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Transcriber's Office

Education Committee
February 07, 2017

[LB554 LB595 LB645]

The Committee on Education met at 1:30 p.m. on Tuesday, February 7, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB554, LB645, and LB595. Senators present: Mike Groene, Chairperson; Rick Kolowski, Vice Chairperson; Laura Ebke; Steve Erdman; Lou Ann Linehan; Adam Morfeld; Patty Pansing Brooks; and Lynne Walz. Senators absent: None.

SENATOR GROENE: Welcome to the Education Committee public hearing. My name is Mike Groene from Legislative District 42. I serve as Chair of the committee. Committee will take up the bills in the order posted outside the entrances. Our hearing today is your public part of the legislative process. We are blessed in Nebraska that the people are the second house. Nowhere else can you testify as you can here face to face with your elected officials. Please turn off cell phones and other electronic devices. Move to the chairs at the front, if there's openings, of the room when you are ready to testify. The order of testimony is the introducer, proponents, opponents, neutral, and closing remarks by the introducer. If you will be testifying, please complete the green sheet form and hand it to the committee clerk when you come up to testify. They are in the corners, the green sheets are. If you have written material that you would like distributed to the committee, please hand them in to the pages to distribute. We need 12 copies for all committee members and staff. If you need additional copies, please ask a page to make copies for you. When you begin to testify, please state and spell your name. That's very important because everything is being recorded here and the transcribers then know how to spell your name correctly. We'll use the light system: four minutes, green, will be on green; yellow for one minute; a total of five minutes. When it's red please wrap up your testimony. You may be asked questions by the committee members so stay in your chair to see if you have questions. Please speak directly into the microphone so our transcribers are able to hear your testimony clearly. The committee members with us today will introduce themselves beginning at my far right.

SENATOR LINEHAN: Good afternoon. I'm Lou Ann Linehan from District 39, which is western Douglas County.

SENATOR GROENE: Senator Pansing Brooks will probably be joining us, I haven't heard anything otherwise; the same with Senator Morfeld.

SENATOR KOLOWSKI: I'm Senator Rick Kolowski, District 31, southwest Omaha.

SENATOR EBKE: Laura Ebke, District 32, Jefferson, Thayer, Saline, and Fillmore Counties, and a southwest corner of Lancaster County.

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SENATOR ERDMAN: Steve Erdman, District 47. My district is about 80 percent of the Nebraska Panhandle.

SENATOR WALZ: I'm Lynne Walz, District 15, which is all of Dodge County.

SENATOR GROENE: Thank you. I'd like to introduce the committee staff. To my left is Committee Counsel Charles Garman; to my far right is Committee Clerk Kristina McGovern. And today helping us, the pages are Alexi Richmond and Sam Baird. They're both UNL students. Please remember that senators may come and go during our hearing as they may have bills to introduce in other committees. I'd also like to remind our committee members to speak directly into the microphones. Lastly, we are an electronically equipped committee and information is provided electronically. You may see committee members looking at their phones or at devices. Normally, it's because they're seeking information for questions with their staff back in their offices, so bear with us. And we will start with Senator Smith's introduction of his LB554. [LB554]

SENATOR SMITH: Good afternoon, Chairman Groene and members of the Education Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. I'm here today to introduce LB554. Earlier this year I was fortunate to have the opportunity to attend an Excel in Education Convention in D.C. and was inspired by the group's mission to maximize every child's ability to achieve his or her potential. I began to think of what I could do as a legislator here in Nebraska to advance policy that would help in making our education system one of the best in the nation. I already think Nebraska is fortunate to have a very strong education system, but there is always room for improvement. I was then introduced to a group called America Succeeds. This Denver-based group consists of nonpartisan business-led policy organizations that advocate for the business sector to take an active role in improving our schools. Businesses fuel our economy and today's students will be the backbone of our future businesses. The long-term success of our country and our state relies directly on strong educational outcomes. America Succeeds issued a report called "Pulling Back the Curtain," which examines an educational financial transparency law that passed in Colorado with bipartisan support and was signed into law by Governor John Hickenlooper in 2014. This transparency law requires reporting of school funding at an unprecedented level that finally allows teachers, parents, and taxpayers to see the return on their investment in education. The law requires school districts to report financial and human resource information to the state in an improved manner that allows for an apples-to-apples comparison of schools within a district and among districts. So why is it important and how does the transparency improve educational outcomes? Again, it gives us the ability to see firsthand how our tax dollars are being spent. This allows us to not only identify inefficiencies but also uncovers possible funding inequities between affluent and high-poverty schools, and shines a light on those programs that are working and where additional government spending should be directed to help our children. As written,

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LB554 would require the State Board of Education to contract for the creation of a Web site that translates the expenditures for major categories of expenditures for schools, school districts, and educational service units in a format that is readable by a layperson. I'm going to repeat that last part, that is readable by a layperson, because that's the key to this piece of legislation. I know that schools are already required to report a wealth of information to the state and that all these figures are available on the Department of Education's Web site. But it is how these figures are made available and to what level is the discussion I want LB554 to stimulate. While the Web site does allow for some comparisons, in general, I was unable to easily find anything that provided information allowing me to compare one school building to another school building, for example. Most of what I found was either district-specific, a district's total expenditure on transportation, for example; or when comparing individual schools I could only uncover a general snapshot of a school's student population. If the information I was looking for was on the Web site, I wasn't able to locate it. I want LB554 to be the beginning of a discussion about how do we take the information we have and make it readily available and easy to understand by everybody, not just educators and policymakers but by the general population. If the members of this committee have not yet visited Omaha Public Schools' Open Book initiative, I would highly recommend it. I've had several conversations with Senator Justin Wayne and I believe it is during his leadership time on the OPS Board that they introduced that Open Book concept. The Open Book initiative aims to make the district more accountable to the taxpayers by increasing the transparency, accessibility, and clarity of OPS's budget information. The Web site is easy to navigate, easy to understand, and it is easy to make building comparisons. So again, I applaud OPS for what they've done with making that information transparent to their teachers, to their...to the parents, and to the public. The goal of having this information available to the general public encourages schools to be better stewards of taxpayer dollars and to increase efficiencies and accountability. The Open Book initiative should be a model for the state in reporting and delivering education finance information. I understand, to do this, the way information is collected and reported by districts would have to change. We'd have to drill down to the school level and break out information by categories that are the same throughout the state. However, if our largest school district in Nebraska is able to deliver this today, I think the entire state should be able to be up to and embrace this challenge. I realize that LB554, as drafted, would not necessarily accomplish all of this. But as I said, I think it's a great starting place to begin this discussion on how to make school finance transparent throughout the state and, again, understandable by a layperson. That's the best way for this information to be of use, to allow the investors in the state's education system to evaluate their investment and to identify areas where further investment will help our children succeed and lead our state into a prosperous future. I look forward to continuing working on this issue with all of you. And I appreciate the time before you today. Thank you. [LB554]

SENATOR GROENE: Thank you, Senator Smith. Any questions from the committee? Senator Kolowski. [LB554]

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SENATOR KOLOWSKI: Thank you, Mr. Chairman. Senator Smith, thank you very much for being here today and for the topic that you're bringing. I think it's really important for us and we can gain a lot from it. The fiscal note, Senator, said...did not have much as far as the dollar sign with it, but your point and the fiscal note also mentioned is this material exists in different fashions and at different levels of different districts. [LB554]

SENATOR SMITH: Uh-huh. [LB554]

SENATOR KOLOWSKI: How much do you think it's going to take to model like the OPS system or any other possibility that we might look at that would assist us in reaching your goal? [LB554]

SENATOR SMITH: Well, that's where I believe the discussion should begin. I do know that programming costs seem to be significant with any fiscal note that we look at. Anytime there's a change in anything the way we're doing in our state, there seems to be a programming fiscal note that goes along with that. And I would expect that this would be no different. I think the starting point is that the information is there, but how do we consistently...I think there needs to be a model created as to what information we want to see to make it consistent across all school districts and to make certain it's interpreted properly so that again the average person looking at this can interpret it. But I think that's where the discussion needs to begin. I'm not confident that we know entirely what that fiscal note is to send this to the floor immediately. [LB554]

SENATOR KOLOWSKI: Sure. [LB554]

SENATOR SMITH: But I'd like to hear a little bit more as well from OPS and some of the others that have interest in providing this type of information. [LB554]

SENATOR KOLOWSKI: Thank you. [LB554]

SENATOR GROENE: Any other questions from the committee? I have one, Senator Smith. You're looking at one Web site that you could look up any school. Is that correct? [LB554]

SENATOR SMITH: Yes, or at least a Web site that if it were specific to a school district that it would look the same, feel the same going from one district to another. [LB554]

SENATOR GROENE: What does Colorado do? Is it on one Web site or individual school districts' Web sites? [LB554]

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SENATOR SMITH: I believe that it's a single Web site. [LB554]

SENATOR GROENE: Wouldn't that be better if you're in Millard and you want to compare Westside, you could be right, instead of switching back and forth between two Web sites? [LB554]

SENATOR SMITH: I would think so. I think a single Web site would be ideal. But again, I think it's more important to have consistency from school district to school district. And if that's one Web site or multiple Web sites, I suppose that can be determined later. [LB554]

SENATOR GROENE: That's what your proposal is, to decide that, research it. Thank you, Senator Smith. Any other questions? Will you stay for closing? [LB554]

SENATOR SMITH: I will. [LB554]

SENATOR GROENE: Thank you. Proponents. [LB554]

CONNIE KNOCHE: (Exhibit 1) Senator Groene, members of the Education Committee, my name is Connie Knoche. I work for Omaha Public Schools and we're handing out to you now a copy of some of the pages from the Open Book Web site that we use. About three years ago the district started on this endeavor to be more transparent for the public. When we adopt our budget, we have a summary of the budget but we didn't have anything that would show all the detail of it and we had it. The public really wanted to know what our expenditures were, what was going on with the district, and so we purchased Open Book and then this is...we have two years of budget information on here. We've got the '16-17 budget and then we also have the '15-16 budget, as well as our strategic plan and we have the ESU on there as well. And when you go to Open Book you can see the number of staff we have total for the district, our total expenditures by category, and then also you can drill down further by building and see what's going on in each building or department or anything like that. And ever since we've implemented it we haven't had as many requests for information from the public when they want to come and see what it is we're spending our funds on. So it's been a really good experience and it's a great tool to use. [LB554]

SENATOR GROENE: I didn't want to interrupt you but could you spell your name? [LB554]

CONNIE KNOCHE: (Laugh) K-n-o-c-h-e. [LB554]

SENATOR GROENE: Okay. Thank you. Any...you're finished? [LB554]

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CONNIE KNOCHE: Yeah. [LB554]

SENATOR GROENE: Any questions from the committee? Senator Ebke. [LB554]

SENATOR EBKE: Thanks. Thanks for being here today. Is this one that you built from the bottom up or is this a "templated" type of... [LB554]

CONNIE KNOCHE: It's a... [LB554]

SENATOR EBKE: ...that somebody offers? [LB554]

CONNIE KNOCHE: Right. It's a software package that somebody offers and then we enhanced it with all of our different categories so it can fit a large school or a small school, but it's pretty informative. And if you get a chance to go out on to our Web site and look at it, think you would like it. [LB554]

SENATOR EBKE: Great. Thanks. [LB554]

SENATOR GROENE: Any other questions? Senator Kolowski. [LB554]

SENATOR KOLOWSKI: Thank you, sir. Ms. Knoche, did you have any trouble with any particular data source in your district that had a hard time transferring into their form of explanation? [LB554]

CONNIE KNOCHE: No. In our accounting system we break down expenditures by building and then we also have our centralized central office area where like you have the board of education, accounting and finance and all that. So we're able to break all that information down and show it in the Open Book. [LB554]

SENATOR KOLOWSKI: Were there...was there information also on human resources as far as the personnel of the district, who's employed, what levels, and numbers of years experience, all those things? [LB554]

CONNIE KNOCHE: It doesn't show the years of experience but it has the number of employees in each department and at each building and how much is spent at each building and all of that. [LB554]

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SENATOR KOLOWSKI: Great. Thank you. [LB554]

SENATOR GROENE: Senator Pansing Brooks. [LB554]

SENATOR PANSING BROOKS: Thank you, Senator Groene. Thank you for coming, Ms. Knoche. It's good to see you. I'm interested in how many people it takes to fill this out and create all the information or has it been pretty seamless because the information is already part of what you do... [LB554]

CONNIE KNOCHE: It took a long time... [LB554]

SENATOR PANSING BROOKS: ...in budgeting and all that anyway or...? [LB554]

CONNIE KNOCHE: It took quite a bit of effort in the beginning to get it started, but once you get the template set up and everything is in place, you're just replacing it with the current information and moving forward. We did make a few tweaks, like we added the strategic plan this year. We didn't have that before. The strategic plan ties to our budget and what we've budgeted to spend. So it does take some time for your staff to get everything put together, but once it's done then you can move forward. [LB554]

SENATOR PANSING BROOKS: So did your staff set it up or do each...does each school staff? How does that work? [LB554]

CONNIE KNOCHE: No, the central office IMS area, they did all the work in the background and then our budget office would help them explain what it is we wanted to show and how we wanted to show it and would provide them with the information. [LB554]

SENATOR PANSING BROOKS: Okay. So have you had to hire new people for that? [LB554]

CONNIE KNOCHE: No. [LB554]

SENATOR PANSING BROOKS: Okay. Thank you very much, Ms. Knoche. [LB554]

SENATOR GROENE: Any other questions from the committee? How detailed is it? Can I look up an administrator and see his contract and his pay? [LB554]

CONNIE KNOCHE: No, you won't be able to get to that kind of detail. [LB554]

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SENATOR GROENE: But that is public records. [LB554]

CONNIE KNOCHE: Yes, it...the superintendent's salary and contract is out on the... [LB554]

SENATOR GROENE: So if I wanted to see what an individual employee is paid, I couldn't find it there. [LB554]

CONNIE KNOCHE: No, not in Open Book, but there's a public employees... [LB554]

SENATOR GROENE: But you can contact, yeah. [LB554]

CONNIE KNOCHE: Yeah. [LB554]

SENATOR GROENE: You can contact the school for that. [LB554]

CONNIE KNOCHE: Sure you can. [LB554]

SENATOR GROENE: What if I wanted to see, as a citizen, what the insurance package was and the cost of an individual insurance package for an employee? [LB554]

CONNIE KNOCHE: It wouldn't break that down either. It would just tell you total benefits for the... [LB554]

SENATOR GROENE: Total benefits for each building. [LB554]

CONNIE KNOCHE: Yeah. Right, by the building, yeah. [LB554]

SENATOR GROENE: All right. Thank you. [LB554]

CONNIE KNOCHE: Uh-huh. [LB554]

SENATOR GROENE: Any other questions from the committee? Senator Linehan. [LB554]

SENATOR LINEHAN: Was it helpful, did you think--and I think your opening statement said this but I just...make sure I understand it right--it was helpful as far as all the parents in the district to go and see what was their school versus other schools? [LB554]

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CONNIE KNOCHE: Right. [LB554]

SENATOR LINEHAN: So there was...you found it to solve, I think you said, they used to call a lot and they don't call so much anymore? [LB554]

CONNIE KNOCHE: Right. Yeah, we used to have a lot of people come to the budget hearings trying to find out more information and, you know, just general public wanting to know what you're spending your funds on. And then when we did the bond issue, that was more of a concern for some of the public. They wanted to know, you know, what we were doing and how much is being spent where. And so this really...we hardly get any calls anymore on what we're doing. But if they have questions, we're happy to answer them. [LB554]

SENATOR LINEHAN: Okay. Thank you very for being here. [LB554]

CONNIE KNOCHE: Uh-huh. [LB554]

SENATOR GROENE: Any other questions? Thank you. Next proponent. Senator Wayne, welcome to the Education Committee. [LB554]

SENATOR WAYNE: Welcome. (Laugh) My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I'm speaking today as a former school board member on Omaha Public School Board. I was president and then spent a year after being president when all of this kind of transpired from our needs analysis in 2013 where we saw that over 150 public groups came together and we did over 211 classroom visits and multiple other things, that one of the things that we found out was transparency among the public was a big issue. And as we knew at that point we had a bond, close to \$1 billion in need that we were going to go out for a bond in the next year, 2014, that we had to figure out transparency and make sure that people knew where their money was going, not just from a Omaha Public School perspective but prior to that I was down here for multiple years with the changing of the school board. And the one thing I kept hearing was: Where's all your money going? Where's all the money going? And so president...vice president Lou Ann, former president Lou Ann Goding went out and researched all the Open Books that were out there. And Denver had a really good one and that's what we modeled it off of. And we spent six to seven months with her leadership making sure that we tweaked it to where you can go in and click on individual schools and you can find out how much you're spending on staff, programming support, infrastructure and those, including maintenance and those types of things. And so I just wanted to come and I know it's not often that other senators come and testify in front of committees, but this is one that I've walked through from the start to the finish, and so I wanted to see if the committee had any questions for me. But I will tell you that from a bond perspective, and we did pass the largest bond in the state of Nebraska's history of \$421 million. And it's hard

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to ask people to vote for a tax increase. But if they can go out to a Web site and drill down to where their money is being used and how it's being used per child and what things are going on in the school, particularly, we had, overall, almost 3-1 support on our bond. And I truly believe that part of that was this type of transparency that we provided for our financial statements. And with that, I'll answer any questions. [LB554]

SENATOR GROENE: Any questions from the committee? Is there any place you could see improvement, broadening of it? [LB554]

SENATOR WAYNE: We can probably get down to some of the specialty programs that we have at some of our schools. And here's what I mean by that. OPS is unique in where we have over 115 different languages, which means that we have a lot of different programs to cater to those students. So in some respects, there's two different Web sites they would have to go to--our general Web site versus Open Book--and somehow merging those two would be helpful. We just haven't got there yet. We've been dealing with our strategic plan and a couple other things that we've been working on. But I know that's in the hopper to get done. [LB554]

SENATOR GROENE: Thank you. Any other questions for the senator? [LB554]

SENATOR WAYNE: Well, that was...last time I was here it was a lot more hostile, so this is great. (Laughter) Thank you. [LB554]

SENATOR GROENE: We get a lot of people who want to testify. [LB554]

SENATOR WAYNE: Thank you. [LB554]

KATHERINE RHEA: My name is Katherine Rhea. I live at 1413 Woodlawn Drive in Fremont, Nebraska. I have lived at this address the past three years. Prior to that I lived at 199... [LB554]

SENATOR GROENE: Could you spell your name? [LB554]

KATHERINE RHEA: Oh, K-a-t-h-e-r-i-n-e, my last name is spelled R-h-e-a. [LB554]

SENATOR GROENE: Thank you. [LB554]

KATHERINE RHEA: For the previous 47 years I lived at 19944 County Road P30 in Arlington. Actually, I guess about 18 of that was at 5935 McCall Lane, within a half a mile of the first...of

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the second residence. But having lived in two school districts with vastly different enrollments and vastly different policies gives me a unique perspective on how information is made available to the public. The Arlington district, where our agribusiness company and farmland are located and where I previously resided, is a Class C-1 district. The Fremont school district, where I now live, is a Class A district. There appears to be a different approach to providing information in each district. The Fremont district provides a budget manual with information relating to the data provided and questions are answered promptly when asked. This may be at the meeting or days later. I in no way mean to be critical of the Arlington district. However, while basic budget information is provided at the beginning of the fiscal year and check registers are provided each month, it's difficult to determine from the information provided whether budget categories are underspent or overspent from year to year. And this makes it difficult to compare spending patterns of the two districts. While I am a proponent of quality education, we must be cognizant that tax dollars are spent wisely. Taxes on our farmland in Washington County, Nebraska, are approaching \$100 an acre. This is not sustainable in the current agricultural environment. And let me be clear, this is not because we personally have spent lots of money for farmland. We own a farm, a piece of land that we paid \$600 for but it is still paid as if it's valued at the \$10,000 or \$12,000 an acre now. But comparisons with other districts will be one factor in determining whether we are getting value for our dollar. I support this bill because it will make it easier to get information from districts that aren't as willing to support providing that. [LB554]

SENATOR GROENE: Thank you for your testimony. Any questions from the committee? Thank you for taking the time to come in. [LB554]

MATT LITT: Chairman Groene, members of the Education Committee, my name is Matt Litt, M-a-t-t L-i-t-t, and I'm the Nebraska director of Americans for Prosperity. And on behalf of our organization, our activists across the state, we ask for your support for LB554. I'll abbreviate my statement since we've had such good testimony thus far, but I did want to say that our organization advocates for high-quality education options for all students, whether they be in traditional public schools or elsewhere. We're also proponents of increasing fiscal accountability at all levels of government. In the realm of public education, a critical factor in improving our system is empowering individual families, educators, and all taxpayers alike with the tools they need to understand how their tax dollars are used, even at a granular level. This should not be information that only administrators at the district offices should have easy access to, and we think this bill is a good step in that direction. Transparency in education spending at the three levels indicated in the bill would allow citizens to analyze the return on the investment at each level. And with this level of transparency, we as invested Nebraskans will be able to see which programs, schools, etcetera, are yielding the best outcomes for each dollar spent. This information can be more effectively shared across the state to improve the education of students across the board. Having access to usable data not only informs a parent of a public school student...informs them better to what's happening at their school but gives educators greater

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insights and allows local taxpayers to be further invested. And with that, we just ask for your support and I'll answer any questions I can. [LB554]

SENATOR GROENE: Any questions from the committee? [LB554]

SENATOR KOLOWSKI: I'll ask one. [LB554]

SENATOR GROENE: Kolowski. [LB554]

SENATOR KOLOWSKI: Mr. Litt, just wanted to ask you from a building perspective how much do you want to dig down into a building's particular budget? It could be a large building, small building,... [LB554]

MATT LITT: Uh-huh. [LB554]

SENATOR KOLOWSKI: ...lots of different categories, from textbooks, all sorts of materials and everything else. What is your interest? [LB554]

MATT LITT: Yeah. I wish I had a better answer for you. I guess we're here in support of the idea or the spirit behind the proposal being pushed forward. I know the Colorado law that a lot of this is based on is rolling out and we love to see that. I also was unaware of the OPS Open Book so I would love to take a look at that as well. [LB554]

SENATOR KOLOWSKI: Okay. Thank you. [LB554]

MATT LITT: Yeah. [LB554]

SENATOR GROENE: Any other questions? Thank you, sir. [LB554]

MATT LITT: Thank you. [LB554]

SENATOR GROENE: Next proponent. [LB554]

COBY MACH: (Exhibit 2) Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h. I am the president of the Lincoln Independent Business Association. I'm appearing today on behalf of our school liaison committee. They are in support of the bill. Lincolniters give approximately 60

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percent of their property taxes to the Lincoln Public School System, LPS, and ESU, but we don't always know where those tax dollars go. The bill, we think, moves our school systems forward with more transparency and we think that every district in Nebraska would want to support transparency. LIBA might like to suggest that the bill be amended so that every check that is written is posted on the school district's own Web site. In fact, if you go visit the Millard Public Schools' Web site you will find that they post every check that they write. I took a quick glance at August of 2016 and noted that not only was every check posted there but it varied from \$7 to \$73,000 for the public to view and was readily available on the Internet. We like the transparency and would support the bill. Thank you. [LB554]

SENATOR GROENE: Thank you, Mr. Mach. Any questions? Thank you. Senator Kolowski.
[LB554]

SENATOR KOLOWSKI: Thank you. Mr. Mach, when you said checks are posted, are salary checks also posted? [LB554]

COBY MACH: When I went through and looked, there were names, for example, the \$7.36 check that I mentioned, there was a name. I don't know if that was an employee. I don't know who...why that check was written to them. One idea might be to take it a step further and have a note as to what that check was for. I'm assuming that since they post every check, that all the employees would be there as well. I did not scrutinize it looking for employees. [LB554]

SENATOR KOLOWSKI: Obviously, that one would not be a salary check. [LB554]

COBY MACH: That one would not be, correct. [LB554]

SENATOR KOLOWSKI: Thank you. [LB554]

COBY MACH: It might be a reimbursement. [LB554]

SENATOR KOLOWSKI: Sure. [LB554]

SENATOR GROENE: Any other questions? Do you see any reason why all expenses, even if it's an employee expense, should not be on the Web site? [LB554]

COBY MACH: No reason whatsoever. Those salaries are a matter of public information.
[LB554]

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SENATOR GROENE: I think by statute aren't they now? [LB554]

COBY MACH: They are. [LB554]

SENATOR GROENE: Yeah. Thank you. Any other questions? [LB554]

COBY MACH: Thank you. [LB554]

SENATOR GROENE: Thank you. Next proponent. [LB554]

DEBRA PORTZ: Dear Chairman Groene and members of the Education Committee, thank you for the opportunity to testify before you in support of LB554. [LB554]

SENATOR GROENE: Would you spell your name... [LB554]

DEBRA PORTZ: My name is Deb Portz... [LB554]

SENATOR GROENE: ...so the transcribers get it. [LB554]

DEBRA PORTZ: Sure. My name is Deb Portz. That's D-e-b P-o-r-t-z, and I live here in Lincoln. I am here to represent taxpayers who want more transparency and disclosure in the information readily available to assess the return on investment of where our taxpayer dollars are going. I am here to represent parents of school-aged children who want more information available to make the smartest choices for the education of their individual children. We are told that Nebraska could be facing a projected \$870 million gap between projected revenues and spending for the two-year budget period. General Fund education spending represents the biggest portion of the budget pies of both the state and local tax receipts, and that does not include bonds that are used to build new schools and improve existing facilities. Like households who face financial decisions when their bills sitting on the kitchen table exceed their household income for the month, as the head of that household, one of the first things I want to look at is my checkbook to see where my money is going. When I look at education spending in Nebraska, I would argue we don't have a funding problem as many would lead the public to believe. I believe we have a spending problem. And it is addressing the spending problems that could solve our budget shortfall, or at least cover your fiscal note for LB554's Web site. Nebraska has great public schools across our state and they are well funded, largely due to decisions made at our state Legislature, not Washington. According to the U.S. Census Bureau's Annual Survey of School System Finances, Nebraska ranks 18th in the nation in the amount of money we spend per pupil, and 14th if you make a cost-of-living adjustment. For public school general administrative

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expenses for K through 12, Nebraska ranks 10th in the nation. Nebraska has increased its General Fund for public education at an average of 4.15 percent annually for the last 20 years. Nebraska has increased its state aid contributions .6 percent since 2010, while 40 other states have lower state aid contributions to education than we do in this same time frame due to the market crash Recession. And Nebraska ranks 7th in the nation for the amount of local property taxes used for education spending. I realize that the needs of education in Nebraska have increased with student enrollment growth. According to the February 2017 newsletter for the Nebraska State Education Association, student enrollment from 1999 to 2017 has grown 11.1 percent and there is a need to fund that growth. But if we look at the Nebraska Department of Education's Web site, the per pupil spending in that same time frame has increased 92 percent--80 percent more than the increases in enrollment. As a citizen of Nebraska, paying for the annual per pupil increases for over two decades, I would like to know what this extra spending is going towards. The only form of school choice available to parents in Nebraska is public school open enrollment. But how is that meaningful if a parent doesn't have easy access to the information to help them distinguish between schools? LPS, for example, serves approximately 40,000 K through 12 students in 39 schools. The LPS Board of Education promotes open enrollment to these schools, which suggests parents have a choice as to which school they send their children. However, in making this choice there is minimal academic comparative information readily available to parents. And no individual school expenditure information is readily available. Therefore I, as a parent, want to consider whether I would like to send my student to Pyrtle or Maxey or Morley Elementary, near my home in Lincoln, or travel further to attend one of the elementary schools, I have little comparative academic and no comparative financial information to help me decide. As a managing consultant for the Gallup Organization's Government and Education Division for ten years, I spent a lot of time negotiating government contracts. The line-item details of the scope of work in those contracts had to align with the cost proposal. I had to tell the government agency exactly what I was going to deliver and how much that product or service was going to cost the government. LB554 offers a similar level of detail for Nebraska taxpayers and parents, and we are your customers. And if the actual cost of my product/service came in under budget, I was usually given additional products and services to supplement the contract as add-ons to compensate for the cost difference. In my opinion, one particular attribute was shared in executing most government contracts I worked on across local, state, and government...federal government agencies. It was the "use it or lose it" attitude that budgeted dollars were the government's money versus actual dollars. [LB554]

SENATOR GROENE: Miss, could you... [LB554]

DEBRA PORTZ: I know. [LB554]

SENATOR GROENE: It's good information so I'm being patient. [LB554]

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DEBRA PORTZ: Okay. The bill would eliminate much of my concern that the "use it or lose it" management approach is exercised in our public schools in Nebraska. For example, when Lincoln Public Schools decided to move an extra \$10 million of year-end revenues into a \$77 million rainy day fund for the next year's budget, I questioned why LPS did not alter the tax levy to provide some property taxpayer relief. The LPS School Board chose not to and they put the extra money into a generic line item that had no disclosure accountability for the public. With the current LPS budget that is disclosed to the public, I will never know what that extra \$10 million was used for. With LB554, I would have better information about that. LB554 would offer transparency and disclosure for discussion on better education decisions in Nebraska, whether that's at a family kitchen table or in a legislative hearing room in this building, and I ask you to support that transparency. [LB554]

SENATOR GROENE: Thank you, Deb. Any questions? Senator Morfeld. [LB554]

SENATOR MORFELD: Thank you for coming today. I came in a little late, I apologize. I was working on something else. You know, at first glance I'm not opposed to this legislation. I guess I just have a few questions. It seems like you're a pretty well-informed parent and member of the public. Have you ever requested information from LPS on where the money is going or any analysis of... [LB554]

DEBRA PORTZ: I have conducted a FOIA request prior... [LB554]

SENATOR MORFELD: Okay. [LB554]

DEBRA PORTZ: ...or previously before. [LB554]

SENATOR MORFELD: And did they reply to that FOIA request? [LB554]

DEBRA PORTZ: They replied but they didn't provide me with the information. [LB554]

SENATOR MORFELD: That you needed? Okay. Have you made a request without making a FOIA request, just saying, hey, where was that \$10 million spent last year, where did that go? [LB554]

DEBRA PORTZ: I have through committees that I sit on. [LB554]

SENATOR MORFELD: Okay. [LB554]

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DEBRA PORTZ: So not directly as a parent though. [LB554]

SENATOR MORFELD: Okay. And maybe it's just because I'm a senator on the Education Committee, but I've always found that LPS has always been fairly quick, probably a little bit...maybe a little bit quicker with me, I don't know, because things move quickly... [LB554]

DEBRA PORTZ: Sure. [LB554]

SENATOR MORFELD: ...in the Legislature. But I've just personally found that LPS has been very transparent. In regard to the \$10 million, I do think that...you stated that you'll never know where that money went. You can certainly find out where that money went. [LB554]

DEBRA PORTZ: But I think the purpose of this bill is to make that information more easily accessible without me having to go through the process that you're describing. [LB554]

SENATOR MORFELD: Okay. That might be the case. That very well could be the case, which is why I'm not necessarily opposed to this. But I guess my point is that people that have talked to me, where they've asked LPS for information or their board members, have always told me that they've been pretty forthright with the sources of that funding. [LB554]

DEBRA PORTZ: Sure. [LB554]

SENATOR MORFELD: So I wonder about the need for it necessarily. [LB554]

DEBRA PORTZ: Well, I would say that in my prior employment as well as committees that I sit on, I'm actually familiar with a lot of where this information is on a federal and state and local level. [LB554]

SENATOR MORFELD: Okay. [LB554]

DEBRA PORTZ: So I'm not the average person. And if I can't find it going out there in the public domain, I question whether my next-door neighbor who's a parent with six kids can find that information. [LB554]

SENATOR MORFELD: Certainly. And I agree with that and that's probably why I'll likely be in support of something like this. The only other thing that I'll say is that, you know, as somebody who lives in the LPS school district, particularly with a \$900 million budget shortfall and

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TEEOSA funding being really unpredictable this year, I'm glad that my district was financially prudent and had a reserve so that we wouldn't have to lay off teachers and do other things. But thank you very much for your testimony. [LB554]

DEBRA PORTZ: Yeah. [LB554]

SENATOR GROENE: Well, we got other questions. [LB554]

DEBRA PORTZ: Oh, I'm sorry. [LB554]

SENATOR GROENE: Senator Pansing Brooks. [LB554]

SENATOR PANSING BROOKS: Thank you. Thank you very much for coming. It's my understanding, and I have worked with Lincoln Public Schools quite a bit just as a volunteer, both on cochairing a bond issue for LPS in 2007... [LB554]

DEBRA PORTZ: Uh-huh. [LB554]

SENATOR PANSING BROOKS: ...and so I'm a big advocate of what they do, because the information that came forward when we were looking at the bond issue and what the needs were across the district, they were very forthright in that information. And it's my understanding that as the budgetary process came forward there were at least three...there are at least three opportunities for people, the public, to come forward and go and ask questions and find out information regarding what is happening to the money. So I'm not saying I'm against this, but I am concerned about the aspersions cast on this. So did you go to the budgetary processes that are available publicly? [LB554]

DEBRA PORTZ: I did. [LB554]

SENATOR PANSING BROOKS: And you were not able to find that information? [LB554]

DEBRA PORTZ: For the particular \$10 million that got moved over to the rainy day fund? [LB554]

SENATOR PANSING BROOKS: Uh-huh. [LB554]

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DEBRA PORTZ: Well, it just goes into a line item that's the general budget fund rainy day fund, so you never know where that's going to be spent on, whether that's coverage of, you know, floating the bond or, I mean, there are a lot of different possibilities of what that money could have been used for. But as far as for the when and where and documentation of when that's happening, it's not my job to, like, sit there and look at it every day to say what did you spend today. And that's, I think, what I'm contesting, is that for those of us that are involved, like you, you know, on your committee, we are probably more well-versed about the places to go to look for this information and the right questions to ask. But I would contest that the general public does not know how to do that. [LB554]

SENATOR PANSING BROOKS: Okay. Well, thank you for coming to testify. I appreciate it. [LB554]

SENATOR GROENE: Any other questions? I have one. Have you ever looked to see how much they spend on lobbying? [LB554]

DEBRA PORTZ: I have not, but I've looked to see on campaign contributions of the teachers' union. [LB554]

SENATOR GROENE: Campaign... [LB554]

DEBRA PORTZ: Contributions. [LB554]

SENATOR GROENE: ...to... [LB554]

DEBRA PORTZ: ...for local and state elections from NSEA. [LB554]

SENATOR GROENE: All right. Well, that's different but... [LB554]

DEBRA PORTZ: I know. [LB554]

SENATOR GROENE: Yeah. All right. Have you considered running for office? [LB554]

DEBRA PORTZ: I have not. [LB554]

SENATOR GROENE: Please do. Thank you. Proponents. Any more proponents? We will start with opponents. Neutral testifiers. [LB554]

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JOHN BONAIUTO: Senator Groene, members of the Education Committee, for the record my name is John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, representing the Nebraska Association of School Boards. We are here in a neutral capacity and as I go through my testimony that will become evident why we're in that capacity. However, I'd like to start by mentioning something Senator Smith had said. He referenced the governor of Colorado who is Governor Hickenlooper, and Governor Hickenlooper was the former chairman of the Education Commission of the States, and that organization is always chaired by a sitting governor. And Senator Groene and Senator Morfeld have just been appointed as Education Commission of the States commissioners. So just a little bit of history. NASB likes the bill that Senator Smith has introduced and agree with the need for more transparency and understanding. School board members, elected school board members take their fiduciary responsibility very seriously and want taxpayers to understand where the money goes. They like when people come to school board meetings and budget hearings. I think that as we look at this bill, and Senator Pansing Brooks asked a key question, is when we go down this path how much time, staff time, will it take? Are we talking about new reports? Are we talking about existing information? Maybe a little of both. I know that the Department of Education is working on a new data system and that data system is going to be very important in all areas of public education for our elementary and secondary schools. We also have a federal program called ESSA, E-S-S-A, Every Student Succeeds Act, and there will be requirements for data to be collected for ESSA. I'm thinking with a new data system that NDE is working on, the federal requirements for this program that will be rolled out, this bill and what the bill is asking could be incorporated and managed with things that are already happening. I like the idea of Senator Smith asking for an RFP. Get some fresh eyes, some folks that would create a Web site that would be user friendly, understandable. I think it's critical that at some point we have an idea of a fiscal note. And I don't know what that amount would be, but I surely would not want to have the cost of this taken out of the department's budget, which is already stretched pretty thin. And so it may take some work to figure out what that fiscal note would be. Therefore, and this is where I'm going with my neutral testimony, is we think that this bill would be an ideal bill for a serious interim study to get together the various players, the department, take a look at some folks from the field that are doing some things with this type of transparency. We've got OPS using a program. We've got different school districts doing different things that might be able to work with this. This bill could be held. We could delay the implementation and then it could be taken up when we have a little more information about where we're going and how this would all fit. Again, we're testifying positively and think this is a good idea. It just needs a little more time and work. With that, I'm going to conclude my testimony. [LB554]

SENATOR GROENE: Thank you. Any questions from the committee? Senator Erdman.
[LB554]

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SENATOR ERDMAN: Thank you, Senator Groene. Thank you, John, for coming. As I listened to your comments, I would conclude you're probably in support of the bill. As you well know, my opinion of commissions and task force aren't much. And I believe Senator Smith brought to our attention something that's of need today. And we are great here, in this legislative body, about kicking the can down the road. So tell me why you think we need to study this longer? Why? You don't think the information that has been presented here today by the testifiers and the information of the bill doesn't justify going forward with this bill? [LB554]

JOHN BONAIUTO: Senator, your kicking the can down the road is a fair question and I think that doing the interim...and I'm not saying study this an indefinite amount of time. The way this would...I think could work is you have a bill that's been introduced. That bill, if it doesn't move from committee during this session, is still alive and is in committee and would be available to move in the next legislative session. And I'm thinking between now and the next legislative session get a little more information on how the pieces would fit. And this is a big task to create a Web site of this nature but worthy of the time and effort, and then do a good job in making it a Web site that would be usable and understandable. [LB554]

SENATOR ERDMAN: I guess my concern is if OPS can figure this out, it can't be too difficult for the rest of us. [LB554]

JOHN BONAIUTO: Well, if the state wants to do an RFP and purchase a commercial package, and that's what we're talking about. If you want to purchase a commercial package, you know, that's...I think that what the bill is saying is do an RFP and maybe develop a package that fits because we're different than OPS. We're talking about a lot of different school districts of varying sizes and so. But if there's a commercial package out there that would work, then that really simplifies things and so. But we...I don't know if there is or not. [LB554]

SENATOR ERDMAN: Well, I would assume if other states have done it we can follow them. [LB554]

JOHN BONAIUTO: Absolutely. And I would think that getting information of what not only Colorado is doing but some of the other states and how they did it would again go back to that interim and take a little time to do that. [LB554]

SENATOR GROENE: Any other questions? Senator Pansing Brooks. [LB554]

SENATOR PANSING BROOKS: Okay. Thank you for coming, Mr. Bonaiuto. So I am confused about some of the hesitation. And we heard from Omaha Public Schools it really wasn't an extra

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cost. So are other school boards worried that they can't afford the program and that the input of the data will cost more? Is it an unfunded mandate? What is it that this hesitation is? [LB554]

JOHN BONAIUTO: Well, it's not about the worry about an unfunded mandate. We're just not sure what this is going to entail right now if...how much staff time it might entail, how much additional work, what this might look like. I mean it, as I said, I think the bill is a good idea and now it's a matter of kind of fleshing it out, if you will, and looking at where we go from the idea to an actual working... [LB554]

SENATOR PANSING BROOKS: Do you know if the program costs money for each district? [LB554]

JOHN BONAIUTO: Well, the way that this bill is written, if I understand the way the bill or Senator Smith's intent in the writing of this bill would be, the state would develop the program and it would not cost districts money. So the only local expense would be whatever time it would take to input data. So that was...that's our read on the bill. So with taking the time to develop the Web site that all the districts across the state could use and how that data is fed into that needs to work smoothly. [LB554]

SENATOR PANSING BROOKS: And so we don't...and we haven't heard from the Department of Ed regarding how...and it doesn't say that there's any fiscal note, so I don't understand the problem with it. Okay. Thank you very much. [LB554]

SENATOR GROENE: I don't know if it's proper, but is the Department of Ed going to testify today? Are they? [LB554]

BRIAN HALSTEAD (IN AUDIENCE): Yes. [LB554]

SENATOR GROENE: Good. Then I will spare you the question. [LB554]

JOHN BONAIUTO: Oh, thank you, Senator. I like being spared. (Laughter) [LB554]

MATT HASTINGS: (Exhibit 3) Good afternoon. My name is Matt Hastings. I'm with the Nebraska Department of Education. M-a-t-t H-a-s-t-i-n-g-s. A lot of terrific testimony here today so I'm going to just keep it brief and mention a few key points. Really, since the passage of LR264, the department has been on a quest to really begin to automate our data systems. That really was the key finding from the study from LR264 by Senator Scheer a few years ago. And there was a lot of reason behind that. That study really concluded that Nebraska very much

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needed to update our educational data systems to make them more efficient, to reduce costs to local school districts and to the state, while at the same time making the information that comes from them more valuable to the taxpayers. And so that's what we've been on a quest doing over the past few years. That finding really applies as well to the financial area. But right now the way we collect most of our financial information from school districts is through something called the annual financial report. It is an Excel spreadsheet. That's the level really of sophistication where a lot of the systems originally were developed and we're trying to enhance those right now, but it's an Excel spreadsheet and right now it includes about 1,500 lines. So when a school district submits their annual financial report, it's about 1,500 lines of information that they provide in there. That's rolled up to large...the large budget categories. That information is also only for at the district level. It doesn't break...the AFR is not broken down to the school level simply because that's never been required. Now with this bill, of course, it mentions breaking that information down to a school level. As well, the new federal education law, ESSA, requires that school financial information will be provided at a school level, not just a district level, as well as providing a per pupil expenditure cost. So we've done some initial analysis to see what would need to be done to the AFR in order to make it feasible, not only for this type of effort but also for purposes of ESSA. And really what that means is we would have to take, using the same system that we have in place now, we would have to take that Excel spreadsheet and move it from collecting 1,500 lines of financial information from schools to about 26,000 lines of financial information from schools. So that's to be able...that's to be able to collect information in a way where we can provide it at a school level and provide more information about it. The reality is that that just simply is not practical for many of our school districts to be able to do that. And so just like the LR264 study recommended, we need to have these kind of systems in place that are automated. So Omaha was here earlier. They were talking about an automated system that they use to be able to provide this information both on their Web site but also process the information on the back side. Right now in Nebraska there are about 12 different financial systems like that, that operate throughout the state. Omaha mentioned one. There are, you know, at least 11 others. And so we've been on a process over the past few months of, both for purposes of ESSA but also for this consideration, to see about how we begin to move through that process. But I think the key point that I wanted to make here is that the department is testifying neutrally for this bill but we think that in many ways this would be terrific information. The challenge is that to do this using the same systems and processes that we've always had in place for years and years just simply is not practical, that we would have to have this be a more twenty-first century approach to managing this kind of information which requires some automated processes that we just don't have in place right now. [LB554]

SENATOR GROENE: Thank you, sir. Senator Kolowski. [LB554]

SENATOR KOLOWSKI: Thank you, sir. Mr. Hastings, we were talking about data of a financial nature, but what else can be added as far as information about the school in that district? I'm

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asking because parents, if they're moving to Omaha or Lincoln or any other town, sometimes they'd like to be able to do a little shopping. [LB554]

MATT HASTINGS: Uh-huh. [LB554]

SENATOR KOLOWSKI: What district do I want our kids in, what size school, what activities are available, what academic strengths do they have, all those kind of things. Are you able to add more to this than just financial? And I know that transparency is all about the financial, but sometimes parents are looking for more... [LB554]

MATT HASTINGS: Yep. [LB554]

SENATOR KOLOWSKI: ...and there's no place to go to find that. They go to each board of education office, get their little materials picked up. And how can we help people thinking about coming to Nebraska to get a bigger picture of our school districts and do some shopping? [LB554]

MATT HASTINGS: Yeah. So, Senator, technically speak, yes, that's possible and we've begun the process of doing that by enhancing the data system that we have in place. But I will tell you that the systems that we operate on, both in terms of these financial...the collection of this financial information as well as other school-related information, are systems that were designed to meet one purpose only and that is accountability, whether it be accountability that was designed here at the Legislature or in Washington. They were never designed to do the kind of things that we're talking about today in terms of giving parents and taxpayers the kind of information they would like to make the best choices for their students. The systems weren't designed for that. So if we want to use the systems in that regard, we have a lot of work to do to enhance the capacity of those. [LB554]

SENATOR KOLOWSKI: It'd be less work just to stick with the economic side, just the money of the budget and where things are being spent, but this is not an impossibility as far as doing an outreach to a higher level. [LB554]

MATT HASTINGS: Right. [LB554]

SENATOR KOLOWSKI: Speaking for thousands of parents that I've had come to our doors in the district I was employed in, that would really be helpful. [LB554]

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MATT HASTINGS: Yeah. And that's the...that is the feedback we've been receiving as well. And so, like I said, we've taken the steps initially to move in that direction using the resources that we have available to us at the time, both General Funds here at the state but also the limited federal resources that we can apply to this. And the Commissioner has made it very clear since he started, Commissioner Blomstedt, that that's a direction we need to move. It's just these systems need a lot of work. [LB554]

SENATOR KOLOWSKI: Thank you. [LB554]

MATT HASTINGS: They're out of date for that work, yeah. [LB554]

SENATOR KOLOWSKI: Thank you very much. [LB554]

SENATOR GROENE: Senator Pansing Brooks. [LB554]

SENATOR PANSING BROOKS: Thank you. Have you seen the fiscal note on this? [LB554]

MATT HASTINGS: I reviewed it, yes. [LB554]

SENATOR PANSING BROOKS: Okay. I guess I'm just...I'm concerned or confused about the fact that NDE, it says the Nebraska Department of Education anticipates there will be minimal costs associated with the advisory committee. But then there's another part that talks about substantial costs in implementing something like this. [LB554]

MATT HASTINGS: So... [LB554]

SENATOR PANSING BROOKS: So who are the costs to, the Department of Education or to the various counties and their school boards or who are these costs? And I can't understand why. We guess all the time on giant fiscal notes that have no basis in actual fact. [LB554]

MATT HASTINGS: Yeah. [LB554]

SENATOR PANSING BROOKS: So I can't understand why we can't get a guess here. [LB554]

MATT HASTINGS: So this is the best context I can provide, Senator, that to meet the deadline that was specified in the bill as it's currently written, which I believe was 2018, that there would be significant financial costs for us to meet that deadline to put this kind of a system in place,

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because effectively what we would have to do is go out and contract all of that work to be done or go out and buy that system and get it in place very, very quickly. That would be at a relatively substantial cost. However, if the deadline for implementation of this could be stretched out over time into 2020, I believe is what we mentioned, that at that point the costs could be less because we could take on the burden of creating it ourselves. So part of it has to do with the time line in terms of those pieces. But, you know, things like putting together obviously advisory committees, that doesn't cost us any kind of money. It comes down to how quickly we need to have it on-line and how we're going to, you know, then pay for that. But then you also mentioned is it cost to the department, is it cost to local school districts. It would depend on the approach that's put in place, right? So if we went out and, you know, bought one-size-fits-all solution like Omaha was mentioning earlier, the software that they have, and everybody had to use that, you know, I guess you could probably do that pretty quickly and maybe you could get a good deal. One of the challenges of course with that is, you know, then we are certainly stepping on the local control of a district to decide what sort of financial services software that they're going to use. And so there's a series of angles to that which could cause challenges. [LB554]

SENATOR PANSING BROOKS: And do you have an idea how much a program like that would cost to put out across the state? [LB554]

MATT HASTINGS: No. We did ask the Omaha folks here when they were walking out what the cost was for their system and they weren't able to access that before they came here. And I can't tell you for sure either. You know, certainly we could look into that. [LB554]

SENATOR PANSING BROOKS: Thank you. [LB554]

SENATOR GROENE: Senator Linehan. [LB554]

SENATOR LINEHAN: Thank you, Mr. Hastings, for being here. Did I hear you mention Speaker Brashear when you started? [LB554]

MATT HASTINGS: Speaker Scheer, yeah. [LB554]

SENATOR LINEHAN: Scheer, okay. [LB554]

MATT HASTINGS: Yeah. [LB554]

SENATOR LINEHAN: I'm sorry. So when he...can you repeat that? I'm sorry. [LB554]

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MATT HASTINGS: Yes, so this was the One Hundred Third Legislature a few years ago. He introduced LR264, which was a resolution that asked the Department of Education to do a study, a comprehensive study, of Nebraska's educational data systems and to provide recommendations on or a review of the status and what needed to be done. One of the key findings of that study--and I would encourage all of the members of the committee to please take a look at that if you could--was that Nebraska since...needs to automate and update the data systems that we have relative to education, both on the financial side and on the student side. That was one of the key findings of the study. And so we began a couple years ago following the recommendations of that study. That work has not spread into the financial realm as of now. [LB554]

SENATOR LINEHAN: What hasn't spread into...? [LB554]

MATT HASTINGS: Just the education data collected around students and staff. [LB554]

SENATOR LINEHAN: So would that be AQuESTT? [LB554]

MATT HASTINGS: That's the accountability system. No, this would be just the system itself for transferring and holding information required for both state and federal reasons. [LB554]

SENATOR GROENE: Thank you. [LB554]

SENATOR LINEHAN: I feel if it was a study done two years ago and we're still...I feel a lack of urgency. [LB554]

MATT HASTINGS: Well,... [LB554]

SENATOR LINEHAN: I mean have you asked the Legislature for money to buy...to look at these programs or you brought us proposals? [LB554]

MATT HASTINGS: We have the last two bienniums, I believe, to fund this specific work and it hasn't been...it hasn't worked out. [LB554]

SENATOR LINEHAN: You brought it to the Education Committee. [LB554]

MATT HASTINGS: We did. [LB554]

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SENATOR LINEHAN: But you didn't think that you could use that to help with the fiscal note so we'd know how much it would cost? [LB554]

MATT HASTINGS: I personally didn't complete the fiscal note so I can't respond to that specific question, but. [LB554]

SENATOR LINEHAN: But I think what you're saying is you do know how much it would cost, because if you've come and asked for the money then you must know. [LB554]

MATT HASTINGS: They may know. They may have some idea of some costs. [LB554]

SENATOR LINEHAN: So do you think they could share that with us? [LB554]

MATT HASTINGS: I think so. Yeah, I think they sure could. [LB554]

SENATOR LINEHAN: Thank you. [LB554]

MATT HASTINGS: Yep. [LB554]

SENATOR GROENE: Any questions? Senator Erdman. [LB554]

SENATOR ERDMAN: Thank you, Senator Groene. So to follow up on Senator Pansing Brooks's question, you said substantial costs. Define "substantial." [LB554]

MATT HASTINGS: In terms of putting something in place for this time line, I don't know, Senator. I don't want to speak incorrectly. I would guess...I just don't know. I can certainly go back and we can review it, look, and get back to you on what that might be. [LB554]

SENATOR ERDMAN: I'm not the one who used the word "substantial." [LB554]

MATT HASTINGS: Right. I have some ideas in my head, but you know... [LB554]

SENATOR ERDMAN: What are those ideas? [LB554]

MATT HASTINGS: ...I don't want to...I would guess, I would guess about the cost to go out and buy a system like that and put it in place for all school districts and do that in the time line

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required and have the training for schools on how to use it and get all the information there, I would say at least \$1.5 million, but I could be wrong. [LB554]

SENATOR ERDMAN: Okay. I was just asking for your opinion. Thank you. [LB554]

MATT HASTINGS: Yeah, that's just my opinion. [LB554]

SENATOR GROENE: Thank you. I have a question or two. You have programmers on staff. Are you the head of this department that does the programming and... [LB554]

MATT HASTINGS: For data research and evaluation, yes. [LB554]

SENATOR GROENE: So that inserts it into the system, all the information. How many programmers do you have? [LB554]

MATT HASTINGS: We have about six programmers. [LB554]

SENATOR GROENE: That do all of that information on the... [LB554]

MATT HASTINGS: Uh-huh. [LB554]

SENATOR GROENE: ...Web site. [LB554]

MATT HASTINGS: Uh-huh. [LB554]

SENATOR GROENE: And you said systems. Are you continually updating your systems, your software? [LB554]

MATT HASTINGS: So we are making a transition right now, moving from a...one system that's sort of less automated, if you will. Effectively, school districts upload flat files into that system at certain times throughout the year. It's a very labor-intensive process for the school districts. The LR264 study, you'll see it takes about 650,000 hours across all school districts across Nebraska to do that kind of work. We're moving to a system where it's automated. So once a school district has student information, education information in their local system, that flows automatically to the state system, the information that's necessary. And so what I'm saying is we could do something similar in the financial realm like that. So those systems are being put in place right now. [LB554]

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SENATOR GROENE: Just...what you're saying is just give you time and these six people can work some...they're doing a lot of work, six people. [LB554]

MATT HASTINGS: It's a lot. [LB554]

SENATOR GROENE: They could eventually get to that and incorporate that into the present system if we didn't give you a time line... [LB554]

MATT HASTINGS: Yes. [LB554]

SENATOR GROENE: ...or if we said it was voluntary for a year or two by school districts, and as they got there then put maybe a time line that all school districts had to be involved. [LB554]

MATT HASTINGS: Yes. There are a series of processes in place right now to examine how we can do this. [LB554]

SENATOR GROENE: You have some financial information on the Web site now, don't you? [LB554]

MATT HASTINGS: Yeah. [LB554]

SENATOR GROENE: I used to be able to look up what average teacher pay was in every district. You still have those types of... [LB554]

MATT HASTINGS: Yeah, we do. [LB554]

SENATOR GROENE: ...numbers, enrollment numbers,... [LB554]

MATT HASTINGS: We do. [LB554]

SENATOR GROENE: ...total budgets. [LB554]

MATT HASTINGS: Yes. And all of that information, that comes in on that AFR, that 1,500-line Excel spreadsheet. That's all on there for districts and ESUs. [LB554]

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SENATOR GROENE: So you do have some of it. It's just a matter to give you time, give you direction, maybe do work with Senator Smith to define what we want you to do and then you study it within your own. We don't need a bunch of laypeople driving to Lincoln and having a meeting when, when it comes to the end of the day, you make the decision about what's the best. [LB554]

MATT HASTINGS: Yep. [LB554]

SENATOR GROENE: All right. That's...I don't want to put words in your mouth but that makes sense to me. [LB554]

MATT HASTINGS: Yep. [LB554]

SENATOR GROENE: Thank you. [LB554]

MATT HASTINGS: The key thing is if you want to move it to a situation where you're collecting more finite information, not just at a district level but at a school level, and not just rolled up to these large budget categories, the current system in place for collecting that information, we can't use that because you're going to explode, you know, the amount of work that's going to be required on local schools to do that. So we have to move to a more automated process. [LB554]

SENATOR GROENE: Well, I've seen it in business where you did it all at once and it was the wrong system. A lot of money was wasted. I would see where if you eased into it, corrections could be made before everybody made a big boo-boo. All right, thank you. Any other questions for...? Thank you. [LB554]

MATT HASTINGS: Thank you. [LB554]

SENATOR GROENE: (Exhibit 4) Was very informative. Any other neutral? Senator Smith, would you like to close? I have one individual who supports LB554. There's a lot of support, Senator Smith. There's just one letter from a constituent. Chris Proulx, P-r-o-u-l-x, is in support of your LB554. We'll put that into the record. [LB554]

SENATOR SMITH: All right. Well, thank you again, Chairman Groene and members of the Education Committee. I'm going to be brief. I'm going to open up on another bill in Transportation and Telecommunications here shortly. But I just want to say thank you for your questions. You know, you're really engaged and really trying to understand the subject and

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appreciate that very much. And appreciate those folks that came and testified here today and for the neutral testimony as well, and I guess especially to Senator Justin Wayne for coming and speaking. And I know he's had...he's been a leader on this issue for a long time with OPS and I appreciate his perspective. I think this is something that can be extremely valuable. I cannot imagine any board of directors, be it a nonprofit or for-profit board of directors, that could do a good job in their role if they did not have financials and comparables with the organization that they were running. And our citizens are the board of directors, if you would, for our education system, our public education system, so I think putting information in their hands is a good thing. And I can't imagine any better investment that we can make than to help our citizens, our families be informed about how government works. So I think this is something that we really should dig into and work on. And I appreciate the sense of urgency. Senator Erdman, I appreciate your questions on how do we move this forward. I know there's a fiscal note and it seems to be a date-specific fiscal note. I'd like to try to work to move beyond that. And then I would also, just one last piece of encouragement would be, as this is designed that we include parents and laypersons in designing this so that we really make it valuable to the end user and not just to the educator or to the financial person that is accustomed to having spreadsheets and financial reports and statements of accounts but really to make it meaningful to the person that's using it. So thank you for your time today. [LB554]

SENATOR GROENE: Thank you, Senator Smith, for those final points. We'll take about a three-to five-minute break and then Senator Pansing Brooks will introduce her bill. [LB554]

BREAK

SENATOR GROENE: Could everybody sit down? We're going to start the hearing. Senator Pansing Brooks will now introduce LB645. [LB645]

SENATOR PANSING BROOKS: (Exhibits 1-3) Thank you, Chairman Groene and fellow members of the Education Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here to introduce LB645 today to add a definition of dyslexia into state statute. But this legislation really does more than just add a definition, it sends a clear message that dyslexia is a specific learning disability that needs our attention. It is my hope that LB645 will be the first step in a more ambitious effort later to provide assessments, screening, and early interventions to improve outcomes for kids. I want to first give you a little background on how I became interested in this issue. My brother, Tom Pansing, has dyslexia and was told that he would not graduate from high school when he was in elementary school. My cousin, Virginia Johnson, was similarly treated by the schools. Thanks to the significant efforts of my mom and my aunt, my brother and cousin were able to overcome some of the most debilitating aspects of dyslexia. This disability

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definitely requires intervention from others. Next, I remember driving with my mother to Rochester, Minnesota, so that she could go to the Mayo Clinic in the '70s to study the Orton-Gillingham method for remediating children with dyslexia. When she came back, she tutored teachers on this Orton-Gillingham method one teacher at a time. She then decided that she needed to make a broader change impacting a more significant number of students. My mom then decided to run for the Lincoln Public Schools school board and she won, handing me my diploma when I graduated from high school. My mother shared her knowledge and expertise with teachers, volunteers, and parents. She helped form the Nebraska chapter of the Orton-Gillingham Society and lobbied to incorporate this method of teaching dyslexic children into the Lincoln Public Schools curriculum. While my mother is no longer with us, I am proud and happy that I have the opportunity as a state senator to follow in her footsteps and to try to help to tackle this important issue. When I first looked at introducing legislation I wanted to add the requirements for assessments and screening of children and also for training teachers who often struggle to meet the needs of these children. But it soon became apparent to me that the legislation along this front would require a financial investment from the state and it would be tough to get this through this year with the current budget deficit. I also noticed that surprisingly Nebraska did not have a definition of dyslexia in statute. This seemed to me to be a necessary first step, so we worked with the Commissioner of Education, Matt Blomstedt, and dyslexia advocates, including Dr. Vautravers, on a definition, and also the people from FixLexia. LB645 defines dyslexia as a specific learning disability that is neurobiological in origin, is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities typically resulting from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and effective classroom instruction and has secondary consequences that may include problems in reading comprehension, and reduced reading experience that may impede growth of vocabulary and background knowledge. Since introducing this bill I have received numerous calls, e-mails, and social media comments from people who either have dyslexia themselves or have a loved one with dyslexia. It is clear to me that we as a state are long overdue in addressing this issue. Nebraska is 1 of only 11 states left that does not have legislation regarding screening for dyslexia. This is particularly concerning to me since the Department of Education statistics show that there were more than 15,000 students and children ages 6 to 21 with specific learning disabilities in 2015-16 and somewhere between 80 percent to 85 percent of them have dyslexia. Dyslexia's most visible indicators don't show until third or fourth grade, so if this learning disability isn't caught early, it puts those with dyslexia rapidly behind their peers. National figures show high school dropout rates are 2.5 times higher for those with learning disabilities, and students with learning disabilities are twice as likely to be unemployed. Yet studies show kids with dyslexia may be, on average, smarter than kids without dyslexia. I have a feeling you may see this in some of the testifiers that come before you today. When we don't give these kids the same opportunities to learn and thrive, we cheat them. As testifiers today will show, the earlier dyslexia is identified and the earlier interventions begin, the better the outcomes are for kids with dyslexia. We know that there are three different

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types of learners: tactile, auditory, and visual. Learners with dyslexia fall into each of those categories, so we must have intervention that understands the ways kids with dyslexia learn and the special needs that they have. We know dyslexia has educational consequences and, therefore, having teachers and tutors knowledgeable and trained in Orton-Gillingham method is extremely important. This method helps stimulate essential wiring for reading. I hope the testimony today will help dispel misconceptions about dyslexia, show us what science says about the learning disability, and help us forge a path forward to help tackle this issue. Two of the testifiers testifying today, Dr. Dennis Molfese and Dr. Victoria Molfese, from the University of Nebraska, are going to shed light on the latest science on dyslexia. We are really blessed to have their expertise in our state. I want to thank them and the University of Nebraska for showing their commitment to work with the Department of Education and K through 12 educators on teacher training. I also want to thank Dr. Eileen Vautravers, Rebecca Miller, and other advocates for their tireless work. I want to thank Commissioner Blomstedt for coming to the table and helping us to draft this bill. I look forward to continuing to work with these excellent individuals. I do have one small amendment to this bill. AM106, which you should have before you, connects subsection (6) with subsection (13), making clear that dyslexia is part of a specific learning disability definition. We weren't sure if this was necessary, but we wanted to err on the side of caution. I have also made copies for each of you of a great Lincoln Journal Star article written by Zach Pluhacek recently on dyslexia and an excellent paper by Senator Linehan, which she wrote within the last three years called "Dyslexia in the Classroom." After I introduced this bill I was delighted to hear of her interest in dyslexia legislation. I look forward to continuing to work with her to address the issues of assessment, screening, and teacher training. In closing, I would ask you to advance LB645 to General File and take this important first step to address dyslexia. With that, I will be glad to attempt to answer any questions, but the experts are all behind me. [LB645]

SENATOR GROENE: Any questions from the committee? So I have one... [LB645]

SENATOR PANSING BROOKS: Okay. [LB645]

SENATOR GROENE: ...Senator Pansing Brooks. Dyslexia was already in the statute. [LB645]

SENATOR PANSING BROOKS: It was mentioned, but it wasn't defined. [LB645]

SENATOR GROENE: It was mentioned. [LB645]

SENATOR PANSING BROOKS: Yes. It was just... [LB645]

SENATOR GROENE: And what you're doing here is defining it. [LB645]

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SENATOR PANSING BROOKS: Yes. And that's the national definition that's... [LB645]

SENATOR GROENE: That's your first step... [LB645]

SENATOR PANSING BROOKS: That is a first step and then we'll see what we can do. [LB645]

SENATOR GROENE: ...in the way you go this year. That's a good start. Thank you. [LB645]

SENATOR PANSING BROOKS: Thank you very much. [LB645]

SENATOR ERDMAN: Senator Groene. [LB645]

SENATOR GROENE: Senator Erdman. [LB645]

SENATOR ERDMAN: Thank you, Senator Groene. Senator Pansing Brooks, I was interested in learning about this subject. Just last evening it was kind of ironic, there was a person who found out that I was in favor of this and she told me that her brother-in-law was 50 years old before they discovered he had dyslexia. But anyway, my question is, is this. Do you see this...is it a hereditary thing? If the parents have it, the children may have it? Is that something that happens? [LB645]

SENATOR PANSING BROOKS: I think that all the experts will talk about that, but I do know that it does have a tendency to run in families. That's why I mentioned my cousin and my brother. And there is a belief that there is some genetic link involved. But again, I shouldn't even be saying that, because the people behind me know better. [LB645]

SENATOR ERDMAN: Thank you. [LB645]

SENATOR PANSING BROOKS: Thank you. [LB645]

SENATOR GROENE: Thank you, Senator. Are you going to close? [LB645]

SENATOR PANSING BROOKS: Okay. Thank you all. Yeah, thank you. [LB645]

SENATOR GROENE: If you want to join us, Patty,... [LB645]

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SENATOR PANSING BROOKS: Okay. [LB645]

SENATOR GROENE: ...because there's no seating out there. [LB645]

SENATOR PANSING BROOKS: Oh. Thank you. [LB645]

SENATOR GROENE: Proponents? [LB645]

EILEEN VAUTRAVERS: (Exhibits 4-6) Senator Groene and fellow members of the Education Committee, my name is Dr. Eileen, E-i-l-e-e-n, Vautravers, V-a-u-t-r-a-v-e-r-s. I am testifying on behalf of members of the Nebraska Medical Association and the Nebraska Dyslexia Association in support of LB645. We applaud Senator Pansing Brooks for introducing this bill and thank the ten other senators who cosponsored it. They have recognized the longstanding need to address dyslexia in Nebraska and in state statute. Nebraska, as Senator Pansing Brooks indicated, is 1 of only 11 states without dyslexia legislation. We also commend Commissioner Blomstedt for his proposal for the format of this bill and commend the State Board of Education for their endorsement of this bill. Dyslexia is a receptive language-based learning disability or difficulty with hearing sounds. When we read, we break a word, such as cat, into individual letters, then associate a sound with each letter and put those sounds together to read cat, cah-aa-tah (phonetically). Those affected by dyslexia have difficulty hearing, learning, and remembering sounds of letters, as well as letter names and shapes. This can cause problems not only with reading, but with writing, spelling, developing vocabulary, remembering what was read, and fluency. I've coined the term "dyslexia spectrum disorder" to reflect that there are varying degrees of severity of dyslexia. As a matter of fact, 10 percent of those with dyslexia--as indicated with the 50-year-old--do not manifest school problems until high school because they can read words well, just not fluently. Learning to read is one of the greatest achievements of childhood. Reading really is rocket science. Reading requires multiple areas within both the gray and white matter of the brain to communicate with one another. This is unlike speaking and hearing, both of which are mastered without direct instruction. Functional MRI's in the past 20 years have shown that individuals with dyslexia lack the essential brain wiring for reading. Dyslexia is usually inherited. In 5 (percent) to 6 percent cases, it is not hereditary, but most often it is inherited. There is a 50 percent chance of inheritance from a parent. Students do not outgrow dyslexia without intervention. MRI's have also demonstrated that the brain wiring for reading can be developed using direct, multisensory Orton-Gillingham instruction, which can be used for all classroom students. A few Nebraska schools, such as Omaha Central, Park School, and Sutton have done this. But, more educators, administrators, speech language pathologists, and school psychologists must become aware that dyslexia exists, know what dyslexia is, and that it is a disability for which schools must provide services. Each year our Dyslexia Association receives 100 or more e-mails and phone calls from parents all across the state with concerns such

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as, "The school says they can't provide help for my daughter if she is dyslexic." And, "Our school administrator said dyslexia is a myth." Dyslexia awareness is critical. To meet the admirable goals of the State Board of Education's Strategic Plan, early recognition and remediation of students with dyslexia will be essential. One goal that Senator Pansing Brooks talked about was the dropout rate. The goal is to reduce the dropouts to less than 1 percent. This will require early recognition of students with dyslexia, because they drop out 2.5 times more. Another goal of increasing the percent of proficient readers from 79 percent to 89 percent will also require this, since, "Explicit instruction in reading makes a difference in student outcomes, especially for those who are low achieving." In other words, the greatest gain in reading scores can be achieved by targeting the lowest readers and providing evidence-based instruction. The window of opportunity to make these reading gains requires awareness of what dyslexia is and that dyslexia is a verifiable disability for school services. Research has shown that when appropriate instruction begins in first grade the reading outcomes are significantly better than when instruction begins in third grade. Early identification and intervention are critical in the prevention of reading problems. Prevention should result in significant savings in special education costs, as demonstrated in the Ohio Dyslexia Pilot Project. Many students would no longer require special education through high school, as they presently do. We have to have a solution that is as big as the problem. The dyslexia problem is big. Dyslexia accounts for 80 percent of learning disabilities. It is the most common cause of reading problems. It occurs in up to one in five, or 20 percent, of your constituents and others--20 percent. Therefore, Nebraska has up to 60,000 students in K-12 with dyslexia. The solution to this big problem begins with increased awareness of what dyslexia is by adding the definition of dyslexia to state statute. This bill does not create more government, but does create more awareness that schools must provide services for students with dyslexia. LB645 is the first step in the solution. I ask you to advance the bill and help students with dyslexia. [LB645]

SENATOR GROENE: Thank you. Questions from the committee? Senator Ebke. [LB645]

SENATOR EBKE: Thank you for being here today. [LB645]

EILEEN VAUTRAVERS: Yes. [LB645]

SENATOR EBKE: Can you tell me a little bit more about the instructional methods that are successful for folks with dyslexia? [LB645]

EILEEN VAUTRAVERS: Yes. Once the...the methods of Dr. Orton and Anna Gillingham were implemented decades ago. And by their research they demonstrated clinically with students that they improved in their reading skills. Well, in the 2000s functional MRIs became available so that evaluation of what the underlying disorder was in the brain--and there are multiple ones--but

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what the essential problem was, was this wiring to the reading centers. So they identified the problem and they then implemented use of these multisensory, Orton-Gillingham-based, that's explicit, direct, systematic instruction. And they found that with 100 hours of this instruction the wiring in the brain actually was restarted...was started...was developing. And without further instruction, but one year later, those MRIs were repeated and it showed increasing wiring to the primary reading centers in the brain and less use of other areas of the brain that were...they were compensating with. [LB645]

SENATOR EBKE: So what is this...you said that that can be used in the traditional classrooms for all students. [LB645]

EILEEN VAUTRAVERS: Yes. [LB645]

SENATOR EBKE: So what does that instruction look like? [LB645]

EILEEN VAUTRAVERS: I'm not an educator. [LB645]

SENATOR EBKE: Okay. [LB645]

EILEEN VAUTRAVERS: There are others that could tell you better. But it would be better for some of the educators to answer that question for you. [LB645]

SENATOR EBKE: Somebody else knows? Okay. Senator Pansing Brooks is saying, yes. [LB645]

EILEEN VAUTRAVERS: I know lots about it. It's phonics-based. [LB645]

SENATOR EBKE: Okay. [LB645]

EILEEN VAUTRAVERS: It is very systematic. It is going through...it's basically utilizing linguistics, the science of our language, and it's going through every letter sound and letter combination sound and consonants and so on. But there are educators behind me. [LB645]

SENATOR EBKE: And so is the incidence of dyslexia increasing or is it being recognized more or what's going on do we think? [LB645]

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EILEEN VAUTRAVERS: It is not increasing that we are aware of, the primary dyslexia, where there is lack of wiring in the brain. We might say that we are seeing perhaps some increased, what we would call, secondary dyslexia where the wiring is present in the brain, but it hasn't been activated. So in families living in poverty, English as a second language, children with adverse childhood experiences and such where they haven't received that early childhood stimulation, they may have the secondary dyslexia where the wiring isn't stimulated. The methods of Orton-Gillingham explicit instruction systematically has been shown to activate the wiring and also to develop the wiring in both types of dyslexia. The incidence, to my knowledge, is not increasing. It is hereditary. If a parent has it, 50 percent chance each child will. If one child has it, 50 percent chance another will. We're identifying multiple genes that carry that trait for dyslexia. One of the researchers at UNMC in Omaha has been involved with identification of those genes. So we're learning much more about it. I, in talking with individuals--this is anecdotal--I think that many times the dyslexia and the interventions that were used 40 years ago, 50 years ago, worked on those...worked and helped those individuals many times. Not all were caught. But it has come out of vogue perhaps in the last couple of decades with the issue of whole language versus the phonics-based. And again, I'm not an educator, but that is why perhaps there is such a critical issue to address dyslexia with our education system. [LB645]

SENATOR GROENE: Thank you. Thank you. [LB645]

SENATOR EBKE: Thanks. [LB645]

SENATOR GROENE: Is there an educator out here that's going to testify that's an expert on this? [LB645]

EILEEN VAUTRAVERS: Yes, we have two from... [LB645]

SENATOR GROENE: We'll save our questions then for that so we don't get redundant here; it's going to be a long day. Is there...we test for hearing, we test for eyes, we test for dental anymore. Isn't there a test when a student shows up for kindergarten to test for this? [LB645]

EILEEN VAUTRAVERS: There are several very good screening tests to identify children at risk for dyslexia, even in preschool, four- and five-year-olds that have difficulty rhyming, have difficulty naming objects, and so on. There are a lot of signs. [LB645]

SENATOR GROENE: But there is...do our ESUs do that or do we do it on a common practice? [LB645]

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EILEEN VAUTRAVERS: This is not a common practice. And the normal screening for kindergarten that many children receive for kindergarten readiness, the tests that are needed to identify dyslexia are not those screening tests being utilized. [LB645]

SENATOR GROENE: Thank you. You mentioned some schools that have a program. Are those areas...caught my attention...Sutton. That's a small school. Is that an area where there's a pocket of hereditary? Is that why this district...? [LB645]

EILEEN VAUTRAVERS: I don't know if it's... [LB645]

SENATOR GROENE: Thank you. [LB645]

EILEEN VAUTRAVERS: They implemented it in every classroom because they saw the value of their students. [LB645]

SENATOR GROENE: Thank you. [LB645]

EILEEN VAUTRAVERS: And their performance on reading scores is much higher. [LB645]

SENATOR GROENE: Thank you. We have a lot of testifiers. You've been very helpful. Any other questions for the testifier? Thank you. Next proponent. [LB645]

VICTORIA MOLFESE: (Exhibits 7-8) Good morning. I'm Victoria Molfese, V-i-c-t-o-r-i-a, Molfese, M-o-l-f-e-s-e. I'm a professor at the University of Nebraska and have, for the past 45 years, been researching dyslexia in the development abilities in young children. One of the projects that we were engaged in was looking at newborn infants and following them through to age 13 where we were looking at cognitive development as well as their brain responses to speech stimuli, to see how it mapped onto language skills when the children were three to five years old, and then to look at the subsequent impacts on reading skills at eight years old. This was a sample of about 400 children. And we and others in the field have shown that skills that are identifiable as deficits in children with dyslexia are evident early in life, but that encouragingly, dyslexia is remediable through intervention. Starting interventions early, ideally before school entry or at school entry, is important so that children learn to use effective strategies for accurately reading words, which is also referred to as decoding; for reading for comprehension, which is very important for school achievement; and for expressing their thoughts both orally as well as in print. Screening can identify children at risk for dyslexia who will benefit from interventions. And ideally this screening can begin at birth but universal screening in prekindergarten or school entry in kindergarten is the next best approach if it's

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linked to services provided for these children who are identified with dyslexia, as opposed to screening alone. Many skills have been linked to dyslexia but critical skill areas are phonological sensitivity, that is hearing differences between speech sounds, and between sounds in words, such as bat and cat and pat and mat, sounds that distinguish one word from another. Those forms of distinction of those speech sounds are difficult for children with dyslexia. Alphabetic skills--not just letter names but letter sounds that are associated with each letter--English is a very difficult language to learn. We have 26 letters and there are an estimated, conservatively, to be 40 speech sounds that are associated with those 26 letters, so that it's difficult to understand which sounds go with which letters and which letter combinations, particularly if you have dyslexia risk. Oral language skills are also critically important. Children need the vocabulary skills so that they understand the meaning of the words that they're reading or that they're hearing. Young children not responding to preschool or elementary literacy classroom instruction, which has gotten very much better in the last decade, need to receive interventions to strengthen those critical skills. Small group intervention, as you know, is the next tier up from whole classroom instruction to help target the skills needed for stronger achievement, resulting in children being able to read at school level. If small group instruction is not effective, individual instruction is called for so that these children can achieve reading at school age. It's important to understand that there's evidence-based, structured literacy interventions with proven effectiveness that can help children at risk for dyslexia to become grade-level readers. Without structured instruction with proven effectiveness, this will not happen. Children don't catch up suddenly. Children don't outgrow dyslexia. Intervention provided by dyslexia specialists are important so that they can deliver all of the components of a successful, effective intervention in their work with children and to use effective progress monitoring to determine the acquisition of skills. It's also important in teacher preparation that teachers be trained to meet the professional education standards needed so that children with dyslexia get the help that they need in the classroom to support skills as well as to support the skills that children are learning through intervention to help them to be able to read. Children at risk for dyslexia can be identified early through screening. Intervention for children at risk for dyslexia works well, especially when it's begun early. Evidence-based, structured intervention can help children to learn effective strategies for reading, writing, and spelling, rather than inventing their own strategies. [LB645]

SENATOR GROENE: Thank you. Any questions from the committee? Senator Kolowski.
[LB645]

SENATOR KOLOWSKI: Thank you, sir. Dr. Molfese, is that correct? [LB645]

VICTORIA MOLFESE: Yes. [LB645]

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SENATOR KOLOWSKI: Thank you for your presentation. I was glad to hear early childhood education mentioned. How early in early childhood development years can you see the different points of reference for the possibility of dyslexia in the child? [LB645]

VICTORIA MOLFESE: So the research that we've done has shown that even in infancy, newborn infants and the discrimination of speech sounds, you can see discernible differences between infants that are going to grow to be at risk for dyslexia, either of family characteristics or because of their actual performance from children that are typically developing. [LB645]

SENATOR KOLOWSKI: Is there DNA testing that could also be done? You said some things are being spotted even in that category. [LB645]

VICTORIA MOLFESE: Right. There are gene differences, but it shows the children that might have a propensity for developing dyslexia, but it's not a sure test identification. [LB645]

SENATOR KOLOWSKI: Could you elaborate briefly on the phonics versus school language aspects of the differences and what's taking place? And also, what role does electronics in our world play when students are...young people are connected with so many things electronic? [LB645]

VICTORIA MOLFESE: So the whole language would be an approach in which children are taught to look at the whole word and be able to recognize whole words. We know that many of us were educated in the see-say method where we learned a large number of words just by sight words. Some of us, me included, grow up to be really poor spellers, because we can't sound out words. And also when I see an unfamiliar word in print, even now, it's difficult for me to figure out how to sound it out. The phonics-based system is one in which children are taught the strategies for sounding out words. That's a much more effective strategy, particularly at the older grades, because the words become longer and more complex and the text is denser. So you need to be able to decode quickly. You need to be able to read fluently. Now there's controversy about whether electronics are good for children or not. And I think all of the bets are not on the table yet. But from a perspective of, it's important for children to practice their reading skills, having a device that provides text for them to read I don't think is a bad thing. [LB645]

SENATOR KOLOWSKI: Students in poverty hear thousands of words less than a student that's with more monetary resources in their families. Is that a huge gap also we need to think about? [LB645]

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VICTORIA MOLFESE: Yes. It continues to be. And fortunately in Nebraska and in other states we have a really good early childhood programming system, where parents can put their children in early care settings where they do get the kind of verbal input that they need to have. But, yes, families play a critical role. [LB645]

SENATOR KOLOWSKI: Thank you. [LB645]

SENATOR GROENE: Thank you. Any other questions? Thank you for your testimony. We have an awful lot of testifiers. So when you do see the red light, would you please cease your testimony? The yellow means you have a minute left. I appreciate that. [LB645]

DENNIS MOLFESE: (Exhibit 9) My name is Dennis Molfese, D-e-n-n-i-s M-o-l-f-e-s-e, I'm the Mildred Francis Thompson Professor of Psychology and Founding Director Emeritus for the Center for Brain, Biology & Behavior at the University of Nebraska. I am speaking in support of LB645 regarding dyslexia and wish to provide the panel additional information. This information is based on my 45 years of research on dyslexia, beginning with newborn infants on up through the study of adults with dyslexia. There is ample evidence that at birth the brains of newborn infants who later are identified as dyslexic differ from those of infants who are typically developing in discriminating between speech sounds. Also, they differ in the speed at which they process those speech sounds, and the organization of their brains are quite different, as Eileen alluded to earlier. At birth, infants cannot...all infants at birth cannot discriminate all speech sounds. They can hear, for example, a B sound versus a G sound, but they cannot hear a B versus a D sound. That's true universally across the world. But, as infants develop, they begin to hear and discriminate between the speech sounds that characterize their particular language. Unfortunately, infants at risk for developing dyslexia discriminate between fewer speech sounds in general. And even with those fewer speech sounds, the brains of these infants take longer to process those sounds. They simply cannot discriminate between the sounds that normally developing infants can, nor do their brains process the sounds in the same manner. The brains of infants who are later identified as dyslexic are less efficient, requiring more brain areas; they engage much more of the brain to process speech sounds than typically developing infants and children. This slower processing and use of more brain areas impedes the processing of speech sounds, making it more difficult to discriminate between speech sounds occurring in words that are vocalized by their parents. An additional complication is that the connections between the brain areas are also much more unstable than those of typically developing infants and children, resulting in changes in brain organization from moment to moment during speech sound processing. Consequently, their brains do not process speech sounds with the reliability, speed, and efficiency of typically developing infants who go on to be effective readers. Given that the infants and children at risk for dyslexia have such difficulties in discriminating between speech sounds due to differences in brain organization and processing, it is not surprising that they will later have difficulty in mapping speech sounds onto letters and words. Even...we found even with

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the interventions that we currently use, the brain doesn't completely normalize and it still involves more processing time. As one of the children commented to their parent in one of our studies after we showed the results of the school: See, Mom, I am using my whole brain. They're using much more of their brain process than we typically see. It is these skills involved in discriminating between speech sounds that are foundational skills needed for both language acquisition as well as learning how to decode written language in print and ultimately reading. Thank you. [LB645]

SENATOR GROENE: Thank you. I have a question. [LB645]

DENNIS MOLFESE: Yes, sir. [LB645]

SENATOR GROENE: Curiosity--so you've been...25 years you've been studying. [LB645]

DENNIS MOLFESE: 45. [LB645]

SENATOR GROENE: 45. [LB645]

DENNIS MOLFESE: I'm younger than I look. [LB645]

SENATOR GROENE: You got out of...you got a Ph.D. at 16, I can tell. But anyway... [LB645]

DENNIS MOLFESE: Thank you. [LB645]

SENATOR GROENE: You've studied babies. And then you followed them through the point where they're five, six years old? [LB645]

DENNIS MOLFESE: Actually, through 13 years of age. We had a... [LB645]

SENATOR GROENE: What is your accuracy rate when you...where are you at right now when you can accurately... [LB645]

DENNIS MOLFESE: We started at 80 percent...our last compilations indicated we're at 99 percent projecting from newborn infants. [LB645]

SENATOR GROENE: So now is this being incorporated into pediatrics? [LB645]

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DENNIS MOLFESE: No. It's not clinically available. We have argued that we think...we have universal hearing screening for all infants pretty much across the state that are mandated. We think it would be possible to add a test of simply speech sounds to these newborn screenings. [LB645]

SENATOR GROENE: Have you developed a test, any of your professions? [LB645]

DENNIS MOLFESE: We have not developed that, but we believe it would be very straightforward. We have talked with some companies about the possibility of developing, but that hasn't gone anywhere. [LB645]

SENATOR GROENE: All right. Well, maybe we can help put an emphasis somehow. Thank you, sir. Any other questions from the committee? [LB645]

SENATOR KOLOWSKI: Thank you. Doctor, why has Nebraska been so late to the party? [LB645]

DENNIS MOLFESE: That's a great question. I've only been here for about six years, so I'm unfamiliar with that. I have heard that...well, I just don't know. It may be informational, perhaps. I know the Nebraska Dyslexia Association has been very energetic in terms of trying to educate, provide information. Oftentimes, I think there is reluctance from parents who are faced with a conundrum. Their child is having difficulty. I think there is...and so they may not share information. They also don't know necessarily where to go, which, again, organizations like Nebraska Dyslexia Association, The Orton Society are really important tools. It may be at some level it's education; we've not done a good enough job with our teachers going through the educational process to make them aware, you know, more issues about atypical development and what needs to be looked at seriously. [LB645]

SENATOR KOLOWSKI: And when identified, the resources to go behind and help with those students. [LB645]

DENNIS MOLFESE: Very, very, very much so. [LB645]

SENATOR KOLOWSKI: Thank you. Thanks very much for your... [LB645]

SENATOR GROENE: Any other questions from the committee? Thank you, sir. [LB645]

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DENNIS MOLFESE: My pleasure. [LB645]

SENATOR PANSING BROOKS: Senator Groene, could we have the students come up right now to take a little break? We have scholars here, young scholars, and they've taken time off from school. So if we can have those young people speak and then we'll have more of the professionals coming forward. [LB645]

SENATOR GROENE: It's your hearing. I'm a very polite young man. [LB645]

JULIANA SIDAK: (Exhibit 10) This isn't tall enough. Thank you, Senator Groene and others. Hi. My name is Juliana Sidak, J-u-l-i-a-n-a S-i-d-a-k, and I'd like to tell you about how my life has changed because I have learned to read, write, and spell much better with Bright Solutions for Dyslexia. On a soft brown couch nestled up to her mother, a little girl curls up to read a book aloud. Within minutes tears flow down her face. Frustration mounts. She shouts in anger. Today I want to paint a picture of my journey to being able to read. At seven years old, I was trying my best to read, write, and spell. I'd miss words while reading and writing caused me great trouble. My younger sister was surpassing me in those areas. One day we went to Mrs. Merz, who's my Barton teacher. Mom talked for a while and decided to begin the Barton system. We met weekly during my second-grade summer. She asked me to break up words into syllables, finger spell, and memorize rules. I worked four to five hours a week with my mom and Mrs. Merz. From then to now I've learned many things. I'm a better speller, I love reading, and I'm just finishing my twelfth paper this year. It's hard to admit, but the Barton system helped. I hated giving up hours being tutored when I could have played with my friends. Without the Barton system I'd be embarrassed to read in front of others or to have them see my writing. Now I have the confidence to share in front of you and others. Thank you. [LB645]

SENATOR GROENE: Thank you, young lady. Any questions from the committee? How old did you say you are now? [LB645]

JULIANA SIDAK: I'm 11. [LB645]

SENATOR GROENE: A lot of improvement in four years. Thank you. Any other questions? Good job. Another student wants to come forward. [LB645]

FINN McINERNY: (Exhibit 11) Hi. I'm Finn McInerny, F-i-n-n M-c-I-n-e-r-n-y, fourth-grade student, Ruth Hill Elementary student. Kindergarten: Kindergarten was one of the hardest...I mean kindergarten wasn't that hard because there weren't that many tests. But still, the writing was a challenge for me. First grade: First grade was hard for me because I couldn't read the

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words or decode them. My teachers would always say, keep trying, keep trying. But I just couldn't read the words. When my teacher said that, I felt kind of angry because they didn't know how to help me read. Second grade: Second grade was one of the hardest years. In second grade my teachers expected us to know the words, but I didn't know them. Most of those words my friends knew or could read. That made me jealous. I had to take lots of reading tests, but most of the stories I couldn't read. Third grade: Third grade was the easiest grade because I started to get extra help because we found out that I was dyslexic. We started going to my tutor, Shelli. With her help I made some of the big improvements. Shelli really knew what I needed to do to learn to read and write. Fourth grade: I'm in fourth grade now. Mrs. Suiter helps me with my tests and learning. Mrs. Trinh and Mrs. Christensen are some of the teachers that help me in school. With them, I have been learning how to read and write, but I wish they could teacher me more like my tutor does. [LB645]

SENATOR GROENE: Thank you, young man. Any questions from the committee? Senator Kolowski. [LB645]

SENATOR KOLOWSKI: Finn, great job! And second grade was really tough for me, too. So thank you for what you did. [LB645]

SENATOR WALZ: I have one question, real quick. [LB645]

SENATOR GROENE: Senator Walz. [LB645]

SENATOR WALZ: I am so proud of you, first of all. Thank you for being here. What's the difference do you think with your tutor Shelli? What did she do different for you? [LB645]

FINN McINERNY: Well, she helped me with the words and she just helped and then they'd click with like click. And the other teachers, they didn't provide like the help that my teacher (sic--tutor) does, so that's what. [LB645]

SENATOR WALZ: Thank you. Good job. [LB645]

SENATOR GROENE: You have a very good vocabulary, too, young man. [LB645]

FINN McINERNY: Thank you. [LB645]

SENATOR GROENE: Any other questions? You can go. Thank you. [LB645]

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ALEX FILING: (Exhibit 12) Hello. My name is Alex, A-l-e-x F-i-l-i-n-g, I'm 13 years old and today I'm going to talk to you about my struggles with dyslexia. I struggled with dyslexia as early as kindergarten and I would see the first letter and the last letter and most times guess at the word and get it wrong. Recently I was featured in the Omaha World-Herald and the Lincoln Journal Star. I was put into a Title I reading class from first grade to fourth grade. I would get physically exhausted when I would read in front of anybody and when I'd read on my own. It was like having your teacher show up and having them ask you to fly like a bird every day. You'd show up, you'd jump, you'd flap your wings, knowing you couldn't fly because you didn't have the right tools like wings or feathers. I was very nervous to read in class and I was very embarrassed to mess up. I was assigned reading numbers and I'd have to pick a book between those reading numbers and I never got to my reading goal because I couldn't read any of the books. My classmates knew I struggled and I was always the last to be picked for group projects. Spelling tests were always especially hard for me because I didn't know any of the words and I would never get two right in the same...two right in a row. I had very good teachers and they tried to understand what was wrong with me, but they didn't. Most of them said, try harder. Try harder was very, very frustrating term and it made you think, what if you're not trying hard enough and what if this is your fault that you can't read or write? Now I understand as much and I don't feel that way, but I do want to speak on behalf of the kids that are future, that will have schooling in the future and need that help. I had very proactive parents as a kid and they helped me find tutors, tests, and schooling options and I go to FixLexia three hours a week. I do on-line schooling for most of my schooling now and I get all A's and B's, because my material is read to me. And all my books are read to me on audiobook. I talk-to-text my papers into my computer and it helps me give more creativity in my papers and helps me write better papers and get A's. I know this hearing won't help me in the rest of the school years I have left, but early intervention is a very big game changer. Dyslexia is real. It is in schools. It does not discriminate. And it is challenging but fixable. It can be helped with the proper teaching. I believe Nebraska's dyslexics deserve better understanding and instruction from our public schools. Thank you. [LB645]

SENATOR GROENE: Thank you, young man. Any questions from the committee? [LB645]

SENATOR KOLOWSKI: Just a comment. Alex, good luck with your future education,...
[LB645]

ALEX FILING: Thank you. [LB645]

SENATOR KOLOWSKI: ...all your doing. You're going to be a maximizer. Maximizer is a do-it, whoever you are. [LB645]

ALEX FILING: Thank you. [LB645]

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SENATOR KOLOWSKI: And I wish you the very best. [LB645]

ALEX FILING: Thank you. [LB645]

SENATOR GROENE: Do you say books are read to you? Can you read? [LB645]

ALEX FILING: Yeah. [LB645]

SENATOR GROENE: Well, you just read that very well. [LB645]

ALEX FILING: I can read. It is very hard and I do get physically exhausted to read. [LB645]

SENATOR GROENE: So it's a slower process. [LB645]

ALEX FILING: Yes. [LB645]

SENATOR GROENE: All right. How's your math scores? [LB645]

ALEX FILING: My mat? I'm not taking a mat... [LB645]

SENATOR GROENE: Arithmetic. [LB645]

ALEX FILING: Oh, okay. [LB645]

SENATOR GROENE: What they call it nowadays probably changed the name. (Laughter) [LB645]

ALEX FILING: What are my math scores, Dad? B? I have a B in math. [LB645]

SENATOR GROENE: Thank you. [LB645]

ALEX FILING: Yeah. Anything else? [LB645]

SENATOR GROENE: No, I don't see any other questions. (Laughter) [LB645]

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HUNTER GILBERTSON: (Exhibit 13) Hi. Good afternoon. My name is Hunter Gilbertson, H-u-n-t-e-r G-i-l-b-e-r-t-s-o-n. I am testifying today in support of LB645 because I have dyslexia. When I was in second grade my reading teacher noticed that I was having trouble reading. My mom and teachers asked for me to be tested and when we found out I had...we found out I have dyslexia. Things in school that are difficult for me are reading, spelling, writing, and typing. I have an IEP and I get to work with resource teachers, and one of my resource teacher's name is Ms. Kiefer. She is my fourth grade through...third, fourth, and fifth grade resource teacher. And mine when I got into middle school was Ms. Market (phonetic). And with my IEP I get to have audio books and I get to use an app called Dragon Dictation for like big like essays that we have to type. I also get help reading instructions when I take tests. Sometimes having dyslexia is hard because other kids and adults don't understand why I can't read or write as well as other people. One time when I was in fifth grade a kid in my class told me I should go back to kindergarten because I couldn't read. Even this year I have been made fun of and called an idiot. I think that it is important that people understand what dyslexia is and that it doesn't mean that you are stupid but that you learn differently. I feel like my brain works a lot harder to do things because my brain processes things differently. I hope that all students with dyslexia can get help that they need so that they can do their best in school. Thank you for listening. [LB645]

SENATOR GROENE: Thank you, young man. Any questions? Senator Ebke. [LB645]

SENATOR EBKE: Hunter, I want to thank you for coming today. And anybody who says that there's anything wrong with you is all wrong. And any teenager or young man who comes here to speak in front of the Legislature has a lot going for them, and you'll be very successful in life. So thanks for coming. [LB645]

HUNTER GILBERTSON: Thanks. [LB645]

SENATOR GROENE: Any other questions? What's your favorite class? [LB645]

HUNTER GILBERTSON: Math. [LB645]

SENATOR GROENE: It doesn't affect your intellect, young man, if you like math. So anyway, yeah, I'm very amazed that there was no fear in these young men and these young lady. They just stepped right up. So thank you. Any other questions? [LB645]

SYDNEY SHAW: Sorry, I'm a mess. It hits home. Okay. My name is Sydney Shaw, S-y-d-n-e-y, Shaw, S-h-a-w. I have dyslexia. It's a shame that I can't even spell dyslexia without using my phone. I go to Mercy High school in Omaha, Nebraska. I go to a private school, because public

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schools just didn't do it for me. I couldn't get the help that I needed in public schools. When I was three and four I was in kindergarten. They kept...my parents held me back twice, because I didn't recognize colors and numbers. I was behind everybody else. When I was in elementary school, they did the same thing. They did the exact same thing to me. I didn't blame anyone but myself. I felt like I was the problem. I got extremely depressed at a very young age. When I was younger they took me out of classes and it was humiliating. All my friends were in class reading and writing normally. I was stuck being pulled out of class to read, to feel humiliated. What happens if your daughter or your grandchild went home crying every day because they didn't feel like they fit the picture. I prayed to God. I asked God, why did he make me like this? I felt stupid. I felt like I couldn't be normal. When I had spelling tests, they'd make me pick 10 of the words out of 20. They didn't think that I needed the extra ten. Why didn't I need the extra ten? Why couldn't they focus on giving me that extra ten? And I'm 17 and I still have problems with dyslexia. My parents took me to Sylvan Learning Center. They did my homework for me. I went to the Munroe-Meyer Institute. That wasn't feasible. So what was I supposed to do? What was I supposed to do? I was in fifth grade reading at a first-grade reading level. I was in public schools at that time. My parents found out about the Phoenix Academy. The Phoenix Academy works on reading, writing, and arithmetic. That's all we did all day long. My parents were at the end...there was no other solution but that. One day when I was with my mother--she works at a hospital--she asked me to push the fifth button to go to the fifth floor. I had to count on my fingers first, then I had to draw the letter five on my hand, and then I pushed the button. How sad is that? How sad is that, that public schools couldn't give me the help that I needed? Why did public schools give up on me? Why did I feel like I was alone in a system that was supposed to help me? Why? So, I went to the Phoenix Academy. They gave me the second chance that I needed. They didn't make me feel like I was alone or stupid or dumb. I didn't go home and cry every day. The Phoenix Academy focuses on their specific reading techniques that are supposed to retrain your brain, like these lovely ladies and men and all them described. We did Read Naturally, Shurley Grammar. We worked on visualizing and verbalizing. We worked on phonics and we did walk to read. I was finally feeling confident. I tried public schools again. I lasted a week in middle school. I went to Logan Fontenelle in Bellevue. The vice principal said to incoming students, if you don't know how to spell, read, or write, you don't have A's or B's, you will end up being nothing. You will end up working at Burger King, McDonald's, fast food places. That does not measure my intellect. I'm a very smart young lady, a very smart young lady. So I left and went back to Phoenix and became myself again. I felt confident. Now I'm at a Catholic school called Mercy High School. It's a small school with small classrooms and I actually don't feel like another number in public schools. I am provided with the teachers reading me the tests and quizzes, I'm provided with audiobooks, I'm provided with extra time in my tests and quizzes and other things. Why do my parents have to spend \$10,000 a year to send me to a private school when I should have been getting that help in public school? I'd like to leave you with this, from a great dyslexic named Albert Einstein. Everyone can be a genius, but if you judge a fish because it cannot climb a tree, it will live its whole life believing it is stupid. Thank you. [LB645]

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SENATOR GROENE: Thank you, young lady. Any questions? At what age were you diagnosed? [LB645]

SYDNEY SHAW: Two, three, four, around there. [LB645]

SENATOR GROENE: So going into public school you were...your parents already knew you were dyslexic? [LB645]

SYDNEY SHAW: We knew that I already had a problem. [LB645]

SENATOR GROENE: I shouldn't be...I should be asking your parents. But at what age did they tell...say that you were dyslexic, at five? [LB645]

SYDNEY SHAW: Mother? Fifth grade. [LB645]

SENATOR GROENE: Thank you. [LB645]

SYDNEY SHAW: If I could have had the help that I needed, I wouldn't have to be dealing with this right now. I could have been a normal high school student. [LB645]

SENATOR GROENE: Well, maybe we can change that. If anybody sends you a nasty e-mail because you said something about public school, tell them to send it to me. I'm used to it. (Laughter) All right? You're a very brave young lady and you have a right to be passionate. Thank you. Any other questions? Next proponent. [LB645]

DARLENE MERZ: (Exhibit 14-15) I'm Darlene Merz, D-a-r-l-e-n-e M-e-r-z. I'll be using the white sheet to start with. And every one of those children that's been up here works five times harder than the average student that comes to school every hour that they spend at school. Someone you know, someone you love wants to fit in with you like a glove. That someone can't read in the way that you do. Come see what we've learned, for centuries we've had not even a clue. They gave up all hope but tried harder each day. With no avail showing they continued to pray. Please give me, my Lord, hope for my life. How can I live with this plague in my life? In this poem, I'm the next part. I've lived to see change. I've seen their eyes shine. I've messages on my phone, in my ears ring like chimes. Thank you for doing and what you have done. I now hear his voice, the book read by my son. There's no way to repay what you have given, says a parent to me, a voice like from heaven. That message, again and again has come through loud and clear. To me was the gift of hearing those words. In My Journey Into Dyslexia: That child called dyslexic, but smart as a whip can learn reading but by a different trip. See the brain function,

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take that child's hand. Becoming a reader is his demand. He now has life as a reader, ready to attack. A life-changing experience, he says, no holding me back. He can read any words with all he has learned and no longer is heartsick as he formerly yearned. Now, he, like you, is able to read. Watch out. Ready to take heed. That dyslexic is the person that we need. And that's a quote from Carl Schramm, supervisor of Kauffman Enterprises (sic--Foundation) at the end of the movie Journey into Dyslexia that I started using when I started giving presentations. My passion for students with dyslexia grew through 11 years of teaching struggling readers as a special education teacher in the Nebraska public schools that included using an Orton-Gillingham program for four years. Because God placed that Orton-Gillingham program in my path and the administration where I was teaching supported using it, I began with a few students. When we saw the character improvements, such as demeanor, self-respect, positive attitude for learning and reading, spelling improved, writing improved. I continued to teach, additional staff was hired, and we gathered four years of data to compare. And Orton-Gillingham--I've laid these tiles out here, this is how we start--and an intervention with RTI that they're using at the schools now. The results, the Orton-Gillingham program, they would improve 30 to 50 points on their DIBELS assessments, which we use all over the United States and in Nebraska to find out how the students are improving; 30 to 50 points in one semester. A regular intervention--that on your colored sheets gives the interventions that work and don't work; it's several pages back--but I had three to five points of improvement with a regular intervention. That was a no-brainer. The amount of change was striking. After four years, new administration was hired where I was at school. They phased out the Orton-Gillingham program. I terminated my teaching career to help students with Orton-Gillingham privately, share through presentations, recruit other teachers--now currently 20 across the state--and help work for legislation. My life changed. Parents calling to share stories of desperation have become commonplace. I have a paper laying on my table today with red marks all over that paper. That's what these children are seeing. Bright, talented kids, but with their heads hanging low with little self-respect. No, they don't need...or that they have a not-fit-in attitude, and there are red marks on their paper. But within two or three weeks the change is striking using an Orton-Gillingham program. With reading tiles like this we begin to sound out words. And the tactile activities, we finger spell. We might say the word "bet" and we'd go bah-et (phonetically). And these are things that they do in school, but it's not as explicit and direct teaching like what you're doing when you're tutoring. A dyslexia bill was presented in 2015. The outcome was the creation of the Nebraska dyslexia handbook by NDE. Six months after the school (sic--book) was completed and on-line I did a survey. I called ten Nebraska schools, such as Lincoln, Columbus, Nebraska City, and others. I talked to principals and SPED staff and asked if they knew what NDE had done to help students with dyslexia. One school, you can be proud, it was Lincoln; nine schools knew nothing about what had been created for dyslexia. Below that on my handout, you will see there's some blue areas there. One out of every five--if we counted off in here, think how many--one out of five people would be standing in this room with dyslexia. This is the most common, most prevalent of all learning disabilities, above autism, Asperger's, and all the others. It's the most researched of all learning disabilities. As

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many boys as girls have it. It is hereditary. And it's not in pockets of the United States. It's like...is alcoholism in a pocket? It's going to be everywhere. Additional quotes at the bottom of the page that are important...and I think that my quote will be wrong because I heard Mrs. Vautravers say 11 states now are the only ones that don't have legislation. So we have a lot of states that already have in place an Orton-Gillingham program, early assessment, and educational teachers for dyslexia. My final comment: Nebraska needs to pass legislation, this LB645, and work for further dyslexia legislation, as Senator Pansing Brooks mentioned. I am currently advising parents that are inadequate for an adequate reason to begin tutoring, just without all the testing that we might have, with an Orton-Gillingham program. With failing grades, poor portfolio, low benchmark reading scores, and hereditary dyslexia traits in the family, I would say, go ahead and start an Orton-Gillingham program. It will help all students, not only dyslexics. [LB645]

SENATOR GROENE: Thank you. Could you wrap up? [LB645]

DARLENE MERZ: Yeah. [LB645]

SENATOR GROENE: Thank you. [LB645]

DARLENE MERZ: Orton-Gillingham programs presented in the kindergarten class even would be a great attitude to take for all schools because they all benefit from it. [LB645]

SENATOR GROENE: Thank you. Any questions? [LB645]

DARLENE MERZ: I would like to address a couple of the questions that you had for educators previously. Somebody mentioned electronics. Actually, this program is on-line and you can be a tutor...I could tutor a child in California, as far as electronics being helpful. Otherwise, they have to learn how words are broken apart because of the number of vowels in a word or so forth. [LB645]

SENATOR GROENE: I don't think we've many educators. We've had researchers so far. [LB645]

DARLENE MERZ: Yeah. [LB645]

SENATOR GROENE: So when you called the schools and you asked...now, that was a joke earlier. I understand a teacher has to teach a lot of students, so they can't tutor one-on-one. And you're tutoring one-on-one, right? [LB645]

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DARLENE MERZ: I am tutoring one-on-one now, but in the classrooms I have a para who actually in the Cross County schools up at Stromsburg, Nebraska, is using in the first grade classroom. But if you ask the administration, can I use this program, they will say, no, because...and that would be an answer to one of the other questions, money is the root of the reason why this hasn't been brought up before. [LB645]

SENATOR GROENE: Why? Why? Is it costly? Is it costly to contract with and purchase this program? [LB645]

DARLENE MERZ: No. No. The little Julie that was up here, the little girl, she had each one of the kits that she had...she's gone through eight levels of that. Each one is \$250. I bought \$1,000 worth and it helped. I'm using that for ten years. [LB645]

SENATOR GROENE: I guess, in fairness, how many of those young people were in public schools that were doing so well? [LB645]

DARLENE MERZ: They were all in public schools, probably, to start with. But then when they did...actually, the ones that I was teaching were in public schools. I used just a number of 30 as an example when I used my criteria for seeing the difference in the scores. That's the reason I saw... [LB645]

SENATOR GROENE: I just want to clarify that public schools are trying...resource and trying. [LB645]

DARLENE MERZ: Yes. [LB645]

SENATOR GROENE: But I just wanted to know how many of these young people were succeeding through programs in public schools I guess. [LB645]

DARLENE MERZ: They will not succeed like this in public school. They have to have an Orton-Gillingham program and they say, we don't recognize dyslexia, which we will have happen now. It's not used. [LB645]

SENATOR GROENE: You're saying it's...you've tried all of the programs out there and this one really works well? [LB645]

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DARLENE MERZ: This one is...the Orton-Gillingham programs, there are several of them. There's another sheet that shows you how many programs there are that are Orton-Gillingham. [LB645]

SENATOR GROENE: All right. Thank you. [LB645]

DARLENE MERZ: Those all will work. [LB645]

SENATOR GROENE: Thank you. [LB645]

DARLENE MERZ: But there's only about eight. [LB645]

SENATOR GROENE: Senator Linehan. [LB645]

SENATOR LINEHAN: Thank you for being here. I appreciate it very much. So why do you think there's been a resistance to recognizing dyslexia in the public schools? And from my personal experience, there's considerable resistance. So why do believe there's been resistance? [LB645]

DARLENE MERZ: A lot of money. And you know what? I was absolutely...if I walked up to the administration where I terminated my position because I actually was asked to teach students out of time of the school while I was a special ed teacher. And they said...they called me in and said, you know, you're breaking the law. And I said, how am I breaking the law? Because you're tutoring a child in the school that you're teaching. They weren't kids in my class, but I had to stop. I said, you know what? You're my boss. I will do anything you tell me. But I will stop right now. I think it's the fact that they...I'm the expert here. I know what's best for students. And so this is just a special ed teacher. And this has been...this is like a dream, me sitting here telling you this, because I have been working on this...I cannot... [LB645]

SENATOR GROENE: We can tell you've been pent up for a lot of years. [LB645]

DARLENE MERZ: I cannot commend these two back here...yeah, it's like a miracle. [LB645]

SENATOR LINEHAN: It's a bit like a dream for me, too. [LB645]

DARLENE MERZ: Yes. But I think a lot of it has to do with money. [LB645]

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SENATOR LINEHAN: Okay, but let's...many of these kids end up in special ed, right? [LB645]

DARLENE MERZ: Yes, they do. In fact, that was one of my notes. For a long time when I first started teaching, they would put the kids in special ed as a fix. Now we have Response to Intervention, which is a three-tiered program that you would be...you're in levels. If you get low grades on your reading test, then you're put in that second or third tier. You're taken out of the classroom and they start to work with you. But if they're not using the program, this would be like taking the piece of dirt on the table back to the atom, because each one of this, these will symbolize the sound in a word. Like if I said a nonsense word, not a real word--which we use a lot and they use it with DIBELS--I said the word "vit" the sounds are "v-i-t" and pull down a different colored tile for each one. So they're breaking it down into the molecule or whatever, atom... [LB645]

SENATOR LINEHAN: I've actually tutored with this, so I do know. I just want to clarify. I understand the system and I've used it. So a number of kids that go to special ed actually could probably be better off and--it would seem to me--cheaper if they used this program. [LB645]

DARLENE MERZ: That's right. [LB645]

SENATOR LINEHAN: Okay. Thank you very much. [LB645]

DARLENE MERZ: And you can teach three or four students with it. I have three or four students in a classroom frequently. [LB645]

SENATOR LINEHAN: Thank you. [LB645]

SENATOR GROENE: Thank you. Any other questions? [LB645]

REBECCA MILLER: (Exhibits 16-17) Good afternoon. My name is Rebecca Miller, R-e-b-e-c-c-a M-i-l-l-e-r. Thank you for allowing me to speak today. I am the owner and managing director of FixLexia, a clinic whose mission is to serve individuals with dyslexia and other reading-related difficulties. Additionally, I am a Board Certified (Special) Educational Advocate and have additional training in special education law. I am here today to express support, my support for LB645. Some of the things I think other people have mentioned, so I am going to save some time here and skip those pieces that are in here. But I want to make it absolutely crystal clear that dyslexia...there is absolutely no correlation whatsoever between dyslexia and IQ. So you can have kids with varying cognitive abilities that have dyslexia. Dr. Vautravers spoke specifically about phonological processing, which I would kind of refer to the underlying sound system that

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we need for reading and for spelling. One important thing I think to clarify on that issue is, many times I will hear, kids with dyslexia need really good, explicit, phonics instruction. And that is true. What is often missing in that conversation is the fact that unless a child has good phonemic awareness--which is part of the phonology--unless they have good phonemic awareness, which is the ability, okay, to auditorily process sounds without any support of print at all. That's why many people here are talking today about early speech and that sound, you have to have that. So if you do not have the ability to auditorily discriminate those sounds, that absolutely will impact reading, writing, and spelling. Some kids naturally have that. Kids with dyslexia don't have that. So that's kind of the caveat between that piece. As many of you are aware, Nebraska Rule 51 is a state regulation that governs special education services. Currently, there are 13 categories in which children can be determined eligible to receive special education services. Of particular importance here today is the category referred to as a Specific Learning Disability or SLD. Currently, the term dyslexia appears in the formal definition of a Specific Learning Disability and has for more than 40 years. Yet, despite the fact that the term appears in Rule 51, it is not clearly defined. In the absence of a definition, many educational professionals do not understand dyslexia and therefore do not assess in those areas characteristically deficient in children with dyslexia. I am hopeful that expanding the definition of dyslexia will subsequently lead to special education evaluations that are inclusive of risk factors specific to dyslexia. Without appropriate evaluation, which is the key in special education...we always want to assess the assessed need and those assessed needs drives those goals. Okay? Without appropriate evaluation it is nearly impossible to create remediation goals that are targeted and effective. I find this deeply concerning and entirely preventable. It is, of course, important to speak to the rates of prevalence, which Dr. Vautravers also spoke of. And according to the Nebraska Child Count Data for the school year 2015-2016 there are 15,118 children that are verified with a specific learning disability. Subsequently, research has shown that 80 percent of those children demonstrate characteristics of dyslexia. Okay? So in Nebraska, the number that we are talking about is 12,094 children. To put that in perspective, Nebraska has 443 cities, so the number of children that we are talking about makes us the 16th largest city in our state, just below Beatrice. Okay? While the prevalence rates are important, what I'm going to do is I'm going to ask Mr. Bo Faimon to come up here for a minute. Okay? When Bo came to our clinic, okay, he just finished kindergarten. Okay, per his IEP it says, Bo reads one word per minute correctly, placing him in the fourth to ninth percentile. Yet despite Bo's significant reading deficits he was not initially assessed in phonological processing nor rapid naming. With proper assessment, we learned that Bo had significant deficits in phonological processing that were not being systematically addressed. Bo received interventions at FixLexia for approximately 14 months. He went from barely reading at all to reading in excess of 70 words a minute and actually now I think the last word is 94 words a minute. Okay? It is not magic. It is the power of in-depth evaluation and targeted intervention. In closing, I would just like to say I believe the passage of this will result in: First, when reading disabilities are suspected, an in-depth assessment in phonological processing will occur with greater frequency, resulting in an individualized and target

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remediation. Also, maybe even more importantly, the expanded definition will codify an important fact: Dyslexia is neurobiological in origin; thereby dispelling the myth that it is made up or due to lack of reading or poor parenting. I appreciate the opportunity to speak before you today. And I'd be happy to take any questions. [LB645]

SENATOR GROENE: Any questions from the committee? What method do you use? [LB645]

REBECCA MILLER: So we subscribe also to the Orton-Gillingham-based approach. That is, as they're referring to, as a systematic approach where basically you're going back and you are rebuilding that sound system. And so when you are doing that, what is really integral is that the system that you are using for reading is the same system that you are using for spelling. The other piece we now know as time has marched on, there are some children and adults that do not necessarily have the ability to visualize how words are spelled. So many people, if you're trying to spell a word you'll kind of jot it down or you'll, oh, yeah, that looked right or that doesn't look right. Some kids do not have that ability. So those are the kids that we see. When you do the targeting interventions in the phonology piece, okay, their reading picks up but their spelling is still poor. So it is many things. There is not one dyslexic kid that is the same. There are some basic characteristics, but good, solid intervention, it works. And that's what's so frustrating. [LB645]

SENATOR GROENE: Okay. [LB645]

REBECCA MILLER: (Laugh) It works. [LB645]

SENATOR GROENE: Thank you. Any other questions? Thank you. Thank you for your testimony. [LB645]

TIFFANIE FAIMON: (Exhibit 18) Hello, I'm Tiffanie Faimon, T-i-f-f-a-n-i-e F-a-i-m-o-n. You all met my son, Bo, and he is here with me today in support of LB645. Bo showed many signs of dyslexia very early on. The most obvious was his difficulty identifying letters and their corresponding sounds, which continued despite repeated attempts to help him learn. Even using puzzles and games to keep it fun often ended in frustration and tears. Despite being unable to recognize his letters and sounds, even into the second semester of his kindergarten year, Bo passed the school's reading assessment. His scores indicated he did not qualify for any sort of reading intervention. Bo's experience is one example of why it's important to clearly define dyslexia. It is primarily a deficit in phonological processing. If schools are not clear about what dyslexia is and is not, they cannot adequately assess a child. If they cannot assess properly, they are not able to provide interventions known to remediate deficits associated with dyslexia. While Bo's school was receptive to helping him, they did not understand the root cause of his deficits

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and that resulted in our having to obtain a private evaluation in addition to a school-based evaluation. The educational professionals admittedly said, while they were interested in working with children with dyslexia they had not been trained how to do so. I found this to be surprising considering dyslexia is the most common learning disability. The private evaluation we pursued for Bo led to a better understanding of his deficits. The result was private instruction focusing on his oral-motor, visual and auditory feedback system, which enabled him to prove the identity, number and order of phonemes in syllables and words. This was progress we had not seen before. Bo made significant gains the summer between his kindergarten year and the start of first grade. It was a huge relief to know with proper instruction Bo could learn to read and write. Even Bo knew his hard work was worth it. He enjoyed the time with his tutor and told her confidently, you are going to teach me to read. I often wonder what if we had not pursued the private evaluation? Most likely, Bo would have continued to struggle throughout his years in school as the only intervention provided was more time reading. Granted, this time was one on one with an aide. Unfortunately, this strategy did not prove helpful, as Bo was not progressing and his frustration was overwhelming. I decided to pursue the private evaluation and instruction when Bo asked me one night: Mom, what am I going to do in first grade when kids make fun of me because I can't read? Clearly, defining dyslexia is the first step in providing effective services to kids with dyslexia and serves as the basis for solid assessment and effective intervention. All students deserve to feel they are capable of learning. Bo's most recent report card read: Above all, I appreciate Bo's kindness towards everyone and his willingness to work as hard as he can, no matter what. That sums up Bo perfectly. Please support LB645 and provide the opportunity for all hardworking students to learn and perform to the best of their ability. Thank you for your time. [LB645]

SENATOR GROENE: Any questions? Could you explain this to me? His tutor said he could read one word a minute. And you stated Bo passed the school's reading assessment? [LB645]

TIFFANIE FAIMON: That's correct. [LB645]

SENATOR GROENE: Then how did you identify it? [LB645]

TIFFANIE FAIMON: Well, it's a long story, but... [LB645]

SENATOR GROENE: You were probably reading to him. [LB645]

TIFFANIE FAIMON: Yeah. So he went to school and when they start school, do you have any concerns? Front and back page, all my concerns. If you looked at early signs of dyslexia, he had every single one except he could rhyme. And so we had meetings. He had speech articulation issues, which actually he self-corrected after he started with FixLexia so he was on their radar.

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His teacher knew he was struggling to read, but the reading assessment they gave him he passed. So the school did provide... [LB645]

SENATOR GROENE: Is he in public school now? [LB645]

TIFFANIE FAIMON: Yeah, he has been the entire time. [LB645]

SENATOR GROENE: So you're working with combination with the public school and a private tutor? [LB645]

TIFFANIE FAIMON: We're trying. Most of his progress came from the private instruction through FixLexia. [LB645]

SENATOR GROENE: But he's learning his math and science and things in a public school. [LB645]

TIFFANIE FAIMON: Yeah, yes, yeah. [LB645]

SENATOR GROENE: Thank you. [LB645]

SHELLI COOK: (Exhibit 19) Senator Groene and members of the Education Committee, I'm Shelli Cook, S-h-e-l-l-i, and Cook is C-o-o-k. And I'm testifying on behalf of the members of the Nebraska Speech-Language-Hearing Association in support of LB645. Learning to read opens a whole new world. That's what an eight-year-old client of mine recently told his mother after returning home from choir practice. He was so excited to tell his mom that he was able to actually read words to the music for the first time. Remember that children typically learn to sound out sounds and letters by about age six and he unable to do any of that. In the six months since I've seen him...I actually just tested him last night and at the word level he's almost nearly grade level, thanks to his mother's intervention. He is fortunate. His mother referred him to my private practice about six months ago. She knew he was a bright child and yet he hadn't learned to read at all. This was because traditional reading instruction did not work for him. As a speech-language pathologist with additional training in systematic, multisensory, Orton-Gillingham instruction, like we've talked about today...or it's often now called structured literacy. You might see that if you Google this. Structured literacy is kind of one of the new terms for that now. I was able to assess his abilities and I am able to provide needed intense intervention. Ideally, it would have been better if he had been referred at an even earlier age. This is because a younger child that receives services for dyslexia the better they are, they're more able to catch up and read with their peers. Unfortunately, some children don't even get the opportunity to receive specialized

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services. I think back to the many students and patients of mine over the years who did not receive appropriate needed interventions through public or parochial schools in order to learn to read. Many professionals who work with children with dyslexia fail to recognize children who have it. Appropriate assessments and interventions weren't even considered. And this is because dyslexia assessment and treatment does require special training. And this bill could help these professionals recognize this disorder. Fortunately, there are some success stories. With the fMRIs that Dr. Vautravers and Dr. Molfese talked about and the extensive research that's available, I have been blessed to learn how to help many experience the whole new world of reading, writing, and spelling. Today you got to hear some of these stories. But we need help. We need so many more professionals to acknowledge dyslexia, recognize characteristics of it, and know how to assess for it, and to be trained for appropriate structured literacy interventions to help those with this disability. The sooner we are able to intervene in the child's life--and yes, it can begin at preschool age--the better the prognosis. The state of Nebraska needs to recognize dyslexia as a disability and to define it now. I'd like to add some more notes on my behalf and on behalf of the Nebraska Dyslexia Association. As we said, unfortunately, not all have the success stories happen like we'd like to have. And I think back to those who did not receive the needed interventions. I think back to the many multidisciplinary--which are MDT meetings--that I've been in my private practice. I was also working for the public schools doing contract services for 16 years and I was contracted to do parochial schools, so I've had extensive experience in private schools, public schools, and even some home schools. And so as I would go to those meetings, as I would read the report that would come to people who would come to my private practice, there would be no appropriate assessments even considered or mentioned in those MDTs, yet those students had dyslexia. I think about the school meetings I've gone to where I've reported dyslexic tendencies, either as part of their staff or as an outsource person, only to get blank stares and to be totally ignored. I think about the mom who was told at her son's MDT meeting: Dyslexia, that's just an eye thing. When she asked about if that could be a possibility, they just told her, it's just an eye thing. I think about the elementary special education teacher who I worked with on a regular basis told me: I hope I never have a student who needs phonics. I wouldn't know what I would do. I recall the times I've attempted to work with reading teachers to help implement reading interventions that I would be able to help instruct them with. And I would identify the need that would be needed, only to hear things like, oh, I'm not trained in that. Or one teacher recently told me, I just use the regular curriculum. I still hurt for these students when I think about it. I wasn't able to help many of these students for very long in the school the caseloads or offer them much time. And no one else there knew how to help. I was able to do so little for them. Fortunately, with these fMRIs and information we've been able to receive and the extensive research that's available, I have been able to help bless many of these people. But, again, we need help. We need so many more professionals to acknowledge dyslexia, to recognize its characteristics, to know how to assess for it, and be trained in appropriate, structured, literacy interventions to help them. The sooner we're able to intervene in a child's life the better. We do need to have this definition. Thank you. [LB645]

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SENATOR GROENE: Thank you. Any questions from the committee? Thank you for your testimony. [LB645]

SHELLI COOK: You're welcome. [LB645]

SENATOR GROENE: Any more proponents? [LB645]

SCOTT SCHOLZ: (Exhibit 20) Good afternoon, Senator Groene and members of the Education Committee. For the record, my name is Scott, S-c-o-t-t, Scholz, S-c-h-o-l-z, and I am the director of the Talking Book and Braille Service, which is the division of the Nebraska Library Commission that provides direct library services to citizens of Nebraska with print disabilities. I am here today in support of LB645. This bill provides an up-to-date definition for dyslexia that conforms with the definition used by the International Dyslexia Association and the National Institute of Child Health and Human Development. By providing a clear definition of dyslexia in state law, this bill will help to assure that Nebraska students with this qualifying disability receive special education resources as appropriate to help them succeed in school and beyond. LB645 increases awareness of what dyslexia is, which should lead to early recognition and intervention for dyslexic students. The Talking Book and Braille Service is a good example of a powerful resource for dyslexic students that could be made available to more students if they were properly identified as having this disability. Current statute includes dyslexia with other kinds of learning disabilities, but not all of those disabilities are qualifying factors to use the Talking Book and Braille Service. By federal law, the provision of our service can only be afforded to individuals with qualifying physical disabilities. Some physical disabilities are easy to determine, such as blindness or visual impairment, or conditions such as paralysis or severe arthritis that prevent holding a book or turning its pages. In the case of dyslexia, it is the neurobiological origin of this disability, as phrased in LB645, which enables dyslexic students to qualify to use our service. For dyslexic students and adults, we provide print materials that have been created in a Digital Talking Book audio format, which is essentially an audiobook with additional navigational features. The resources we provide to students whose severe dyslexia prevents the use of regular print can help to assure that no one falls behind in school. They can assure that reading is still an important part of life, no matter the method. Presently, the majority of Nebraska citizens who use the Talking Book and Braille Service have blindness or visual impairments, but we could be serving more dyslexic Nebraskans as well, if only they were identified. We are excited at the prospect of helping more students and Nebraskans of all ages to stay connected to their schools and their communities through reading, and we recommend that LB645 be advanced. Thank you. [LB645]

SENATOR GROENE: Thank you, sir. Any questions? Thank you for your testimony. [LB645]

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KATHY ANTHES: (Exhibit 21) Good afternoon, Senator Groene and fellow members of the Education Committee. My name is Kathy Anthes, K-a-t-h-y A-n-t-h-e-s. I'm a retired educational therapist and a board member of the Nebraska Dyslexia Association. At the end of my testimony I would also like to answer some of the questions that you had earlier about some of the instruction. During my 40 years as an educational therapist, I taught behavior-disordered students for 36 of those years. I taught at Immanuel Mental Health Center in Omaha and I helped to diagnose learning disabilities in those same students. Most of them had been referred without having received an educational evaluation, even the teenagers. Our psychologists tested and identified many of those behavior-disordered students as learning disabled. Research has shown that there is a strong correlation between learning disabilities and emotional-behavioral disorders. In one study, 60 percent to 80 percent of students with emotional-behavioral disorders also had a learning disability. We know that 30 percent to 50 percent of children with ADHD also have a specific learning disability, and 30 percent to 50 percent of children with learning disabilities also have ADHD. Students with dyslexia become fearful because of their constant frustration and confusion in school as classmates surpass them in reading skills. Many become angry with the schools and the teachers. The self-image of students with dyslexia appears to be extremely vulnerable. They learn that they are inferior to others and feel incompetent and powerless, as you've heard from many of the children's testimonies. Depression also occurs frequently in students with dyslexia. They have a higher risk for intense feelings of sorrow and pain. In addition, they often misbehave to cover up their painful feelings. When they feel that their learning difficulties are somehow their fault, they may become emotional, fragile, and vulnerable. Since schoolwork is agonizingly slow and frustrating for them, they may become embarrassed, cautious, and defensive. Samuel Orton, M.D., was one of the first researchers to describe the emotional aspects of dyslexia. According to his research, the majority of preschoolers with dyslexia are happy and well-adjusted. Their emotional problems begin to develop when early reading instruction does not teach them to read. Because of the significant impact of dyslexia on the emotional development of students, early dyslexia awareness and intervention is critical. LB645 will increase dyslexia awareness and result in earlier intervention. By preventing the emotional-behavioral problems associated with dyslexia, this should result in lower special education costs for educating behavior-disordered students. Because 85 percent of youth in our juvenile justice system are functionally illiterate, there should also be cost-savings in the justice system by preventing these behavioral problems. I ask you to advance this bill and help students with dyslexia in so many ways. And since the light is still green, if I may continue...is that okay? [LB645]

SENATOR GROENE: Yes, go ahead. You've got your five minutes. [LB645]

KATHY ANTHES: Through the jail and prison ministry that my church is involved in, I have visited the county jail in Omaha and talked to a couple of people there that work with young adults. I was encouraged to come and tutor some of these young adults who are craving to get an

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education and learn how to read, because they hadn't learned how to read in school. I know that there is a connection and that I think that some of the cost saving in our justice system is a relevant point to consider when we talk about a definition of dyslexia and assessment and intervention. Thank you. [LB645]

SENATOR GROENE: Thank you. How many more testifiers are there on this bill? Two? All right, because we...thank you. Any questions? Did you...oh, there's three more testifiers, then? All right. Thank you. [LB645]

AMY RHONE: My name is Amy Rhone, A-m-y R-h-o-n-e, and I'm the assistant director for Special Education for the Nebraska Department of Education. I'm here representing the Nebraska Department of Education and the State Board of Education. And in light of all the other testimony, I thought I would just let you know that we are here in support of the bill and offer you an opportunity to ask me questions. [LB645]

SENATOR GROENE: In defense of public education, are you working...is there a program that if a school district calls you that you recommend some course of action? [LB645]

AMY RHONE: We actually are working quite closely with the Nebraska Dyslexia Association. We have a technical assistance document that is out. But within Special Education, we recommend that they work through their school systems to go that route with those students if that's what they feel they need. There are also other avenues in which students with dyslexia or that are diagnosed with dyslexia can find (inaudible). [LB645]

SENATOR GROENE: What about our educational service units? Do you work with them? Is there a set program statewide that if a school district calls, and a small school district, in looking for some guidance? [LB645]

AMY RHONE: It would be the same. We would refer them to our technical assistance document that we've created with the Nebraska Dyslexia Association. [LB645]

SENATOR GROENE: Do you put them in touch with these researchers or anybody that can help them? [LB645]

AMY RHONE: Yes, we can. [LB645]

SENATOR GROENE: All right. Thank you. Any other questions? Steve. [LB645]

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SENATOR ERDMAN: Thank you for coming. Thank you, Senator Groene. So, what do you do for my district out 400 miles from here? How do you work with those people? [LB645]

AMY RHONE: We would work with them the same way we work with the districts. [LB645]

SENATOR ERDMAN: So you'd work with them through the ESU? [LB645]

AMY RHONE: Yes. Specifically, in western Nebraska, is that where you're at? [LB645]

SENATOR ERDMAN: Right. [LB645]

AMY RHONE: We would work...my guess is ESU 13 and whatever they're doing and whatever special education directors or coordinators they have at their individual site. [LB645]

SENATOR GROENE: Thank you. [LB645]

SENATOR WALZ: Can I... [LB645]

SENATOR GROENE: Who was first? I think Senator Walz was. [LB645]

SENATOR WALZ: I'm sorry. Thank you. [LB645]

SENATOR GROENE: You got to get it up higher. [LB645]

SENATOR WALZ: Okay. Can you just explain a little bit further the question, what are you doing for the students who are 400 miles away, a little bit more example? Or tell me a little bit more about what you're doing. [LB645]

AMY RHONE: Well, specifically, we, through the office of Special Education, support the units and then also the school districts in providing oversight in the federal regulations. And the federal regulations require them to identify students and then, if need be, evaluate students and then move through the process of which that is required through federal regulation. Also, through just general education initiatives and Special Education initiatives, we are working with the RTI process, the Response to Intervention process, to hopefully identify students who not necessarily are special education but that need that additional assistance at a tiered level of support. [LB645]

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SENATOR WALZ: So teachers are trained to identify students who... [LB645]

AMY RHONE: No, teachers are not. So if a teacher, through a student assistance student team within their school district, is identified as having maybe needs, they are brought to an evaluation team, the multidisciplinary team that was spoken about earlier. And then a psychologist or whatever means of that evaluation, maybe a speech and language pathologist, would perform whatever that evaluation would be necessary for that individual student. [LB645]

SENATOR GROENE: Senator Kolowski. [LB645]

SENATOR KOLOWSKI: Thanks. Have you had any study of fiscal impact if this bill was successful--and I hope it is--that we can move along and what would you need to help take care of the definition and application to every student that would need this help? [LB645]

AMY RHONE: Well, I think...as far as the fiscal note on this bill currently? [LB645]

SENATOR KOLOWSKI: Right. [LB645]

AMY RHONE: I believe that we didn't identify specifically a fiscal note within this, as it would just put a definition to dyslexia. As I think things move forward, that may change. [LB645]

SENATOR KOLOWSKI: Resources would be extremely important. And we know SPED funding has been at times. [LB645]

AMY RHONE: Uh-huh. [LB645]

SENATOR KOLOWSKI: So thank you. [LB645]

SENATOR GROENE: Senator Linehan. [LB645]

SENATOR LINEHAN: So...I just want to...I think I understood Senator Walz's question and I want to rephrase it. So I don't know how teachers could recognize dyslexia if they don't know what it is. And I don't think they're...I mean, it doesn't seem, from what we've heard today, that teachers recognize it. So how could they recognize it if they don't know...I don't know how that would work. [LB645]

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AMY RHONE: So within education, they're supposed to recognize that there's difficulties happening with students. I don't know that we have a specific method as to which we tell them to use to identify specifically dyslexia, but we do have teachers identifying needs that are being not met within students. And then that's what's brought to a student assistance team. And then within that they go forth and move within any kind of an evaluation process that would be needed.
[LB645]

SENATOR LINEHAN: But dyslexia is not a term frequently heard in those evaluations, is it?
[LB645]

AMY RHONE: I wouldn't know that information currently. [LB645]

SENATOR LINEHAN: Are you familiar with it? [LB645]

AMY RHONE: Yes. [LB645]

SENATOR LINEHAN: Okay. So you talk to these people, right? So... [LB645]

AMY RHONE: There are school districts, absolutely, that are serving kids that are found to be dyslexic. [LB645]

SENATOR LINEHAN: Okay. Out of Nebraska, how many do you think, school districts,...
[LB645]

AMY RHONE: Are serving kids? [LB645]

SENATOR LINEHAN: ...that are absolutely serving kids with dyslexia? [LB645]

AMY RHONE: Well, currently, they would be serving them under Specific Learning Disability. As it was stated earlier, this definition is currently found under Specific Learning Disabled. So they could be served specifically under SLD, Specific Learning Disability, in an area of reading. If they are found through private evaluation or other means to have dyslexia, then they would get that Specific Learning Disability category placed on them. [LB645]

SENATOR LINEHAN: So is there a specific program for kids who are found to be dyslexic, is there a specific program used in the public schools for them? [LB645]

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AMY RHONE: Not that we mandate, no. [LB645]

SENATOR LINEHAN: Okay. Thank you. [LB645]

SENATOR GROENE: Senator Erdman. [LB645]

SENATOR ERDMAN: Thank you, Senator Groene. I'll just be brief. So you heard the testimony of people today that came in and testified about their children not being discovered and not helped in public school. What degree of success do you think the public school system in Nebraska is dealing with dyslexia? Is that a high rate of success? Are they dealing with it at all? Or is that why all these people have to go to private tutoring, is to get the education they need? [LB645]

AMY RHONE: I wouldn't know that information specifically. I think that our school districts do a great job at providing services for students in whatever area they can. But I wouldn't know that very specific information. [LB645]

SENATOR GROENE: It seems to me here, if you boil it down, our teaching colleges should be involved here. And we don't dictate that or you don't dictate to them that in a four-year degree or master's degree they have a class that every teacher takes about identifying certain learning? They don't do that? Do you know? [LB645]

AMY RHONE: I can't speak to that. [LB645]

SENATOR GROENE: All right. Well, we'll find out. Thank you. [LB645]

AMY RHONE: Yes. I can find that out for you. [LB645]

SENATOR GROENE: Thank you. Any other questions? Thank you. Got you off the hook there. [LB645]

JAY SEARS: (Exhibit 22) Good afternoon, Chairman Groene and members of the Education Committee. For the record, I'm Jay Sears, J-a-y S-e-a-r-s, and I'm representing the 28,000 educators of the Nebraska State Education Association in support of LB645. And you can read my testimony. And I think the best testimony we've had today is from the students and the progress that they've made. I would be happy to answer any questions or make them up if you need them, so. [LB645]

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SENATOR GROENE: Any questions? We're not blaming you today. (Laughter) [LB645]

JAY SEARS: Thank you so much, Senator. You'll probably get me later, right? [LB645]

SENATOR GROENE: Any other testifiers? Neutral? Excuse me. Thank you. I have to read off the list of support of letters--you can sit down, ma'am--that we received of support: Gwelda Carlson; Nebraska Child Health and Education Alliance...maybe I just found out what's wrong with my reading. Tamsen Aichinger; Judy Roach; Sandra McCoy; Sarah Youngman; Dr. Christopher Youngman; Kathy Monico; Nancy Coffey; Glen Flint; Donette Koelzer; Peggy McDaniel; Becky Kugler; Christina Leise; Peggy Stahr; Jennifer Calahan; Sheri Baumgartner; Craig Maher; Ellen and Bruce Karsk; Nebraska Planning Council on Developmental Disabilities. That was the list of individuals we received letters in support of this bill. No opposition, of course. Neutral, Ralston Public Schools. Was there any opposing testimony? Thank you. Neutral. [LB645]

JANE BYERS: Good afternoon. My name is Jane Byers, spelled J-a-n-e B-y-e-r-s, and I represent the Nebraska Association of Special Education Supervisors, that's NASES. First of all, I appreciate the effort of our state leaders to recognize and support the needs of students with disabilities in Nebraska. I, too, have a brother with dyslexia and I think he's pretty awesome. As special education leaders, we do understand the lifelong implications of dyslexia and with that have created systems of support that include Orton-Gillingham-based, multisensory approaches to instruction as well as intervention within our public schools. I would be happy to answer any questions that you may have about those supports presently in our schools. But before that, I wanted to point out a few things that we feel that you should be aware of or may want to look in further as you move forward with this legislation. First of all, the needs of students with dyslexia can currently be met under the disability category of Specific Learning Disability in the state of Nebraska and across the United States. By adding dyslexia as a definition separate from or further defined within Specific Learning Disability, a door is opened to many other diagnoses covered or discussed within the DSM-V and to be listed separately under Nebraska Rule 51, thus exceeding the requirements of a federal law, which is not our common practice in the state of Nebraska when it comes to rule. A similar comparison to this would be a condition known as attention deficit disorder--very real--in which students are often served under our Nebraska disability category as well as the federal disability category of Other Health Impaired (sic--Impairment). There is no separate definition of ADHD in rule. Still another example would be children with medically diagnosed Down syndrome, who may receive services as intellectually disabled. In fact, in the current Nebraska Rule 51 there are over 25 other conditions or disabilities or diagnoses listed under and within the recognized disability categories. Dyslexia is already mentioned in Nebraska Rule 51 in Section 006.04K1, under the term, Specific Learning Disability. I think you've heard that a number of times. Another question we have or suggestion that we make is that LB645 address appropriate and accurate identification of dyslexia. You've

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heard that from the proponents as well. Given that this is a neurobiological condition, who will be responsible for the verification of dyslexia in children? Presently we receive reports on a regular basis in our school districts from people who represent themselves as dyslexia specialists with no particular set of credentials or training that we can identify. What will be considered a valid diagnosis for educational purposes? Will school districts incur that cost? Is that necessary, given that we can already prescribe curriculum and interventions based on the student's specific symptoms and needs? Just a few things that I would ask you to consider. And finally, I would suggest a study of implications and fiscal impact potentially under Section 504 of the Americans with Disabilities Act. Section 504 states that we must provide accommodations, special education, and related services to students who are substantially limited by disability. Under the federal IDEA and Nebraska Rule 51 we can define that substantial limitation through psychoeducational testing to verify the need for special education as a student with a learning disability, including dyslexia. Substantial limitation is a judgment call under Section 504. We would suggest that the Education Committee investigate the fiscal impact on school districts, who will have to provide direct services for students under 504 without any funding source at the state or federal levels. My testimony may sound as if NASES is in opposition to LB645; we are not. We're just concerned about the fiscal impact for our school districts. I'd be happy to answer any questions that I can from a school district perspective. [LB645]

SENATOR GROENE: Any questions? Senator Linehan. [LB645]

SENATOR LINEHAN: Thank you for being here. What percentage of the special ed teachers do you think in Nebraska are trained on the Orton-Gillingham method? What percentage of the special ed teachers do you think are trained? [LB645]

JANE BYERS: Sure. I think that your...the question would be, do they know it's an Orton-Gillingham method. So we have many teachers in our schools and across Nebraska that are using strategies, things like, for example, in our kindergarten programs all of our speech-language pathologists implement instruction in Lindamood-Bell through the LiPS curriculum, the colored tiles that I think someone was showing earlier. I don't know if you asked her if she has specific training in Orton-Gillingham if she would respond, yes, to that. [LB645]

SENATOR LINEHAN: Thanks. Do they have specific training...anything with dyslexic kids? I mean...they're trained to recognize dyslexic kids? [LB645]

JANE BYERS: We are trained...we...and I'm going to speak specifically to the school district that I am from. We have literacy coaches in every building that have specific training in literacy. And they would be looking for kids who struggle with phonemic awareness. Those kinds of issues are measured regularly through district assessments, so we're looking at kids who through regular

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what we could call word-play or word-making activities that aren't able to combine the initial and medial and ending sounds, they're not able to rhyme words, those kinds of things, are regular district assessments that we would look at beginning immediately with our kindergartners and with our preschoolers as well. [LB645]

SENATOR LINEHAN: Do you ever use the term "dyslexic"? [LB645]

JANE BYERS: Yes. [LB645]

SENATOR LINEHAN: Often? [LB645]

JANE BYERS: No. We use the term Specific Learning Disability. Just like when we have a child who has an intellectual disability, we don't say that they have cerebral palsy or Down syndrome or what have you. We say that they have an intellectual disability and treat according to their symptoms. [LB645]

SENATOR LINEHAN: Thank you. [LB645]

SENATOR GROENE: What do you tell the parents? Do you tell them the child has dyslexia or do you give them that long... [LB645]

JANE BYERS: Educators can't diagnose dyslexia. We can identify a learning disability. So if they claim that their child had dyslexia, that we would come into a meeting. We would do a menu, a variety of educational assessments and say, yes, there is a discrepancy between your child's ability, his cognitive level and the level at which he's reading. And then we would do further diagnoses to see what's leading to that. [LB645]

SENATOR GROENE: So is this considered an illness? It doesn't sound like an illness to me. So you can't...a mental illness. You can't diagnose, I understand that. But this is just a learning, isn't it? I mean, but you're following federal guidelines. I understand that. Listening to the state representative and you, it seems you spend an awful lot of time worrying about state and federal guidelines. And they don't give you a lot of time to actually do your job. I'm not criticizing you, I'm just...what I'm hearing. All right. Thank you. [LB645]

JANE BYERS: Uh-huh. Thank you. [LB645]

SENATOR GROENE: Any other neutral comments? Closing, Senator Pansing Brooks? [LB645]

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SENATOR PANSING BROOKS: Thank you all for being here so long. Obviously, we had some pretty passionate testimony and some really, I think, important and educational testimony. I want to specifically thank all those fabulous kids who are heroes who were so courageous to speak before us. I'm really grateful that they came forward and spoke, and I know all of you are, too, and also their parents for their courage in fighting this. I just want to say that when you look at this, this isn't necessarily a public versus private school issue. This bill and this definition will cover public and privates, as defined. I have not heard from the special ed group of professionals. Clearly, because we can't get them to agree on some of this, there's part of the problem. We have an issue across the state. We know that there are school boards and districts that say, oh, it's all a myth; there isn't such a thing. Or...so that's why we've gone first to define it and have the national definition of dyslexia, so that nobody can any longer just say, oh, well, they talk about it, but it's really not anything. So I want to talk about that. Many teachers have contacted the office regarding the need for resources and how...and discussing how frustrating it is. I have talked to the university. There is some discussion right now about implementing certification for teachers on a rapid pace. So I want to thank Dr. Bounds, because he has indicated that he's willing to work on that. And so I hope to continue to do that. And, again, we know that the school-to-prison pipeline is direct and straight if kids can't read by third grade. We have all sorts of statistics on that. So this is something that I hope you will pass. It's just merely...I can't believe we have anybody in the neutral about getting a definition into our statutes. We have all sorts of things defined: autism, blind and visually impaired, deaf. So again, I thank you for your patience and the extent to which we took your time this afternoon. And I hope you'll pass LB...whatever it is. (Laughter) [LB645]

SENATOR GROENE: It's been a long time. [LB645]

SENATOR KOLOWSKI: LB645. [LB645]

SENATOR PANSING BROOKS: LB645. Thank you. [LB645]

SENATOR MORFELD: We'll pass it anyway. Don't worry about it. (Laugh) [LB645]

SENATOR GROENE: We are going to take a break. We are going to take a break. When we come back, I'll be introducing LB595, a bill I'm introducing. And Senator Kolowski will chair the committee. [LB645]

SENATOR KOLOWSKI: Yes, sir.

BREAK

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SENATOR KOLOWSKI: Thank you for your attendance and welcome again to the Education Committee for the third and final bill of the day, that is LB595 and Senator Groene is welcome to the table as well. Thank you. [LB595]

SENATOR GROENE: Thank you, Mr. Chairman. I'll try to skip over some paragraphs to speed things up. I'll stick to the script, I'll try, so I don't elongate it. Discipline in the classroom is the utmost importance in order to allow students to focus and learn and teachers to effectively communicate to the entire class. The present Student Discipline Act, Nebraska Rev. Stat. Section 79-254 to 294, outlines what student actions may lead to discipline and empowers school boards to adopt additional conduct policies. The act further authorizes student short- and long-term suspensions, student expulsion, and mandatory reassignment, as well as describes a student's due process rights. But there is a gap, however, as to what actions teachers and administrators may take to contain an incident by an unruly student. LB595 attempts to fill this gap. LB595 allows teachers and administrators to maintain order in the classroom from unruly students by allowing them to set boundaries and use necessary force or physical restraint to subdue the student until such student no longer presents a danger to him or herself, the teacher or administrators or other students. This bill also allows the teacher/administrator to use physical restraint to protect school property. The bill further allows teachers to remove a student who repeatedly interfere with the teacher's ability to teach or whose behavior is so disruptive that it seriously interferes with the class's ability to learn or who commits other disruptive acts punishable in the Student Discipline Act. The administration can then place the student in another classroom, in-school suspension, or into alternative education programs. The student cannot be returned to the original classroom without the teacher's permission. This bill will give teachers and administrators the assurance that they have control of their classroom without fear of legal action or administrative discipline as long as their conduct was reasonable. Of course, after writing the bill, and it's a pretty good bill as written, but we consulted with a lot of individuals; one of them was the trial attorneys. I thought they would be vehemently against this. They were pretty reasonable. They suggest add the lines--or maybe they'll testify here--but indication wasn't they...if we just said, "if such teacher or administration was acting in a reasonable manner." That is the exception that you see in police actions and a lot of actions, it's reasonable. Supreme Court cases have said as long it's a reasonable action. Also I consulted with my administrators in my local district Saturday morning and they said they really liked it, but they were concerned about the federal guidelines for special education. Could you remove a student from a classroom because some of the guidelines pretty much say they have to be in the classroom? So we added: unless such return is--this is in the return section where the teacher can remove a student from the classroom, has the authority if they are disrupting the classroom--unless such return is required pursuant to the Special Education Act or the federal Individuals with Disabilities Education Act. So that is an amendment we are offering to the committee to correct a couple of legalistic errors. I introduced this legislation because I believe education starts and strives in the classroom. I understand that the majority of teachers are in the profession because they have the gift of teaching. Did you hear

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that? I believe most teachers are very good. They face a lot of scrutiny from parents and from the communities and they want to teach. But they can't teach if they don't have control of their classroom. The end results can't be achieved. So I thought about writing and people say, what do you know about it, Groene? So I received a letter and I asked this individual, an educator, if I could use their letter as my introduction and he said yes. Dear Senator Groene and members of the Education Committee, I am submitting my written testimony in support of LB595. I have been an educator for 20 years, including 6 years as the local president of the Omaha Education Association. In my two decades of experience as an elementary and middle school teacher, I can recite numerous occasions where provisions in LB595 would have been extremely beneficial to me, other teachers, and countless students. I'll begin with the provision in the bill that would legally protect teachers from being sued for using reasonable force or physical restraint to protect other students or school property. It is unfortunate but still a reality that I have to on occasion break up fights or restrain students during emotional outbursts in a forceful manner. Every time I do this, I can't help but fear in the back of my mind about getting sued for my actions. The last thing I ever want to do as a teacher is to use physical force on any student but I shouldn't fear for the financial well-being of my family for acting in a reasonable manner to protect the other students. I feel confident in speaking for the thousands of teachers in Nebraska that this provision is long overdue and very necessary if we are to maintain a safe learning environment in our schools. The second provision allowing for a teacher to remove a student and not allow him or her to return for the remainder of the class without the consent of the teacher is also a welcome provision to be included in the state statute as a means of providing and maintaining a productive learning environment for all students. It is unfortunate that on occasion we have some students who choose to be extremely disruptive and interfere with the teacher's ability to provide meaningful, high-quality instruction. On these occasions, a teacher should be able to use their own professional judgment as to whether or not a student should be allowed to return to class. It is extremely frustrating and at times demoralizing to send a student out of a classroom for extremely inappropriate behavior only to have that same student return in a few minutes later after a brief visit with an administrator. I can't count the number of times I've had a student return to my own classroom with a smug smile on their face thinking they can get away with most any behavior they want at the expense of other students' ability to learn. And to make matters worse, other students see these students return to class with little to no consequence and then some of them choose to act in a similar disruptive fashion believing they, too, won't get in too much trouble. Teaching is not only a noble profession but also a very demanding one. We put in tireless hours of preparation every day to help our students succeed, and we would all benefit greatly from the provisions outlined in your bill. I want to thank you for the time you have put into drafting the bill and I remain hopeful in eventual passage in your legislative session. I introduced this bill because of what I heard. I meet with teachers; I got them in my family. No boundaries. No boundaries. Children are showing up with no boundaries. It's disruptive. It's hard to teach. Then we had an incidence in North Platte where a 35-year teacher just basically lost it. He didn't know what to do with a child that was ten years old that went completely ballistic and

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he had no guidelines. He had absolutely no guidelines of what he could do, as this individual here said, for fear of being sued or losing your job. Humans lose it. He lost it. Would he have lost it if he had guidelines? If he knew exactly that he could have restrained this child with force, held him to the floor, would he have drug the child down the hallway if he knew he had that ability? Bad situation, he called the office, somebody was--nobody was in the office--taking a break, going to the bathroom, you don't know. The child went off. Rules said you could not leave a class alone, but he had this child; so he drug the child by the leg, because he was kicking on the floor, 93 feet to detention room. He lost his job, community revolted, he was hired back. Would this have happened if this would have been in place? I doubt it. Also the Nathan Hale situation in Omaha, heard about that. The teachers were blamed. At the end of the day, the teachers took the blame. They didn't have enough. They were taking counseling. We need to fix this. Is this rare? No. Alaska, here's their statutes. I'm just going to hit some high points: "When and to the extent reasonably necessary and appropriate to promote the welfare of the child or incompetent person, a parent, guardian, or other person entrusted with the care and supervision of a child under 18 years of age or an incompetent person" can reasonably and appropriately use "nondeadly force upon that child or incompetent person." "When and to the extent reasonably necessary and appropriate to maintain order (and) when the use of force is consistent with the welfare of the students, a teacher may," if authorized, use restraint, always for the good of the child, for the good of the classroom. This is not corporal punishment. In our statute, we specifically say this cannot be construed as corporal punishment, big difference--restraint, not punishment. This is not a form of punishment. This is control of a classroom. I could go on and on. Arizona: "A teacher may remove a pupil from the classroom if either of the following conditions exists: 1. The teacher has documented that the pupil has repeatedly interfered with the teacher's ability to communicate effectively with the other pupils in the classroom or with the ability of other pupils to learn. 2. The teacher has determined that the pupil's behavior is so unruly, disruptive or abusive that it seriously interferes with the teacher's ability to communicate..." I could go on and on: Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, California. Immunity, Alabama: "Except in the case of excessive force or cruel and unusual punishment, no certified or noncertified employee of the State Board of Education or any local board of education shall be civilly liable for any action carried out in conformity with state law and system..." Alaska: "not liable for civil damages resulting from an act or omission (1) arising out of enforcement" of school discipline. California: "during the performance of his duties, (of) the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order..." You can do what a parent would do. I could go on and on: Colorado, Connecticut, Delaware, Florida, Georgia, they all have immunity for their school employees when they are trying to maintain order in their classrooms. This is not a punishment. This is not being mean to students. Part of education of a youth is to learn your boundaries. We put a lot on our teachers. We put a lot of burden on them: suicide prevention. This is one they would do gladly to set an example. I talked to a teacher from Texas who is retired. They have corporal

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punishment. I looked at that and I said, no, I don't think they would like that in Nebraska, so we did not do that. But her example to me was parents can sign off that you cannot do it in Texas. She said, I never needed them all to do it. All I had to do was set an example. I know a young teacher who was taught to cross her arms and be hit if a student strikes them. She comes home bruised. That's not just for that student. That's an example, as this teacher here from Omaha said, that's an example to that whole class--you can hit an adult we teach in schools. We need discipline in our classrooms and it's time Nebraska did it. We need to help our teachers control their classrooms. Thank you. I will close when I'm finished here. This is not punishment. If you hear testimony that their child was harmed, I don't know, this will prevent that. This will control the situation before it escalates because we're humans. Thank you. [LB595]

SENATOR KOLOWSKI: Senators, any questions for Senator Groene, please? Senator, let me ask you one. You alluded to it in special education and students with individualized education plans, IEP. [LB595]

SENATOR GROENE: Yeah. [LB595]

SENATOR KOLOWSKI: From that perspective, trying to work toward a least restrictive environment and some of the other impacts that would take place in the classroom, from a constitutionality side, everything you've checked out with what you did is... [LB595]

SENATOR GROENE: We checked. Department of Ed helped us out. [LB595]

SENATOR KOLOWSKI: Okay. [LB595]

SENATOR GROENE: And they said if you add that federal statutes in there, except that we have to follow federal guidelines on special ed into a classroom being removed or returned, they were fine with it and they thought that would fix it. [LB595]

SENATOR KOLOWSKI: Okay. Thank you. Any other questions? Thank you, Senator. [LB595]

SENATOR GROENE: Thank you. [LB595]

SENATOR KOLOWSKI: Opponents, excuse me, yes, proponents, let's start with them. Welcome, Jay. [LB595]

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JAY SEARS: Good evening. For the record, I am Jay Sears, J-a-y S-e-a-r-s, and I am here testifying on behalf of the 28,000 educator members of the Nebraska State Education Association. We are testifying today as a proponent because our members have told us, in no uncertain terms, that they need strong support and additional resources and training to ensure safe classrooms for all students. Senator Groene, you've identified an issue that is of significant concern to our Nebraska classroom teachers. A week ago Sunday, we, the NSEA, sent out to 19,000 of our K-12 members by e-mail a survey on LB595 asking six questions specifically about the little divisions in each parts of the bill and on the issue of safe classrooms and student discipline. The response was overwhelming. Within the first three hours, we received more than 3,000 responses from our members. In my 33 years in working for NSEA, I don't think we've gotten 3,000 responses for almost anything. We've since received more than 7,100 responses to our survey and over 2,000-plus written comments because our seventh question was a fill in the blank--tell us what is going on and what do you need. The response rate was easily, as I said, the highest we've ever received from our members. These are some of the questions that are on the minds of our members. I could share with you all 105 pages of it, but you've got other things to do like sit here in hearings. So the questions were what do I do with a student who is violent and interfering with the opportunity to learn for the other students in my classroom; how do I protect my students and myself from being harmed by the violent behavior of a single student; will this student get the help he or she needs to return to and function in my classroom? And that was probably one of the most often elicited comments that we got. These and about 2,000 more comments were received from our members in just nine days of an open survey. I'm getting tired of reading the comments, but they enlighten me about what's really going on in some classrooms. Let me share with you just one teacher's story: I was assaulted by a student my first year in my district. I was taken from my classroom to an emergency room. I missed a week of work. It never occurred to me that that student would be placed back in my classroom. Upon my return, the student was to return to my room. There's more to the story, but I think you should know this is from a fourth grade teacher. This wasn't a special ed student either. In Nebraska, every teacher knows that we speak about the opportunity for all students to learn. "All students" means all students to our members. Our members do not want any child to miss the opportunity to learn, even those who are disruptive and need to be removed from the classroom for a while. The Nebraska student discipline statute and in particular statute 79-258, states that teachers are allowed to use physical contact, short of corporal punishment, to the degree necessary to preserve order and control the school environment. Yet our members are fearful that when they do remove a student from class, the student might return in a matter of minutes. In fact, 70 percent of our survey respondents reported that they were not aware that they are, in fact, allowed to use physical contact to protect themselves, their students, or the student who is exhibiting the violent behavior. Seventy percent of the teachers responding reported that their administrators are supportive of their decisions on discipline. So it's not a we versus them. It's about how do we control what's going on in classrooms and make sure that we have support. We believe there is a better solution to ensuring that all students and staff can learn and teach in a

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safe and supportive environment. Some of the concepts in LB595 should be discussed, along with other solutions that NSEA believes can be developed through an interim study. In that setting, all interested parties can review and discuss potential solutions. I'd go down to the very bottom of my testimony. NSEA is committed to providing the professional development and training for our members to help them build a safe and secure learning environment. We look forward to collaborating with the Education Committee, the Nebraska Department of Education, the Nebraska School Administrators, the Nebraska Association of School Boards, parents, students, and others to find solutions to this growing problem. Thank you for the opportunity to testify in front of you today. [LB595]

SENATOR KOLOWSKI: Mr. Sears, have you...do you think there's a shortage of written guidelines from the aspect of school boards across the state that this is clearly stated and they would know what their range of options might be? [LB595]

JAY SEARS: I think...not all of our members, all of our teachers, all of our administrators are aware about the statements in 79-258. The thing I would say is many of them don't want to become physically involved in any altercations because they know that violence begets violence and that's not a good model. So as we did our survey, most of our teachers, over 70 percent of them, were not aware that there is a statute that deals with the ability to protect one's classroom environment, whether it's individual teachers, individual students, or property or whatever. And I don't see them entering into that...getting in between students or a student who for some reason becomes very violent. In fact, they're being trained to empty the classroom of students and themselves and let what happen is going to happen--usually students get pretty tired really quickly--and then go back in and control the environment. It's not a good place for 30 little first graders to be in when a classmate has a mental health issue and goes off in a classroom. So I don't know if even being aware of it we would do something about that piece. I also know that teachers don't want to send kids out of a classroom because that's where they learn. But they also know sometimes students have to be someplace else so that they can calm down, get a hold of themselves, think about where they're at, make good decisions, and come back. Many of our districts are working through many different types of programs. I know the Department of Ed has done training on PBIS, positive behavior intervention supports. And where it's introduced and implemented with fidelity, the climate in schools change. That takes resources. That takes time. But our members are willing to go through that. They want to know how I can deescalate any problem in our classrooms so that all kids can learn. I probably talked way around your question but... [LB595]

SENATOR KOLOWSKI: That's all right. I appreciate that. I didn't know where the school board association would be as far as reinforcing in every district... [LB595]

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JAY SEARS: Yeah. [LB595]

SENATOR KOLOWSKI: ...some necessary (inaudible) that would be (inaudible). [LB595]

JAY SEARS: Yeah. And I'm sure districts have different policies and processes. I also want to assure you that...and the administrators, our members don't want to take over the student discipline piece of doing the hearings and the due process and those pieces. They want a break for the child and themselves and the students in the classroom so that we can get order and learning can go on and especially for that child that is the one that might be violent or be what my daughters would call naughty. They get the help they need because it's not necessarily just the child that has the mental health issues. Many of our children also come from environments of the way you solve a problem is to be violent. And so we need tools to help the kids that we work with every day. And so we're willing to work with that. We're willing to work with the partners in that process. And I don't know, like I said, our survey showed that most of our members weren't even aware of the student discipline provisions so leave it at that. [LB595]

SENATOR KOLOWSKI: Okay. Any questions from senators, please? Yes, Senator Pansing Brooks. [LB595]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Sears. So I'm just trying to figure out whether or not there's something that can be done that's sort of a middle ground because I know that like when I was in Leadership Lincoln they talked to us about how police learn how to do restraint. [LB595]

JAY SEARS: Right. [LB595]

SENATOR PANSING BROOKS: And there's no fiscal note on this so there's obviously no training involved here. [LB595]

JAY SEARS: Yeah. (Inaudible) yeah. [LB595]

SENATOR PANSING BROOKS: So why...I just can't imagine allowing somebody that hasn't been trained to just start attacking somebody else who's in a negative situation. [LB595]

JAY SEARS: Right. And, Senator, I think you'll also know...understand that teachers don't want to be that restrainer because they're also the caregiver, the learner, teacher, the... [LB595]

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SENATOR PANSING BROOKS: Right. [LB595]

JAY SEARS: ...and that changes the model of who you are. But they also want to learn how do I deescalate a situation; how do I build the trust with students; how do I work with students who, you know, every day the safest place for them is in that classroom. And when it's disrupted, then learning doesn't go on and that's important. That's why we as an association have committed to providing professional development for our members as often as we can get there and whatever resources we can get. I look at...I'm a former special ed teacher along with being a social studies teacher and so I look at the model of special ed in where we have teams that try to put together the supports that every child needs to learn, whether it's a child with dyslexia or whatever. And so maybe that's a road we need to look at is, okay, let's have the professionals and the parents and whomever else needs to be in that room to talk about the supports. And sometimes as I found out working with the members in my southeast Nebraska school districts, the solution really is about helping families and how families cope with child rearing and their environments also. And when you can bring parents into this process, then everybody understands that school is about learning and there are rules. But some children need other types of supports than what they can get right now in school so. [LB595]

SENATOR PANSING BROOKS: I guess I'm also interested, it doesn't seem like there are steps. [LB595]

JAY SEARS: Yeah. [LB595]

SENATOR PANSING BROOKS: It seems like there ought to be steps initiated like call the parents or... [LB595]

JAY SEARS: Yeah. Can I... [LB595]

SENATOR PANSING BROOKS: I mean if the first step is to be able to restrain and use physical force, that's pretty Draconian. [LB595]

JAY SEARS: That's not where our members want to go. And I think many districts do have a good process to go through so I don't want to paint with a broad brush all districts. But not all of our districts have the same resources or same expertise. And so can we at the state level help to start to provide those supports? I've always found that you can't dictate and pass laws that make people be good. But we need the tools to help people do and make the right decisions in our classrooms. [LB595]

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SENATOR PANSING BROOKS: So what resources are needed? You just said different resources are available, different... [LB595]

JAY SEARS: Okay, yeah. Well, for example, if I decide to do one of the behavior intervention programs in my school district, I know Papillion La Vista has done that, that takes time and resources and commitments by the whole school district to learn the processes of building the relationships with students in our classrooms so everybody knows everybody and you can call them by name and you can talk about, uh, Johnny, you didn't do this piece. And it's not in a negative way. It's, you know, let's step back and think and let's make good decisions. And so there are processes that help us make the decisions that probably you and I grew up with our moms and dads telling us about when we made good decisions and when we didn't. So those are the things. And I think if we have the people that I mentioned around the table talking about what's the supports and what's the process we have to put in the room to make sure that every child gets the education and learning that they need then we'll make the right decisions for students. [LB595]

SENATOR PANSING BROOKS: Yeah. And we also...I think everybody here would agree that making sure teachers are safe is of utmost importance so that's not what I'm trying to talk about. [LB595]

JAY SEARS: Yeah. [LB595]

SENATOR PANSING BROOKS: But as I sit on Judiciary, I also see the zero tolerance policy where a schoolyard fight is ending up a charge of the courts. [LB595]

JAY SEARS: That's wrong as you know. [LB595]

SENATOR PANSING BROOKS: And so it seems like we're going to such extremes on any kind of infraction. [LB595]

JAY SEARS: Um-hum, that's... [LB595]

SENATOR PANSING BROOKS: And to not set forward a path of here's the first step, call the principal, call the parents... [LB595]

JAY SEARS: Yes, it's progressive. [LB595]

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SENATOR PANSING BROOKS: It should be progressive, but this does not set forth any kind of progressive pattern. [LB595]

JAY SEARS: And that's what we'd advocate for is something that's progressive. I know in the last three or four years in testifying in the different committees different pieces of the package are starting to come together. HHS is doing the mental health piece and starting to provide some of those supports in communities that don't have them. At the judicial level, you're looking at juvenile justice and how do we treat offenders that really aren't offenders. But what we're doing is building a pipeline that's not good because it's more costly. [LB595]

SENATOR PANSING BROOKS: Okay. Thank you for your time today. [LB595]

JAY SEARS: Thank you. [LB595]

SENATOR KOLOWSKI: The climate and culture of a building is the responsibility of everyone in that building,... [LB595]

JAY SEARS: That's correct. [LB595]

SENATOR KOLOWSKI: ...not just the leadership or the principal or superintendent or anyone else in that district. And it's very important to inculcate the whole staff... [LB595]

JAY SEARS: Whole staff. [LB595]

SENATOR KOLOWSKI: ...and the students to that attitude and that hopefully knowledge and ability to carry that on with one another in a responsible way. [LB595]

JAY SEARS: That's correct. [LB595]

SENATOR KOLOWSKI: Hopefully we can... [LB595]

JAY SEARS: Do that. [LB595]

SENATOR KOLOWSKI: ...concentrate on that rather than... [LB595]

JAY SEARS: Sure, yes. [LB595]

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SENATOR KOLOWSKI: ...punitive natures of things so. [LB595]

JAY SEARS: Yes. And I know you've had that experience because we had it together as you built a culture at Millard West so. [LB595]

SENATOR KOLOWSKI: Absolutely. [LB595]

JAY SEARS: It can be done. [LB595]

SENATOR KOLOWSKI: Absolutely. Senator Erdman. [LB595]

SENATOR ERDMAN: Thank you, Chairman Kolowski. Thank you for coming. In my prior life, we did a lot of surveys and sent things out to people, and we incentivized people to send in replies and we never got to 25 percent. That's amazing. [LB595]

JAY SEARS: That's why I said this is a hot button issue. [LB595]

SENATOR ERDMAN: Yeah. [LB595]

JAY SEARS: And if you listen to your members... [LB595]

SENATOR ERDMAN: Yeah. So my question is, what legal protection do these teachers have now if they operate under the provisions that are there? [LB595]

JAY SEARS: They're protected by the processes that they go through. They join our organization because then they have legal representation. We know in this society it's litigious and so, in fact, I just had an example in a school district where I work where a kindergarten child ran across the playground, a teacher had their arms out, the youngster ran into them and their loose tooth came out. And now the district's insurance company is paying the bills for the child's tooth and the orthodonture or whatever else she's going to have. In my day, my mom would have said, Jay, you got to watch where you're running. They wouldn't have sued the Omaha Public School District. We have that now. And so that's...we know when we enter into the education profession some people aren't going to like what we do and some people are going to find--sorry, those of you who are attorneys around the table--will find an attorney who will take a case. [LB595]

SENATOR ERDMAN: And so how (inaudible)? [LB595]

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JAY SEARS: You can't legislate immunity in this process so. [LB595]

SENATOR ERDMAN: I understand that. [LB595]

JAY SEARS: And that's not what we're asking for. [LB595]

SENATOR ERDMAN: So my question was, what legal protection do the teachers have? [LB595]

JAY SEARS: They've got me. [LB595]

SENATOR ERDMAN: Okay. [LB595]

JAY SEARS: And unfortunately, they call me, but that's why they pay their membership and so they have legal representation in that process. They have educators' liability insurance also... [LB595]

SENATOR ERDMAN: Okay. [LB595]

JAY SEARS: ...just like districts do, so yeah. [LB595]

SENATOR ERDMAN: Thank you. [LB595]

SENATOR KOLOWSKI: Thank you. Senator Walz, please. [LB595]

SENATOR WALZ: Yeah. I have a question. [LB595]

JAY SEARS: Senator, yes. [LB595]

SENATOR WALZ: Thank you for coming. How are you? [LB595]

JAY SEARS: Yes. I just drove through your city the other day. [LB595]

SENATOR WALZ: Oh, you did? [LB595]

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JAY SEARS: That was on my way to Arlington so. [LB595]

SENATOR WALZ: Okay, what was I going to ask? [LB595]

JAY SEARS: I'm sorry. [LB595]

SENATOR WALZ: No, no, no, that's okay. So you did have some good results from people responding to your survey. Can you give me an idea of what kind of questions were asked on that survey, please? [LB595]

JAY SEARS: Sure, sure. I'd be glad to. Figured you all don't want to go to dinner tonight anyway. So, as I said, you hit the hot button, Senator. So we asked six questions and you got to choose yes or no. So our first one was, have discipline and behavior problems in your school increased over the past few years? Yes or no. And 80 percent of our respondents said, yes, they've had violence increase. And that's, I'll tell you right now from my ed-psych background, it's not scientific. Okay? It's just a where are you, where are our members? The second question dealt with are unruly and disruptive students the biggest problem you face in your classroom? And over 60 percent said, yes, it's the biggest problem. The biggest problem should be helping kids learn but it's not. The third question: Do you believe your principal and administration is supportive of teachers' decisions on discipline? Almost 71 percent of the members said, yes, my principal, my superintendent support what I do when I discipline students and they have a discipline policy. Then we got more specific. Question four was LB595 would authorize teachers to remove a student from class if the student's behavior interferes with the classroom. Absent the teacher's consent, the student would not be allowed to return to classroom. The bill prohibits administrators from coercing a teacher to consent to the return of a student. The bill also prohibits legal action or administrative discipline against the teacher for removing a student. Should teachers be given the authority to make the final decision in determining whether a student may return to the classroom? Over 80 percent of our teachers said yes. But when you read the comments, it's an individual, whether it's a principal, teacher, or whomever, shouldn't have the final say on that. That needs to be done, like I talked about, in a multidisciplinary team. The fifth one was LB595 also authorizes teachers and administrators to use necessary physical force or restraint to subdue a student that becomes physically violent toward another student or school personnel. Do you believe the teachers and administrators are currently allowed to use necessary physical restraint or force short of corporal punishment to the degree necessary to subdue a student that becomes physically violent toward another student or school personnel? The answer to that was no and, in fact, over...just at 60 percent. It's kind of like that show what we do. And then the last question, LB595 also authorizes teachers and administrators to use necessary physical force or restraint to subdue a student that exhibits destructive behavior toward school property. Do you believe teachers and administrators are currently allowed...and it goes

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on and 70 percent of our teachers were not aware that they were allowed to use some type of restraint in that process. So my take on that one is--any of those questions is--they're not aware, they don't want to be aware. They don't want to have to be physical in a classroom. They want orderly classrooms. They want learning to go on. And so what supports we can give teachers and parents and students is what we're looking for in that process. In some cases it is. You have to separate the child from the classroom for a while, but then they need supports. You just can't take somebody out and let them come back. So what is it we're doing? Sometimes it's more psychologists, sometimes it's social workers, sometimes it's help for Mom and Dad or whatever, you know, the family situation is. So I hope I answered your... [LB595]

SENATOR WALZ: Well, yeah. I guess the last question is a little confusing... [LB595]

JAY SEARS: Sure, sure. [LB595]

SENATOR WALZ: ...because the answer was, no, they currently don't have that. But if...there was not a question that said if a student becomes physically violent toward himself or herself, a teacher or administrator... [LB595]

JAY SEARS: Yeah. [LB595]

SENATOR WALZ: ...may use, you know, and how do you feel about that? [LB595]

JAY SEARS: Use, right. Yeah, yeah, I could (inaudible) yeah. [LB595]

SENATOR WALZ: Do you agree with that or not? So I guess that would have been a... [LB595]

JAY SEARS: And I think after reading through the 105 pages of comments, you know, it runs the gamut but most of our teachers are responding we've been instructed to remove the rest of the students and let the student that's exhibiting violent behavior calm down because they...there's a minute or two and then they're not destructive but to watch and make sure that they're not hurting themselves because we've had that happen also. So it's...there are procedures in many districts but what happens after that incident? Because kids are traumatized, teachers are traumatized, and the student is traumatized. And so there's got to be some solutions. We'd be glad to talk about what they might be. [LB595]

SENATOR KOLOWSKI: Any other senator questions? Another one, Jay, if I may. [LB595]

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JAY SEARS: Sure. [LB595]

SENATOR KOLOWSKI: Separating a couple of third graders is a lot different than separating a couple of juniors in high school. [LB595]

JAY SEARS: Yes. We've been in high schools, haven't we? [LB595]

SENATOR KOLOWSKI: Yes, we have. And that's a different situation. Either a boy/boy fight or a girl/girl fight, there's not much difference sometimes. [LB595]

JAY SEARS: We probably have stories about that, don't we? [LB595]

SENATOR KOLOWSKI: Yes, we do. Those kind of situations are traumatic and sometimes very dangerous. And the whole issue of the student not being allowed back into a classroom by a teacher's decision is going to be problematic to say the least... [LB595]

JAY SEARS: That's...yeah, well,... [LB595]

SENATOR KOLOWSKI: ...especially when you have 245 districts and 45 of them have a plethora of kids... [LB595]

JAY SEARS: Right, yeah. There's no place else for them to go, right, yeah. [LB595]

SENATOR KOLOWSKI: ...and others may not have even two teachers in a department. How do you approach that situation? Yet, we still need all the resources to deal with those situations... [LB595]

JAY SEARS: Sure. [LB595]

SENATOR KOLOWSKI: ...in different districts, depending on their size. [LB595]

JAY SEARS: Yeah. And I know some districts use a you're not having a good day today so I as a teacher can send you to the cool-down room or time-out room... [LB595]

SENATOR KOLOWSKI: Time-out room. [LB595]

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JAY SEARS: ...or whatever. But all that becomes for some students is I got out of class. And so it's what's the follow-up? Can I as a teacher and the school psychologist or the counselor or the principal or somebody sit down with the student and talk through what the real issues are? Do we need to bring Mom and Dad or a guardian in and talk about, okay, those aren't proper behaviors in school? How do we solve that issue and still realize that all of the students in the school system have the right to an education in that district? So it's not an easy issue, as you know... [LB595]

SENATOR KOLOWSKI: Absolutely. [LB595]

JAY SEARS: ...because you've got to deal with them. [LB595]

SENATOR KOLOWSKI: You mentioned earlier of the mental health aspect. [LB595]

JAY SEARS: Aspect, yes. [LB595]

SENATOR KOLOWSKI: Students could have an anger issue. They could have a short fuse issue, whatever you want to call it; but whatever sets them off and they put themselves in danger and others around them in danger or physical property in danger depending on what they're doing. We've got to have resources again to address those things. And that's not always available or prevalent, even with ESUs and other districts or within a larger district, you have a little more way to do some of those things. I hope whatever we do with this bill we'll have an understanding that resources need to follow... [LB595]

JAY SEARS: Yes. [LB595]

SENATOR KOLOWSKI: ...so there's some assistance for places that need that kind of help. [LB595]

JAY SEARS: That's correct. And to follow up on that, I know that the legislative committees of Health and Human Services and Judiciary are trying to deal with those issues and put those packages together. Because if you come to HHS when they have a bill about how we help incentivize more people to go into the behavioral health fields... [LB595]

SENATOR KOLOWSKI: You bet. [LB595]

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JAY SEARS: ...we're going to be right there because we know you don't have to go very far down O Street where there aren't behavioral health supports in the communities. And we saw this December an example of telehealth and where families and students and community members could come into a mental health office, kind of like your dentist office, sit in front of a screen and talk to a mental health counselor. And so that might be some of the issues that we need to solve for especially rural schools that we have all over Nebraska. So thank you, Senator. [LB595]

SENATOR KOLOWSKI: Thank you. Any other questions, please? [LB595]

JAY SEARS: Thank you for your time, appreciate it. [LB595]

SENATOR KOLOWSKI: Thank you. How many more would like to testify today on this? Okay. Other proponents. Proponents, please come forward. Again, proponents coming forward, anyone else? Okay, opponents, would you please come forward and have some seats up here in the front row or second row, if you would, please, so we know how many we're dealing with. Thank you. Good afternoon. Good evening now. [LB595]

KAREN HAASE: Good evening. Thank you, Senator. My name is Karen Haase, first name is spelled K-a-r-e-n, last name is spelled H-a-a-s-e. My address is 301 South 13th Street, Suite 210. I am an attorney in private practice and I focus my practice exclusively on the representation of public school districts in the state of Nebraska. I need to start my testimony this evening by telling you that I am not a registered lobbyist. I'm not paid by any client to be here. I am testifying as a private citizen and based on my knowledge professionally in working with and representing about 150 to 170 different public school districts across the state. Although I think Senator Groene has put his finger on a crying need in the state of Nebraska, which is the need for mental health resources for young children in Nebraska, I believe that LB595 is bad public policy, bad for teachers, bad for schools, and bad for kids. As I've tried to sort through my thoughts to tell...explain to the committee why I feel so strongly about this bill, I want to divide my comments into first addressing general education students, typical developers; and then secondly, I want to visit with you a little bit about special education students. So general education students are protected by the United States Supreme Court in Goss v. Lopez against being dismissed from public education settings for more than ten days unless they've had formal due process, which means the student has a right to have a representative to challenge the evidence against him or her, to confront witnesses and all that stuff. Right? The Nebraska Student Discipline Act, the Unicameral has decided in our state that we cannot dismiss a student from educational services for more than five days without formal due process. That exists in the Nebraska Student Discipline Act. So if we want to remove a student from his educational setting based on his behaviors for more than five days, we have to give the family a notice; we have to

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give the family an opportunity to request a formal due process hearing; they have the right to see all the evidence that the administration has against him or her and etcetera, etcetera. That means that simply removing a student from a teacher's classroom when a student is disruptive does not remove that student from the public school system setting. It means that the school district is going to have to find something to do with that child which means that the school district may have to hire additional staff. They may have to have additional facilities. Senator Erdman, in a situation that I had in one of your school districts very recently, we had a student who was consistently fleeing the classroom and the parent insisted that the teacher was this child's trigger and so the student should have a different teacher. But, of course, in your school districts, a lot of the time we don't have more than one teacher in each grade level. So the idea that every school district is an Omaha Public Schools with a smorgasbord of classroom teachers to select from just does not exist. And so how does it work in your school districts, Senator Erdman, when a teacher says I will not teach this child and we don't have another third grade teacher? So all of those are my concerns about students who are typical developers, just sort of bad kids who are difficult and frustrating; but I don't think the solution is simply to allow a teacher to dismiss them from his or her classroom. Now Mr. Sears talked about a fourth grade teacher who was taken to the hospital because a student assaulted her, and he said that that student was not a special education student. I don't know this teacher. I don't know the situation. If a fourth grade student assaulted a teacher in one of my school districts to the extent that she had to be taken to the hospital, we would immediately recommend that student for expulsion. Under the Student Discipline Act, you can expel a student for one semester for most types of misconduct; two semesters for serious bodily injury. If the teacher was transported via unit to the hospital, I would take the position that that was serious bodily injury so we can already expel that student for two semesters and we don't need LB595 and all the complications that it brings in order to expel that fourth grade student. The last thing I want to say about typically developing students, Mr. Sears is correct that 79-258 gives teachers the ability to use reasonable force to maintain order in the school building. And LB595 would say that a teacher can use reasonable force. And this is...it's just the weird way lawyers work, that actually gives teachers less protection. Currently, teachers can only be held personally liable if they engage in willful and malicious misconduct. Otherwise, the school district is the one that would have to pay any kind of damages under the doctrine of respondeat superior. The kindergartner who lost the tooth, that's one of my clients. The teacher is not personally paying the family for the lost tooth, the school district is because we stand behind our teachers. Okay, sorry, I'm running out of time. So that's all general ed stuff. Let's talk about special ed. I think Senator Groene is absolutely correct that LB595 as it was originally introduced cannot withstand constitutional muster and it can't withstand challenge under the federal statutes, IDEA, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. About 12 percent on average of students in our schools verify under IDEA. Another 30...oh, Senator, I'm sorry. [LB595]

SENATOR KOLOWSKI: Go ahead, finish up. [LB595]

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KAREN HAASE: Thank you. About another 30 percent qualify as having some other form of disability. We cannot remove special education students or students who have Section 504 plans, we can't remove them from their current educational placements for more than ten days unless we go through an expensive and complicated process that you don't want to hear about. But it's the kind of thing that lawyers like me do, right? So if Senator Groene's amendment says we're going to remove students except those who have special needs, the vast, vast majority of the problems that we're trying to solve with LB595 won't be solved because those special education students and those disabled students under Section 504 of the Rehabilitation Act will have the right to come back into the classroom. The teacher that's having to cross her arms while the child assaults her, I guarantee you that is a special needs child. That is a child who needs mental health. That is a child who needs additional support from HHS. That is a child who needs teachers who are able to work with him and stick by him. The last thing I'll say is, Senator Pansing Brooks, what would Tom Pansing have done if his reading teacher could say I don't want to work so hard to teach this kid; he's out of my room, right? And he was not verified as special ed because at the time your brother was going through school we didn't know enough about learning disabilities to know that that was a disability. These behavioral disabilities are exactly the same problem. And I'm telling you it is not good for schools, teachers, or kids. And for those reasons, I respectfully request that you not advance this bill. [LB595]

SENATOR KOLOWSKI: Thank you, Ms. Haase. Any questions, please? Senator Erdman. [LB595]

SENATOR ERDMAN: Thank you, Chairman Kolowski. So thank you for coming. So what is your solution to those kids who aren't...don't have mental illness problems in the classroom who are disruptive? What is your solution? [LB595]

KAREN HAASE: If the child does not have mental illness issues and is disruptive, I believe that student, we should go through the Student Discipline Act. We can bounce that kid for up to 5 days with very rudimentary due process; up to 19 days would be long-term suspension; a semester would be expulsion. Now if the committee wants to amend the Student Discipline Act and make it so that we can expel for longer than a semester, I would actually support that. So I think there are processes in place, Senator Erdman, to deal with the general ed student who is disruptive. [LB595]

SENATOR ERDMAN: Obviously it must not be working or the NSEA wouldn't have got these kind of results. [LB595]

KAREN HAASE: No, I think what the NSEA results show you is that there are so many mentally ill young children. I think that, what was it, 83 percent say discipline has gotten worse

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in the classroom. I wish we could drill down. I get these phone calls every day: Karen, we have a third grader who has kicked over the desk and the teachers are scared of him. What's his deal? He's emotionally disturbed; he's got a behavior disorder. Okay, well, we'll work through the process but that student, those are the kids that Mr. Sears's members are concerned about.
[LB595]

SENATOR KOLOWSKI: Any other questions? Yes, Senator, please. [LB595]

SENATOR LINEHAN: Thank you, Senator Kolowski. You said 12 percent of kids are under IDEA and then you said 30 percent have some other form of disability. Where is that from? What...what do...numbers... [LB595]

KAREN HAASE: Where are those numbers from? [LB595]

SENATOR LINEHAN: Yeah. [LB595]

KAREN HAASE: Those are national averages. I just attended a national conference for special education attorneys so those happen to be the most recent numbers that have been released. I can get you that data but those are national averages. [LB595]

SENATOR LINEHAN: Okay, so could you get me that data and the source? [LB595]

KAREN HAASE: Yes, I will. [LB595]

SENATOR LINEHAN: Okay, thank you very much. Thank you. [LB595]

SENATOR KOLOWSKI: Yes, thank you. Senator Pansing Brooks. [LB595]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Haase. I'm interested what is the solution then if this many teachers are really that concerned and feel that they're out on an island that they cannot handle. So we have that many more mentally ill students. They still need help and the teachers still need help. [LB595]

KAREN HAASE: Yes. [LB595]

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SENATOR PANSING BROOKS: So what are the solutions, what are the plans for protecting the teachers, for helping them to have a plan of how to go forward and do something about all this? [LB595]

KAREN HAASE: Well, we'd have to, for each individual child we'd have to go through the IEP team meeting and the whole process. But the attorneys in my firm have...what we're lobbying for is that every educational service unit in the state provide a regionalized mental health and behavior placement so that a student in...I'm just trying to...Fillmore Central could, although you guys are...have the luxury of geography, but so a student from Fillmore Central could be sent to a regionalized program that's operated by the service unit that has the specialized training and behavior therapists and social workers and all that stuff. But that's the...one of our problems is geography. Our other problem is that nationally mental illness among children is just exploding. And so I don't...I cannot give you like the magic pill but I do think programmatically we have really excellent service units. So if we could have a regionalized system, that would be very helpful. [LB595]

SENATOR PANSING BROOKS: Thank you. [LB595]

SENATOR KOLOWSKI: Any other questions? Thank you, ma'am, appreciate it. [LB595]

KAREN HAASE: Thank you so much. [LB595]

SENATOR KOLOWSKI: Next. Let's try to please stay within the five minutes. When the red light comes on, conclude as to where you are. [LB595]

BRAD JACOBSEN: Good evening. Now I can say good evening I think now. [LB595]

SENATOR KOLOWSKI: Good evening. [LB595]

BRAD JACOBSEN: Brad Jacobsen, B-r-a-d J-a-c-o-b-s-e-n. I'm a 6th through 12th grade principal and I am here representing the Nebraska Council of School Administrators, so, Senator Kolowski and Education team, thanks for being...hanging in there this evening with us. So I'm going to jump to just a little bit about probably more about the process. I think we've heard a lot--even there were some questions to Mr. Sears and also just to Karen--about the actual process. So I guess I can speak from, you know, 21 years in education and 14 as a teacher and now this is my eighth as an administrator. You know, I think that for us, that process for me and the people that I've worked for, it's, you know, it's a yearly process. We start our year with our staff talking about things like routines and procedures and adherence to those things. And it's a

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constant. I mean it's not something you hand out your rules at the first day of class and then snap your fingers and everything is going to be perfect. It is a work in progress teaching and reteaching those desired behaviors all the time. And, you know, with the increase in especially the little ones, you know--and I don't have the little ones--with the mental health concerns and the anger, you know, that even adds to that even more, you know. And a typical seventh grader, I happen to have one of those in my school, he'll have 13 different teachers during the school year. That's 13 potential sets of routines and procedures and having to learn how to, you know, navigate that. So we talk a lot about it with my staff and we work together. It's not me giving them or telling them, it's us, and we literally sit down at our round lunch tables in August and each year we go through some of those things about adherence. And we talk about, you know, we have a policy, we have a district policy about restraint and seclusion that's been, you know, it's been there...I can't...I've been at the same district now for 21, well, 20 years, and it's been there the whole time. So however, you know, listening to some of the things today, I think certainly it's incumbent on...that's where it becomes incumbent on the leadership--the superintendents and principals--to make sure that the staff knows what their boundaries are and what they can do in order to keep a kid safe from themselves or harming equipment or hurting somebody else or them...or the staff member themselves. So, you know, and I think bigger picture, I work a lot with my staff and there's always ideas for new rules. The new kid shows up. The new kid is dropped in as a foster kid placement from HHS and there's always a new opportunity to create a new rule. We live by the mantra that, you know, words impact relationships, relationships impact culture, culture impacts results. My staff and students might get tired of hearing me say that but I've heard that word "culture" from me and Mr. Sears, Senator Kolowski have really talked about that a lot. I don't think you can replace the effort that it takes to continually work at building those relationships and, you know, such...in my school in the last three years, we've actually, you know, cut the number, you know, our failing grades have cut in half in three years, our suspensions have gone down from a 1:1 ratio. We actually have a positive referral system that we used to be 1:1; now it's 3:1, positive to negative. You know, those things aren't because a principal has put in a new system or set up a new rule. Those are teachers deciding, you know, okay, this kid, I got to figure this kid out, I...we've got to...and we work with each other or they work with their colleagues. You know, we talk about who is having success with this particular student and we just work and it's good work and it's important work. You know, best part about a teacher in education is it matters, the hardest part: that it matters every day. So that's kind of my...you know, I didn't have a script to read. I wanted to be available as a practicing administrator to answer questions but that's where my heart took me today after I listened for a little while with what I've heard this afternoon into this evening. So do you have any questions for me? [LB595]

SENATOR KOLOWSKI: Any questions, please? Senator Erdman, please. [LB595]

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SENATOR ERDMAN: Thank you, Chairman Kolowski. So you've been in education for some time now. [LB595]

BRAD JACOBSEN: Yeah. [LB595]

SENATOR ERDMAN: And we've heard today that mental illness is increasing. When you started teaching, was mental illness this big a problem? [LB595]

BRAD JACOBSEN: I would say no and I think, you know, what's the cause of that? I don't know that we'll know what the cause of that is. You know, is it electronic devices? I mean there is some brain research, and please nobody ask me to cite the research right now, but I know there is some brain research talking about that, you know, the frontal lobe of the brain isn't developing as it used to maybe because of electronic devices and access to technology. You know, that's not my expert area. You know, I do know things that, you know, kids don't reason as well. And if the frontal lobe is your reasoning lobe and they don't reason as well as they used to, you know, there's maybe some of the reason we're seeing more anger and those types of things. So I think, you know, there is definitely more. We have in Saunders County a school-based behavioral health program through a grant; we have two full time for the schools in Saunders County. And there is a waiting list of 38 kids on that list and we have two full-time therapists and there's, what is there, six schools. So that's new this year and already we have a waiting list of 38 kids. So I think the data certainly would show that there's an increase. [LB595]

SENATOR ERDMAN: Was it a little surprising to you to see the response back to the NSEA survey that 71 percent of the teachers didn't know that they could use the force that they need to use or be... [LB595]

BRAD JACOBSEN: Yeah, it really, it was to me. And at the...you know, not only was it a surprise because I think I'm fairly intentional about, you know, discussing those things, but it also made me reflect as a leader that, you know, that I wonder if, of that, the 7,000 responders, how many of them were mine. And I know I have a strong membership in NSEA. I was a member in NSEA so I would assume some of those are mine, and so that...one of the things I'm planning on doing tomorrow is making sure that they have some information about what they are able to do if needed. [LB595]

SENATOR ERDMAN: So what do you think the solution is if LB595 is not the solution? [LB595]

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BRAD JACOBSEN: Well, you know, I think there are...you know, I think most in LB595, a lot of it is already available to us. I know as I read through it and I look at the statute and my handbook, which is approved by my board each year, which is older than by statute, it's available now. I think communication. I think spending more time about with building of the culture and talking about, you know, the ways how do we keep a kid engaged, keep him in the classroom, you know, what are reasons they become disengaged from learning. And so, you know, teachers by nature I've found are very reflective and they really want to grow. And if you give them the meaningful piece that they can reach that one more kid, they'll take that so fast and they'll run with it. And so, you know, I think it's just, it's continued, it's practice, and it's intentional about how can we keep some of these students in the classroom engaged because it's disengagement or it's...it can be a learning disability or anything that interrupts that learning process that, you know, could lead to something that leads to then an emotional outburst or something that's disruptive. And, you know, that's our line we use all the time in my building is, you know, when they disrupt the opportunity of others to learn, sometimes it's time for them to go. Now a lot of my teachers, that could be a three-minute timeout, could be a, you know, a one-minute timeout, and then they're going to step outside with the door open so they can keep supervising the kids that are in there and they may have a conversation with let's talk about what we did that was inappropriate, let's talk about how we're going to reengage in class, and let's...when you're ready to do that, you can come back, or maybe they need to head down and see Mr. Jacobsen kind of thing. So, I mean, again, that's a strategy. It doesn't always end that way and, you know, there are times when it doesn't end well and there's discipline to be had and we have that system in place to do that too. [LB595]

SENATOR KOLOWSKI: Any others? Senator Linehan. [LB595]

SENATOR LINEHAN: I had a question. But somebody said earlier that one of the strategies was the teacher and all the other kids to leave the room, which, is that a strategy? [LB595]

BRAD JACOBSEN: It sure can be. I mean, you know, not...and that's...I would say that's a situation where, you know, I'm a middle and high school so I'm getting to that size that Senator Kolowski mentioned. Sometimes there are kids that, you know, restraint maybe isn't an option sometimes. There have been a couple of occasions where the student had been, you know, so volatile or disruptive, you know. [LB595]

SENATOR LINEHAN: But it's not for somebody who is...okay, it's not a frequently (inaudible), right. [LB595]

BRAD JACOBSEN: No, we're talking about now the student has been asked to leave. Again, maybe it's to step outside for a timeout. Or maybe they've been reported, you know, please go to

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the office, and they let us know they're coming. And they just refuse to leave. It's one of those. It's more of a gross insubordination type of an act where I honestly haven't dealt... [LB595]

SENATOR LINEHAN: You're worried about the safety of the kids that are in the room. [LB595]

BRAD JACOBSEN: Right. [LB595]

SENATOR LINEHAN: Okay. [LB595]

BRAD JACOBSEN: And, you know, so, again, that, I haven't really dealt with a lot of those safety issues where somebody feels like they're under siege. It's more of a, you know, just an insubordinate type thing or maybe there has been some poor language or really disrespectful conduct where the, again, the rest of the kids are just like really buzzing or shaking that they...you got to get them, remove them from the situation to get back to the task. [LB595]

SENATOR LINEHAN: Okay. You would...okay. [LB595]

SENATOR KOLOWSKI: Any...oh, I'm sorry. Go ahead. [LB595]

SENATOR LINEHAN: I'm all right. [LB595]

SENATOR KOLOWSKI: Any other questions, please? All right, thank you very much for being here. [LB595]

BRAD JACOBSEN: You bet. [LB595]

SENATOR KOLOWSKI: Next person, please. Welcome. [LB595]

LYNN REDDING: Welcome. Good afternoon. My name is Lynn Redding, L-y-n-n R-e-d-d-i-n-g, and I'm here to oppose LB595. As a person with a disability who has had restraints applied to me in school, I see this bill as a step backwards. While I think teachers should be able to defend themselves and keep other students safe, I do not see this bill, as currently written, moving us towards building a safe environment in schools for both teachers and students. I fear that letting teachers be free of potential discipline or legal actions will allow the potential for abusive situations to occur. There is a line that needs to be drawn to protect a child, even one engaging in a bad behavior. No child should suffer abuse, physical or emotional. Being dragged down a

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carpeted floor for 90 feet is abusive. A line was crossed. This bill would allow the teacher to continue their behavior without a review. There needs to be a review of all incidents. This allows for learning and better supports to be developed. We also need to ensure that the parents of the child are involved in all the reporting and decisions being made on behalf of the child. The parents have rights and they must not be compromised. Proper documentation of the incidents protects all involved: the child, the parents, and the teachers. Additionally, there needs to be training. Come on now. To allow any adult to touch a child without proper training in how and why you are touching them could have very bad results. Having been restrained in the past, I could assure you, without proper training you endanger both the teacher and the child. LB595 is shortsighted and is reactionary to one incident that only looks at one side of the issue. The Legislature needs to take time and study the situation and then take action, as the evidence and data would suggest. Thank you. [LB595]

SENATOR KOLOWSKI: Thank you. Questions for Lynn? Thank you so much. [LB595]

LYNN REDDING: Thank you. [LB595]

JANE BYERS: (Exhibit 1) Hello again. [LB595]

SENATOR KOLOWSKI: (Inaudible) good evening again. [LB595]

JANE BYERS: My name is Jane Byers, J-a-n-e B-y-e-r-s, and I represent the Nebraska Association of Special Education Administrators. First I'd like to start with a thank-you to Senator Groene for bringing attention to our increased behavioral and mental health needs within our students in the state of Nebraska. We acknowledge the struggle of our teachers, parents, administrators, and communities to problem solve on behalf of all of our students, including those who are acting out and those who are not acting out. LB595 would directly and substantially conflict with special education law and would result in ethical and logistical challenges to our responsibility to all children. I think that's been potentially addressed through Senator Groene's revisions, so we appreciate that. But I did want to point out that students with disabilities under IDEA, as well those who are identified under ADA in Section 504, they do exhibit destructive...most of the students or many of the students who exhibit destructive patterns of behavior already have an IEP or are certainly suspected of having a disability. When we look at protections under special education law and civil rights law, students that are suspected of having a disability are also protected. As was published in Education Week on December 30, 2016--so very recently--students with disabilities represent 67 percent of those who were restrained or secluded during the '13-14 school year, which is the year that we have the most complete data through the Office of Civil Rights, while making up only about 12 percent of the total student population. So data disparity alone does not prove discrimination, but the existence

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of that disparity, however, does raise a question regarding whether school districts are imposing restraint or seclusion in discriminatory ways. Earlier, and I'm going a bit off script here, but there were several questions about, so what do we do? And I'm not sure if you're familiar with the efforts that are taking place in the state of Nebraska through the Department of Education and some very specific systems development, as well as training on multitiered systems of supports. We have to begin with the majority of our students. That's those 85 percent of our students who learn in traditional and standard ways. And we're identifying, have a wonderful staff development grant in the area of positive behavioral interventions and supports, but that's the core. School districts, as well as service units, are very actively engaged in developing multitiered systems of supports that look at those individual needs of students. So as those IEP teams or 504 teams are planning to meet the needs of that individual student, they have some options, like social skill instruction, like mental health therapy and counseling without barriers, like daytime programs through Boys Town who may have specific expertise in a particular area. I could...that's just naming a few but there are efforts to increase that continuum. And not only are those efforts being addressed within our public schools but also with our community agencies like Project Harmony in the Omaha area. And again, I know that geographically we have some advantages in the Papillion La Vista School District. But further, whether trained or not, restraint escalates physical aggression and people, teachers and students, can be seriously injured. Restraint is already allowed in situations throughout our districts as defined in policy but only when that individual student is injurious to himself or others or very significantly damaging property. Our charge in the public schools is the care, welfare, safety, and security of our students and staff. LB595 is not a solution but, rather, a responsive act that would place our students, teachers, and state at risk in the form of safety and potential lawsuits with some pretty significant fiscal impact. Questions? [LB595]

SENATOR KOLOWSKI: Thank you. Any questions for Ms. Byers, please? Seeing none, thank you very much. [LB595]

JANE BYERS: Um-hum. Oh, I also have some testimony that is submitted by Jay Dostal, principal at Kearney High School, so can I submit that at this time too? He's opposed to LB595. [LB595]

SENATOR KOLOWSKI: This young lady will take that. Thank you so much. [LB595]

REECE PETERSON: Hello. [LB595]

SENATOR KOLOWSKI: Yes, sir. [LB595]

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REECE PETERSON: Thanks for having me. My name is Reece Peterson, R-e-e-c-e, Peterson, P-e-t-e-r-s-o-n. I am a professor of special education at the University of Nebraska in Lincoln and have spent almost 30 years studying school discipline, school behavior, violence in school, alternatives to school, to exclusionary school discipline, and over the last several years have focused almost exclusively on the use of physical restraint and seclusion procedures in schools. And to be honest, in my background one of the things that I did was nine years ago, eight or nine years ago, I testified at the U.S. House of Representatives regarding the federal bill on restraint and seclusion. And since that time, up until the last Congress, there has been a federal bill addressing restraint and seclusion that have been proposed. None of them have been passed. But what I wanted to mention as a part of this is, as a part of that testimony I sat next to a foster mother of a middle school-aged young man who had been abused as a child and one of the abuses of him is he had been starved almost to death. What happened to him, however, was that for whatever reason the person supervising the lunch that day thought he was behaving inappropriately and in so doing he became agitated and he was physically restrained and ended up dying. And I don't know if you know this, but there have been numerous deaths over the past 25 years of people being restrained, kids being restrained in school settings, also far more injuries of kids in school. One of the more recent ones is in Kentucky and actually I've provided the link for that if you want to look it up in my testimony. In that link this young man's two femur bones, the strongest bones in his body, were broken as a result of a physical restraint and there could not be identified any way that that could have happened given the circumstances. I don't mean to prejudge it but I think it was a cover-up. While Senator Groene's concept about making teachers feel safe I think is very important, I think, as some of the previous speakers have said, it has to be a balancing act to keep kids safe as well and we need to find the right alternative. In fact, I was here testifying about a year and a half ago, provided testimony at the interim study on physical restraint, and I'm kind of surprised that that hasn't come up yet. We should look at the suggestions that came out of that. And I want to make sure everybody knows that most schools in Nebraska do have a policy about the use of physical restraint. They need that in order to be accredited. And that policy should direct the use of these procedures in school settings. I've recently studied the training content of the vendors that provide training in physical restraint to schools. Those vendors call this crisis intervention and it not only includes the physical holds that might be used in a situation where a youngster is out of control, but it also includes conflict deescalation procedures and basic prevention procedures with the idea that the restraint would be the last resort. So in spite of the good goals, and I understand the intentions of this bill, it does not address, I think, the problem the way it could or should be and there's a variety of things that are missing, documentation. So if this bill were in effect, how would we know how many times this happens going forward? Are parents to be notified? No indication that I saw in it, and so on. Some of the concerns about students with disabilities may have been addressed but I'm just going to be very short and say I feel very strongly that we need to be thinking about the dangers of physical restraint in kids and often that means when kids are

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restrained the adults making the restraint are also injured. So at this point I'll let you look at the rest of the materials and answer any questions. [LB595]

SENATOR KOLOWSKI: Thank you, Dr. Peterson. Questions, please, anyone? Thank you, sir. Good evening. [LB595]

BRAD MEURRENS: (Exhibits 2-4) Good evening, Senator Kolowski. Members of the committee, for the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy director for Disability Rights Nebraska, the designated protection and advocacy organization for persons with disabilities here in Nebraska. And I am here today in strong opposition to LB595. Everyone here will agree that the safety and security of teachers, administrators, and students is of paramount importance and has an impact on the ability of teachers to teach and students to learn. However, this bill's approach is misguided and fraught with policy deficits. It is our suggestion that this bill be indefinitely postponed and an interim study be conducted again to gather all pertinent stakeholders, including parents, students, and students with disabilities, around the table to work toward developing not only a better understanding of how to address issues of school violence and misbehavior but also how to plan how Nebraska can strengthen policies to reduce and, ideally, eliminate the use of aversive behavioral interventions like restraint and seclusion. The problems inspiring this legislation are complex and require a thoughtful, planned, and deliberate process which is starkly lacking in this bill. Under Rule 10, Nebraska schools are required to adopt a restraint and seclusion policy, meaning that the school personnel identified in this legislation already have the authority to perform restraint on students. A major concern is that the policies adopted by school districts are not uniform and can vary widely from district to district. We fear that this bill could have the unintended consequence of allowing schools to roll back their policies to conform to the state law or at least create a situation where there's confusion as to which lead to follow. Since the use of restraint is already allowed yet behavioral problems persist, the solvency of this bill's approach is questionable at best. National and state-level data and reporting indicate several important issues regarding restraint use in schools which provide reasons to vote down this bill. First, restraint use presents a serious physical health risk to those involved. Reports by the National Disability Rights Network, which should be in your handout, the Governmental Accountability Office, and others show that children suffer serious bodily harm and even death at the hands of teachers or school staff when using restraint techniques, especially when they are not trained, and even when they are, incidents where students were subject to restraint and/or seclusion and have been physically injured, traumatized, or died as a consequence. The GAO found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on schoolchildren during the past two decades. (2) Restraint and seclusion are disproportionately used on students with disabilities. We've heard this 12 percent, 67 percent ratio which is in the "First Look" handout that I gave to you as well. They...and the Civil Rights Data Collection indicates, quote: Schools restrain and seclude students with disabilities at higher rates than those

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without disabilities. During the 2013-14 school year, students with disabilities were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students. The GAO investigation found that most of the hundreds of allegations they identified related to children with disabilities and 90 percent of the closed cases involved children with disabilities or a history of troubled behavior. (3) Even when prohibited, students with disabilities are restrained as a disciplinary measure even when the student's behavior appeared not to be aggressive. This is documented in the GAO report and I think also in the NDRN report that you have in your handout that I handed out to you as well. (4) Lack of adequate safeguards and precautions risk abuse. This bill contains no provisions for staff training, no delineation regarding what staff are authorized to use restraint, or what types of restraint would be allowed. This bill has no provision for staff to utilize less aversive techniques to deescalate potential situations first, nor does it give any guidance as to when situations would require the use of physical force or restraint. With no definition of physically violent, destructive behavior, or school property, and with no qualifying language which is already contained in many of the Nebraska school district policies on this issue, such as imminent danger of serious physical harm to self or others, this bill's "restrain first, ask questions later" approach provides too much latitude and is unclear on too many critical issues for it to be an effective law or a vehicle to secure the safety of students with disabilities. And with that, I would be happy to answer any questions you may have at this late hour.

[LB595]

SENATOR KOLOWSKI: Perfect timing with the red light. Thank you. Could we have any senator questions, please? Seeing none, Mr. Meurrens,... [LB595]

SENATOR PANSING BROOKS: (Inaudible) wait a minute. [LB595]

SENATOR KOLOWSKI: Oh, yes, I'm sorry. [LB595]

SENATOR PANSING BROOKS: That's okay. [LB595]

SENATOR KOLOWSKI: Senator Pansing Brooks. [LB595]

SENATOR PANSING BROOKS: Can you speak about...thank you for coming, Mr. Meurrens. Can you speak...I was taking notes on your four, four things, your...you said on (3) "Even when prohibited," they are restrained, even when it's not aggressive. [LB595]

BRAD MEURRENS: Um-hum. [LB595]

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SENATOR PANSING BROOKS: So you must have some facts about just restraining because of just yelling out or something. [LB595]

BRAD MEURRENS: Sure. Sure. You know, the GAO reports that, for example, teachers restrained a four-year-old--a four-year-old--with cerebral palsy in a device that they described as similar to an electric chair because that student was reportedly being uncooperative; and teachers confined a child to a small, dirty room 75 times over the course of six months for offenses such as whistling, slouching, and hand waving. And again, the problem with this bill is it does not have any of those prohibitions. Right? The many, if not all, of the school policies that are or have been adopted in the status quo will have some of those limiting language, like you cannot use restraint as a disciplinary measure, you cannot use restraint for staff or teacher convenience. It has to be done within certain strict parameters and that's pretty consistent and that's what I'm saying is that. You know, and I think also another problem with this bill is that, like I was saying earlier, there is no restriction. So if the teacher is having a bad day, they spilled their...they haven't had their coffee yet, they had an argument with their spouse on the way out the door and the student does something that might just set them off, there is nothing in the bill that would prevent any of that. And so that even when they're prohibited from using restraints in certain situations or as a response to certain things that might come up, they often, especially with children with disabilities, those restrictions, like not using it for discipline or convenience, conveniently get overlooked. [LB595]

SENATOR PANSING BROOKS: Okay. I just have to ask, because you said it, what do you mean, like an electric chair? [LB595]

BRAD MEURRENS: That was the language that they had in the report. I don't...I didn't look at the...I didn't look at the...they didn't have a picture of the chair, anything like that. I mean it...that's what the GAO... [LB595]

SENATOR PANSING BROOKS: Were they shocking a child? [LB595]

BRAD MEURRENS: No, I think that...I think if my recollection is correct, I think they were talking about it was, you know...I mean it may have been wooden. It may have had a flat back. [LB595]

SENATOR PANSING BROOKS: It had restraints on the arms? Is that what you're talking about? [LB595]

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BRAD MEURRENS: I...yeah, I think that that would probably be accurate. I don't know. I'd have to go back and look at the report. I don't know if they really actually describe the chair. [LB595]

SENATOR PANSING BROOKS: Okay. I'm getting nods from experts all around here that that's what it was. [LB595]

BRAD MEURRENS: But that...but there are other reports, like the NDRN--the National Disability Rights Network--report does talk about children being restrained in their chair, being duct taped, bungee corded down to their chairs with their arms, you know, wrapped and their legs wrapped around the chair, so that does happen. I don't know why they mentioned the electric chair. I don't know, but that was just the GAO's language, not mine. [LB595]

SENATOR PANSING BROOKS: Thank you. [LB595]

SENATOR KOLOWSKI: Any other questions? Mr. Meurrens, thank you very much. [LB595]

BRAD MEURRENS: Thank you. [LB595]

SENATOR KOLOWSKI: Next, please. [LB595]

JANINE BROOKS: Good evening. My name is Janine Brooks, J-a-n-i-n-e, Brooks, B-r-o-o-k-s. Today I'm serving as the self-advocate on the state board for the Autism Society of Nebraska. I am not a lobbyist. I'm a complete volunteer that just advocates for a bunch of parents and today I'm actually speaking on behalf of my daughter. I come before you today to ask that you not allow for the advancement of LB595 out of this committee. I do not feel it is the best answer, nor the safest response, to help educators in maintaining discipline within the classroom, or for children who have behavior issues needing to be addressed. Since I only have a few minutes, I will hit on two stories involving my daughter—of how the same response to seclusion within a school setting ended up with her going to jail. When my daughter was 12 years old, she had multiple mental health diagnoses. We had a treatment team in place, went to weekly therapy, and kept her medicated with pills. Because of numerous behavioral issues, my daughter was an inappropriate fit for the neighborhood school. She had earned a seat at Heartland School, a Level III contract school for children like her. Let me append this moment by saying: What a horrible school. The focus at such a school is not education but the teaching of how to be constrained in your behaviors; it is essential for the child to learn how to embrace his fears so he can survive the day-by-day. Nothing in that school was ever about book learning; sadly, home schooling was not an option available to us at the time. Back to Heartland, I cannot tell you how many days my

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daughter spent in seclusion, but the days were many and numerous. Since my daughter was not very good at expressing herself, she had the inability to explain the amount of time she spent secluded in that room, often in restraints, due to her ticking, stimming, and getting overly stimulated. It started with one incident: being forcibly held to the ground by her teacher until she stopped twitching. She walked away from that incident traumatized, bearing rug burns on her face. That might not seem like much, but it's a lot for a third grader. These methods of restraint continued to happen due to my daughter's disruptive behaviors. It was all she could do to sit in the classroom. It was too much too often but it was lonely in the time-out room or seclusion room--or now, as they call them, sensory rooms--and she missed being at home with people who loved her, left her feeling safe and secure. One day Allye took a cigarette lighter with her to school. When sent to the time-out room, she lit the head of an eraser on fire and held it up to the smoke detector. When the alarms went off, she was freed from the room. She did it a second time that same day and was caught--the eraser had left residue that the fire marshal found on the table under the smoke detector. Years later, my daughter is at Yates Alternative School. She has been in attendance with the same teachers for most of her life, yet they still do not fully understand her. She was being made to serve two after-school detentions. On the second day, she attempted to slip away from the school when classes were released. She was accosted by the security guard who left a three-finger and thumb impression on her left shoulder where he grabbed her. He held her down physically to the ground until able to apply restraints to her. He then dragged her up the stairs, put her in the seclusion room, removed the handcuffs, and locked the door behind him, leaving her alone to calm down. By this time, my daughter had developed an intense fear of seclusion rooms. She had been assaulted by a staff member in such a room while at Midlands IRTC. A teenage smoker, she had a lighter in her possession. She attempted to set the door on fire, her hopes that it would set off the smoke alarm. Instead, it did \$100 in damage to the door of the seclusion room and left her charged with arson, as a felony, looking at 1-50 years in jail and permanent exclusion from the school because they did not want her back, even though the due process hearing demonstrated it was a manifestation of her disability. This is also when she received her first diagnosis of autism. Prior to that, she had numerous diagnoses but this means she was not properly diagnosed while in the school setting or by a medical professional. Allye ended up graduating from Ollie Webb Career Center, Inc., where Omaha Public Schools elected to place her for her last two years of education. She ended up on one year of probation with the charges being reduced to a misdemeanor offense. She saw the probation officer a whole one time during that year, and the only thing she learned from the incident was to fear those of authority, including me, as we are all out to hurt her, even now at age 30. I just have a few more words if that's okay. [LB595]

SENATOR KOLOWSKI: A few more words, please. [LB595]

JANINE BROOKS: So I look at LB595 and I ask, what is to be gained by passage of this bill? How will it benefit the educator who is untrained, most likely responding from fear in the

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moment when the child has the behavior incident? What happens if the child has a sensory meltdown, because he cannot handle being touched, and the teacher ends up injured from the incident? How does the child learn out of these incidents appropriate ways to respond when his behavior is out of control? There are ways, I know. We didn't discover how until my daughter was in her late 20s, when we all helped Allye to identify when she was going into meltdown mode, and then taught her to go to a room away from everyone so that she could calm down. Please, from experience I know LB595 is not beneficial to the kids of Nebraska, the educators who work so hard to educate them. Let us find an alternative way to keep everyone safe in the classroom, to prevent disruption that makes us all uncomfortable. Let us look at laws that mandate training for our educators, that keep our kids safe by requiring schools to record incidents involving our kids being secluded and/or restrained. That's all I have to say. [LB595]

SENATOR KOLOWSKI: Thank you, Ms. Brooks. Any questions for Ms. Brooks, please? Seeing none, thank you very much. [LB595]

JANINE BROOKS: Thank you, sir. [LB595]

SENATOR KOLOWSKI: How many more testifiers do we have, please, hands? Thank you. Welcome, sir. [LB595]

MICHAEL CHITTENDEN: (Exhibits 5-6) Good evening, Senators, appreciate your time tonight. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n. I am the executive director for The Arc of Nebraska. I had crafted some testimony that you are going to receive here shortly. I thought it was great until, of course, everybody beat me to the punch. So I will try to be brief in my comments. [LB595]

SENATOR KOLOWSKI: Thank you. [LB595]

MICHAEL CHITTENDEN: You've heard the 67 percent restraint to 12. The issue really becomes one of numbers. LB595 needs to be opposed because it doesn't have the numbers behind it right now. There's no data to suggest that we need to do anything. Nebraska already has the lowest possible rating and that's on a...a 0 on a 12-point scale for protections against restraint and seclusion in schools, according to a 2014 analysis by ProPublica--this is in my testimony. The study compared states along six basic questions: Is the use of restraints limited to emergencies; is the use of seclusion limited to emergencies; is parental notification of either practice required; is the use of seclusions prohibited; are restraints restricted...are restraints that restrict breathing banned; and are mechanical restraints prohibited? We get zero points. We can't answer those questions. There is no data. There is no policy. There is no procedure. We need to do that. So to answer you, Senator Erdman, because I've heard you ask a lot, what's the solution,

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what's the solution, while I will not give you a magic pill or a magic wand, I do suggest the following: that we have at least a baseline of incidents; get some numbers behind this. Right now there's no reporting system in the state of Nebraska so we don't know if this is a problem. We know of a single problem that got...that sponsored this...that, you know, got this bill initiated. We need to provide for explicit prohibitions on mechanical restraints and I think that's what that electric chair reference might be is a mechanical restraint. We may...and those restraints that restrict breathing, we need to have proper training. It's always about the training. As a 30-year veteran of working with people with disabilities, and for over 10 of those years I was the trainer of those that needed to provide that restraint, it's training, it's training, it's training. And 90 percent of that training is how to deescalate a situation and how to have great relationships with the person that you're working with. We need to make sure there's...we require timely reporting of incidents. We need to make sure parents are notified in part of the process. And we need an independent panel to determine if any abuse has occurred. There should be no magic wand for...to allow people to be allowed to abuse people. I will leave my testimony at that. You've got my written testimony. [LB595]

SENATOR KOLOWSKI: Any questions from...yes, please, Senator. [LB595]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Chittenden. I just...can you explain what restraints that restrict breathing are? [LB595]

MICHAEL CHITTENDEN: Restraints that restrict breathing would be those that would pull the arms up and around the upper chest cavity up to and including the neck. Especially with kids who tend to be very wiry and flexible, a lot of times you will see what is commonly called a basket hold or something like that where we...they will cross their arms, the person applying restraint will be behind the person in the restraint, and then the child will start to slip down and it will create a choke hold and it will restrict it. The other thing would be anything that's placed on the ground where an adult's full body weight would be on a child's chest. That would restrict breathing. [LB595]

SENATOR KOLOWSKI: Other questions, anyone? [LB595]

MICHAEL CHITTENDEN: Thank you for your time, Senators. [LB595]

SENATOR KOLOWSKI: Thank you, sir. [LB595]

MICHAEL CHITTENDEN: Appreciate it. [LB595]

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SENATOR KOLOWSKI: Next, please. While the next person comes up, I want to pass this on from the proponents' side. We have 8 names on a list that I'll provide for the record and 14 on the con side, of opposition, and 1 on the neutral side. Rather than read all those right now, I'll just pass them on for connections. Thank you very much. Please. [LB595]

JULIET SUMMERS: Good afternoon, Senator Kolowski, members of the Education Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s, and I am the policy coordinator for child welfare and juvenile justice with Voices for Children in Nebraska. I'm testifying in opposition tonight. It's a late evening and I'm sure everyone is ready to go, so you have my hard-copy testimony. It's getting handed out to you. I'll skip any pieces that are redundant with other testimony you've heard tonight, specifically regarding the broad language about physical restraint or use of force and data regarding the already disproportionate use of these, you know, restraint or force or removal of students with disabilities, and just highlight that our concern is that, you know, that I'd specifically like to talk about tonight is on the removal side, the piece of the bill talking about the ability to remove students from the classroom. At Voices for Children, we don't do a great deal of policy work in education, so I acknowledge this isn't my direct area of expertise, but we do work in the realm of juvenile justice and we know that the sum of practices that push students out of schools can drive them toward the court system, commonly referred to as the school-to-prison pipeline. So I think, as the senator mentioned earlier tonight, there is a direct line between suspensions, particularly at early ages, to further suspensions to expulsions to increased misbehavior to court referral. And in Nebraska, if a student misses too much school, he or she can be charged in the juvenile court where he or she can be subject to consequences as severe as removal from the home, indefinite years on probation, a court record, etcetera. And as for the larger classroom, I'd like to note that there are studies out there showing that removing problem students doesn't actually improve the educational environment overall for all students in the classroom; rather, studies show that schools with a higher reliance on school exclusion as a form of discipline, they actually tend to score lower overall on academic achievement tests for all of their students, and that's even when you're controlling for socioeconomic factors or demographic factors. So schools in the same neighborhood, the same zip code or community but that have different exclusionary policies, the schools that are attempting to wrap services and interventions like positive behavioral intervention supports around their students are doing better on those overall achievement tests schoolwide, not just the students who are being removed. I'll skip my data piece about students with disabilities because you've certainly heard plenty about that. But I would note that we're also concerned about the language as it would apply to children of color. So we know that the other large population of students that are disproportionately removed from class or see restraint or force used against them already are our students of color. So according to data from that same Office of Civil Rights and Disability...or Office of Civil Rights school...or Department of Education data collection process, we know that 6 percent of all K-12 students in America received one or more out-of-school suspensions in 2013-2014, but that percentage was 18 percent for black boys, 10 percent for black girls, 5 percent for white boys,

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and 2 percent for white girls. And we also know from studies that have been done in schools that the reason for these disparities is not necessarily that children of color are acting out in a higher degree or in higher numbers. Rather, research has shown that children of color are more likely than their white peers to receive punishment or be removed for discretionary perceptions of behavior. So in my testimony I quote one study that looked at middle school students who were being sent to the principal's office and white students were going more frequently for offenses that were much more categorical, easy to identify, so things like vandalism, smoking, use of drugs. And then black students were more often being sent for things that are more discretionary: conduct interference, loitering, disrespect, excessive noise, or threats. And our concern with this bill is that the language of "unruly" or "disruptive" could result in increased disparities between white students and their minority peers. So with that I'll close and I'll thank you for your time and your long hours and dedication to the children of Nebraska and I'm available for any questions. [LB595]

SENATOR KOLOWSKI: Thank you, Ms. Summers. Any questions, please? Seeing none, thank you very much. [LB595]

JULIET SUMMERS: Thank you. [LB595]

SENATOR KOLOWSKI: Next, please. Evening. [LB595]

KRISTEN LARSEN: Good afternoon...evening. I'm sorry, it is evening. I'm sure you're all hungry. I let the pregnant lady go before me. She's got to be more hungry than I am, so (laugh) apologize if you hear my stomach grumbling, but, yes, hello. This is my first time doing this, so good evening. My name is Kristen Larsen; that's K-r-i-s-t-e-n L-a-r-s-e-n, and I am here on behalf of the Nebraska Planning Council on Developmental Disabilities to testify in strong opposition to LB595. Although the council is appointed by the Governor and administrated by the Department of Health and Human Services, the council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. We are a federally mandated independent council. We're comprised of individuals and families of persons with developmental disabilities, community providers, and agency representatives who advocate for systems change and quality services. I want to acknowledge the good work that Senator Kolowski did in the One Hundred Fourth Nebraska Legislature when you passed that LR314 to study the use of restraint and seclusion in Nebraska. Disability Rights of Nebraska led that effort, and you heard Brad give his testimony earlier, and documentation and testimony also addressed the lack of uniformity in the regulation of the practice of restraint and seclusion in Nebraska. Parents provided testimony on behalf of their children who were subjected to restraint and seclusion with adverse effects, much like we heard from Janine. One of the main recommendations from this study was to implement a uniform data collection technique

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used by Nebraska schools to report incidences of the use of restraints or seclusion. Unfortunately, this recommendation has not been implemented yet, and Nebraska has yet to address a level of standardization or uniformity in these policies across the state. I mentioned the LR314. I encourage you to look at what would...you know, some of the transcripts from that study and to realize it does have, it correlates to LB595 and why the council is taking a position against that. Council members are concerned about what or who defines what is necessary physical force. There is also some concern that the use of restraint or seclusion would not be considered corporal punishment and that there would not...folks, you know, administrators, teachers would not be subject to legal action or administrative discipline if they used that. I'm going to skip the part that talks about our concerns over the removal of the classroom because that has been addressed in prior testimony. LB595's intention is to address serious discipline issues within Nebraska schools and, while we understand the need for teachers and administrators to maintain control on school property and to keep all students and faculty safe, we cannot condone the act of physical restraint and/or seclusion of a child of any age. The physical, emotional, and psychological toll on the student and their peers is extremely harmful and may result in further damaging behaviors. Research has identified the use of seclusion and restraints in school as a dangerous practice for all students, especially those with disabilities. I want to reference...I know that you've been here a long afternoon and you've heard reference to the Every Student Succeeds Act that President Obama signed in December of 2015. That law reauthorizes and amends the Elementary and Secondary Education Act, which is otherwise known as the No Child Left Behind Act. ESSA includes guidelines that the State Departments of Education must report how they will assist school districts to reduce the use of adverse behavioral interventions that compromise children's health and safety, such as seclusion and restraint, in addition to the use of discipline practices that remove children from the classroom. So LB595 would almost, you know, contradict the provisions within the ESSA, and that's important to note that. The United States Department of Education reported that disproportionality use--I won't go into those--that 12 percent of students with disabilities are...that while students with disabilities only represented, you know, the 12 percent of students in the study, they represented nearly 70 percent who were physically restrained. And you've heard about that earlier in earlier testimony. Okay, then I want to talk about this. The use of seclusion and restraint has received much national attention over the past years. Several national reports have been published documenting the increase in injuries to students and staff when this practice is used. And Brad referenced many of those. We've been called on to address this on a federal, state, and local level. If you look at the reports, some of the reports that Brad has referenced from Disability Rights of Nebraska, they document incidents where students with disabilities were subjected to restraint and/or seclusion resulting in physical injuries, trauma, and even death. This report was instrumental in revealing a lot of unsafe practices including strapping students to chairs, even their wheelchair; adults pinning students to the floor; students being grabbed and dragged into rooms; students held in arm locks; students--even really young students, as young as third graders--being handcuffed; and students being placed in very small

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rooms or locked in closets. The report and follow-up reports have noted that the use of seclusion and restraint is not limited to emergency situations. It's often used without parental consent or notification, and so that has a tendency, of course, with the population I'm, you know, speaking on behalf of for potential abuse. So again we just...we caution you folks. We'd like to come around the table and have more of a discussion. Perhaps we can revisit the issue of seclusion and restraint because we're fearful if LB595 does...were to pass, it could unintentionally put Nebraska students, with and without disabilities, and their teachers at more risk. And I will also mention I'm also a parent, have a child with an intellectual disability and autism that went through the schools program, you know, the school situation, had to address this situation personally. It's not an easy situation. But I want you to know that the teachers want to do what's best and it all comes down to training and giving them the resources. And I fully support any kind of public, you know, the positive behavior support model, getting those resources in teachers' hands so that they do feel, know how they can deescalate situations. [LB595]

SENATOR KOLOWSKI: Thank you, appreciate it. Any questions, please? Seeing none, thank you very much for coming. [LB595]

KRISTEN LARSEN: Thank you. [LB595]

SENATOR KOLOWSKI: Two more to go, is that correct, sir? Very good. Ma'am, please. Welcome. [LB595]

ROBYN ROBERTS: Hello. [LB595]

SENATOR KOLOWSKI: Oh, three. Thank you. [LB595]

ROBYN ROBERTS: I will be brief. My name is Robyn Roberts, R-o-b-y-n R-o-b-e-r-t-s. I'm a board member for the Autism Society of Nebraska and the parent of a child with autism. I'm here today speaking as a parent more than as my board member position. I did not plan to testify, which is why I have nothing to hand out to you today, but I can't stay silent. I am here in strong opposition of LB595 because it's the unintended consequences--and somebody used those exact words that I had written--it's the unintended consequences of this bill that scare me. Restraint and seclusion is already in use in almost all of our school districts in this state. And do you know that restraint and seclusion, when it happens in the school setting, is not required to be reported to a parent? And speaking as a parent of a child with autism and on a board where I serve people on the autism spectrum, so many of our population is nonverbal. And so those children can be restrained, they can be secluded, and nobody has to tell their parents and they're not able to speak that information to their parents. And that's what concerns me. I understand that we've added some language about/because of the IEP, but it is still allowed and I'm afraid that this would give

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even more access for teachers to be able to restrain and seclude them. And so if...for elementary in my district there are 7 hours and 25 minutes in a school day for an elementary child. And the way this bill is written, no matter who that child is, either side, a typical student or a special-needs student, if they would misbehave in such a way that they would/could be removed from the classroom in the first minutes of the day, that means they could spend 7 hours and 25 minutes of a day someplace that's not in their educational setting. And that concerns me. I understand in a high school setting or a middle school setting you have shortened classes and so there would be less time away but that is a concern to me. When restraint and seclusion is promoted or legalized, it becomes very overabused in the special needs situation as we've heard today. I understand the intention behind the bill and it's a good one, but we're citing two examples in Nebraska schools and what will you...you'll unintentionally do is put many, many students in harm's way. My son is 14 years old. He has autism. He doesn't need to be restrained. He needs help when he gets upset. He doesn't get physical. He gets vocal. And if somebody just takes a minute to tell him to calm down, sit in a safe seat, he will do that and he will be fine. We try to tell him that teachers are trusted people, administrators should be trusted, they have your best interest at heart. But if somebody can restrain you and physically hold you down, how can I build that trust for him with his teachers? I understand the intention of the bill. I think it does have good intentions. I spoke to a lot of teachers at a different meeting from the teacher's union and a lot of them actually did not indicate, as Mr. Sears did, that they were for this bill. They were actually against it. They're for more training. They want to know how to deescalate without using the restraint or without using force. And so I would like to see some more studies done on that and to take a look at that. Today my ten-year-old daughter stayed home sick from school and she is with her father, who works from home, so she's not alone, but when I told her that I was going to skip going to Lincoln today and miss the hearing, she asked what this hearing was about. And when I explained the basics of it, that people like her brother, people like students in her classroom that we could name who have misbehaved, that they could be restrained, that they could be put into basically a choke hold or a bear-hug hold, she looked at me and she said, that is the most horrible thing I have ever heard, you have to go, Mom, go fight. So if a ten-year-old can see the problem with LB595, why can't we all see it? I understand the intentions are good, but the road to heck is paved with good intentions and that's my concern. Thank you so much for your time. [LB595]

SENATOR KOLOWSKI: Thank you. Any questions? Yes, ma'am. [LB595]

SENATOR PANSING BROOKS: Okay. So has your child been placed into a solitary place? [LB595]

ROBYN ROBERTS: No, he has not. But I know other children in our autism community who have. [LB595]

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SENATOR PANSING BROOKS: And do you think that they've been put for longer than a couple of hours? [LB595]

ROBYN ROBERTS: Yes, and in one instance it was actually not a child with autism who was put in there. It was a person, a child with behavior issues who was placed in a seclusion room, or a sensory room or a time-out room, whatever you want to call them--it's a sensory deprivation room, in my opinion--but she was left in there for five hours a day on many days, enough so that our child with autism could hear her screaming: let me out, please, somebody, help me and let me out. And he started self-injurious behavior where he was harming himself, he was biting himself, because he's nonverbal. He has since had to be...he's been removed from the public school system, is being home schooled because it is...he can't be in the classroom anymore. It bothers him. [LB595]

SENATOR PANSING BROOKS: Okay, well, we are working quite, quite steadily on attempting to get rid of solitary confinement in Nebraska and that is in detention and prisons. And so if it's happening in the schools, that's a new world that we need to start investigating. [LB595]

ROBYN ROBERTS: And I agree and, you know, in the state of Nebraska, if it happens in a mental institution, in a prison, in any other public setting, it is, has to be documented, has to be reported, has to be trained. And we're allowing teachers, even now and even more so with this bill, to do that without training and without reporting. There's no reporting measure in place and that's why I felt like I had to speak, because it bothers me. [LB595]

SENATOR PANSING BROOKS: It bothers me too. Thank you very much for coming today. [LB595]

ROBYN ROBERTS: Thank you. [LB595]

SENATOR KOLOWSKI: Any other questions, please? Thank you, ma'am. Good evening, sir. [LB595]

SPIKE EICKHOLT: Good evening, Senator Kolowski and members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. You are receiving a copy of my written testimony, or our written testimony. I'm not going to read it. Many of the points that I addressed in there have already been made. I'm not going to restate those. But I would just state a couple of things that I ask the committee to consider and just highlight again for the record. It's our position that this bill is bad and flawed in law and flawed in policy. One thing I would just ask the committee to consider is to look at the plain language of

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the bill itself. Contrary to what Mr. Sears said when he mentioned that his support of the bill or his organization's support of the bill is not requesting immunity, this bill is immunity and it is absolute immunity. Page 2, lines 17 through 21 provide that a teacher or administrator shall not be subject to any legal action, criminal, civil, or any administrative action. That is absolute immunity. That is unprecedented in Nebraska law. That is greater than the immunity that we give to law enforcement even though law enforcement, as Senator Pansing Brooks mentioned before, are properly trained in deescalation techniques, use of force, and dealing with stressful and highly charged incidents. This immunity is greater protection than we give for parents to discipline their own children in their own home, and I don't think that the people in Nebraska would think that would make any sense whatsoever to give greater protection to administrators and teachers than parents have themselves as far as physically disciplining their own children. The terms of the bill itself are problematic. No one has mentioned that. I think that people have talked about that this would apply to all children, kindergarten through 12th grade, all children in the schools. The inappropriate behavior, for lack of a better term, or the physically violent behavior or the destructive behavior, there's no mens rea requirement or no intentional showing that needs to be done for the student's misbehavior. In other words, it can be accidental behavior. It can be incidental behavior to a mental health situation or a special ed situation, and there's no requirement that it have to be something that a child is doing intentionally or even knowingly or willfully. The bill is also flawed with respect to policy. I'd ask the committee to strongly consider Ms. Haase, the lawyer who first testified, her points. They were...she clearly knows what she's talking about. I am not as familiar with education law as she is. It took me probably two days to quite get up to speed to understand half of what she was saying. But what she was saying should cause this committee to be very concerned. There is a U.S. Supreme Court case that provides a due process standard before a child can be removed from school. This bill eclipses that and is likely unconstitutional in and of itself because it gives the individual teacher the final say, if you will, for whether the child goes back in school. It's inconsistent. This bill is inconsistent with other existing laws and I'm sure committee counsel is familiar with them, as is the committee. Chapter 79-257 gives the board, school board, the authority to determine expulsion policy. This would somehow confound that. (Statute) 79-262 provides for a standard student code of conduct. This also sort of eclipses that or confounds that because the individual teacher, him or herself, can decide what appropriate...what behavior is appropriate and what's not. And finally, there's already protection, if you will, for the teachers, as Ms. Haase explained, in 79-258 that provides teachers with some authority to enforce rules and maintain order in their classrooms. And I think that kind of highlighted perhaps whether this bill is even necessary because there seems to be some sort of disconnect between what the teachers can actually do under the law and what they understand they can do under the law. Perhaps that's just a training matter, issue of training or education that really cannot be addressed by this bill. So for all those reasons we would urge the committee to not act on this bill and to indefinitely postpone it. [LB595]

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SENATOR KOLOWSKI: Thank you, sir. Questions, please, anyone? Senator (inaudible). [LB595]

SENATOR PANSING BROOKS: The ACLU did a study on solitary confinement in prisons. Was there any discussion about the fact that children are being placed in solitary in our schools? [LB595]

SPIKE EICKHOLT: There was, and you may remember that some of the issue was perhaps what the definition of solitary confinement was and which institutions would be considered to be impacted by the prohibition on solitary confinement. I've been so focused trying to keep up on education law, I couldn't remember the exact details. But you are right, there are some issues the ACLU is looking at on there and I can get information to you about that as well. [LB595]

SENATOR PANSING BROOKS: The schools should be on notice that they should not be putting children in solitary. That's... [LB595]

SPIKE EICKHOLT: We absolutely agree. [LB595]

SENATOR KOLOWSKI: Thank you. Any other questions, Senators? Thank you very much. Thank you, sir. [LB595]

SPIKE EICKHOLT: Thank you. [LB595]

SENATOR KOLOWSKI: Appreciate it. I believe the last testimony. [LB595]

SENATOR PANSING BROOKS: Not for extended full-day periods there (inaudible). [LB595]

SENATOR KOLOWSKI: Good evening, sir. [LB595]

JOHN LINDSAY: Senator Kolowski, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in a neutral capacity. Originally we would have testified in opposition, objecting to (4) of Sections 2 and 3 which provide an immunity from liability. We worked with Senator Groene's office on language that he mentioned in his opening that would add the language to those sections that if the teacher or administrator was acting in a reasonable manner. And the trigger word there, of course, is "reasonable," which gets us back to tort law that has developed over a thousand years about people need to act in a manner that a reasonable, prudent person would act

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in the same or similar circumstances. And so that's what we were getting to. With that change, those sections, we go to a neutral position and we, of course, we, our organization has no position on the underlying policy statement; it's simply those sections. With that, I'd be happy to answer any questions. [LB595]

SENATOR KOLOWSKI: Thank you, Mr. Lindsay. Any questions, please? Seeing none, thank you. Senator, closing. [LB595]

SENATOR GROENE: Thank you. That was the word I was looking for. [LB595]

SENATOR KOLOWSKI: Yes, sir, for all of us. [LB595]

SENATOR GROENE: "If a student becomes physically violent," physically violent, not if they yell--I'm familiar with autism, I have some relatives--not if they won't move from their chair, "If a student becomes physically violent toward himself or herself, a teacher, an administrator, or another student, a teacher or administrator may use necessary physical force or physical restraint." Maybe I need to clarify that. That's not handcuffs. It's not a straitjacket. That's not strapping them to a chair. That is holding them so they don't hurt somebody. If those things are happening in our schools, we need to stop them. This is to try to stop those things before it escalates. You heard the amount of teachers there. I just became more and more admiring of teachers who stick their careers out. How can you even go in a classroom and be scared that you cannot control your classroom because somebody is going to sue you, somebody is going to accuse you of stuff before you even did it? The attorney came up here and said, for that fourth grader, we have a method for that fourth grader that beat that teacher up, we can expel him, we can expel him. Meanwhile, the teacher is in the hospital. Meanwhile, the teacher is in the hospital. Do you understand why teachers want security? Nobody is changing any of the present systems of helping the disabled. We are trying to set a framework that we can work under in this state to say this is the envelope, this is the umbrella, under here. I've had administrator after administrator, I've had two very large school districts contact me and say, we have a position, we have policies, this would sure help, we could fit our policies into this framework. This is a framework. Do we really want to put into statute that you have to do this, you have to do this? You heard the testimony--we've been to this conference, I went to this conference, I've studied this, I read this report. Meanwhile, every report changes, every theory changes; meanwhile, we have teachers that can't control their classroom. Theories are fine. The teacher is in that classroom. He's on the front line; she's on the front lines. These experts are sitting there saying you can't do this, I've studied this, the university professors, I've studied it for 40 years. The teacher is in that classroom. It's escalating. It's getting worse. We need to put a framework in. State after state has done it. What was said, they can already do it? Read that statutes. That's for if your neighbor is drunk and he comes over in your yard and starts assaulting you; that's if the

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self-defense. They're putting teachers under what two adults' behavior is, how you can defend yourself if somebody assaults you. We are talking about children and we are talking about professionals who do not lose your temper, who do not want to lose their temper and want something to do. As I said earlier, the incidents in North Platte wouldn't escalated into what happened if we would give teachers an umbrella, if we would give administrators an umbrella. Seclusion? That's not in the bill. We heard talk about seclusion, truancy. The lawyer said you can expel for truancy. What's talking about on truancy? There's nothing in this bill about truancy. We heard about restraints. There's nothing in here about restraints, straps. Seclusion? There's nothing in here about seclusion. This is about controlling your classroom. We heard the policy is not to discharge the perpetrator; we leave him in the room to destroy it and we take the other 20 kids and hang them in the hallway. We're going to have to start building bigger hallways. Something is wrong. This works. We've modeled other states. Other states are doing it. The Supreme Court case, did you hear him? Always watch what a lawyer says. Supreme Court case about when you can expel them. This teacher isn't expelling him from the school. They are saying, you are leaving my classroom. Maybe we need the old-fashioned thing that I sat in. Of course, I was a perfect student. But we had a study hall. You sat there and the principal stood there and watched you. By the way, this is a small state, small world. The young...God, I'm getting old. The superintendent, the principal from Ashland-Greenwood, his dad was my basketball coach, and I won't tell you what kind of discipline he did on me, but I turned out okay. But anyway, this is about a framework to protect the classroom and then we can fit all the rest of these theories under it. We can fit what my North Platte superintendent handed me--we had coffee Saturday morning--handed me a deal. He said, after we've seen your bill, I thought, why not? Let's get a real policy, black and white. We're starting a conversation. It doesn't have to...you heard all this. It's never reported. We don't know how often it happens. Duh. These administrators and teachers are trying to control classrooms and they don't know what they can do. They don't know if they're going to get sued tomorrow. Would you report that? You don't know what guidelines you have. The state doesn't back you up. We don't need any more studies. We don't need any more ideals. Let's start a framework. Society needs what children are missing: boundaries. That's why we pass laws. Let's set a boundary and then let's work under that umbrella. Thank you, fellow committee members. [LB595]

SENATOR KOLOWSKI: Any questions for Senator Groene, please? Thank you. [LB595]

SENATOR GROENE: None? [LB595]

SENATOR KOLOWSKI: None. And that concludes LB595 and the end of our day. Thank you very much for being here. [LB595]