure that there isn't a person in this room that didn't have someone say something or their group of friends say something to them that hurt or wasn't appropriate but didn't reach the level of a threat, but did that really warrant this? I mean, does it really warrant putting that in statute? And then where do we, you know, make that cutoff? When do we stop giving the administration the power to determine? Do we

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actually put in statute one-time event? I mean how do we define it? [LB123]

JANE STAVEM: Um-hum. I don't know. I will say that's one of the difficult issues with bullying is everyone has a different interpretation. And you can define it as best you can, but you'll have someone who thinks persistent bullying is three times in a six-month span or three times in five minutes that someone has said or done something. [LB123]

SENATOR CORNETT: But we're changing the wording in the statute, then we have to determine what that is. [LB123]

JANE STAVEM: Exactly. Um-hum. [LB123]

SENATOR ADAMS: Senator Sullivan. [LB123]

SENATOR SULLIVAN: Thank you, Senator. The bill states that part of this policy would be aimed at prevention and education. My question to you is, what sort of education right now is taking place that you are aware of in schools with respect to this? [LB123]

JANE STAVEM: I can only speak for sure for my own district. But I know many districts have put those things in place--Internet safety. A lot of us have added cyber-bullying specifically. Blair just this fall has done two different sessions for parents. Sometimes, as we have said today, some of us are the digital immigrants and not the natives. People just aren't aware of how the dots connect. If I post something and you respond to it and you respond to it, everybody is involved and people aren't sure sometimes how any of those social networks necessarily work and so we're trying to educate in that way as well. I wouldn't say that that's happened everywhere. I certainly can't say that, but I know there is more and more of a push to incorporate those things and it's needs driven. It's because we've seen the necessity to do so. [LB123]

SENATOR SULLIVAN: Thank you. [LB123]

JANE STAVEM: Um-hum. [LB123]

SENATOR ADAMS: Senator Howard. [LB123]

SENATOR HOWARD: Thank you. Thank you, Mr. Chairman. But the original bill I passed, LB205, does include electronic bullying. [LB123]

JANE STAVEM: Um-hum. [LB123]

SENATOR HOWARD: And I'm quite sure that many of these students do check their Facebook pages at school whenever they have the opportunity (laugh), even though that may not be sanctioned. And so it would seem to me like you have the responsibility

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to address that when it occurs. It's not just in their own bedrooms, but they can also have situations or opportunities to have this happen to them right there on the school grounds. So when that does occur, when a student does come to you to say that they're feeling like they're being bullied and they're having these things happen, how is it generally handled? [LB123]

JANE STAVEM: Well, I can speak for Blair. We have a specific protocol in place of how principals address that so that we're consistent with that, and it's taken very seriously. The difficult part comes in, like we talked about before, determining the wheres and the whens and the whos of that, and it's a very time-consuming, labor-intensive process. But it's not ignored because of that. [LB123]

SENATOR HOWARD: Well, that's the problem. If it becomes...a student is not going to come and tell you about this if they don't feel anything is done because that can just make it worse for them. [LB123]

JANE STAVEM: Exactly. [LB123]

SENATOR HOWARD: You know, the word gets out and they're snitches or whatever. So do you feel that your system, the way you do deal with it, is effective? [LB123]

JANE STAVEM: I don't know if we ever feel completely effective. We've increased our measures. We have it on our administrative team meeting every week so that we're continually reviewing those things. We try to make sure that the adults in our system are connecting with students so that they don't just feel like the principal is the only person they go to--it's teachers, it's other adults. We do as much as we can and we continue to try and add to that all the time. [LB123]

SENATOR HOWARD: Well, I appreciate your investment in this. It's important and it makes a difference that you take it seriously. Thank you. [LB123]

JANE STAVEM: Thank you. [LB123]

SENATOR ADAMS: Are there any other questions for this testifier? Thank you, Jane. [LB123]

JANE STAVEM: Thank you. [LB123]

LARRY RAMAEKERS: Senator Adams and members of the Education Committee, my name is Larry Ramaekers, that is R-a-m-a-e-k-e-r-s. I'm superintendent at the Aurora schools, and I am here to testify in favor of LB123. We had a very similar situation in the Aurora school system that was experienced by the individual I think the first testifier, Cornett, if I have the...Corbin (sic), excuse me, I'm sorry, the first testifier, and I certainly

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can sympathize what occurred with her because it was very similar to what we had with two teachers in the Aurora School District. What occurred there was an individual student had gone into and created a Facebook page for two teachers and put on that Facebook page some very derogatory things. And we then, as administrators, because it occurred with middle school staff and a middle school student, excuse me, middle school staff and a high school student, it ended up then we had two administrators who were involved in trying to get to the bottom of the entire situation, which they did. I certainly can sympathize with everybody in this room because if we were to put this on a spectrum, the least capable with technology to the most capable, I would be on the left to be the least capable. And we found that out very quickly with the other administrators who were working on this situation with the student. The student was far, far above any one of us in that room. And in our particular situation, what helped is that we had an assistant principal who knew about Facebook and was able to, in a sense, interrogate that student to the point of getting the truth from that individual. But the problem...I guess I would come to say as well that I am somewhat sympathetic to the Nebraska City administrators because we knew well enough as we were going through this process that all of this had occurred off of school grounds. And as Mr. Perry had said, the two tests, the very first question that he would ask, I should say, when someone contacts him is saying did this happen on or off school grounds? And in our particular situation, this occurred off of school grounds. If it would have been on school grounds with a school computer or in the classroom, we had the tools to deal with it. LB123 now gives us tools going into the Discipline Act that would allow us then to deal with the situation that would be off of school grounds. And so for that reason we are supportive of that. One of the things that I know has been brought up and Senator Cornett has asked about this, and that is the ongoing issue that is currently in I think 79-2317 (sic) I think it is the statute that is talking about the ongoing. One of the things that we dealt with and we found out very quickly with Facebook is that as soon as that child or that student put that onto Facebook, it went to every one of his friends that were there and there it became ongoing because it literally can exponentially grow from that point on. And so we viewed that as an ongoing type of a situation as opposed to a single incident. So that's how we, I guess, could say it is ongoing. And as I said to Mr. Perry here today is that I define ongoing as it's going on, you know, and really whether it be one time, ten times, or whatever it may be. But the end result of this I will tell you that we're definitely in support of LB123. It was something that I had brought to Senator Dubas, 34th District. And I know simultaneously she had developed a bill as well and then went in together with Senator Heidemann on this. But we had done the same thing. It was taking the course of action to try and get this into the Discipline Act. So thank you. [LB123]

SENATOR ADAMS: Thank you, Larry. Senator Cornett. [LB123]

SENATOR CORNETT: Point that you must made. If the student posts something one time on a Facebook page, I have 700 or 800 friends so all 700 friends happen to read it

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and 600 of them send that on, I have no control over that. Are you going to go after every student that...because the first comment might again only be I hate, I don't like, I think this person is ugly, whatever. They've made a one-time comment, so then are you going to go after all of the people that forward that and/or comment to that? Because they are just as guilty of a one-time action as that first person that posted it. [LB123]

LARRY RAMAEKERS: The obvious to that would be no. It would be impossible for me to do that. [LB123]

SENATOR CORNETT: Then how are they any less guilty than the person that posted it one time? [LB123]

LARRY RAMAEKERS: That's a difficult question for me to answer other than to provide something that would be maybe analogous to that. If a student stood up in a crowd and yelled some derogatory comment at another player there and everybody laughed and cheered, are those other kids just as guilty as the one who made the derogatory comment? Would we discipline all of them or only the one who made the statement? [LB123]

SENATOR CORNETT: But a lot of those comments feed off of the original and are actually worse than the original comment. [LB123]

LARRY RAMAEKERS: That's very true. And that was one of our problems. We didn't know where this would stop. [LB123]

SENATOR CORNETT: Well, that's my point. Where do we draw that line? I agree that bullying and cyber-bullying is an issue. I'm just having trouble in my mind drawing a line where we're carrying it too far or do we go after every student that comments on it because they're no less guilty than the original person. [LB123]

LARRY RAMAEKERS: I think the best way I could answer that is that an administrator, when they are dealing with a disciplinary situation, they have to use their best judgment to determine the guilt or innocence, you could say, of that individual student. And it would be difficult for me to sit up here and say here is a cookbook, if you will, that if you do this, this is the answer. If that were the case, we wouldn't need administrators because you could just pull the book off the shelf and say, okay, here's the incident, look across. What is the solution to that problem? Every administrator will investigate that in a separate way and what they feel best and what would be their most successful. In our particular situation, what we did find out, though, and with the help of that assistant principal, who was very savvy, knowledgeable, if you will, of how to work with Facebook, is we were able to have the student pull it from the Facebook page. It's hard to put the toothpaste back in the tube because we don't know how many friends pick that up and they in turn maybe send it on. But we at least knew who that student was

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and we dealt with that student at that time. We knew then that that student had done it, finally was coming to admission to the situation. Had we had this type of a situation, we would have had a lot more tools in our toolbox, if you will, that we could have disciplined that student other than what we were able to do. And we contacted legal counsel. We went so far as to also contact the Attorney General's Office. We contacted the State Patrol. We wanted to get this taken care of. And as law enforcement officers, they were able to do more things than we were as a layperson, if you will. But nonetheless, we tried every avenue we possibly could. And again, the help of that assistant principal was probably the best thing because it let that kid know, quite frankly, there's somebody else in this room that knows as much about computers as I do. But again, having that in our toolbox would be very beneficial. And that again is why, in talking to the administrative team in the Aurora schools and several other administrators it would be a great help to them. I don't know if I answered your question, Senator Cornett, but it's something that again comes down to the administrators. [LB123]

SENATOR ADAMS: Are there other questions? Senator Howard. [LB123]

SENATOR HOWARD: Thank you, Mr. Chairman. I'm wondering does it make any difference if these kids' parents know that they've done this? [LB123]

LARRY RAMAEKERS: We called the parents in. Mom and Dad were appalled that it had happened, and they were very cooperative with us. [LB123]

SENATOR HOWARD: Good. [LB123]

LARRY RAMAEKERS: In fact, there was even a point in time where we left the room and Mom and Dad sat and talked to the kid, trying to coerce him, if you will, to...and we had excellent support. [LB123]

SENATOR HOWARD: Thank you. [LB123]

SENATOR ADAMS: Other questions? Senator Sullivan. [LB123]

SENATOR SULLIVAN: Thank you, Senator Adams. Well, just as a follow-up to that then, what were the consequences for the student? [LB123]

LARRY RAMAEKERS: In this particular situation, we do have a course or a policy that came about in 2008 is when we developed the policy. We also had one on electronic separate from that. But again, it was pretty much so with what happens on campus. And we also placed in that policy what would happen if it happened off of campus. In that particular situation, maybe you would call it the foresight or whatever to have that, but we put in our policy at that point in time that they would be banned and it would then be the discipline associated with our extracurricular activities. Now the immediate would be

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then what happens if you have a student that's not involved in extracurricular activities? Would they have a free pass then to get away with it? And quite frankly, we were expanding extracurricular activities to talk about prom, things like that and we would catch 99 percent of our students. But this particular student it was with the extracurricular activities. And the interesting part about that, the student, it was for an assistant wrestling coach and this student wrestled--had no idea why he picked on this teacher, this one particular teacher. And I will tell you, if I may add one very quick little, little situation here, the other teacher that was involved in this actually was retiring, desired to go...he was a very strong Civil War buff, he would have been in some Civil War movies, he wanted to go to that part of the country to teach. So he was eligible for retirement here in the state. He took that retirement with the hopes to go to that place, and his fear was that if they were doing a background check in that particular school district that they may go to Facebook, find that page there, and then have the falsification, if you will, of what was on that page, all the more he wanted to get that off of that page. And so that's all I have. Thank you. [LB123]

SENATOR ADAMS: Okay. Thank you, Larry, appreciate it. Any final questions? Senator. [LB123]

SENATOR HAAR: Yeah, thank you. Is there any recourse then for a student who's been basically judged by administrators as something being inappropriate? Can this go to the court system then or? [LB123]

LARRY RAMAEKERS: What would happen, and this is in the Discipline Act, and within that Discipline Act there are provisions that are set up for a student to request a hearing. And that hearing then, the school district would have to have a hearing officer come in. What that hearing officer then, it is spelled out in statute exactly what he or she can do as a hearing officer. They can have a number of different things, again, spelled out in statute. That report from the hearing officer is given to the superintendent of schools. He then is the one that implements that, shares that with the parent and the student on that. If that's not satisfying the parents, they then have the opportunity to take that to court. But there is a means before that happens within the Discipline Act that you could go through as far as request the hearing. [LB123]

SENATOR HAAR: Okay, thank you. [LB123]

SENATOR ADAMS: Any final questions? Thank you, Larry. [LB123]

LARRY RAMAEKERS: Thank you. [LB123]

SENATOR ADAMS: Next testifier. [LB123]

BARBARA PARIS: Good afternoon, Chairman Adams, members of the committee. My

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name is Barbara Jane Paris, P-a-r-i-s. I am on the board of directors for the National Association of Secondary School Principals and I'm also here representing Bully Police, which is an organization I volunteer for which is a watchdog organization that reviews antibullying laws across the country. I also serve on the Texas Safe Schools Coalition and have worked with the Texas Attorney General's Office on the issue of cyber-bullying in public education. I recently served on a White House committee for youth and am about to serve on a victims of crime committee, all of this pertaining to cyber-bullying so I thank you for allowing me to speak with you today. I'm going to try and I'm not sure how well I'm going to do this, but I'm going to try to answer some of the questions that each of you asked earlier, so I'm going to start with the one I know about. Senator Adams, I think you mentioned it. You asked if there were any federal statutes in the works. I testified this summer before the U.S. Congress. Senator McCarthy has drafted some legislation which is very similar at the federal level to what you are proposing at the state level. That was also done in conjunction then with the Office of Civil Rights and the U.S. Department of Ed have also issued a letter saying basically that there is urgency surrounding this and that is an issue that has to be addressed in public education. So that is in the works. There is nothing actually in place currently that delineates that. I do want to address Senator Cornett. You were talking and you had some great questions. Those are all issues that we struggle with. You had talked about the Facebook piece and at what point do we delineate an occasional lapse of judgment. I think really that will come down to when the law takes place and is then translated into policy and the policy then translates into code of conduct. At that point, it falls on the school administrators then to determine intent. To what...what was your intent? Was there intent to do harm? So there's a huge difference between me sending you a text message saying I hate you versus somebody building a Web site with the intent, as you heard testimony earlier, to denigrate somebody. So it will come down to that point. I know the question also came up about threats. Well, if it's a threat, isn't that a legal jurisdiction? And as Mr. Perry was talking earlier, the tenets of what constitutes a true threat, it comes down to I think the fifth tenet of that is what would a reasonable person believe. And that's a very gray area so I concur with Mr. Perry that how we delineate true threat is gray, at the very best. I can tell you as a first year assistant principal I can remember having a parent have me slammed up against a wall and tell me that if I didn't let his child out of in-school suspension he was going to kick my (pause) to the curb. And when law enforcement were notified, the response from law enforcement was, well, was it conditional? And I said, well, what do you mean was it conditional? And he said, well, he told you if you don't do this I will do this, that's not a threat; that was conditional so nothing happened. I mean how we define threat again is vague. That's pretty sad, isn't it? [LB123]

SENATOR CORNETT: No, I'm sorry. Her brother is a police officer. We just had an inside cop joke. [LB123]

BARBARA PARIS: You did, okay, inside cop joke. I do want to commend the

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committee. Senator Howard, I know we talked briefly about your original law. It had some great basic framework on which this bill has been able to build. The components we look for in Bullypolice.org are does your law identify bullying, which yours does. Does it talk about it being a bullying law as opposed to just a school, safe schools law, which tends to stress the whole zero tolerance point, and that's not what we're trying to emphasize here. Does the law address bullying specifically? Yes. Are there definitions? Yes. Do you have recommendations for districts to build model policies? Yes. Do you address the issue of a necessity for systemic training? Yes, you've done that. Is it a mandate, not just a suggestion? Yes. Does the law contain time lines and deadlines? Yes. Do you have pieces in there that address victims and the need for protection against retaliation? Yes, in fact, you already have that in place. Thank you for that. Are there systems in place for accountability? And then the big one that sorts out the lamb from the lion is do you address the cyber issues? Most of the states fall short on that whereas your law would put this into an A+ category so we're very proud of the law that you've drafted. On the whole free speech thing, I've had an opportunity to sit down with the ACLU many times in the last two years on proposed antibullying legislation. And what really comes up is, and I'm no lawyer by any stretch of the imagination, but I do know that the four cases that drive this in public education are Tinker, Fraser, Hazelwood, and Morse. And in all of those, the questions are and continue to be, is there a nexus between what happened and the educational process? And to what extent does it disrupt that process? If those two pieces are in place, then it doesn't necessarily alleviate accountability due to protected speech. In other words, it's not protected if those pieces are in place. Does it interfere with the ability of a student's right to learn, and in the testimony you heard earlier, a teacher's right to teach? If it does, then the school jurisdiction should end because that interferes with the educational process and that's our business is the educational process. I would also say that this is so long overdue. We don't allow this conduct in the workplace. People don't get sent to the principal or sent to detention. They get sent home; they get fired. And yet we expect our children to tolerate it. That's untenable in this day and age. So again, I applaud your law for having that. I will also say that on the Facebook piece we have a very similar law proposed in Texas. Facebook has come out in support of that law. I have written testimony from them saying that they support these laws. They support this legislation. And they do work pretty closely now with schools. It's very simple to report abuse on Facebook and to be able to secure their help in removing inappropriate conduct. They're actually very proactive. I would not have said that two years ago, but that's changed very much recently. So they are very supportive of these laws. Again I would mention, Senator, you had talked about posing to be somebody else and creating a Facebook. I just wanted to clarify it is a felony. It is already a felony to pose to be somebody else on the Internet with the intent to do harm to that person. That law came out of the Megan Meier suicide due to cyber-bullying. So that piece is in place, but that's not the preponderance of what we deal with. People don't pretend to be somebody else. They create these Web pages to denigrate them. They just don't tell you who they are. They don't pretend to be you so that's not the lion's share of what we're dealing with. I just

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want to close by saying this: That children don't report cyber-bullying. And you said it, Senator Howard: They don't do it because they know nothing is going to happen. And nothing happens because we have nothing in our code of conduct which is because we have nothing in state policy. And we have nothing in state policy because we have no backbone. We have no law that drives that process. So we need this law to put those policies in place to allow our superintendents to train our staff and our students and our stakeholders and parent communities about what is the accepted behaviors in a school learning community. So we need this law to protect the educational process, not to interfere with it. So I would ask that you support this law wholeheartedly and do your part to remove the code of silence which is taking lives across this country. Nebraska is fortunate that you do not have a long track record of suicides due to Internet bullying. I applaud you. I applaud you taking this step to protect your students. Thank you for allowing me to speak. [LB123]

SENATOR ADAMS: Thank you. Senator Cornett. [LB123]

SENATOR CORNETT: Again, I'm not opposed to legislation regarding cyber-bullying, but legally it creates difficulties. [LB123]

BARBARA PARIS: Yes. [LB123]

SENATOR CORNETT: With the comments earlier, let me ask you would there be room inside of the proposed bill to define the difference between one-time posting, I'm just talking posting, and you will understand what I mean by posting, that says I don't like somebody. I think they're ugly. I think they're fat, whatever. They can be considered demeaning, but is a one-time posting versus creating a Web page deliberately to denigrate somebody? There is a difference between creating a Web page and a posting, correct? [LB123]

BARBARA PARIS: Correct. And I agree with you. [LB123]

SENATOR CORNETT: If...the difficulty comes for me in my mind if someone posts something one time and same thing I said earlier and that's passed on to every single person in the school and they pass it on to the rest of the school district, is that ongoing from the person that posted it one time? That is different than creating a Web page. [LB123]

BARBARA PARIS: Correct. And it comes down to... [LB123]

SENATOR CORNETT: Where...do we look at the language and say deliberately creating or with intent to denigrate creating a Web page and actually separate postings out from a Web page if we look at ongoing? Ongoing postings, yes, that would be considered bullying. [LB123]

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BARBARA PARIS: I don't think you can do that because then you're tying your own hands. [LB123]

SENATOR CORNETT: But then you leave the discretion up to the principal or the administration which is more discretion than we allow our courts most of the time. [LB123]

BARBARA PARIS: I think what we're going to do is look at what is the intent here. The intent of the law is to protect the educational process. And again, it comes down to, as it does every single day for a campus administrator, they always have to ascertain through due process what was the intent of the perpetrator in any situation. [LB123]

SENATOR CORNETT: Where is the due process? Where is the due process here? [LB123]

BARBARA PARIS: In schools? [LB123]

SENATOR CORNETT: Yes. [LB123]

BARBARA PARIS: The due process starts with an investigative process, which the schools would have to have in place as a result of this law. [LB123]

SENATOR CORNETT: With that investigative process if we're talking about something that could lead to expulsion or suspension... [LB123]

BARBARA PARIS: Correct. [LB123]

SENATOR CORNETT: ...are we talking to the right...for the student to have an attorney present? [LB123]

BARBARA PARIS: There's always a right for a student to have an attorney present in due process. You don't negate that. [LB123]

SENATOR CORNETT: But do the students or the families know that? It's not a criminal act that they're investigating. [LB123]

BARBARA PARIS: Depending on how your state defines due process for the public school system, that I'm not as closely familiar with. But I think you'll find that every school district has a system where you delineate due process, where there is an appeals, whether it's done through a grievance procedure or an appeal process. [LB123]

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SENATOR CORNETT: But I'm talking about actually sitting down and interrogating a student, which one of the other principals... [LB123]

BARBARA PARIS: We don't need an attorney for that. That's an investigative process as opposed to an interrogation, but...I mean we're tasked with that every single day. We do that already. This is just another piece where we would have to ascertain intent. I mean we could...you and I could probably talk all day about the difference between probable cause and reasonable belief, but that's where we are and that's the tools that we have to work within right now. We're not going to change that at all. We would still have to ascertain intent. To the extent, and here's the key, to the extent cyber-bullying interferes with the educational process, a school needs laws to enable them to take action. That's really what we're asking for in a nutshell. [LB123]

SENATOR ADAMS: Questions? Senator Haar. [LB123]

SENATOR HAAR: The trouble with the First Amendment is that it's pesky and especially when you start to deal with new technologies and we haven't thought of it. I mean cell phones is a big issue the way different schools handle it and so on. So I think in my mind at least I'm going to have to think through a lot of what ifs. And then sort of to follow up a little bit on Senator Cornett's idea, and we see a bigger one with WikiLeaks--the whole thing of, okay, if I send an e-mail to Senator Cornett and I say Senator Schilz is blah-blah-blah, you know, that's a personal communication. Now if that gets out, is that...how is that handled? What's the what if in this case? [LB123]

BARBARA PARIS: As always in every educational decision and disciplinary action, there are a million what ifs. That's not going to change. But just because there are what ifs doesn't negate the need for us to have courage and take action. [LB123]

SENATOR HAAR: No, I agree with that. [LB123]

BARBARA PARIS: You know, I could tell you 27 stories right now of suicides in the last five years due to these scenarios we're talking about. And just because each of those scenarios had what ifs doesn't refute the need to do something. And schools need somebody behind them basically when they look at somebody and say, knock it off. That's not okay. And the truth is I think somebody mentioned it earlier, in 90 percent of the cases, parents are cooperative. Maybe that's an exaggeration, but most of the time I can pick up the phone and say, ma'am, let me take you to the Internet. Let me show you what your child has done. And most parents, reasonable people, are going to say, oh my gosh, I'm so sorry. I had no idea. I'll take care of it. That is the norm. But this is not the norm and we need something more because this problem is interfering with education every single day, every minute of every day. [LB123]

SENATOR HAAR: So it covers Facebook and so on. Would it cover e-mails and then...

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[LB123]

BARBARA PARIS: All electronic communication, yes, sir. [LB123]

SENATOR HAAR: So if I sent to one other person and somebody takes that then and broadcasts that,... [LB123]

BARBARA PARIS: No, because... [LB123]

SENATOR HAAR: ...what are we talking about, intent then, or what are we talking about? [LB123]

BARBARA PARIS: We're back to the whole issue of intent. We're always going to have that argument. We still have to ascertain intent every single day. If I trip you downstairs, somebody has got to ascertain whether I did that on purpose with the intent of breaking your neck or whether I just wanted to embarrass you. That's not new in public administration. We do that every single day. This would be no different. But the key piece of this really is the training piece, educating the administrators to know what they can do, develop policies to show them how to do it, and then to share those expectations with their staff and their students. Because 99 times out of 100, once students truly understand the certainty of consequences, when they understand that there is a consequence for an action, it's far more powerful than the severity of the consequence. Just knowing that this is not allowed and there is a consequence will do more to change their behavior if they know they're going to be held accountable for what they do off campus. And that will do far more to change this climate that we're in now than anything else a state can do. Where else can you do something courageous? I'm not denouncing that. [LB123]

SENATOR ADAMS: Are there other questions for this testifier? Thank you. [LB123]

BARBARA PARIS: Thank you. [LB123]

SENATOR ADAMS: Originally we set 45 minutes and we have run by that. Are there other proponents? Okay. Come ahead. [LB123]

BRIAN HALE: I will be very quick. My name is Brian Hale from...H-a-l-e, representing the Nebraska Association of School Boards. Our organization supports this bill. We see it as enabling school administrators to take information that's received from activities that happen off school campus. We don't believe that it necessarily compels us to be investigating what goes on in 500 or 1,000 different Facebook sites representing all of our students. With that, I certainly will stand...I'll stand aside and I have Jim Luebbe here who has helped a lot of school districts, dozens of school districts around the state, build school policies representing the bullying policy, and he'll talk a little bit about how

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this extends the work that school boards have already done representing bullying policies. So I'll certainly be at arm's length for any questions if you need. [LB123]

SENATOR ADAMS: Thank you, Brian. All right, thank you, Brian. Jim. [LB123]

JIM LUEBBE: Yes. My name is Jim Luebbe, L-u-e-b-b-e, and I am director of policy services for the Nebraska Association of School Boards. As Brian said, we work with dozens of school districts, ultimately get involved with probably at least half of the school districts in the state as they work to craft new policies because of changing legislation. And since they were just here today to answer any questions that the senators may have of how our districts and ourselves would work to try to implement something like this. As Brian said, essentially we see it as an enabling piece of legislation. Hopefully it would assist school districts in crafting policies that help them limit the impact of cyber-bullying and prevent cyber-bullying to the extent that they legally can when it occurs and when it impacts the educational environment. [LB123]

SENATOR ADAMS: Thank you, Jim. Are there questions? Senator Howard. [LB123]

SENATOR HOWARD: Thank you, Chairman Adams. I'm wondering, Jim, how do you...when you deal with the issue of electronic abuse, how do you interpret that and how do you...what do you have in place to address that since this seems to be a step beyond what was in the original LB205? [LB123]

JIM LUEBBE: Electronic means, we would offer some examples of that in the bill. Does the e-mail, the texting, the social networking, blogging, etcetera, but electronic is a good broad term because it will include the various methods of communication between students that aren't here now but will show up in two or three or five years down the road. So I think it's a useful term for describing cyber-bullying. [LB123]

SENATOR HOWARD: Virgil Horne deserves the credit for that interpretation in the bill so. [LB123]

JIM LUEBBE: Okay. [LB123]

SENATOR HOWARD: But you are able to use that and address it with... [LB123]

JIM LUEBBE: Yes. It's a meaningful description for it as opposed to the bullying which is essentially behavior outside the electronic realm. [LB123]

SENATOR HOWARD: Thank you. [LB123]

SENATOR ADAMS: Senator. [LB123]

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SENATOR HAAR: What is the role in all of this of actually having a school policy versus just dealing with an incident as it happens? Could you talk a little bit about that? [LB123]

JIM LUEBBE: The policy is really the piece that the board uses to set its expectations for the governance and operation of the district. And when the board puts those expectations into writing and extends them to the administrative team and the administrators take that policy and write their rules, their handbook rules, their regulations that set out the daily rules of how they're going to proceed and how they're going to define acceptable and prohibited student conduct, it really creates a legal trail which is useful in saying that we have said in writing what we are going to do. If someone wishes to contest that we're not treating their student fairly, they can come in and look at what we've put in writing and see that the decisions we have made are fair, they are objective, and we have followed what we have said we would do. [LB123]

SENATOR HAAR: And then from a...and that's good. What about from a student standpoint? Why is... [LB123]

JIM LUEBBE: From a student standpoint, ultimately those rules and regulations end up in the student handbook that are transmitted to the students. The students and their parents have to sign off on that handbook every year to say they've looked at it, they're aware of what those rules are so that when they cross the line the objection that they weren't aware of the rules is sort of taken care of beforehand because they have had the rules in front of them. They should know what the rules are. [LB123]

SENATOR HAAR: And when we see these policies, are they very specific or are they pretty broad brush strokes? What have you seen? [LB123]

JIM LUEBBE: The policies themselves are intended to be broad so that as society changes, as the things that we see happening in schools change they're broad enough that they detail to the administrators what the board's expectations are. And yet the administrators can write those detailed rules and change those detailed rules from year to year in the handbooks as new things happen, new things arise. So the policies themselves are intended to be fairly broad, much like the language in the bill is. We try to use a broad definition of cyber-bullying and then let the rules offer more detailed instances or examples of what that might entail. [LB123]

SENATOR HAAR: So as an organization then, will you be providing, if this bill passes and so on, be providing best practices in terms of this policy or? [LB123]

JIM LUEBBE: Yes. We will create a model policy that goes out to our member subscribers and helps them craft the language in the bill. And then along with that model policy they're expected to look at their own local needs and their own local history to interpret that to make the policy really fit their own needs and their own means of

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operation. [LB123]

SENATOR HAAR: Thank you. [LB123]

SENATOR ADAMS: Are there other questions for Mr. Luebbe? Thank you, sir. [LB123]

JIM LUEBBE: Thank you. [LB123]

SENATOR ADAMS: How many more proponents? Okay. We really need to move along. Please. [LB123]

DALE FORNANDER: Thank you, Senators. Dale Fornander, F-o-r-n-a-n-d-e-r, and I'm a school board member from Creek Valley Public Schools in Chappell and middle school is in Lodgepole. I want to speak on the favorable side of this bill. It provides, I feel, the flexibility that the school boards need to develop policy. It also gives us some direction as to what that policy can be, what it can include. It allows our administrators to carry out their duties, whether the problem disrupts school...whether it happens on or off campus. I understand that bullying happens in schools. It happens in the workplace also and other settings. And it's a concern that I have as a school board member as far as getting it into policy. My one concern with it is the last paragraph and it talks about the educational training, the situation there. I think training is very important to our teachers, our classified staff, as well as to us as board members, and to the parents in the community. And I think that by having this policy we can put it into our board policy, then it can go into the handbooks of the teachers as well as students so that they can understand more clearly what they're dealing with. I think that our in-service training that we provide to administrators, teachers, and classified staff is also very important. And we can incorporate this into that, as well as to the existing programs that we have in place, such as Character Counts and different programs like that. To put it in as a specific class or something like that is going to take students out of other classes that...core classes possibly or electives. And I guess this gives us the flexibility to work it into the system wherever it needs to be worked into. Thank you. [LB123]

SENATOR ADAMS: Are there questions? Thank you, sir. I know you came a long way, appreciate your testimony. [LB123]

TERRY WERNER: Senators, the longest part of my testimony will be my introduction so I will hurry. My name is Terry Werner, T-e-r-r-y W-e-r-n-e-r, and I represent the Nebraska Chapter National Association of Social Workers. And I'm also today representing Nebraskans for Peace. We obviously are here as a proponent and support this legislation. And the only thing that I want to bring up today is as you did, I believe, with the dating violence act, you tied it to the accreditation of the school. And we're just asking that perhaps you senators could consider that provision as well. Thank you. [LB123]

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SENATOR ADAMS: Okay. Thank you for your brief testimony. Are there questions for Terry, anyone? Thank you. Next. [LB123]

MARK SHELDON: I'm Reverend Mark Sheldon, pastor of Elmwood Christian Church, and I'm representing the Interchurch Ministries, but also I come as a parent whose stepdaughter has been affected by cyber-bullying. And... [LB123]

SENATOR ADAMS: Could you spell your last name, sir. [LB123]

MARK SHELDON: Oh, I'm sorry about that. S-h-e-l-d-o-n. [LB123]

SENATOR ADAMS: Thank you. [LB123]

MARK SHELDON: And I said I wasn't going to cry and be all macho, but I don't know if I can do that. This is a picture of my stepdaughter, and she currently now is living with her aunt and uncle down in Kentucky because she was a victim of bullying. Part of it was through the Internet, through Facebook, texting, e-mails. And what happened is a best friend and her broke off a relationship and the friend took it upon herself to make Catherine's (phonetic) life miserable. And it started through the Facebook through texting and what would be kind of what we would think of as innocent remarks--I hate you, you're an idiot, etcetera, etcetera--but unlike the bullying of our days that was at school or on the playground, you can't go home and get away from this. It's with you all the time. You open your Facebook and the message is, you're an idiot; no one likes you. You get an e-mail or a text sent saying something to those effects or even worse. You get what starts on Facebook on e-mail, MySpace, text messaging, and it results in being shunned, being ostracized by girls, by the class at lunchtime, not having a place to sit, not having friends to talk to. Those who you thought were friends that you confided in begin to use that against you and it shows up on Facebook, on text messages as well. And we did go to the schools. We did go to the administrators, and their hands were tied because most of it happened off campus, not on school computers. Had that happened, it would have been easy. They would have been able to follow their rules, follow their procedures. But they were unable and unwilling to do things. And then once it started at school and they were trying to do things, Catherine (phonetic) and some of her friends who were involved, eventually it was just my stepdaughter. But she was by herself and she would go up to an administrator or to a teacher and they would call in the girls who were at the core of it. But then nothing would happen because it was off campus and things would get worse. And she started out the school year it was probably halfway through second semester last year when we finally pulled her out of the school district and allowed her to go to another school out of state actually with her aunt and uncle, my wife's sister and husband, because she would come home, see the things on Facebook, see what was happening at school and say, I don't want to live. I can't take it anymore is what she said (crying). And how...she's 15

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hours away because the schools had no policy, no law behind them that said stop this. Their hands were tied. She started out with average, above average grades, some Cs, some Bs, occasionally we were thrilled with A's. But as the year and a half or so process of this bullying went on, she was lucky to make Cs. So what happens outside of school on the Facebook, on MySpace, on any of the other electronic media does affect school. It affects the school's pocketbook because she withdrew, they don't get the funds for counting that student. It affects the other students as well when they know that we had to move her out to get away from this, and, therefore, they're unwilling to step up now if they're being bullied. But as a pastor, I have kids come to me as well saying that they've been bullied on the Internet also. I can think of at least two others, not just girls but guys. One young guy, his Facebook was hacked and they were spreading rumors about his sexuality, which was kind of what guys do when they're trying to be bullies that way. But because there's no law, no way for the schools to do anything, the administrators to do anything because it was off campus, Catherine (phonetic) is no longer with us to experience our family. And so the Interchurch Ministries, myself, my family are in support of this. And the Interchurch Ministries would definitely support having it tied to accreditation because otherwise there's no teeth to it, and it just becomes a policy on the books without any means of disciplinary actions, which is what we're concerned with as well is that if there's a policy, it should be able to be enforced and enacted. Discipline should be able to be meted out. And Senator Cornett talks about the first time. Sometimes having it as a first time, bring the people in and have them know that this is a serious offense. Say this is what you said. What the intent was for ongoing, that's for the school to decide. But it's the same way that if I was in the hall or a student was in the hall and said those same words in the hall one time--I hate you, you are a liar--and yelled it at the top of their lungs, they would be brought in to the principal. What's the difference between the all caps on Facebook, which means yelling on Facebook, one time than yelling those same things in the hallway? And that's what I have for right now I guess. [LB123]

SENATOR ADAMS: All right. Thank you, sir. Any questions? Senator Sullivan. [LB123]

SENATOR SULLIVAN: Thank you, Senator. One thing I've been curious about all along with this because the nature of the beast, so to speak, with the World Wide Web, I hope that Catherine (phonetic) is no longer being subjected to this. [LB123]

MARK SHELDON: She is really thriving and away from that and has really blossomed to a wonderful young lady so thank you. Thank you for that, but... [LB123]

SENATOR ADAMS: Other questions? Thank you, sir, for your patience, appreciate it. [LB123]

MARK SHELDON: Thank you for allowing me to speak. [LB123]

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SENATOR ADAMS: Is there more testimony? Bev, come on up. You've been waiting a long time. [LB123]

RACHEL HOLMER: Hi. My name is Rachel Holmer, it's R-a-c-h-e-l H-o-l-m-e-r, and I'm here in support of the bill because about a month and a half ago my daughter was a victim of cyber-bullying. Someone created a page on Facebook that said people who hate my daughter's name. And you know, she cried and she said she didn't want to go back to school and how she would just rather be dead than have to deal with all of that. Everyone hates her. So now this person is mad because you...at me, as mom, went and tried to tell the police and now everyone is mad that...and so it kind of becomes a retaliation and a vicious cycle. You know, when things like that kind of happen, it becomes out of our control and we don't have ways to stop that. And you know, it's just...I just want there to be a voice for the kids, you know, so they have, you know, the right to be heard. Whether it happens at school or it happens at home, it needs to be stopped. I mean how many kids have to die before we, you know, set something in place and have laws for that? I just feel really strongly about it. And, of course, the administrators, once I did find out about it, they didn't notify all the parents that were on there. I actually had to go personally knocking on all the people who joined that group's door and let them know what had happened and that their kid was a part of this. And they all, you know, commended me for doing that, that I had the courage to do that. But they all apologized too. The point was earlier how she said you could add people to Facebook, well, this person actually did add all the other people...actually said this person added this person; this person added this person, you know. So I know that that can happen too. So the effect that happen on the kids, it's just heartbreaking. So I just wanted to be able to stand up and be a voice for my daughter at least. [LB123]

SENATOR ADAMS: Well, it's good that you did. Thank you. Are there questions for this testifier? Yes, Senator Schilz. [LB123]

SENATOR SCHILZ: Thank you, Senator Adams. Thank you for coming in. How old is your daughter? [LB123]

RACHEL HOLMER: She's 12. [LB123]

SENATOR SCHILZ: Twelve years old. Thank you. [LB123]

SENATOR ADAMS: Thank you for your patience today too. [LB123]

RACHEL HOLMER: Thank you. [LB123]

SENATOR ADAMS: Dare I ask are there more proponents? All right. If not, we are going to shut off proponent testimony and we will now take opponent testimony. Is there any opponent testimony to LB123? Then we'll move to neutral testimony. Is there any

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neutral testimony? [LB123]

AMY MILLER: (Exhibit 3) Good afternoon. My name is Amy Miller, it's A-m-y M-i-l-l-e-r. I'm legal director for ACLU Nebraska, the state affiliate of the American Constitutional Liberties Union. I want to start by saying the reason we're testifying neutral is because we care very deeply about bullying issues. We strongly supported Senator Howard's LB205 and we're happy to see that pass after many years of testifying in favor of it. As my testimony indicates, several times a year my office has to directly intervene with a school district to remind them that they have a constitutional duty to stop bullying at the school and protect all children. This is particularly painful calls in my office because it's often the only child with a disability, the only minority child, the only gay or lesbian child. And it is inexplicable to me that many times I'm having to literally threaten a lawsuit in order to get school administrators to step in on things that are happening on school grounds. The first page of my testimony provides you with the legal basis for why school districts must, under the constitution, provide efforts to protect students from bullying. But the reason we're testifying neutral today is because we do have concerns that LB123 does go too far in attempting to reach outside the school grounds or outside of a nexus with school activities. Technology and public policy move much faster than the courts do. Probably everything moves much faster than the courts do. So we have to look to other bodies of law to decide how a court might analyze LB123 were it to pass in its current state. We don't have any case law decisions yet that talk about this sort of effort to get out in the cyber-bullying or regular bullying context past any school nexus. I've given you on page 2 at least two examples of where Congress attempted to protect children, and in both of those cases federal laws, those federal congressional mandates, were struck down because they went too far. They impacted First Amendment free speech activities and were not narrowly tailored enough to honor the First Amendment. So we want to suggest that in order to have LB123 pass constitutional muster there does have to be some narrowing of its impact in order to make sure that it does not go too far while still protecting students who are being bullied. You don't ever want to hand over to a school responsibility--I don't think they either want the responsibility or the requirement that they do something about it--to monitor the behavior of students who happen to be members of their school district and their behavior at all times off of school grounds. There has to be a linkage to the student's behavior and the school classroom environment. We've suggested some language on the bottom of page 2, one possible amendment, "provided the conduct occurs at a place or in connection with an activity sponsored by the school." You've heard testimony from previous testifiers quoting some of the language from U.S. Supreme Court cases, including Tinker, Fraser, Hazelwood. All of those cases had conduct that happened on school grounds or occurred at a school event. The most recent holding from the U.S. Supreme Court, of course, has been the "Bong Hits 4 Jesus" case where the student held up a banner outside of school grounds, but it was a school event where students had been brought to watch the Olympic torch pass. That would be an example of a nexus of school activity. The U.S. Supreme Court found that

the school could discipline the young man for holding up an inappropriate banner because it was connected to a school activity and students are present and he had been invited to be there as part of the school's representation. The last suggestion that we are making in order to bring LB123 to a point where it will both honor the intent of protecting all students as they access their right to free education, but also make sure that the First Amendment is protected is to modify it that it would cause harm or serious emotional distress to specific students or school personnel. Right now there's the concern if I were to post on my Facebook page that I really hate blonde men, could all blonde men school administrators or students say that they felt emotionally distressed by this? You want to allow it when it's targeted at a student so that that student or that school official knows that this is the person who is intended to have harm. Otherwise, general matters of opinion that are protected by the First Amendment, even if expressed in ugly fashion, would be reached by this policy as currently stated. The last overarching comment that I have is that most of what we're talking about should be dealt with at the educational level in terms of providing more information to parents and students about how to grapple with these issues in the same way that schools provide generally helpful information about nutrition, generally helpful information about fire safety, generally helpful information about dental hygiene. The sort of information that schools can pass on to students isn't always information that we then expect the schools to somehow carry through. There's a responsibility that falls back on the parents of the students who are engaged in the bullying, and that is where we are suggesting that the emphasis at the end of the bill that encourages education to be put in the hands of the parents and the students is the better way rather than giving the heavy-handed tool of expelling kids, possibly for First Amendment protected behavior. I'd be happy to answer any questions you may have. [LB123]

SENATOR ADAMS: Senator Howard. [LB123]

SENATOR HOWARD: Thank you, Mr. Chairman. Well, I've always appreciated your support of my antibullying bill, and even though it took us a few years to get it done, we did do that. I'm just wondering if a child went to the student, burst into tears and said, something terrible is happening to me, of course, then the teacher would say, well, let's sit down, let's talk about this. And the student was able to show on the computer the site or the information, then doesn't it become at the school or on the school grounds? Isn't that problem brought right there to the school? [LB123]

AMY MILLER: That may be. I'm not sure that I can prescribe you a direct recipe for what will and will not constitute disruption. But as the bill is phrased and as the U.S. Supreme Court has given guidance, the First Amendment protects conduct unless it substantially or materially disrupts the school environment. So if a school administrator can argue that the child's emotional situation is disrupting, possibly. I do think it's going to be tighter condition, tighter nexus if some of that conduct is leaching back into what's happening at school, that is a student posts a Facebook page and then also is saying

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something about that Facebook page at school. [LB123]

SENATOR HOWARD: Well, if you'd follow that train of thought for all the years that I did child protection service work, a child that went to the teacher and said something terrible is happening to me, and the teacher or the principal, probably together, the teacher and the principal would talk to that child and call CPS. Are they then going beyond their responsibility? [LB123]

AMY MILLER: No. I think anytime you're talking about threat or harm to a child, we're all definitely on the same page. And I think some of Senator Cornett's questions were good ones. If there are threats of physical harm, it doesn't even need to be a question under the LB205 before it was passed or the current LB123. Threats of physical harm are illegal under city, state, and federal laws. So I think in the context of anytime there's an allegation of physical harm to a child, even just a verbal threat, we're absolutely covered that there's no problem there with the school taking steps and, in fact, the school should take steps. [LB123]

SENATOR HOWARD: Well, they should. There's a law in place that says they must. But, you know, it goes beyond physical--we get involved, CPS gets involved--emotional abuse. You know, there's types of abuse that aren't easy to define that don't leave physical marks. And I would say this, the bullying, falls into that until there's a situation where it becomes so determined that there is a consequence. [LB123]

AMY MILLER: Yes. I think one...another category of law that you might want to think about looking at because we don't have law yet directly on point because the courts move slow, another category of law you might look at is other controversial speech that students engage in. The courts have said, for example, a student may not have the right to wear a T-shirt with the F word on it in school. But no one here would believe that the school had the right to discipline a student for wearing that same T-shirt off of school grounds, not at a school activity. It's then protected by the First Amendment and there is no nexus where the school can get its hands around that. So I think in the same way we're going to have to look at, if LB123 passes, it needs to be tailored to bring back a nexus and limit. I realize that's not going to solve the problem of everybody we've heard about today. But I think that for the substantial portion of these issues if there's flowage back into the school, as the Blair superintendent described, that's flowing from the home to the school, once it actually starts to disrupt the school process, that's when the school can and should flex its muscle, but not on things that do not have any connection with the school. [LB123]

SENATOR ADAMS: Senator Cornett. [LB123]

SENATOR CORNETT: So hypothetically, if somebody says something on the Internet,

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it doesn't reach the level of a threat, not a criminal action, nothing necessarily to even do with school, you know, they live on the same block, they're fighting over a boyfriend, whatever, the school suspends them or expels them, now they're outside that school's jurisdiction. They keep the behavior up. There's nothing here to stop that. There's nothing here to say they can't keep texting their friends, keep posting things on Facebook, and having all the kids at the school still reading it and continuing this. I guess again my question is where do we draw the line and where does it end? What is ongoing? What isn't ongoing? Do we need to look at defining inside this bill it is written what is ongoing, what is deliberate attempt to denigrate a human being or just a one time, you know, you stole my boyfriend, blah-blah-blah? But... [LB123]

AMY MILLER: I think you're right that in many ways this bill is overbroad, that it gets to conduct that is far outside the school's jurisdiction. But at the same time, I think you're also right in showing that no matter how broad you try to cast the net, it's not going to stop all these behaviors. [LB123]

SENATOR CORNETT: You can't. [LB123]

AMY MILLER: And I think that I have to admit that when the first mention was made by one of the previous testifiers in support of the bill that perhaps we wanted to broaden or, excuse me, narrow ongoing and pervasive to just one incident, I'm afraid that I sat up a little straighter in my chair because... [LB123]

SENATOR CORNETT: That is what caught my attention the most. [LB123]

AMY MILLER: Yes. One of the compromises or well-thought-out ideas that came out of LB205 was you don't allow a single stray comment or maybe one or two stray comments to become matters for suspension or expulsion. They may be matters for a principal or a teacher to take that child aside and give them a talking to or inform their parents. But suspension and expulsion, removing them from the educational process, is a much more serious matter. And so the mere idea of taking out the ongoing concept and bringing that smaller would become much closer to rendering the entire bullying statute we had to work for so hard that it would render it unworkable and possibly unconstitutional. So I pray, please keep ongoing and pervasive. [LB123]

SENATOR CORNETT: Well, I was going to say that was the comments that I heard in the hearing that most concerned me, along with just some of the underlying issues in regards to how do we define what occurs on school property, what doesn't occur on school property, what...I mean because you can say the exact same thing to a person's face with all of your friends standing around outside of school, but here we're saying we can expel them for doing that. [LB123]

AMY MILLER: Yes. The other aspect of having the protection of ongoing and pervasive

is that while there's been comparisons in previous testifiers about we wouldn't tolerate this in the workplace, these are children. And I don't like to look back on my own conduct and think about some of the unkind or flippant things I said when I was a very small child. We hold children to a different standard where you might want to grab them by the scruff of the neck and explain to them this is inappropriate. But to take them out of school for something that is unfortunately part of the nature of the beast of small children, a comment, maybe one or two comments directed at another child is part of growing up and learning how to be a civil member of society. We do want to outlaw the child who consistently and in an ongoing and pervasive way singles out another child for what becomes verbal or emotional abuse, even if it doesn't rise to the level of a threat. So I think we have already reached with the existing law a great place that allows the flexibility for school administrators to step in and take the harshest of steps that they may need to take when it has become a serious problem. Normal school conduct rules are going to allow, again, intervention on a case-by-case basis as individual students need to be reprovved, again shouting in the classroom, shouting in the hallway, school administrators should step in. But here we are talking about taking a child out entirely which reminds me that there was a question about some of the process. It is true that the Nebraska School Disciplinary Act would allow a child to come to the school board and have a hearing officer and that he or she could have an attorney present. The other remedy, and what I hate to think of being opened up here, both for the school districts and the students and possibly my office is 1983 civil rights actions. A student who's been removed from school under a very expansive bill has the right to come into court, state or federal court, and say, my civil rights are violated. I was kicked out of school for saying something, and sure it wasn't the most gracious thing to say, but the First Amendment protects some of the most ugly speech with the idea that all of us have a right to express ourselves pretty harshly. [LB123]

SENATOR ADAMS: Senator Avery. [LB123]

SENATOR AVERY: Let me follow up on that last comment. Why would it not be constitutional to allow school administrators to take into account off-campus activity that was not school related in determining the accumulated or aggregate environment, aggregate evidence that the behavior of another student was presenting a clear and present danger to the well being and safety of another? And that would allow...it seems to me the argument could be made that in order to get a full understanding of the threat of one student you have to look beyond just what happens at school or school-related, off-campus activity. [LB123]

AMY MILLER: Again, I'm going to go ahead and carve out threat of harm, physical harm, that I think that's already amply covered under both criminal law and existing Nebraska state law relating to students. The reason from an overarching policy perspective that we don't allow schools to reach out past things related to the school, and again it's broadly defined in the existing law to include school activities,

extracurricular matters, things that the school has some fingerprint or control over, the reason why is because where the heck would you draw the line? For example, if it turned out that one of the students had a pretty crass denigrating to women rap song on his or her cell phone as the answering machine message, could the school say, I really think that's inappropriate when I called to let them know it was a snow day and I want to go ahead and discipline the student for a song that he or a message he chose to put on his cell phone? If the school's superintendent is sitting next to me at a Pizza Hut and hears me telling my mom, oh, I had rotten time in biology today. I had to sit next to Bobby and I think Bobby is stinky, can the school administrator say, hey, I think that's abusive and unkind conduct? There's a point at which the school can only control those that are affecting the school. Now if simultaneously Bobby comes and says that I spent the entire biology class hissing at him or muttering at him or passing him unkind notes, school can step in. But you don't want to start allowing or requiring schools to govern the conduct of their students 24 hours a day because drawing where the line is going to be is just too hard. That's why the law has already made the line for us by tying it and talking about nexus to the school, disruption to the school. And you've got that language in LB123. It's just a matter of you need to probably figure out either a way to modify or eliminate the reference to off-school grounds because, frankly, I can't think of a way that that would pass constitutional muster under the current prophecy of where the law is going to go. This is a changing area of law and we'll see what's going to happen as courts finally have a chance for some of the existing policies to trickle down into lawsuits. [LB123]

SENATOR AVERY: So you are suggesting that perhaps the courts will catch up with technology and give us better...better rulings so that we'll have better guidance. [LB123]

AMY MILLER: Yes. There's always a lag time. I would tell you, for example, I've been tussling with some school districts about the question of if a student is caught texting in school, may the administrator take the cell phone, not just confiscate it, but look through the cell phone messages and look at all the information on the phone? I would argue that's an illegal search without a warrant. The school administrators argue that they have the right to do it because it was contraband if it was not supposed to be in the classroom. No case law on this issue, even though texting has been around for, well, I've only done it for a couple of years, but students have been texting for nearly half a decade or more. So the court process is just so slow it takes a while for a written decision to come to us. [LB123]

SENATOR ADAMS: Senator Haar. [LB123]

SENATOR HAAR: Another one of my what if questions: So if I'm teaching chemistry, which I did for a while, and if someone sets up a barrage against Ken Haar as a chemistry teacher, that's covered by the law. [LB123]

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AMY MILLER: Yes. [LB123]

SENATOR HAAR: What if they just talk about chemistry 101 badly? Is that...I mean you were talking about it has to be directed towards an individual. [LB123]

AMY MILLER: This does...the proposed law does talk about an individual, but I have to tell you that I think clever trying to just play word games, whoever teaches the chemistry 101 class must sure be a bleepity-bleep, I don't think that's going to fool anyone. I think if it's directed and can be fairly said to be talking about a specific individual this law could apply. [LB123]

SENATOR HAAR: Or they just talk about the class, they don't talk about me. [LB123]

AMY MILLER: Well, if a student...you know, the First Amendment does protect the rights of students, for example, to level harsh criticism at teachers or principals, and there's a line of cases out there talking about that in the context prior to this new technology. A student has the right, to example, create an underground magazine saying I think that blah-biddy-blah school is run by idiots. So, unfortunately, harsh criticism of the class and how it's taught or the school and the school's policies, that's already protected under existing case law. And I'd be happy to send a note with some of that examples to supplement my testimony so you could see some of those other lines of cases might help formulate where this type of case might go as well. [LB123]

SENATOR HAAR: Well, nobody would have said that about my class anyway so (laugh). [LB123]

AMY MILLER: Absolutely not. And earlier when you said chemistry teacher, I have to admit that a little thrill of fear went down my back because that was not my best subject. That's why I went to law school (laugh). [LB123]

SENATOR ADAMS: Senator Cornett. [LB123]

SENATOR CORNETT: What you just brought up was exactly the point that I was trying to make, not as well as you did, earlier. Are we going to develop two sets of laws for interpersonal communication, written communication, and electronic? Because that is basically what this is doing. We're not saying that you can't publish an underground newspaper and you can't criticize a teacher in that newspaper. And I'm not talking about threats again and I'm not talking, but...and you can't say something to someone. But we're saying you cannot do those things electronically. [LB123]

AMY MILLER: In many ways, many of the examples that we've heard about today and examples I've read about in news reports from other states, I would argue that Nebraska's existing law already took care of it. That if a child was able to demonstrate

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the school... [LB123]

SENATOR CORNETT: That it was an ongoing... [LB123]

AMY MILLER: ...and it was having a nexus with the school, then I think that even without the word cyber-bullying or electronic communications, I think the school can and should step in. [LB123]

SENATOR CORNETT: But the existing law includes electronic communication. [LB123]

AMY MILLER: That's why in many ways I still think that LB123 is additional frosting on the cake. And if you take out the part trying to extend it off of school grounds, I think it's a great idea. I would argue if a student called me today explaining that they were being bullied by Facebook, explaining that they were being bullied by text messages, some electronic message, and it did have a nexus to the school, I would pick up the phone already under the existing state law and the cases cited in my testimony and say you have an obligation to stop this. So in many ways, I don't think we need to go down that road that you're suggesting scares you. I don't think we need to carve out a separate category for electronic media because bullying per se, in whatever form it takes--the note passed in class, the words shouted at the school ground, or me posting comments on your Facebook page--if there's a nexus to the school, the school should take responsibility for it. [LB123]

SENATOR ADAMS: Senator Sullivan. [LB123]

SENATOR SULLIVAN: Thank you, Senator. But we've also heard testimony today that that hasn't been the case. [LB123]

AMY MILLER: This is why I do tear my hair out over this issue. I don't understand what the thinking of, when I pick up the phone and call a superintendent or call a principal and say, these parents tell me that they've been trying to sit down and meet with you about problems--and we're talking about classic bullying: shoving people into lockers, using derogatory racial epithets, or language against gay and lesbian students--they've come to you and reported it and you've told them kids will be kids. This is not acceptable. But I think for those of you who will flash back to the testimony that you heard from many school administrators and school associations back when LB205 was being suggested, there was a strong push back suggesting, oh, we can't possibly control bullying. So it's a very maddening problem that in some ways I feel today as if I'm dealing with two different camps of school administrators--those who want to prevent even more behavior than I think is permitted, and those who will not take action despite the fact you've already mandated in law that they have the responsibility. So it goes...it's an ongoing educational process, I guess, for school administrators to understand that balance. Some need to move up; maybe some need to calm down a little bit. [LB123]

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SENATOR ADAMS: Senator Avery. [LB123]

SENATOR AVERY: Just one more. This is more a comment than a question. The school board association does an excellent job on open meetings. They have workshop after workshop, handouts and manuals. Why couldn't they do this on bullying? [LB123]

AMY MILLER: I think that's an excellent idea, and I know there's a number of organizations ranging from the Anti-Defamation League to PFLAG, Parents and Friends of Lesbians and Gays, that offer antibullying, diversity awareness training for free in the state. So it is one of those things I think this is an opportunity where, again, some of the established organizations just need to wake up to the fact that they need to get more information disseminated to their membership and then from there to parents and students. And I think that might go a far longer way than simply taking individual kids and tossing them out of school permanently. [LB123]

SENATOR AVERY: So there might be some room in this bill to encourage superintendents and school boards to get better information and train their personnel. [LB123]

AMY MILLER: Yes. And I know that those organizations, the two that came to mind were the ADL and PFLAG that currently offer that sort of training, perhaps help make a mental note as well to reach out to them and tell them, you should contact the Nebraska School Boards Association in case they've got a free slot they want to fill someday. [LB123]

SENATOR AVERY: Well, they do these orientations every year. And I attended one just last year on open meetings. It was excellent. [LB123]

AMY MILLER: Um-hum. [LB123]

SENATOR ADAMS: Other questions? Thank you. [LB123]

AMY MILLER: Thank you. [LB123]

SENATOR ADAMS: Is there any other neutral testimony? Any other neutral testimony? If not, Senator Heidemann chose to waive closing so we will conclude the hearings and, committee, if you will stay for a few moments. [LB123]