

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: Welcome to the Education Committee public hearing. My name is Mike Groene from Legislative District 42. I-- I serve as the Chair of this committee. This committee will take up the bills in the posted agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please turn off your phones or-- or other electronic devices. It looks like we might have a few testifiers, so move to the front of the room if you plan on testifying so-- so we keep the process going. The order of testimony is the introducer, proponent, opponent, neutral, and closing remarks by the introducer. If you will be testifying, please complete the green testifier sheet and hand to the committee page when you come up to testify. If you have written material that you would like distributed to the committee, please hand them to the page to distribute. If you are not going to publicly testify or need to leave early you can turn in written testimony with a completed green testifier sheet. We need 12 copies for the committee. If you do not have enough, please give it to the page now and they will get copies for you. When you begin to testify, please state and spell your name for the record. Please be concise. It is my request the testimony is limited to five minutes. We will be using the light system: green for four minutes, yellow for one minute. When you see red, please wrap up or finish your comments. You may be asked questions by the-- by the members of the committee. If you'd like your support or opposition to be known but do not wish to testify, please sign the white form in the back of the room and it will be included in the official record. If you are not testifying in person on a bill and would like to submit a written position letter to be included in the official hearing record as an exhibit, the letter must be delivered to the office of the committee Chair, e-mailed or sent at 5:00 the preceding business day. Additionally, the letter must include your name and address-- that's for future hearings, it's too late for the day-- your name and address and your position and what bill you are writing on. Please speak directly into the microphone so our transcriber are able to hear your testimony clearly. Committee members with us today will introduce themselves, beginning at the far right.

MURMAN: I'm Senator Dave Murman, Legislative District 38: Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and part of Buffalo County.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

LINEHAN: Good afternoon. Lou Ann Linehan, District 39, western Douglas County.

WALZ: Lynne Walz, District 15, Dodge County.

BREWER: Tom Brewer, District 43, 13 counties in western Nebraska.

PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

KOLOWSKI: Rick Kolowski, District 31 in southwest Omaha.

GROENE: Thank you. I'd like to introduce the committee staff. To my immediate left is legal counsel, Amara Block. To my right at the end of the table is committee clerk, Trevor Reilly. The pages, if you young ladies would stand up, are Erika Llano is a sophomore at the University of Nebraska-Lincoln studying political science and sociology, and Maddy Brown is a junior at the University Nebraska-Lincoln studying political science. Please remember that senators may come and go during our hearing, as they may have bills to introduce in other committees. You might see Adam on his computer, me on my cell phone taking notes or contacting staff back in the office to look up facts so we can ask you pertinent questions. Otherwise, we are ready to go. And my bill is first, LB147, so Vice Chair Lynne Walz will be conducting the hearing while I'm testifying.

GROENE: Mike Groene, M-i-k-e G-r-o-e-n-e. I refer to my LB147 as my student/teacher/administrator protection act. LB147 accomplishes four distinct goals in order to protect children and teachers from violence, protect school personnel from legal actions, aid teachers in maintaining order in their classrooms; and encourages a better learning environment for all students. LB147 puts into statute clarity and defines what the state Supreme Court ruled in the 1990 Daily v. Board of Education case as to what a school employee can do in that moment of time when a student becomes violent. LB147 divides the court's description of physical contact into two areas of physical restraint and physical contact. Programs such as Circle of Friends, positive behavior intervention programs or Boys Town's well-managed schools are good preventive programs but they do not address violent behavior of a student at that moment when it occurs. Our public school teachers are on the front lines when it happens. Administrators are like the calvary [SIC] that shows up after the battle, armed with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

saddlebags full of hindsight. We need to protect and give our school personnel the tools they need to protect students and themselves from harm. LB147 defines when physical restraint can be used and gives teachers and administrators the ability to restrain violent or destructive students using very special-- specific methods. Teachers and administrators are only allowed to use physical restraint on a student if the student is physically violent towards themselves, another student, or the teacher administrator-- that moment in time; or the student is destroying school property. LB147 defines physical restraint as holding the hands, wrist, or torso of a student to control the movements of such student and shall not include the use of any mechanical device or binding a student to an object. LB147 puts into law what the Daily case clearly intended when it interpreted our statute 79-258 and the word "actions" in that statute. Physical contact short of corporal punishment to the degree necessary to preserve order and control the school environment is what the court said, or a teacher can take actions which are reasonably necessary to aid the student, further school-- school purposes, prevent interference with the educational process; such actions which are not intended to inflict pain as punishment and, therefore, are not considered corporal punishment. The words of the court. LB147 protects teachers and administrators from wrongful legal action or administrative discipline if the teacher restrains the child pursuant to this law and the teacher was acting in a reasonable manner. "Reasonable and necessary" is a term used by the state Supreme Court in Daily v. Board of Education. Section 3 of the bill discusses the teacher's ability to remove a student from the classroom. First, let me to clarify this section is not directly related to the section-- section of the bill dealing with violent episodes and the use of physical restraint. In fact, if a student was violent because of some reason, the teacher could leave that student in the classroom. The two are not tied together that the student has to be removed immediately. Removal is tied to a Daily v. Board of Education referred to as prevent interference with the educational process and to the degree necessary to preserve order and control in the school environment. That is the directive given to teachers, which we have taken away from them. LB147 gives them back that directive. Teachers can have the child removed from the classroom by an administrator or school resource officer if the teacher has documented that the student has repeatedly interfered with the teacher's ability to-- to effectively communicate with the students or the student's ability to learn; a student is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

the students or with the ability of students to learn; or determines such student has committed other disruptive acts that merit discipline under the Student Discipline Act. LB147 does not override specific instructions for special education students. I'll repeat that. LB147 does not override specific instructions for special education students, IEPs. You might hear some testimony today that this is aimed at special education students. They are exempt if their IEP already defines what the team does when it when-- when a child becomes violent in a school. This is for the 90 percent of the violent behavior that is done by your normal students. If a student individual education plan under the federal Special Education Act or the Individuals with Disabilities Education Act has a restriction on how their classroom behavior is handled, the teacher not-- may not keep the student from staying in the classroom. Once an unruly student is removed, the administrator can't place a student back into the classroom unless the teacher consents. Or if the teacher does not consent then a conference must be held with the teacher, parent, and principal within two days after the removal. After this conference happens within two school days the student can return to the classroom regardless of whether the teacher consents or not. To be clear, this conference could happen within 15 minutes of the student's removal. The administrator decides when to schedule it but it cannot happen later than two days following the removal. It must happen within two days. In the meantime, the student can be placed in another appropriate classroom, into-- into school suspension, or suspend the student pursuant to Student Discipline Act. This has nothing to do with seclusion. Seclusion is already in Rule 10 that it can be used. There's-- there's-- but this has nothing to do with that. We're not dictating the seclusion. We're not even bringing it up. That's a policy that a school may or may not have now. LB147 prevents an administrator from coercing a teacher into consenting to the return of a classroom. And it also provides that if a teacher has a student removed from the classroom and the teacher acted in a reasonable manner, the teacher cannot face legal action or administrative discipline. We just had a recent episode of that out at Garden County in our area where an administrator went through a lot of sleepless nights for darn near a year before the case was dismissed. Amendment-- we are proposing an amendment, because we do listen. Met with administrators and teachers and NSEA representatives, and we have listened to concerned individuals and it will be-- will be an amendment presented at the exec, if we exec on this bill and when we do. We are proposing defining physical contact include the definition of physical restraint. Court used the word "physical contact" in all of its ruling and to include the definition of physical restraint.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Based on the court's comments in the Daily case, the court ruled that the word "action" in 79-258 I believe it is, yeah, 79-258 statute included physical contact. Our definition is modeled after the court's finding and shall read physical contact means incidental, minor, or reasonable physical contact, including physical restraint of a student by holding such student's hands, wrist, or torso to control movement, which is necessary to preserve or restore order in the school environment or protect persons or property from harm. The court also stated that for teachers to promote personal interaction with students a certain amount of physical contact is virtually unavoidable for people working together in a social environment. We hope that a time never comes where we find it necessary to further define that a teacher holding an upset child's hand or placing a gentle hand on a shoulder for emotional support has to be defined in law. Therefore, defining physical restraint as a component of physical contact takes care of what we find necessary to accomplish. We only want teachers and administrators to understand that they can do what is necessary to control the violent student. We think that restraining a student by holding their hands, wrist, or torso is a reasonable and sufficient way to handle a violent classroom situation and putting it into law protects those teachers for doing so. The amendment will expand people who are allowed to use physical restraint from just teachers and administrators to all school personnel. Kids don't always act violently in the classroom in front of a teacher. Sometimes these things happen in the hallways or school buses or other areas of the school. If that happens we want other school employees to be able to reach-- react to protect students. For example, if a janitor employed by the district sees a violent kid hurting students in the hallway, that janitor can restrain the kid while holding their hands, wrist, or torso to defend the other student. It's school employees, not contract employees. Like in some cities, the buses are contracted. We can't put on the administration control of another company's employees so it's school employees. The amendment also clarifies situations when a teacher can have a student removed. We're going to change "communicate effectively" is a little vague. We're changing this to a teacher can remove students if the student repeatedly interferes with art or commits the rough-- disruptive acts that affect the learning environment and the opportunity for students to learn. The amendment also adds a provision as to what happens if the parent of a student cannot be reached, the parents of the student cannot be reached or refuses to come in for the conference. The conference will still happen but it will happen with the teacher, student, and the principal, absent the parents. As I mentioned before, the conference

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

can only-- can happen very shortly after removal. If the school calls the parent right after the student is removed and the parent says, I won't come in, or they say, I can be there in a half an hour, the conference could happen right away. The two-day provision is a limit. You can't drag on a conference and removal of the kid for endless amounts of time. Finally, to be clear, I will repeat that these removal provisions don't apply when a kid is subject to the federal Individual with Disabilities Education Act and when they have an Individual Education Program, IEP. If the IEP of federal law says that the kid can't be removed from or has to be returned, that governs. I want to mention that some of these suggested changes came directly from frontline teacher members of the NSEA, and some came from administrators who agree with the necessity of LB147 but suggested wording changes. Enacting this bill will empower our teachers to protect students from harm and allow them to again control the learning environment in their classroom. It makes clear to all concerned that violence towards others or property is not acceptable behavior-- behavior in Nebraska. Supporting this bill means supporting public education. With that, I would be happy to take questions.

WALZ: Questions from the committee? Senator Kolowski.

KOLOWSKI: Thank you, Madam Chair. Senator, how many contacts have you had with school districts or buildings on this particular topic and--

GROENE: I've met with--

KOLOWSKI: --what is the need?

GROENE: I've met with all of my school districts over the past five years I've been-- four point some years I've been a senator. None of them see anything wrong with this. Most of them say they're already doing it. They see no harm in it. They-- they understand. I met with a lot of teachers who have 30-40 years in. Administrators come and go; they're there. A bad administrator shows up like in every bad occupation, and for a two- or three-year stint, that teacher, life is in an uproar because they get no support. The other 28 years they have good support. As I say, this statute is to clarify to that teacher, to those parents, to those administrators, the teacher is the sergeant in that classroom and they're in charge on the battlefield and we need to allow them to control their classroom.

KOLOWSKI: You said the-- in the case of districts that are already doing this, it's already in their policy? It's already in their

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

handbooks? It's already in their statutes as far as the districts are concerned?

GROENE: They're not harmed by this.

KOLOWSKI: No. Is it-- this language already existing?

GROENE: In some. In some it's in there and it's not enforced by administration or working with the teachers. I-- this bill, as I said earlier, I mentioned students first, teachers second, administrators third.

KOLOWSKI: What do you mean by that?

GROENE: I am protecting students. I'm protecting public education environment. And this bill protects the teacher.

KOLOWSKI: And you've had lots of incidences [INAUDIBLE].

GROENE: I have already commented on that. Yes. I could mention a-- I got three letters that are out in the record just earlier today of three teachers, one bus driver, two teachers who gave me examples of-- of instances where this happened and they-- and they did not know that they could react. Bad things happened.

KOLOWSKI: Are the buildings that have a school resource officer being dealt with differently than those that don't have one?

GROENE: No. The legislation says they can restrain them until an administrator comes or a school resource officer. But in that moment in time that school resource officer could be three blocks away.

KOLOWSKI: Not if he's on campus.

GROENE: Ever been in violence? I'm sure you have.

KOLOWSKI: My history is not important.

GROENE: I don't think any school resource officer can move that fast but that teacher is there.

KOLOWSKI: My point is school resource officers on the school grounds,--

GROENE: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

KOLOWSKI: --not three blocks away.

GROENE: And the teacher's already hurt and Sally's already been beat up by Johnny and then the school resource officer shows up, a little late.

KOLOWSKI: And you make it sound like it's a common occurrence.

GROENE: It's a common occurrence in the bigger cities, in the bigger districts. It's getting to be a common occurrence in the small towns too. It's just not reported.

KOLOWSKI: It's not reported?

GROENE: Not reported.

WALZ: Other questions from the committee? OK. Senator Pansing Brooks.

PANSING BROOKS: Hi, Senator Groene. Thanks for bringing this again. What--

GROENE: Thank you, Patty.

PANSING BROOKS: Has-- has this changed from last year's bill? I think you've made some changes.

GROENE: Yes, we've done a lot of changes. We listen. Yeah.

PANSING BROOKS: Yeah. Well,--

GROENE: It's making sausage, they say. We took out the word "force" because it wasn't-- it's a legal term but it wasn't necessary here. We define the restraint more to what-- what some of the programs that teachers are taught, the methods to use. We're just putting in the statute to say you can have all the programs you want, the Rule 10 can have, but if there's not a statute to back you up it doesn't-- it's hard to defend yourself in a court of law.

PANSING BROOKS: Yes. So I'm-- I'm pleased that you've, you know, I made an exception for the kids with IEPs and the kids that have special needs. Along those lines I just wondered if you ever-- was there any discussion about training for teachers in-- in trying to deal with some of this because I, I just--

GROENE: I had. I had some admin--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: I presume it's too expensive?

GROENE: --administrators in the other day.

PANSING BROOKS: Pardon me?

GROENE: I had some admin-- I didn't need to cut you off. Were you done?

PANSING BROOKS: No, no.

GROENE: I had some administrators in the other day and they told me, we were talking about something else, the civics bill, and they said we-- we, you know, we-- we teach what's tested. If somebody isn't training their-- their personnel now, we pass this law, I mean you will be sure they will.

PANSING BROOKS: You think they will-- will train.

GROENE: If they're not doing it now.

PANSING BROOKS: Train the teachers?

GROENE: Yes, because now we have a statute that set-- gives those teachers the ability, and any administrator, school board in their right mind will train those teachers if they aren't doing it already.

PANSING BROOKS: I hope so. So along those lines then just the reason I'm-- the only other thing that I'm concerned about that's a little bit missing in this is the kids that-- that are just having training on trauma-informed responses, because there are kids that like, if the parents separated and there was some abusive thing that happened that morning, then the kid is-- some of the people know the kid's having issues and under great trauma and then isn't responding appropriately. So I don't know, I just-- and I don't know how we--

GROENE: Right now in statute, Senator Pansing Brooks, there is no statute that said a teacher can hold a hand, put a soft hand on a shoulder and look in the teacher-- kid's eye and-- and discuss something with them. This bill would allow that.

PANSING BROOKS: Well, you know you're speaking to me a little bit there, so. [LAUGHTER]

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: Yeah. This bill will put into statute that that's legal. Right now it's not in statute.

PANSING BROOKS: OK, Senator Groene. Thank you.

LINEHAN: Thank you, Senator Pansing Brooks. Senator Brewer.

BREWER: Thank you, Madam Chairman. Real quick, I kind of get both angles here because my brother's a resource officer and I do kind of understand what you're saying because he has Roscoe and Gordon. Well, he did. He's-- he's now the sheriff. But when he was there and was explaining some of his challenges, was that it was at least a half hour between schools to get back and forth. And so, yeah, he tried to target the students in the classrooms that tended to be the most challenging, so that he was there where they need him. But when it came to truancy and things like that, you know, you had to go and help coordinate with the faculty to be in the right place to figure out what was going on with some of them. But do you see this as more of a rural issue, urban issue, or is it just across the board?

GROENE: It's across the board.

BREWER: Well, and-- and I'll shift gears a little bit with you. My son, who's a teacher, pretty much has said, listen, I want to make sure I don't lose my job, so if there's a question I'm gonna just back off. Because I think there is just a fear that as a teacher, you're going to do something, intentional or not, that will jeopardize your future, because it's a bit of a zero defect world, I think, as a teacher that you don't get a lot of opportunities to make mistakes and not have that be a pretty crushing mark for you. So I mean, that part of it, I kind of feel for the teachers, because if-- if that's the true world they're-- they're in, whether that's particular to a school in a-- or whether or not it's-- it's just kind of the environment that it becomes a survival drill where you're gonna do what you have to do to continue teaching, rather than to have a classroom that is behaving the way you would desire they would, in order to have some degree of normality there.

GROENE: Make it clear, too, there's no "shall" in here. If a teacher is passive personality and does not want to restrain a child or-- or because of their physical physique, they don't believe they can do so, they don't have to. They can run out and scream down the hallway for help, like a lot of them do now and get told to handle it and go back

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

in your classroom. But-- but there's no "shall" here. There's no penalty if they don't do it.

BREWER: I'll probably counsel him because he's 6'7" and 270, so he shouldn't have to do that. And just-- I'm sure that Senator Chambers would be disappointed if I didn't correct you on this. You do understand that the calvary [SIC] does the reconnaissance ahead of the infantry, so they might be the first ones in contact.

GROENE: Well, then it delays it even further as they ride back to the infantry for help, right?

BREWER: Thank you.

LINEHAN: Thank you, Senator Brewer. Are there other questions from the committee? Senator Murman.

MURMAN: Just from some past experiences I've heard about, for instance when a class is out at recess or something like that and there's certain kids that act up, have-- they have a problem with every-- quite often, let's say, what happens is they end up keeping the whole class inside and it can cause a problem with-- especially when it's younger kids. You know, they don't like school because they can't go out for recess anymore. But I think the problem is, they need to take care of the specific problem and they're a little hesitant to do it because of what might happen.

GROENE: The same situation if student's out of control on the playground. The teacher or para could restrain that person from hurting somebody else.

MURMAN: Yeah, I agree. I-- I support what you're trying to do here. Thank you.

LINEHAN: Thank you, Senator Murman. Are there other questions? Seeing none, thank you very much.

GROENE: I will be here for closing of course.

LINEHAN: Proponents for LB147.

MADDIE FENNEL: Good afternoon. Thank you, Senators and members of the Education Committee. My name is Maddie Fennell, M-a-d-d-i-e, F, as in Frank, e-n-n-e-l-l. I'm the executive director of the Nebraska State Education Association and I'm here representing our 28,000 NSEA

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

members in support of the green copy of LB147 with the amendments, as the senator has stated today. There are two essential parts of this bill. Section 2 would allow teachers and administrators to physically intervene when a student is a danger to themselves, others, or school property. We support this language being amended to say that school personnel, not just teachers and administrators, would be able to intervene. Paraprofessionals, counselors, janitors, and other adults employed by a school may also need to intervene to ensure safety. Currently case law already states the teachers can intervene without threat of being disciplined for corporal punishment. This bill would support case law by stating in statute that school-- school personnel can hold the hands, wrists, or torso of a student to control their movements when they are in danger of harming themselves, others, or school property. I am the parent of a severely handicapped son who experiences substantial behavior outbursts that have injured others in our family. As a parent I have always worried about how school personnel would handle his outbursts. But I'm also worried about who could be harmed if my son, who's about 5-foot 10 and weighs 220 or so, was allowed to rage against others without being stopped. This bill states that school personnel must use reasonable care and not employ any mechanical device or binding. The NSEA is committed to working with teachers across the state to learn the safest and least restrictive means to physically intervene when there is danger. Section 3 of this bill allows a teacher to have a student removed from their classroom by an administrator, their designee, or a school resource officer when the teacher has documented that said student has repeatedly interfered with the teacher's ability to maintain a learning environment or if the student's immediate behavior is so unruly, disruptive, or abusive that it interferes with the learning of other students. Two years ago when LB595 was introduced, NSEA testified to the need for strong support and additional resources and training to ensure safe classrooms for students. At that time we shared our concern that LB595 did not adequately address the needs of special education students, did not involve administrators in decision-making, and did not provide a time line for the student's return to class with adequate interventions in place. LB147 addresses those issues. When a teacher cannot teach due to the continued misbehavior of a student, the teacher will be allowed to use his or her professional discretion to have that student removed by another adult. All involved will then be allowed a reasonable amount of time to come up with an intervention plan designed to prevent future disruptions and reintegrate the student into the learning environment. As educators, we understand that many students who are causing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

disruptions are acting out on the trauma they have experienced in their own life-- lives. Last year we were pleased to offer educators professional development sessions on trauma-informed classrooms. We are currently working with several other statewide organizations to develop resources for professional development on trauma-sensitive schools that we will offer free of charge to every teacher in the state of Nebraska. Yet, even as we take this proactive approach, we must balance the needs of all students against the needs of one. We must have protections in place, such as those offered by Senator Wayne in LB495, by Senator Vargas in LB515, and by Senator Pansing Brooks in LB390. It is prudent to give school personnel the authority to deal with disruptive students while also having protections in place to ensure that those resources are being used prudently while not disproportionately impacting groups of students. We ask you to vote in favor of the-- advancing the green copy of LB147 with the amendments as discussed to General File so that teachers can exercise their professional judgment in securing a safe learning environment for every student. Thank you.

LINEHAN: Thank you very much. Are there questions from the committee? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Ms. Fennell. So do you be-- so have you heard from teachers who feel that they cannot grab a child's wrist to calm down the child and get them under control?

MADDIE FENNEL: Yes. We did a survey two years ago and we heard back within 48 hours from 7,000 of our members stating how concerned they were, in incident after incident, where they did not feel that they had the protections in place. They were worried about what would happen. We heard stories and some of them were just-- it almost sounds like they can't be true but where one student was allowed to sit and-- in a bathroom and pour toilet water all over the place and on top of the adults because the adults were told that they were not allowed to restrain that child in any way or stop them from what they were doing. Things do happen and we need to be able to react to them appropriately. And I think it's important the word "reasonable" in here. When teachers ask me what reasonable is, I always say, would someone understand if they came around the corner and they never saw what happened before or what happened after, would what you were doing look reasonable and is it something you want to have happen with your own child?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: That's good. I know that you were here for the bill two years ago and how that turned into quite a battle.

MADDIE FENNEL: Uh-huh.

PANSING BROOKS: And so what do you feel has improved in this bill?

MADDIE FENNEL: So I like the protections that are in place for special education students. I think that's very important. I like the fact that the role of the administrator is clearly outlined in this, that it's the administrator or their designee is to remove the student. A teacher just can't say, out of my classroom. They have to call on that administrator and they have to send their designee to take care of it. There's also time limitations on this which I think are very important and the fact that there should be a conference. One of the things we frequently hear from teachers is that so often a student has a behavior problem and I send them to the office and they're back right away and I don't know what happened and the kid just seems tra-la-la. Well, they could-- I've had kids who seemed tra-la-la and they're putting on a face for their friends sometimes, that maybe the administrator did really talk to them about the behavior, but maybe they didn't. This allows for that conference to take place and I think that's very important. I also think the piece around restraint, I like the way that it's very clearly outlined what that is, and I think that that's important. I like the fact, especially as the parent of a special education student, that no mechanical devices would be allowed and no type of bonding to a child would be allowed. I, because I do have a child who's severely disruptive, I have been taught how to restrain them, and we are committed to teaching other people how to do that. We want to do it in a way-- we want teachers to learn that, quite honestly, not only for the protection of the child but for protection of the teacher. I dealt with one member that had multiple surgeries and even ended up in Mayo because restraining a child had damaged her so severely. I mean some of these kids, we think of it only as the big high school students that could do damage, but I've seen little six-year-olds that are tornadoes, that can just really harm people also. So we want to be careful from both ends.

PANSING BROOKS: OK. So just briefly, what do you think that the administrators can do if they don't have extra teachers, I mean 'cause we're hearing about all the budget cuts and everything that's--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MADDIE FENNEL: Uh-huh.

PANSING BROOKS: --a problem, so what happens to that child? I really don't know. What happens to that child that could be out of class for two days, up to two days?

MADDIE FENNEL: So I think that if a child--

PANSING BROOKS: And I'm worried about the teacher, but I'm also worried about--

MADDIE FENNEL: Totally agree.

PANSING BROOKS: --the education of the child, and I know you are too.

MADDIE FENNEL: Totally agree, which is why we're very much in support of Senator Vargas' bill that outlines if a child's not in the classroom that they should still be able to do all that classwork and do all that. A lot of times what I found is sometimes a child just needs that-- that removal from that physical space, especially if they're somebody who's been continually disruptive. It's important to really look at what, why is there that continuing disruption. I had a child who was continually disruptive and when we took a step back and looked at it we said, wait a minute, this is at the same time every day. And we involved the school nurse and found out it was a blood sugar issue. We wouldn't have done that if we wouldn't take the time to take a step back. So when there's-- and what happened when we take the step back in an elementary school, they can be placed in another teacher's classroom. They can be placed with, you know, the school nurse. There's a lot of different-- I mean we do this on a fairly-- I mean, it happens. And so there are other things are in place that we can do. Some places also have, like in Omaha, they have positive action centers in every elementary school and a child could be in a positive action center for day. I know they don't have that everywhere, but that's an example [INAUDIBLE].

PANSING BROOKS: OK. And just finally, so you talked about your son.

MADDIE FENNEL: Uh-huh.

PANSING BROOKS: What if the right solution on somebody isn't grasping them by the wrist or if it's a trigger for something or--

MADDIE FENNEL: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: --can you create a plan within the IEP about how to touch that child?

MADDIE FENNEL: Oh, absolutely.

PANSING BROOKS: OK.

MADDIE FENNEL: You absolutely can. In fact, we--

PANSING BROOKS: Could it be different than this?

MADDIE FENNEL: Yes. We crafted, for my son, we did craft special things and we knew, you know, when he-- when he would do certain things that this is what he's supposed to go do, and we knew what his triggering behaviors were and so we tried to avoid the triggering behaviors. But we also knew what things calmed him. And so the adults, we wrote into his IEP these are the things that should happen when he does get out of control. But I also made sure his teacher knew at no time should you feel physically threatened by him. And of course he loved his teacher so much. He hit me before he hit her. I actually put him to bed one night and I said, I love you, and he said, I love Wilson. [LAUGHS] I mean it was a great relationship, but there was one day where he came very close and I never want her to be afraid of that. On the other side, he was on the receiving end of other kids. [INAUDIBLE] know some people have been upset about this as well property. Well, if a kid picks something up and throws it, there's often another kid in the way. And in that case my son got hit in the face with something that was flying. So that's part of the reason why teachers-- it's not that we care about the computer. We care about it becoming a projectile that could harm others.

PANSING BROOKS: Yeah. Just so that you heard my question about trauma-informed responses--

MADDIE FENNEL: Yeah.

PANSING BROOKS: --and you know that we've been working on that some on this bill coming up. So do you have an idea how, because I don't see that in here necessarily.

MADDIE FENNEL: So I-- as we've been talking about this bill among our staff and among all the other things we've been doing, and in fact I've been at several conferences around the country in the last few weeks that's dealing with this and in fact, next week in D.C. I'm going to a conference that's specifically designated for three days

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

just to trauma-informed schooling. And I think what we're hearing clearly from educators is we want to do that work. We want to identify the trauma. We want to identify different ways that we should be responding to that, how we can help kids through that. Yes. But in the meantime, we have to know that there's a space of safety and that we can still continue learning through it, kids can continue learning through it. So what I see, Senator Groene's bill as well as the bills you and Senator Vargas and Senator Wayne are doing, is what we're trying to do is take a holistic 360-degree view and not go too far on either side, which is when the pendulum swings too far on either side, that's when we have problems. But we're trying to find a reasonable middle that allows us to look at a child as an individual, see what's happening with them, try to tailor how we respond to them appropriately. But when they're having a behavior that's really disruptive to the learning environment or dangerous, that we have the resources and the rights to protect that child from themselves and from-- and to protect other children from that person.

PANSING BROOKS: Thank you.

LINEHAN: Thank you, Senator Pansing Brooks. Senator Brewer.

BREWER: Thank you, Madam Chairman. Well, first off, Maddie, thanks for your testimony. It's kind of nice to have someone come in. Senator Groene means well, but sometimes he struggles to explain things in a way normal human beings can understand. [LAUGHTER] You have con-- you have concisely put together the information that we need and talked a little about history and it starting to gel and come together. And so thank you for making sense of this.

LINEHAN: Thank you, Senator Brewer. Senator Morfeld.

MORFELD: Maddie, thanks for coming in today. And maybe you mentioned this. I didn't hear it and I didn't see it right in here. How many other states have laws on the books like this?

MADDIE FENNELL: I do not know. There are a number of states that allow much more than we do. They actually allow corporal punishment, which I will never sit in this chair and ever say I'm in favor of.

MORFELD: Uh-huh.

MADDIE FENNELL: But there are-- I believe, I believe Texas has legislation that's somewhat similar to this--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MORFELD: OK.

MADDIE FENNELL: --but I did-- I did not do a scan of states. I will tell you, however, that having just come from a conference with executive directors from throughout the country, this is a problem everyone is facing: how to come up with-- we don't-- we don't want the school to prison pipeline. We know that's happening and that's got to stop. But we also want to keep every kid safe. So it's a real balancing act that we're trying to do between those two extremes.

MORFELD: Yeah, and that's-- this is something that maybe we can look at NCSL. They might have to have a 50-state summary or something. But if you have any resources on that, that would be useful, too, just to compare.

MADDIE FENNELL: Yeah. NEA's actually pulling together a conference to deal with some of these issues. And as I said, next week I'll be at this national-- it's only the second annual trauma-informed schools conference, and we are going to be using that. We're taking another teacher from Nebraska and we're actually pulling together a cadre of teachers that are going to develop a curriculum, and we're going to offer that curriculum to school districts across the state. It's true. We're doing it through LEARN, which is--

MORFELD: Uh-huh.

MADDIE FENNELL: --our 501(c)(3)--

MORFELD: Yeah.

MADDIE FENNELL: --that can offer professional development whether or not you're a member. So-- and I've already met with representatives of the Catholic schools and told them we're just going to-- this is a freebie. We're doing it as a give back to the profession. And so we're going to be doing that. We're also going to be offering things on-line, so it will be accessible to all kinds of people.

MORFELD: Great.

MADDIE FENNELL: It's our give back.

MORFELD: Thank you, Maddie.

MADDIE FENNELL: You bet.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: Thank you, Senator Morfeld. Senator Kolowski.

KOLOWSKI: Thank you, Madam Chair. Maddie, thank you for being here today for your testimony. One of the problems across the board for the last decade in the state has been the shrinking amount of money available for staff development. When you're looking at any program, the ones you've mentioned or teacher effectiveness training or anything else that you could get into that would make a difference in the buildings, it's hard to send staff when you don't have the finances to make that happen. And that's happened gradually and downhill slope for the last ten years. Where do we find the funds to be able to do the positive things that we'd like to do as far as instilling skills and abilities in the staff, compared to these reactions of just, oh, grabbing the kid or holding them--

MADDIE FENNELL: Uh-huh.

KOLOWSKI: --or sending-- settling them down that way?

MADDIE FENNELL: So I think the key is in what we call a blended learning model. I think we have to take better use of technology and we need to be offering more things on-line. We're actually finding-- we're using ZOOM, which is one of the many methods of-- of having Interaction back and forth between people electronically, and we found that to be very effective. We got a grant from the National Education Association for us to be working on this as well as working on a number of other things, so I think seeking grant funding for that. So I think it's blended learning. I think it's using a train-the-trainers module.

KOLOWSKI: Uh-huh.

MADDIE FENNELL: It's building it into the professional development days that are already out there, and then offering it on-line when teachers-- so that you put the kids to bed and at 8:00 at night you've said, wow, I read about that the NSEA magazine or I've heard it somewhere; I'm going to go on-line and watch that now or I'm going to listen to it on a podcast while I drive to school. I think we have to utilize those mess-- those methods--

KOLOWSKI: Uh-huh.

MADDIE FENNELL: --to get things to teachers at the time that they need it, not just at the time when we found available to provide it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

KOLOWSKI: And-- and also in anticipation for those kids who might be hired and where they're going in a district--

MADDIE FENNELL: Uh-huh.

KOLOWSKI: --because having some of that skill and ability taught at an earlier stage so they're comfortable with the application of it makes a big difference.

MADDIE FENNELL: Absolutely. And with the fact that we have student education associations on every campus across the state, we'll be working with those student education association Nebraska chapters at their fall and spring conferences and well-- as well as other times to make sure that they also have access to this information.

KOLOWSKI: Thank you.

LINEHAN: Thank you, Senator Kolowski. Other questions from the committee? OK. Thank you very much--

MADDIE FENNELL: Thank you.

LINEHAN: --for being here. Other proponents. Seeing none, opponents. Go ahead.

EDISON McDONALD: Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, and I'm the executive director for The Arc of Nebraska. We advocate for people with intellectual and developmental disabilities all across the state. We stand in opposition to LB147, as it almost undoubtedly leads to harm for students with disabilities. Senator Groene mentioned that he intended to exempt students with disabilities. However, reviewing the language, that's not what I'm reading here. What I read is that it only exempts them in the cases of returning, however, it doesn't exempt them from that initial force or any of the other actions. And I'd refer you to lines 13 through 17 on page 3. This bill is contrary to a wide body of research, the experiences of people with disabilities, and basic ethical considerations. Do you know what the Trump administration and the Obama administration can agree on? That we need to move away from the archaic practices of restraints and seclusion. I'd like to begin by referencing LB595, the previous version of this bill which has already been brought up. Many of you were on this committee. I think a lot of those questions and issues have not been addressed. Senator Pansing Brooks, in particular, discussed the lack of required training.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Although I do like that the NSEA is looking to take leadership in helping to provide that training, I think that this legislation needs a specific requirement to include that training. The opposition last time was broad, including administrators, people with disabilities, parents and advocates, many of whom won't be able to make it today due to the snow. I'd highly recommend referring to this transcript, which I've e-mailed all of you, as it includes a wide array of well-researched and important arguments. The revised bill fails to address many of these issues. And again, it's not backed by research other than the NSEA survey, which in the review of the "trensquar"-- transcript, the questions solely address a limited set of issues and it doesn't discuss people with disabilities at all. As you're getting the materials that I submitted, the top one, ultimately, this is really, truly an issue for people with disabilities. The graph shows that restraint and seclusion is used 40.4 percent of the time on students with autism, 2.3 percent of the time on students with another learning disability, 2 percent on a student with a speech or language impairment, 1.8 percent on a student with an intellectual disability. The other percentages include 28.3 percent on a student with an emotional disturbance, 16.8 percent on a student with another health impairment, 7.6 on other, and 1.2 on consent to evaluate. The largest chunk is clearly still students with disabilities. This has been shown to be a costly move. Going and looking over a 12-year period, restraints were decreased 99 percent and seclusion was eliminated at the Virginia-based Grafton Integrated. In this motion they went-- well, they serve 3,200 people with intellectual, developmental, and psychiatric disabilities in residential and community-based settings. The same time they saw a 64 percent decline in a client-induced staff injury and an estimated savings of \$16 million and associated costs from overtime, turnover, and worker's compensation. Clients, meanwhile, were far more likely to achieve mastery of their goals. The Civil Rights Data Collection indicates that schools restrain students with disabilities at these higher rates than students without disabilities, as we've seen. Students with disabilities served by IDEA represented 12 percent of students enrolled in public schools nationally, but 67 percent of the students were subjected to restraint or seclusion. I'm going to skip down and I think one of the really important things is especially on that training. One example of a quality training system would be Mandt, M-a-n-d-t. It's a comprehensive, integrated approach to preventing de-escalating and, if necessary, intervening when the behavior of an individual poses a threat to themselves or others. None of this has been discussed. We'd like to work with Senator Groene to find, you know, some ways to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

improve this. I don't think that it would completely remove our opposition, but it would remove some of the barriers and some of the potential harmful effects for students with disabilities. Some of those concerns, as I said, I don't think that this covers adequately protections for students with an IEP or a 504 behavior plan. There's no training. In terms of restraint, I think the definition needs to be narrowed to specifically include prone restraint. And destruction of school property is not well defined, meaning you could snap a pencil or a Crayola or tear up a piece of paper and that could be considered damaging school property. For these reasons and more, we urge you to oppose LB147. Thank you.

LINEHAN: Thank you. Are there questions from the committee?

MURMAN: Question.

LINEHAN: Oh, I'm sorry. Senator Murman.

MURMAN: Thanks for coming in, Edison. If a special-needs student is being disruptive to the class, himself, or herself, or school property, and you can't use any restraint or seclusion, what would you suggest should be done?

EDISON McDONALD: Yeah, the-- thank you. That Mandt System that I discussed, I think that's really a great tool to go and use in-- in kind of de-escalating. What it focuses on is kind of that person-centered learning plan that we really want to focus on. It helps in focusing on providing training to help to de-escalate situations. And the other thing is, you know, physical restraints, sometimes it feels like it's the only option. But as we've seen, especially in training with providers and provider organizations who work for people with disabilities, this is something that can be avoided in almost all cases.

MURMAN: OK. So I guess I don't understand what the Mandt System is.

EDISON McDONALD: Uh-huh. Yeah.

MURMAN: Could you further define that?

EDISON McDONALD: I-- yeah. Now I-- I was hoping to go and get somebody in who could speak a little bit more to that from a provider organization. They weren't able to make it. I did include basically it's a system focused on building healthy relationships between all the stakeholders in human service settings in order to facilitate the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

development of an organizational culture that provides the emotional, psychological, and physical safety in order to teach new behaviors to replace the behaviors that are labeled challenging. You know, I can't go a ton more into the process other than that it's something that's used regularly by the service providers and has helped them to deescalate a lot of these situations.

MURMAN: So if that system was going to be used on a specific student, wouldn't it be best, for the benefit of the whole class, to maybe take that student out of class and use that therapy on that student?

EDISON McDONALD: I believe a lot of that is a process and procedure that you can go and follow within class. Also, you know, I think the other part of this is, although we have national statistics, we don't have as many specific local statistics. And I think that, as the NSEA stated, it's really important that we pass Senator Wayne's LB495 first, collect the data about these situations, figure out these issues, then go and have a conversation. And although Senator Groene has include-- included teachers and administrators, he hasn't included the developmental disability community as much, and I think that that would be an important part of the process. And I think that, you know, we need to go collect the information, have the stakeholder conversations with everybody at the table, and then we can begin to discuss moving this forward.

MURMAN: Thanks a lot.

WALZ: Senator Brewer.

BREWER: Thank you. All right, Edison, I guess where I'm at with this and where I'm kind of struggles--

EDISON McDONALD: Uh-huh.

BREWER: --is if we set aside the EIP [SIC] part because it's-- it still seems to be kind of in question on just whether that's a viable part of this or not. If you go back to-- to Maddie's testimony-- and again, I got a brother, sister-in-law, niece, a son, they're all teachers. And it doesn't matter where I go. The flustration is that they can't be teachers, that they're afraid to-- to be what they should be for fear they'll lose their jobs--

EDISON McDONALD: Uh-huh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

BREWER: --or something will go into their record that will prevent them from ever having a future. And I-- I struggle that this is a-- a way of helping them with the problem. Without doing some terrible, evil thing, you know, it gives them some ability to have some control and not put things at risk. Can you see how that frustration's out there and how there's a desire just to teach and not have to worry about your future?

EDISON McDONALD: Yeah. No, I-- I definitely understand that. My mom was a-- a teacher and, you know, I think that the survey the NSEA put out does describe that there are some frustrating circumstances. And I think, you know, in terms of addressing this, that I think the best of intentions are here. I think, however, there is work that needs to be done on this. The other thing is that this assumption that restraint and seclusion-- and I'm sorry, Senator Groene. I-- I do keep using the term "restraint and seclusion" because in most cases when we discuss this, we combine the two. But as I've included also in a statement that I sent to you for-- or a study that I sent to you that includes a compilation of 50 studies from the WHO, there's this false assumption that restraints and seclusion actually decrease these sorts of violent tendencies. People using services unsurprisingly tend to view seclusion and restraint as punitive. And so it creates this "us versus them" sort of mentality. This frustration and anger frequently leads to further issues in the future. So one of the things that we'll be suggesting, and like Senator Wayne's study, is let's go and look up not at the one instance, but at the follow-up of what goes on in the future. I'd also suggest that you look further at that WHO study that includes a lot of resources for training and for better practices to include this. And in terms of the assumption about violent situations, in reality, predicting violence and harm accurately is extremely difficult without proper training. You know, teachers can't do that. Often staff are not able to differentiate between unpredictable, unexpected behavior, and risky behavior, so they also correlate agitation and distress with aggression. The uncertainty leads to a lot of situations that are unclear. And I think that really moving back to research-based practices is important in this.

BREWER: OK. So let's just follow that up a little bit.

EDISON McDONALD: Yeah.

BREWER: So if you're the teacher and you're in a classroom and someone is disruptive, the correct course of action would be what?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

EDISON McDONALD: You know, I'd-- I'd indicate that that Mandt System would be one to really take a look at. I think implementing proper training and procedures and protocol is absolutely vital. I think that that's really where we need to start moving this conversation. If Senator Groene wants to continue to move this bill forward, I think we've all heard this discussion that training is important, and I don't think anyone would disagree with it. The thing about training always comes down to what's the price tag going to be, what's the time line going to be, and should it be mandatory or just optional. I would say with this sort of extreme case, I think you need to have that training. With the issues and the potential price associated in some of these cases and the potential damage, I think that making that training mandatory is undoubtedly necessary.

BREWER: OK.

EDISON McDONALD: And so as to the Mandt System, I can't go a lot further into detail, but I can go and help to connect you with more resources on that if you are interested.

BREWER: That's my study project for the interim.

EDISON McDONALD: OK.

BREWER: I'm going to get smarter on it.

EDISON McDONALD: Thank you.

BREWER: Thank you for your testimony.

WALZ: Thank you, Senator Brewer. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming, Mr. Edison-- or Mr. McDonald. I--

EDISON McDONALD: Two last names.

PANSING BROOKS: Yeah, two last names. Yes. I'm just-- so can you explain again why you think that people with special needs are not really covered? I'm just interested 'cause--

EDISON McDONALD: Yeah. So on page 3, and I'm not an attorney so I may be wrong on this, but the way I'm reading this: The principal may not return such student to a class taught by such teacher without the teacher's consent, unless such return is required pursuant to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Special Education Act or the federal IDEA Act. So in regards to that, I think that only specifies talking about the return of the student. It doesn't talk about the other pieces or processes. It doesn't talk about that initial grabbing by the hand, wrist, or torso. And I think that, I think it's--

PANSING BROOKS: I think that's a good point.

EDISON McDONALD: --it's only specifically covering that section.

PANSING BROOKS: Yeah. I-- I mean I think that from the testimony from Ms. Fennell from the NSEA, her testimony indicated that she thought it did cover that.

EDISON McDONALD: Uh-huh.

PANSING BROOKS: So I think that may be a good catch--

EDISON McDONALD: Yeah. And I--

PANSING BROOKS: --on that.

EDISON McDONALD: And I think,--

PANSING BROOKS: I don't think--

EDISON McDONALD: --you know, I--

PANSING BROOKS: --Senator Groene's--

EDISON McDONALD: --I think that's probably within Senator Groene's intent.

PANSING BROOKS: I think so too.

EDISON McDONALD: I just think that that, you know, sometimes when you're writing legislation things kind of slip under. And I think, you know, just going and reviewing some of these pieces, as I said, would be important.

PANSING BROOKS: So I-- I understand that you have a particular constituency whom you represent,--

EDISON McDONALD: Uh-huh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: --which we're appreciative that you're here. And I guess if you-- I can see, though, as I-- as I look at it, if you had a kid that's hitting at everybody and-- it seems pretty [INAUDIBLE] that you would grab a child's wrist if somebody were actually hitting another child or acting out of control. This is different than the force that we saw last time, two years ago.

EDISON McDONALD: Uh-huh. Yeah.

PANSING BROOKS: So do you have something to respond about why you think grabbing a child's wrist, stopping them from hitting another child or a teacher, is inappropriate?

EDISON McDONALD: So that-- that's a great question and I do appreciate the-- the movement on this from the last bill. I think that there do need to be more pieces to that. I think, you know, in terms of that step, though, ultimately what the research shows is that restraints in pretty much any setting have been shown to be physically, mentally, and emotionally harmful to students, you know, because I always like to go and make sure I'm trying to see the other side. I did try and find studies that showed the positive benefits of restraint and I couldn't find anything that specific--

PANSING BROOKS: On stopping another child from hitting a child?

EDISON McDONALD: In terms of the-- the benefits of that. I don't-- there's nothing that I could find in the academic literature that would support that that would be a helpful behavior because, as I say, it's--

PANSING BROOKS: There's nothing that says that it's helpful to stop another child from hitting a child?

EDISON McDONALD: You know,--

PANSING BROOKS: We're supposed to sit back and let it happen?

EDISON McDONALD: I-- I-- I do see the point you're trying to make there. All I can say is, you know, I don't think that they have any specific section where they do offer-- or any-- there is any specific academic study that shows that that is helpful. The other thing is that--

PANSING BROOKS: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

EDISON McDONALD: --it's-- this is a short-term solution. That use of physical force may solve that one incident, however, I think really the thing is this is a long-term situation.

PANSING BROOKS: Well, I do appreciate your idea about the Mandt training.

EDISON McDONALD: Uh-huh.

PANSING BROOKS: I think that's very important. So thank you for your help, your discussion today.

WALZ: Senator Linehan.

LINEHAN: Thank you, Chairman-- Chairperson. Sorry. On the Mandt,--

EDISON McDONALD: Uh-huh.

LINEHAN: Thank you for being here, Mr. McDonald. The Mandt, the way you described it, it sounded like it was a healthcare training, not maybe a school training.

EDISON McDONALD: Yeah, to-- to my understanding, and admittedly it's minimal, this is a-- there is a process and procedure and it's specifically used for people with disabilities in service providers here in Nebraska.

LINEHAN: Because you said that-- the reason I'm wondering if that's not what it is, because I have a daughter--

EDISON McDONALD: Uh-huh.

LINEHAN: --who works on a-- a psych ward in a hospital. And I think with--

EDISON McDONALD: Yeah.

LINEHAN: So I think the training is more-- I'm not saying that there's not--

EDISON McDONALD: Uh-huh.

LINEHAN: More training is always good, no matter what is.

EDISON McDONALD: Uh-huh. Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: But I-- I don't know if it's--

EDISON McDONALD: It's not exclusively for people with disabilities. You're correct.

LINEHAN: OK. And then the other thing, you kept saying seclusion. What are you-- I don't see that in the bill.

EDISON McDONALD: I'm sorry. You're right. I-- I just have, within this practice, we always talk about restraints and seclusion hand in hand.

LINEHAN: But it's not-- there's no seclusion.

EDISON McDONALD: It's not, and that is--

LINEHAN: As a matter of fact, it's very clear that they can't do that.

EDISON McDONALD: Yep, that-- that's an important piece and I'm sorry for that mistake.

LINEHAN: And the restraints, it's also they can't use any binding or mechanical device.

EDISON McDONALD: Uh-huh.

LINEHAN: So basically, back to Senator Pansing Brooks, if you're-- I've got five grandkids and I frequently--

EDISON McDONALD: Uh-huh.

LINEHAN: --I love them very, very much,--

EDISON McDONALD: Uh-huh.

LINEHAN: --and I frequently--

EDISON McDONALD: Yeah. Yeah.

LINEHAN: --grab their hands when they go to hit the other one.

EDISON McDONALD: Yeah. No, I-- and, you know, I think ultimately that every case of this, that this is done in the most loving setting possible. I don't think that there's that negative intent. I think, however, that there are negative consequences. And I'd refer to corporal punishment. You know, it's meant--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: But that's--

EDISON McDONALD: --to be done with love.

LINEHAN: --that's also not in here.

EDISON McDONALD: No. I'm just drawing a comparison.

LINEHAN: OK.

EDISON McDONALD: While it's meant to be done in a loving fashion, ultimately the-- the physical effects have been shown to be detrimental.

LINEHAN: But it is detrimental if you let one child pop another child or throw a book at them or throw their chair out at them.

EDISON McDONALD: That's a fair point.

LINEHAN: Thank you.

WALZ: Other questions from the committee? Thank you.

EDISON McDONALD: Thanks.

WALZ: Next proponent-- or opponent, right?

LINEHAN: Opponent.

WALZ: Can you state your name and spell it, please.

EDISON RED NEST: My name is also Edison. My last name is Red Nest, R-e-d N-e-s-t, and I'm the III. You know, at the beginning of this I was kind of in the neutral. You know, I could see both sides. But, you know, for me, I can't-- I can only speak about the Natives. You know, I can't say anything about people with disabilities or autism or anything like that, you know. And as far as restraints, when it comes to children in schools, you know, that happened to me in Alliance when I was in kindergarten. And you want to know why it happened? Was because I did not want to eat my spinach. So those teachers held me down, force-fed me my spinach. You know what I mean? Terrible, terrible. Then I go to another school where we are with the younger kids and there's a younger Native kid there and he was just taken away from his parents, his mom, you know, so he's very disruptive. So what do these teachers do? They held him down for an hour, you know? And, you know, this is 30 years ago, you know, but it still gets to me. You

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

know, it's terrible seeing stuff like that happen and not-- you know, being intimidated by the teachers because I know that if I step up, if I say something, then I'm going to be in trouble, you know? I-- I don't have the green copy but I read what was on-line. You know, Section 3 seems like it's giving teachers a lot, a lot of freedom to remove a child from a classroom. Now I'm, you know, where I'm from in Alliance, I'm-- I'm a school board member. You know, the guy with the glasses and the white hair, he said this stuff is happening and it's not being reported, but not in Box Butte County, it's not. You know, teachers aren't getting hit there, you know. So for us something like this is a real nonissue because it's not happening. But what is happening are, yes, we do have disruptive kids. A lot of them are Native Americans, you know? With being on the school board, I also sit on the alternative school board policy advisory committee, whatever. I don't even know what it's called. But the alternative school holds 28 students. Thirteen of those students are Native American and those Native American students are there because of being disruptive in class and, you know, reflecting the teacher's time away from the other students. You know, stuff that's relatable to Section 3. And you know again, Section 3 also reminds me of my time when I was in YRTC-K, when they gave us that freedom to determine when we thought one of our group members was being disruptive and unruly. You know, so we could just call restrain, and for no reason, even if we-- I mean if I didn't like, you know, Senator Morfeld here, I could-- and we were in YRTC, I could say restrain and everybody's on him restraining him, you know? To me it kind of seems like the teachers, they'll get a lot of that freedom. You know, if there's a kid who was disruptive in the past and they continue to be disruptive, then they get that freedom to have an administrator or the SRO or someone come in and take them out and then put them in an alternative school. And my problem again comes into play where we already have a high-- almost 50 percent of our Native-- our Native students are in, I mean, at the alternative school. And we represent the smallest population in the school district, but we-- we're taking up a half of an entire alternative school, you know? So something is happening. They're being disruptive. Yes. You know it's a lot on their part. But something more is happening to these kids, you know? And to just say that this-- this kid is being mean or whatever warrants them being taken out of a classroom or possibly restrained, you know, you can-- I'm here testifying to you on the negative effects of restraining, you know? And again, I understand that sometimes you know there are kids that do need to be restrained. Yes. Handle that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

properly. We're adults, you know? It's just, you know, that's just my thoughts.

WALZ: Thank you. Questions from the committee? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Mr. Red Nest, and for your advocacy on so many important things. I-- so again, that's horrible that you were restrained like that and force-fed. To me, that's abuse and those people should have been charged, in my opinion. So hopefully we're not talking that-- that far by just saying that a teacher or administrator could hold the wrists or hands to-- or torso of someone to control movement. I suppose "torso" could be putting somebody down and binding them. But I think that that's true, that people are adults and there are-- there-- there needs to be some way for teachers to stop a child from hitting another child. I mean, I presume you would agree to that.

EDISON RED NEST: Yes.

PANSING BROOKS: So you know, again, it's-- it's the fine line of walking, trying to figure out what is appropriate. It doesn't allow the force that was allowed two years ago, which I think is a positive move, and so I don't know. And I do think training would be good, but I don't know if you have any thoughts on that.

EDISON RED NEST: I don't. I had no idea about this bill until I walked into this room.

PANSING BROOKS: OK. Thank you for your thoughts.

WALZ: Thank you. Other questions? Senator Brewer.

BREWER: Edison, I'd be remiss if I didn't, well, first off, thank-- thank you for coming in to testify. But you're in a unique position and a lot of people, well, most of them in this room don't realize that you deal with children every day. Your, I guess, calling in life is-- is mentoring. Would you real quick like just kind of share what you do there with your youth program?

EDISON RED NEST: Yeah. So I'm a-- I run a for-profit business called Native Futures. We contract with Appleseed. We contract with CAPWN for homeless youth program, a leadership program. I'm the diversion officer for Box Butte County, so I work directly with the county attorney for first-time offenders. Our diversion program sits at 90 percent success rate and those that-- that's backed up by the county

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

attorney, whereas the rest of the state is sitting at about a 40 percent, 40 to 45 percent success rate with their diversion programs. I also work with the Santee Sioux Nation, lots of cultural stuff. I'm a provider for state of Nebraska Probation, both adult and juvenile services, and I've recently been awarded a contract with DHHS for CPS services. We are involved with a lot of stuff. I was aware you were changing a lot of things, a lot of systems, so we are implementing programs that, you know, we're funding on our own. Like I said, I'm a for-profit so if I don't work I don't get paid. I have nobody funding me, you know, which is great because I have no oversight, no one to tell me what to do except for my wife, you know? Well, I'm here because of her, you know. But we're out there and we're doing a lot of stuff and it seems like, you know, there's-- there's so much going on here in Lincoln and in eastern Nebraska that if some of the stuff was going on in western Nebraska, too, we could make a big difference, you know? And-- and like I said, we-- we already are. You know we have kids here from Gordon who are advocating, and they're going to be seeing the Governor here in about a half hour or so to advocate on a legislative bill that-- that they see fit. You know, they're-- they're using their own voice. You know we-- we've successfully changed things in our area to where, you know, a person like myself, because I am a felon, I was convicted of selling cocaine back in 2005, and I'm very, very blessed to be able to do the work that I'm doing despite having that felony on my record. You know that, that lived experience is where I'm at today you know and, like I said, changing things. You know I'm the-- I'm the first Native American to be elected to an-- to a position in our area, a school board position. And I even dropped out of the race two weeks prior to voting. You know, I dropped out. I fully endorsed the other Native candidate. And then next morning I woke up and I was voted in, you know, and you know the other lady, she came in fifth place and I came in third. And if I would have dropped out then there would be no Natives in there representing, you know, and that's-- that's exactly what I'm for. I'm for the Natives. But all of our programs that we do, we're about 50/50, Native/non-Native, you know. So we're not just reaching our people. We're reaching other people and we are doing stuff, we're building up these kids. You know we have businesses going. We have lacrosse programs going. Someone mentioned a prison to-- a school to prison pipeline. We're looking at a lacrosse to college pipeline that is a very real reality to us. We're building businesses. You know I have-- I have two businesses. I have a "pedi-taxi" business. I bought the taxis from Pedal Pushers here in Lincoln, the bike taxi. So that is youth-led, youth-ran. It's going to be-- it's going to be great, you know? We-- we did our test

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

run this past summer. It did well. You know we're looking at moving into sustainable housing. We're looking at working with some people out of Omaha, people with the U.N. to make geothermal greenhouses. Let's put one in Gordon, Alliance, Chadron, you know, all in an effort for us to finally have something, you know. Because you look in western Nebraska, there is not one single thriving Native business, you know, except for-- except for mine, you know. And even I hate seeing that. I hate bringing up that, that fact, you know? But long time ago, before the Indian Prohibition Act was repealed, we were there. We were, we were a part of society, we had cars and horses and houses and, you know, we were doing that. But once that repeal and Natives started drinking back in 1953, everything was gone and now we have nothing, no generational businesses, no anything. You know, I know people whose great-great-grandfather started this business and it's been in their family and their family and that's all over the place. But there is nothing like that for the Natives. We are in extreme poverty in western Nebraska.

BREWER: But, Edison, I think the advantage that you have over teachers and some of the others is the reason that kids come after school to see you. The reason that they spend their weekends playing lacrosse and doing the things they do is because you have a natural leadership ability. They feel a bond to you and they-- they show you, well, it's-- it's a Native tradition that you respect your elders and show it. You have a huge advantage over the teachers. And that's why sometimes I think what you do is-- is so spontaneous and successful. And I think that's why, and I guess it was brought up earlier, I-- I struggle with some of the teachers that-- what you mentioned about them forcing you to eat spinach. I mean, just eating spinach should be punishment enough, let alone [LAUGHTER]--

EDISON RED NEST: Right.

BREWER: --forcing one to do it. But finding a way to not keep the teachers from being able to control, you know, an environment for learning, that I think is kind of at the heart of the bill.

EDISON RED NEST: Yes.

BREWER: But I do understand where you're coming from and thank you for your testimony and for--

EDISON RED NEST: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

BREWER: --what you do with all the youth.

EDISON RED NEST: Thank you.

WALZ: Any other questions from the committee? Thank you so much for coming today. Thank you for your work.

KYLE MCGOWAN: Good afternoon, Vice Chair Walz and members of the Education Committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n. And today I'm representing the Nebraska Council of School Administrators, the Nebraska Rural Community School Association, and the Nebraska Association of School Boards. All three organizations oppose LB147, but I think it's appropriate to recognize Senator Groene and his reaching out to all of us to discuss concerns that we have with this bill, and I think that he did try to make some adjustments. However, ultimately, none of our three organizations want to be on the side of needing more physical restraint to be better at keeping schools safe. We feel that's the wrong part of the equation. A school's building culture has to promote safety. Building administrators need to support teachers and teachers need to support administrators. However, all the adults need to be supporting students. Removing a chain of command that is no longer clear-- no longer clear for any organization, I think, ultimately reduces the effectiveness of that organization. I hate that Senator Brewer left because everybody was talking about analogies with the military. So my analogy with the military is, and I was a building principal for a number of years and had 30 or 40 teachers, that's a platoon. And the principals and the assistant principal are lieutenant. And you can't have different peoples in the platoon, one voting this way and one voting that way, and having an effective organization. I do think Senator Groene's attempting to help make a safer environment. There are some issues and-- and I'd like to defer to-- I know that the senators have legal counsel, but some of the language regarding necessary physical restraint seems ambiguous. Just assuming-- we all know what happens when you assume-- that his language regarding special education covers those issues, however, there is something called a Section 504, which is part of civil rights legislation from the early '70s that doesn't fall under the auspices of IDEA. There might be others that could speak more clearly to that than-- than myself. Interesting, I just want to respond to a couple pieces in testimony that I heard. There was a lot of discussion on Mandt training. I've been through Mandt training. It's a minimum three-day training. First two days are about deescalating a behavior, and that's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

what professionals do. The third day that at least I went through had some training on physical restraint. To offer such training in one day, particularly by, if we're talking about physical restraint, again I guess would be akin to teaching someone in the military, you know, self-defense over Zoom with-- with-- without a live person there. So here's some quick numbers on Mandt. The training, to-- to train a trainer is always the most efficient way, and we have ESUs and we could do that. But there's somewhere around 22,000 teachers. OK. I'm not talking about paras; 22-- north of 22,000 teachers. If it's a three-day training, unless-- I don't know if I heard correctly so I won't-- I won't say this, but unless the teachers are willing to work for those three days at no cost, a minimum teacher substitute costs \$100. So three days, \$300, times 22,000 is \$6.6 million. So with that, I'm on the yellow light. I'll answer any questions I can.

WALZ: Questions? Senator Linehan.

LINEHAN: Thank you, Chairwoman. The-- we already have in-service days, don't we, most districts?

KYLE MCGOWAN: Yes, we do.

LINEHAN: So how many in-service days, what's the norm for a school year?

KYLE MCGOWAN: I can only speak to my school. We had about six.

LINEHAN: So you have six in-service days,--

KYLE MCGOWAN: Uh-huh.

LINEHAN: --which is probably pretty much average across the state. At least they have three.

KYLE MCGOWAN: Yeah. I-- I assume so. Now, yeah.

LINEHAN: So if they have three in-service days, couldn't they use the in-service days they already have--

KYLE MCGOWAN: If that's how you want--

LINEHAN: --for the Mandt training?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

KYLE MCGOWAN: --in-service days. You know, we're asked to do many more things. Also in the Mandt training requires a recertification at least every two years.

LINEHAN: But are you--

KYLE MCGOWAN: So I'm-- I'm sorry.

LINEHAN: --seven-- seven, if I remember Ms. Fennell's numbers correctly, you said there's 22,000 teachers.

KYLE MCGOWAN: A little bit more, actually.

LINEHAN: And 7,000 people, teachers, professionals, answered the survey, this was a problem. So that's an astounding number.

KYLE MCGOWAN: Well,--

LINEHAN: That's a third, like, within 48 hours.

KYLE MCGOWAN: Yeah. So here's how I would respond to that. If I sent out a survey to all of our administrators asking them times that maybe teachers used poor judgment, I'd bet I would get a large response back. The reality is most schools are working very well every day. And we're not talking about a-- what I-- I certainly believe to not be a common problem. Now are there students coming to our school which-- with much more baggage than they ever did? I think so. I-- I think it's fascinating, though. Senator Brewer, I'm glad you came back. Senator Brewer's got a 6'7, 240-- I-- I don't know what that kid was in high school, but I bet everybody said please to him. But if we're not going to say please to the 4th grader or to the autistic student, I-- I think professionals are trained, the vast majority of time, to control a situation without getting physical. Now I-- I heard some testimony. In my 35 years in education, I certainly had to restrain some students, so that exists currently. To try to say that our schools are going to be safer if we use more physical restraint, I disagree.

LINEHAN: I don't-- I don't think the bill says you need to do it at all. It's all, I think Senator Groene said, "may" throughout the bill. So nobody's forcing anybody to do anything.

KYLE MCGOWAN: Nobody's forcing it, but the bill itself is encouraging the use. Otherwise, we wouldn't need the bill if-- if--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: But you just said you did use physical restraint.

KYLE MCGOWAN: I did and because legally I can.

LINEHAN: It's still, I just-- 7,000 out of 22,000 is 33 percent of the teachers evidently don't think that it's all going so very well. Thank you.

WALZ: Senator Kolowski.

KOLOWSKI: Thank you, Madam Chair. Senator Linehan, I think that they had 7,000 responses. They didn't say they had 7,000 negative responses to the physical issues that were going on in buildings. I think you're extending something.

LINEHAN: They said they had 7,000 supporters--

KOLOWSKI: They had 7,000 responses.

LINEHAN: --of the bill two years ago. OK. Well, we can get that clarified, I'm sure.

KOLOWSKI: Correct.

WALZ: Other questions from the committee? All right. Oh, Senator Murman.

MURMAN: Thanks a lot. And thanks a lot for coming in. Yeah, I guess when I look at this bill I, you know, I've been a school board member, I've got a disabled child, I've-- I've got close friends and family that are administrators and teachers. I've kind of seen it from all angles, I guess. My-- the concern I thought this bill was trying to get at is that-- say, you've got 20 in a class and 1 is disruptive; we have to deal with both the disruptive and the other 19 students. And as we talked about earlier, it says "may" all the way through this bill. So I look at it as kind of being a last resort in rare cases that we need to have that option available to take a child out of the class if it's needed. So I'd just-- I'd like to have your response to that, I guess.

KYLE MCGOWAN: Yeah. I think we have those options now. I think students are taken out of the classroom every day. So I-- the idea that we need to somehow free up the authority for teachers to, because they're not being supported by their administrators, I think that's an issue of culture in a building. Do I think it's happened? Absolutely.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Do I have examples of teachers that have used incredibly poor judgment in taking students out of the classroom? Absolutely. So I-- I just feel that this bill is somehow attempting to give more license to a strategy that I think is not very effective but needs-- needs to be available. I think one of the Senator-- Pansing Brooks, there's a student hurting another student; that's going to be stopped. And if it-- if it means you've got to hold that student's arms down, then it's going to be stopped. If we're dealing with a 6'7 person, I might not be the one stopping them but I'll be calling for help.

MURMAN: Well, that's the way I read this bill. It just gives us that authority, that you just said, that kind of as a last resort but--

KYLE MCGOWAN: Can I just--

MURMAN: Sure, go ahead.

KYLE MCGOWAN: I just know you're a school board member.

MURMAN: Yeah.

KYLE MCGOWAN: And I don't know where you're a school board member at, but my guess is that your administrators, your teachers have had to use some sort of physical contacts with kids over the years. So I-- I think that that is taking place now. To somehow allow greater license for that, I think sends the wrong message to what we need to be doing in schools.

MURMAN: Thanks.

WALZ: Other questions? Thank you.

KYLE MCGOWAN: You bet.

WALZ: Next opponent.

MICHELE ZEPHIER: My name is Michele Zephier, spelled M-i-c-h-e-l-e Z-e-p-h-i-e-r. Thank you for hearing me today. I was born in Lincoln and attended Lincoln High School right down the street and UNL. My son Dylan Zephier was also born in Lincoln and went to-- at St. Elizabeth Hospital. He's now 12 years old and we live in Omaha, Nebraska. Dylan was born with Down syndrome and autism and has attended one of Nebraska's finest school districts, Westside, from first grade to fifth grade. Dylan no longer attends Westside. He was denied a free and appropriate education due to repeated restraint and seclusion in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

his school, Prairie Lane Elementary. The seclusion and restraint occurred in the yellow room, a retired shower room 3 foot by 3 foot, covered in tiny yellow shower tiles. All schools in Nebraska have some sort of room used for the seclusion or restraint in which a child is forced into and observed through a closed door or tiny window or peephole while being shut inside with no interaction from teachers. His teacher, Olivia Harrison, due to lack of training, secluded or restrained him up to eight times a day. Often children with disabilities have behaviors that are "interpreted" incorrectly and are unfairly punished with seclusion and/or restraint. In fact, almost 70 percent of children are secluded or restrained are children with disabilities, including autism. Seclusion and restraint results in psychological and physical injury and in several cases a year in the United States, even death. My son started repeatedly expressing to-- that his teachers were going to put him in jail, that he hated himself, and finally that he wanted to kill himself. I took action. I pulled him out of this abusive situation and hired a civil rights lawyer to defend his rights. After months of citing it was district policy, Westside insisted seclusion and restraint would be continued. As a result, my son suffered severe anxiety, PTSD, suicidal tendencies, depression, increased negative behaviors. The policy forced me to relocate my entire family from our beautiful two-story home of eight years in midtown Omaha to a tiny apartment in Bellevue just three months ago. Dylan's trauma is typical of children subjected to this daily torture when treated like criminals in prison. Studies show seclusion and restraint results in increased negative behaviors. This can no longer be acceptable in Nebraska. I'm not going to sugarcoat this. I'm a single parent and business owner. I have-- I was unable to sustain my business and protect Dylan at the same time. We are facing financial ruin and we are not alone. Many states, including North Carolina, have outlawed this archaic failure of treatment. Please do not force other parents who have to fight so desperately for their child's rights. This is not a last resort. Restraints should not be allowed. And I oppose LB147.

WALZ: Thank you for your testimony. Do we have questions from the committee? Thank you so much for coming today. Next opponent.

JENNIFER JAMES: Sorry. I'm not used to this chair yet. Hi. My name is Jennifer James, J-e-n-n-i-f-e-r J-a-m-e-s. I'm one of the disability policy specialists for People First of Nebraska. People First is an organization that's made up of self-advocates. Our mission is to empower, train, and advocate for all people with disabilities. People

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

First of Nebraska opposes LB147. We understand why the bill is introduced. We also understand some teachers are frustrated but physical restraint is capital punishment. Under the bill, contact or restraint can be used when a student becomes dangerous or damages school property. There are better ways to handle this with training. When I was in school, there was a student that tried to push a desktop computer off the table. The situation scared me and the teacher grabbed the computer, not the student and told the student, let's go talk, then walked up to the front of the classroom without touching him. She talked calmly to the student and got him calmed down without physical contact. This also made me feel safer. If the teacher had restrained the student, also known as being taken down, I would not feel safe or protected. Just seeing that would make me feel threatened. Even if the student is injured, no action can be taken against the teacher or the administrator if the teacher is being reasonable. What is "reasonable"? The bill states the student can be taken to an appropriate classroom but does not define what that means. When I was in school, a teacher put me in a small room without any air conditioning or ventilation. I felt like I was being forgotten. I was there for a long time. I wasn't able to communicate with anyone, even to get some water. I was terrified that they wouldn't come back for me. The bill does not stay what "appropriate" means, so it's open to interpretation. It could be the size of a closet or a dark room. Staff or teachers need to have specialized training to handle the tough situations so the student is not injured. Both staff and students deserve support. The bill is open to broad interpretation which can lead to a teacher or administrator using enough physical force they could injure the child. In closing, People First of Nebraska opposes LB147. Thank you for your time; and if you have any questions, I'll try to answer them.

WALZ: Thank you, Jennifer. Do we have any questions from the committee? Thank you for your testimony today.

BRAD JACOBSEN: Good afternoon. Brad Jacobsen here representing my colleagues from the Nebraska State Association of Secondary School Principals, B-r-a-d J-a-c-o-b-s-e-n. I'm here in opposition. I don't have a long statement. I'm hopeful that the committee will ask some questions of somebody that is a practicing building principal. And I'm a 6th through 12th grade principal so I kind of see a lot of age groups as well. Some of the main opposition I guess that I'll throw out there is really a little bit about just kind of the redundancy, and even some of the amendments offered today sounded a lot to me like

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

the policy that my school board has in place. We have a policy in place that clearly defines when restraint and seclusion, and I know, again, we're separating those two things now, but can be used. Also in our staff handbook, it clarifies with our staff when restraint can currently be used, and those questions come up many times. One of those times is to protect a student or protect another student or even to protect yourself, whether it be school equipment or-- or some kind of violent act. A little bit of a concern possibly in that two-day period about when someone's removed. There's something that a school administrator would know; that the standard is called the Goss standard and that's a court case from the '70s that requires the student that's in trouble, if they've been removed from class and they may be facing a suspension and this would, you know, support-- would be supporting the Student Discipline Act to-- to be able-- you have to explain to them what they did wrong and you have to inform them what they did wrong, give them an opportunity to explain. And this isn't a hearing about like an appeals hearing, like an expulsion hearing. This is a different thing. But in that two-day period, if indeed the-- the action wasn't something that in the Student Discipline Act arose to the need to suspend in or out of school, that two-- up to two-day periods, and I understand it can be less than that, but that may not actually-- it could violate that Goss standard of their rights there. Heard a little bit about 504. And again I think, too, similar to an IEP. I was going to bring up and it was stated very eloquently earlier, it-- it helps that on the way back in that conference part of it. But, you know, a 504 plan, they still have that same right to-- to education-- free and appropriate education. And moving them out could violate their 504 plan. A 504, quite honestly, is quite a bit more jeopardy for a school district and individuals as far as with lawsuits and attorney's fees. And it's-- it's kind of a different-- different level. So the bill doesn't address the 504 plan at all. So-- so those are some of the issues that I guess that-- that caused concern for principals and that's-- that's my-- kind of my opening statement. I'd be happy to take questions from the-- from the committee.

WALZ: Senator Linehan.

LINEHAN: So were you here-- thank you, Chairwoman. Were you here when Michele Zephier gave her testimony about her son at Westside?

BRAD JACOBSEN: Just now?

LINEHAN: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

BRAD JACOBSEN: Yes, correct.

LINEHAN: So does this happen? I mean she-- is this-- is this going on in schools, putting a disabled kid in a yellow room all day long?

BRAD JACOBSEN: Not in my school, I mean, can I say--

LINEHAN: It can happen anywhere in Nebraska.

BRAD JACOBSEN: I can't answer-- I can't answer that question. Obviously in her case it did. So I-- I'm not going to sit here and say it didn't because in her case it certainly did.

LINEHAN: So-- and you mentioned seclusion. Do you use seclusion in your school?

BRAD JACOBSEN: Again, seclusion and res-- now we're talking about restraint or we're talking about seclusion?

LINEHAN: Seclusion.

BRAD JACOBSEN: OK. So seclusion is not legal unless there is-- again, an in-school suspension room is not considered seclusion.

LINEHAN: What's the definition of an in-school suspension room?

BRAD JACOBSEN: Well, it's-- in our case it's a space that is right next to my assistant principal's office. It's a room with a desk and a chair and a window between the two rooms.

LINEHAN: So how long can you put a student in there?

BRAD JACOBSEN: Well, if there-- if it's-- if it's they're getting-- met the standard in the Student Discipline Act as a violation to be suspension it can be a full day.

LINEHAN: When do the parents get called?

BRAD JACOBSEN: Imme-- when the violation has occurred and their conference happens right off the-- I mean, that's-- that's a pract-- that's common practice for us.

LINEHAN: So you-- you can now--I guess I don't understand why you're against this bill because it doesn't have seclusion in it, right?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

BRAD JACOBSEN: Correct.

LINEHAN: And the restraint we're talking about is defined when they're-- to use when they're protecting another child or property or another teacher or themselves.

BRAD JACOBSEN: Well, that would-- and so that would be part of the question that we have is as administrators is why do we-- why do we need it? We can already do these things. I already have a board policy and I already have, I mean, staff guidance that the amendments, you know, I could almost track right along with my current board policy. It's already in-- it's already in place. So I'm-- that's part of what we're saying, too, it seems like there's a little bit of redundancy, unnecessary redundancy.

LINEHAN: So why are so many teachers confused, then?

BRAD JACOBSEN: Again, my staff is aware because we make sure they are aware of what-- what their guidelines are. And we have, like, our, you know, we have certain staff that are trained and some are not. And we tell them very clearly that if you don't feel comfortable then you don't-- you know, it's not something that you must do. And then we'll have other strategies to manage those classrooms.

LINEHAN: So do you question the poll that there were 7,000 teachers, maybe former teachers, maybe it's a bigger pool, a large number of teachers that seem to be, excuse me, confused?

BRAD JACOBSEN: You know, certainly that is a concern, that there needs to be communication between a principal and their teachers. OK. When that survey came out, I haven't seen the survey and I have not seen the results. So I--

LINEHAN: I think it was in--

BRAD JACOBSEN: I haven't read the questions. I don't know what the questions looked like. OK? I had a couple of my staff members come to me the next, like, when that-- when that survey came. This was, you know, a couple of years ago and just said, can you tell-- what do you know about this bill and this survey? We got this survey. And so we had this discussion about, you know-- so it was a very productive discussion. I think that's, as Kyle mentioned, the sign of a healthy building. My teachers weren't worried about what I was, you know, is it with me against them? They came to me with a discussion about so

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

how should, you know, what-- what should we do or what questions do I have or what is your expect-- expectation again? And it allowed us to go back and review those expectations so.

LINEHAN: And it would seem that's not happening in every building.

BRAD JACOBSEN: Well, it may not be but I'm not-- you know, again, if things aren't happening in a building now and that could-- that could go-- you could-- that could go with any piece of Rule 10 if it's not consistently happening. Is this-- will this change that? I don't know if it will or not.

LINEHAN: Okay. Thank you.

WALZ: Other questions? Senator Brewer.

BREWER: Thank you, Madam Chairman. All right, Brad. So your policy is such that the bill really wouldn't impact you. Is that kind of the gist of what-- what you said in the beginning there?

BRAD JACOBSEN: Possibly. Again, I think there's been some comments about some of the language about what necessary means and, you know. And Senator Pansing Brooks mentioned the word "forced." It's not in there anymore so, again, I think there has been some improvements made to this. But still "necessary" versus "unnecessary" gets a little bit messy occasionally.

BREWER: Well, and I'm kind of learning as I go here because this whole discussion of the yellow room is new to me. Most of the rooms I knew were sand colored. But the issue is if the-- if the school's policy in case-- in the case of yours is-- is good to go and what this bill is trying to do you're already there, then the bill probably wouldn't impact you much. My concern is that you're representing the principals. And my-- my brother-in-law actually is one and I guess as I talked to a number of them being able to correct the discipline issue in the classroom seems to be something they were concerned about too. So, you know, I think you have islands out there where the leadership has probably done a good job of managing how things are handled. The problem is I don't think it's across the board and that's probably why the bill has kind of gained some momentum is because it's a-- it's a tool so that they can get some, you know, situations in the classroom they're acceptable where the behavior is gonna allow the teacher to continue to do what they're there to do. I mean, would you-- would you give us that much that that probably depending on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

leadership of the school that kind of shapes how that situation is dealt with in a given school and if we have a standard across the board, it might be good?

BRAD JACOBSEN: Standard across the board would be great for everything. But we also know it's a human profession. And I would say the bill up to the point with which I think it creates a wedge between teacher and administrator is when-- is that moment where a teacher can say, they're not coming back until this conference is held. And so even with, as Senator Groene mentioned, could happen in 15 minutes, well, so if we have the conference in 15 minutes, just that discussion has now changed a little bit from-- from a working let's-- how can we make this better to, it's been 15 minutes, we had the conference, the conference took 30 minutes; 45 minutes later, you know, we're-- they're back. And we really haven't then, again, because some of it not only, you know, it's-- it's-- it is more training, doesn't have to be a formalized training. It can just be, you know, we learn more about kids all the time. You know, when the sixth graders come to my building, I can get informed a little bit. But in a year like this year, I had 12 new ones that we didn't know and there was no past experiences and it's only, you know, so there's been a lot of that learning on the go. And I think that's-- that's probably the piece that I think bothers us a little bit more than the rest of it because there has been some significant changes in the rest of it is that I think that-- that section drives a wedge between teacher and administrator unnecessarily. And unfortunately and, again, are there administrators that abuse that? And I think Kyle mentioned that there probably have. And there's probably, you know, it goes both ways. There's gonna be some times when not everybody lives up to what we hope would be the full expectation. But ultimately we know we've got to figure out how to work together. Because, again, if I don't-- I don't have one. No, I don't. I have some multiple sections in my size of building. So there are sometimes some other options for me. But I think that's the part that probably gets, you know, it causes us the most is it feels like a wedge is being placed between teacher and administrator.

BREWER: Now I fully support the chain of command concept here. And I'll grill Senator Groene on some of those questions. But thank you for your testimony.

WALZ: Other questions? I have a question.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

BRAD JACOBSEN: Yes, ma'am.

WALZ: A couple of them. So first of all, does every school board have a policy on this or are they supposed to?

BRAD JACOBSEN: You know, that's-- that's outside my-- that's outside my realm of understand-- I honestly don't know that. My assumption would be-- my assumption would be, yes. I don't-- I don't know why a school district would just do it. But that's-- that's outside of my-- if I was a superintendent, I would probably be able to answer that question but I'm not.

WALZ: OK. And then the other thing that really something-- as a past teacher, you know, I've seen different situations. It bothers me because our children are not standard across the board. I mean that's-- they're all different, you know, and it should be a very individual kind of issue, this issue I think. Each child is different. Each child has different reasons for, you know, the way they're acting. Do you think that there's a better way that we could address this on a case-by-case situation as opposed to a blanket type policy because kids are so different and there's different reasons for them and the way that they're behaving?

BRAD JACOBSEN: There's absolutely nothing that's ever going to take the place of a relationship between teacher and students and between administrators, teachers, and students. That is the number one thing. And so all efforts should start with that, with a-- with-- with a relationship and building those relationships. Because even through rough times, that relationship is what's going to bring it back eventually. So I think that's got to be the number one thing. You know, when you start there and-- and again, I think all students are different. They absolutely are. And you-- and you just-- you can't possibly-- you know, I'm trying to think of situations but, you know, right now in my head I have a whole bunch of student situations that have popped into my head. And there's-- there are so many-- one of the things that a principal usually gets to do is when there's an HHS investigation about the-- about the parent and there needs to be an adult in the room for those meetings. That in my case is usually me. There are things that I learn about kids that are-- are, you know, shocking, you know. And to be able to sit with a straight face and learn what some of them actually go through in their homes, the fact that they're able to manage even to the extent that they are is pretty incredible. And so I think absolutely the more we can do-- and you probably answered your own question there-- is to try to individualize

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

what each of those kids needs is so hugely important. You know, I mentioned one of my-- one of my 12 new ones. You know, it took until the hearing screening that our school nurse does well into the school year that we learned that he has a hearing deficit that had never been reported by parent or the former school to the point like front row seating didn't make any difference. There's probably a reason that kid might act out sometimes. And the last thing is I think we can't ignore the fact, and we heard this from some of the other testimony, the impact that restraint has on not only the kid that is restrained but on all the other students in the room. I mean, it is not a pleasant experience if they have to witness. Now again if it's a fight situation or somebody is injuring somebody else, then-- then even students expect somebody to step in, you know. And so-- so I think definitely the relationship and then that individual understanding of each kid is you just can't put an actual price on it so to speak so.

WALZ: Other questions? Thank you.

BRAD JACOBSEN: Thank you.

WALZ: Next opponent.

KATIE BEVINS: My name is Katie Bevins, K-a-t-i-e, Bevins is B-e-v-i-n-s, and I'm the president of the Nebraska School Psychologists Association. I represent over 340 school psychologists from dozens of districts across the state of Nebraska. School psychologists have expertise in mental health, learning, and behavior that helps children and youth succeed academically, socially, behaviorally, and emotionally. We also have unique training and a familiarity with school organizations and cultural contexts equipping us to play a primary role in working with students with challenging behaviors and with the teachers who support those students. School psychs recognize the behavioral and mental health challenges teachers face every day in the classroom. According to our National Association, one in five youth suffers from an emotional, mental, or behavioral disorder. On average only one fourth of children in need of mental health care get the help they need; and of those, 70 to 80 percent receive that care in a school setting. As school psychologists, our mission is to improve students' ability to learn and teachers' ability to teach. Evidence-based prevention and early intervention services provided in the school setting have been shown to improve student outcomes like higher grad rates and fewer discipline referrals. The Nebraska School Psychologists Association opposes LB147 for two reasons. First, the focus on physical force and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

student removal from classrooms is reactive response that directly opposes what we know is best for student learning. Approaches to problematic behavior such as removal from the classroom contribute to a more negative school climate which is associated with increased bullying, student behavior problems, and low rates of student and teacher engagement and satisfaction. These strategies are particularly problematic for students with disabilities for whom education in the least restrictive environment is a legal mandate provided by IDEA and Section 504. Additionally, students with disabilities have disproportionately more office discipline referrals and suspensions than students without disabilities. Simply put, students must be in a classroom to learn. Unrestricted removal from class eliminates their due process rights. Recognizing these violations, most other states ban or strictly limit the use of restraint, unrestricted removal from classrooms by school personnel. Second, LB147 places an unreasonable burden on teacher as the sole person responsible for the decision making about potentially harmful physical force and removal of students. The existing Nebraska Student Discipline Act requires administrators to make decisions about removal of students from class. We recognize wholeheartedly that teaching is a difficult job. Because it is so challenging, decisions of this magnitude should be made by administrators in consultation with teachers and school psychologists and other school-based mental and behavioral health service providers. Alternatives to harsh punitive acts are available. Sometimes when students act out, we look through the lens of discipline. However, disciplinary issues on the surface are often the tip of the iceberg for a student who may need specialized resources to fully address their needs and prevent future disruptive behaviors. School psychologists are trained members of a school team that can problem solve and address student behavior in the classroom. This can look many different ways depending on the needs of the student. School sites have specialized training in conducting functional behavior assessments and developing behavior intervention and safety plans that prevent disruptive behaviors in the classroom. School psychologists can provide direct intervention services to individual students. We may also provide professional learning for teachers regarding de-escalation strategies and crisis management. School psychologists can partner with families to connect students with resources. In conclusion, school psychologists across the state believe that increasing teachers' ability to use physical force, restraint, and removal of children from the classroom greatly opposes what we know about effective, proactive discipline tactics. Unrestricted removals from the class and unsafe practices will not solve the behavioral and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

mental health crises many of our students experience. Instead collaborative partnerships, evidence-based discipline strategies such as teaching and reinforcing desired behaviors, school climates that foster prosocial behaviors and increased classroom support are the best ways to improve disruptive classroom behaviors. School psychologists stand ready to work with the Legislature and school districts on proactive approaches to this issue.

WALZ: Thank you. Questions from the committee? Senator Brewer.

BREWER: Let's see, you have 340, that's the total number in the state right now that are actively functioning as school psychologists.

KATIE BEVINS: Yes. That's the number that's certified by the Nebraska Department of Education.

BREWER: And that's in how many schools?

KATIE BEVINS: Oh, well, that's across the state of Nebraska. So I'm-- I don't know how many districts we have in the state. But every district would have either a school psychologist employed by the district or a school psychologist employed by their ESU who would serve that district.

BREWER: Oh, so it could be an ESU. So say, for example, if I was to go out through my district right now and I was to run down Highway 2 and look at Sandhills, Mullen, Thedford, Hyannis I'm guessing I'm not gonna find any anywhere there-- Hay Springs, Crawford. I mean just because the size of school, that would probably not be something they'd have access to.

KATIE BEVINS: Probably not in that building but through the ESU. I know school psychologists who drive to many different districts. And so there may be a school psychologist who's there two or three days a week depending on the needs of the students there. Our national organization recommends a ratio of 1 to 500 so 1 school psychologist to 500 students. In Nebraska, we are about 1 to a little over 1,000.

BREWER: A thousand?

KATIE BEVINS: Uh-huh.

BREWER: So if we-- if we-- part of the challenge that I guess I'm trying to run through my mind is-- is-- is I think it's a great concept. I just-- I don't know if it's realistic in some cases that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

the school psychologists are able to do ideally what they're there to do just because of space and distance and everything that we have once we get into outstate Nebraska. So do you think that that as far as responsibilities for dealing with situations in the classroom that-- that get out of control it should be the administration, otherwise it would be the principal, the superintendent that are the primary ones that need to be the one dealing with that, not the teacher in the classroom?

KATIE BEVINS: Well, I think the point was made earlier that every child is different. And in my experience, when you have a team approach and you have multiple people at the table, including the classroom teacher, the building administrator, the school psychologist, or it may be another school-based mental health professional-- professional, it may be a social worker or counselor. When you have all of those people at the table and you are proactive, you are much better able to have a plan for that student. And if it reaches the point of aggression, there are really effective de-escalation strategies. You can also have folks who are, you know, in the vicinity, who are trained to work with students in those situations. So if-- if you can plan for that situation and bring in multiple perspectives, you can reduce the incidents of those behaviors and you can respond in ways that are much better for all the kids.

BREWER: All right. Thank you.

WALZ: Senator Linehan.

LINEHAN: Thank you, Chairwoman. I appreciate you being here very much and I appreciate what you do. And I agree that more training-- but what do you do if you're the teacher and you're in the room, and the principal is not nearby--

KATIE BEVINS: Uh-huh.

LINEHAN: --and you're not nearby, and a fifth-grader is ready to take off and slam another kid's head into the desk. What's the teacher supposed to do?

KATIE BEVINS: And I-- I have worked in schools for 15 years and I have, you know, witnessed situations like that and been involved in planning for students. I won't speak to what a specific situation may need because it's so different depending on the child. It depends on,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

you know, if they've been exposed to trauma and what those triggers may be what a response might look like to that child.

LINEHAN: But-- but-- but I get that. Obviously a kid that's acting like that child needs help. No argument. They need help. But what is the teacher supposed to do to protect the other child that they're also responsible for in that moment?

KATIE BEVINS: In that moment, I've seen classroom teachers do many things. And again, I'm not here to say in a specific situation, you know, what a teacher may or may not do. But I've seen teachers evacuate classrooms when they know that a student is reaching that point. And that puts everyone in a better situation where you're removing other children from that situation. You're removing the teacher from that situation. And many, many buildings have some sort of response team, whether it's a school psychologist in the building or it's other trained staff, to come in and work with that student in a specialized way.

LINEHAN: I find it hard to believe that any teacher that wasn't in that situation would not intervene for the protection of the other student.

KATIE BEVINS: Uh-huh. It just depends on--

LINEHAN: And I think what Senator Groene is trying to do is make sure-- and I get-- I do believe there should be more training and people with disabilities and any kid that's acting out has probably got issues that we need to address.

KATIE BEVINS: Uh-huh.

LINEHAN: But I also think it's very-- it's very complicated to put on a teacher that they have to choose between maybe getting in trouble and protecting a child that's also in their care.

KATIE BEVINS: Uh-huh.

LINEHAN: I think that's where our real hard-- this is really hard.

KATIE BEVINS: Uh-huh. And from my perspective, this bill puts too much responsibility on teachers. I really feel like that when we're in a situation like that that we haven't done all of the other things that we may-- maybe should have done in the first place to prevent that from being a situation. And so I feel like the focus of this puts the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

focus on the teacher and the response in that moment, and that is a really tough position to put someone in. And I think something that might be a-- a better solution is to come at it from the other direction on building school cultures and school procedures and systems and supports that teachers don't end up in those positions in the first place.

LINEHAN: Can't we do both though? Can't we give the teachers room to protect every kid in the class and do all the things you're saying we need to do? Is there-- is there a reason we have to choose between one or the other?

KATIE BEVINS: I think I'll go back to what Kyle McGowan spoke about is that judgment piece and the moment. I put-- I think that puts teachers in a very bad situation to have to make that kind of a decision in the moment and-- and to have a bill that says, you know, that really kind of puts that burden on their shoulders of, well, you could have done this. I think that puts a burden on them.

LINEHAN: I would say the burden is already there. Thank you.

KATIE BEVINS: And we're here to help them with that.

WALZ: Thank you, Senator Linehan. Other questions from the committee? Thank you for your testimony today. Other opponents.

MICHAEL WARNER: Hello. my name is Michael Warner. I want to thank you for the opportunity to speak to you all today. I am a board member of Disability Rights Nebraska, but I am here today speaking on behalf of myself. I stand opposed to this bill because I think what we're failing to recognize in some instance, especially with this bill, is that we're speaking about children. And I've heard a lot said today about the protection of teachers and other students in the classroom. My concern is what happens when you have a disabled child who is not verbally able to express their frustration? And while Senator Groene has said that the IEP would specifically have to state or would specifically state that this does not affect children with disabilities, my concern would be is that that stipulation, first of all, could be overlooked. Or if the teacher doesn't look at the situation as specifically as they should, that that guideline isn't adhered to. Students are in school to learn. They should not be fearful of retaliation from a teacher due to the fact that they got frustrated. And when you have students that are in your schools that may not be able to verbalize or articulate why-- why they are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

frustrated, those are very, very treacherous and dangerous waters to try to go into. You have to treat every student as if they are valued. If we are putting our hands on students in today's society to restrain them in certain instances is to tell them that they have no value. That I'm all about self-preservation. I want to preserve myself and the other students in my classroom. And while I understand that on a certain extent, I would say that we need to be very careful about when we have students that might get frustrated and may not be able to verbalize it. That is where you don't need to put your hands on another student. If they are harming somebody else, that requires a psychologist that-- that may require a resource officer. But does that then say that that resource officer necessarily has to put their hands on that student specifically to calm them down? I do not want children going to school being scared that their teacher is going to have the explicit authority to put their hands on them. With that being said, I'd be happy to answer any questions that you have.

WALZ: Thank you. Questions? Senator Linehan.

LINEHAN: Thank you for being here today. I appreciate it. You were here when the two principals or one was a superintendent, former superintendent, principal said that the teachers already have the authority to restrain a child.

MICHAEL WARNER: Right.

LINEHAN: OK. I just-- that's what they said.

MICHAEL WARNER: Yes. Yes. And my question then would be if they already have the authority to do so, why-- why would we need this bill?

LINEHAN: Because I think the teachers don't feel like they have that authority. That's-- there's some confusion here. Lack of communication seems to be a problem.

MICHAEL WARNER: OK.

LINEHAN: Thank you.

MICHAEL WARNER: Thank you.

WALZ: Other questions from the committee? Senator Murman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MURMAN: Yes, thanks a lot for coming in. I appreciate your perspective.

MICHAEL WARNER: Thank you, Senator.

MURMAN: I guess I've got to speak. Our daughter is disabled and cannot voice her frustration. So I've got to at least speak to our experience. She was at that-- back about 25 years ago when she started school, inclusion I think was kind of a new thing, a new term that we used in school for dis-- disabled students.

MICHAEL WARNER: Basically main--

MURMAN: Mainstreamed, correct.

MICHAEL WARNER: Mainstreamed disabled students.

MURMAN: Yes, correct.

MICHAEL WARNER: Just so I have that correct.

MURMAN: Yes, that's right. And I guess our fear was-- I shouldn't say fear-- but our concern was that the rest of the class could be disrupted from her behavior. And I know it works both ways. We were happy that-- that she was mainstreamed but we're also concerned for the rest of the class. So if she was disruptive, we did encourage the-- the administration and the teachers to remove her from the class.

MICHAEL WARNER: Right.

MURMAN: So-- so, you know, I-- I-- but I do think this bill only says teachers, administrators, and other school personnel do have the authority to take, you know, whatever it takes I guess with restraints to-- to-- to remove the disruptive person from the class.

MICHAEL WARNER: My only concern with that is that-- how can I put this-- I can only speak to my experience. And I am able to clearly and concisely verbalize when I'm frustrated.

MURMAN: Yeah, you do a great job.

MICHAEL WARNER: Thank you. My concern would be a student gets frustrated. They can't verbalize why. All they know in that moment is that they're frustrated. They are then lashing out at other students,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

which is completely wrong. They're lashing out at their teacher, which is completely wrong. My concern turns into when that frustration turns into fear because now their teacher has grabbed their wrist and may have grabbed it a little too hard. So I think we need to look at all of the variables possible before letting the legislation like this go forward.

MURMAN: Sure. I appreciate your ideas but I, you know, I do think this bill only allows it. It doesn't, you know, mandate.

MICHAEL WARNER: Right.

MURMAN: So thanks a lot.

MICHAEL WARNER: Right. Thank you.

WALZ: Other questions? Senator Brewer.

BREWER: Thank you, Madam Chairman. Michael, I understand that part of the frustration is I totally agree with you on the need for them to feel of value. But in the school districts that I'm dealing with in my district, I have only one, maybe two, we're trying to determine right now of 13 counties, 2 school psychologists and one of those may be in the ESU. And I've only got two schools with resource officers so the ability to deal with these situations is fairly narrow. And then when teachers get discouraged because of the situations they're put in and the risk that they take of ending their careers, depending on what they actually do, and the point we collapse the system if enough teachers are saying, you know what, it just isn't worth it. I don't want to take the risk. I do not want to ruin any opportunity I have to have a job in this career field--

MICHAEL WARNER: Right.

BREWER: --because of my actions. And-- and I understand in a perfect world everything would be done as-- as absolutely correctly as could be. But unfortunately, they're trying to deal with a lot of kids under, you know, and they're dealing with the stress of-- of things that happen, whether you want them to or not, in day-to-day routines. And as a result of that-- and I-- and I hear this from my son. He goes, you know what? I came into teaching and I love to teach but I can't do this anymore. I'm not gonna have a situation where I see kids that are disrupting the classroom and keeping me from being able to do what I need to do and I can't do anything to correct the situation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

And-- and that frustration I think is-- is rampant with a lot of teachers. And so trying to find this middle ground .I think is what Senator Groene is trying to do so that we have options and we don't have to throw up our hands and lose the best and brightest of our teachers.

MICHAEL WARNER: And I do understand that. But the only thing that I would rebut with is teaching is a very hard job. It is probably the hardest job outside of being a parent that there actually is. You're in a classroom for, what, six, seven hours a day with varying degrees of personalities. But do they not know that teachers know when they enter that field that a certain amount of disruption is going to happen. The severity of the disruption, at least in my opinion, does not give any teacher the right to put their hands on a child that they are there to teach. I just-- I don't see where there's leeway there because I think we get into a pattern of the Wild West when that is allowed to happen.

BREWER: I-- I understand what you're saying. I just-- I fear that the teacher becomes the one that doesn't feel like they have the value anymore because they can't control the very environment that they're responsible for. But I, I mean, I hear what you're saying and I think we-- we're just going to have to agree to--

MICHAEL WARNER: To disagree.

BREWER: --to understand each other.

MICHAEL WARNER: Absolutely.

BREWER: All right. Thank you.

WALZ: Other questions from the committee? Thank you very much for your testimony today.

MICHAEL WARNER: Thank you. Everybody have a great day.

WALZ: You too. Any other opponents?

JULIET SUMMERS: Good afternoon, Vice Chairman, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska in opposition to LB147. Children need to feel safe, welcome, and supported in school to achieve educational success and all the positive life outcomes that go with it. We oppose LB147 because it is at odds with best practices for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

improving classroom culture and keeping students engaged in education and is likely to lead to increases in the disproportionality of educational attainment outcomes for students with disabilities and students of color. There's been much conversation about the use of restraint provisions so I'm going to focus my testimony on the removal portion of the bill. We're concerned that the bill grants teachers relatively unchecked discretion in removing, quote, unruly students from the learning environment and keeping them out potentially indefinitely, which is a de facto form of suspension. Children are already all too often pushed out of the school system through suspensions, expulsions, and even referrals to the court system. To the individual student who's removed, research shows a direct line between suspension, further suspension and expulsion, decreased likelihood of educational attainment, and increased likelihood of court involvement. As for the larger classroom, the claim that removing problem students improves the educational environment has been debunked. Studies show the opposite. Schools with a higher reliance on school exclusion as a form of discipline actually score lower on academic achievement tests even when controlling for socioeconomic and demographic factors. By granting broad discretion for removal based on language that could be vague, unruly or disruptive behavior, everything we know about disparate disciplines suggests that LB147 might lead to more children with disabilities and more children of color removed unfairly from the learning environment without much recourse. The data shows that these student populations are already disproportionately likely to be pushed out of the classroom through exclusionary policies. According to data from the federal Office of Civil Rights, which I think you've already heard today, students with disabilities served by IDEA were more than twice as likely to receive one or more out-of-school suspensions as students without disabilities. Meanwhile in 2015 and 2016 school year, those students with disabilities made up only 12 percent of national student enrollment. They experienced 66 percent of instances of seclusion and 71 percent of uses of restraint in schools. We see similar numbers related to race and ethnicity. To be clear, the reason for these disparities is not necessarily that children of color or children with disabilities, children who are members of certain populations act out or deserve punishment more than others. Rather research has shown, in fact, research led by UNL here in Nebraska, has shown that children of color are more likely than their white peers to receive punishment or be removed for discretionary perceptions of behavior. For instance, in a study of the reasons middle school students were sent to the principal's office, white students were more often referred for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

vandalism, smoking, endangerment, obscene language, and drugs and alcohol: categorical and easily identifiable violations. In contrast, black students were more often sent to the office for loitering, disrespect, excessive noise, threats, and a catchall category called conduct interference, all types of behavior that are defined at least in part through the eye of the beholder. By allowing removal on the basis of vague concepts like unruly or disruptive-- disruptive behavior, LB147 could increase the disproportionalities we're already seeing in that regard. And so for the foregoing reasons, we would respectfully urge the committee not to advance this bill. And I thank you for your time and consideration.

WALZ: Thank you. Questions from the committee? Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming, Ms. Summers. You know, I love the work that you all do at Voices for Children, and you're doing such an amazing job protecting our kids. I'm-- so I'm-- I'm interested because I agree with so much of what you've said about making sure that we don't have disproportionality of kids of color; that we make sure that there's not out of control force. But this bill has changed from two years ago when it allowed force, and now it's talking about restraining a wrist or a hand and grabbing somebody by a wrist or hand. Now hopefully it's not with violent-- you know, obviously an adult could break a child's wrist or hand pretty easily. So-- but I guess what I'm interested in-- you think that it's already allowed that a parent could or that a teacher could grasp a child to pull them away from punching another child?

JULIET SUMMERS: Yes. So the-- the statute-- the statutory reference and the-- the case law that Chairman Groene referenced in his introduction do exist. They're already in Nebraska law. So the statute, I think it's 79-- I can't remember off the top of my head but I can follow up-- and there's an older case from 1999 interpreting that statute of what other actions teachers are allowed to engage in to ensure that the classroom environment isn't interfered with. And that case arose out of a teacher who had sort of an irritation, slapped the back of a student's head and had been disciplined for it. And what the Nebraska Supreme Court held, they interpreted that statute in considering whether the firing was appropriate or not. And they found that the firing was appropriate but that you could interpret that statutory reference other actions to-- to mean that teachers can use physical contact as reasonably necessary in order to maintain safety and protect the classroom environment. They also

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

defined what corporal punishment means in that case and said that it can't-- essentially an action used to inflict pain to, you know, as punishment. And so they could distinguish between inflicting pain as punishment versus gently holding a student's wrist to protect them from harm or to protect other students from harm. And just sort of-- sorry for the long answer-- but to sort of go to the question, Senator Linehan, that you've been asking today, I live a lot in the child welfare world which is the most of my work. And I think a sort of corollary example could be the sort of the unwritten rule in our-- in our child abuse and our child protection statutes is spanking is still legal in Nebraska. But you can't hit your child and leave marks. You know, there's a certain place where it rises to the level of child abuse. But we still know we have all this research that, like, spanking isn't the best way to respond to child misbehavior. So if the Legislature wanted to pass a law that said spanking up to a certain level is not child abuse, that would technically be redundant with what currently exists. But the very fact of having that legislation might start to point-- point parents' responses in a different direction and make them start to question or think more about, OK, what's the level that I can reach up to in terms of my physical discipline, when we really want to be pointing the entirely opposite direction of proactive rather than reactive responses to misbehavior. That's not to suggest that there's anything in this bill about spanking. I'm not trying to say that [LAUGHS] but rather to use it as an example of, you know, kind of how just having legislation on the books can sort of direct us in which-- which approach we want to try to take.

PANSING BROOKS: So would you feel more comfortable with language that said grabbing a wrist without the intention to produce pain similar to what the Supreme Court has written would be-- would make it easier? Because I think some-- we're hearing that some teachers don't even feel that they can grab a wrist. Now whether that's reasonable or not, I really don't think the teachers are like, I really want to take these kids down and I'm going to punish them and hurt them if I can. And if I can get Senator Groene to pass this bill, then I'm going to try and do whatever I can to hurt these kids because they're driving me crazy. I really don't think that is what the Nebraska teachers are trying to do, and I don't think you think that either.

JULIET SUMMERS: No, absolutely not.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: So-- so Senator Groene is responding to somebody that-- some people that have said they don't feel that they have that authority. We're hearing administrators saying, yes, they've already got that authority. I mean, it's just I guess my-- I think that somebody should be able to protect my child from being beat up by another child. And having a teacher, I mean, we all heard the story about the teacher that was film-- or the principal that was filming a fight rather than going and getting in the middle of it and breaking it up. Whether that would be pulling somebody by their wrist or pushing them back by their torso, somehow we have to split up kids and teach them conflict resolution and anger management and all sorts of other positive ways to teach this conflict resolution. So I don't know. I'm just interested. I don't want to-- I agree that we are-- we have to be so careful about that school to prison pipeline. We have to be careful about disproportionate arrest of kids that are of color. But meanwhile, if-- if people think they can't come in and grab somebody by the wrist and pull them apart, that's-- that's going too far the other way.

JULIET SUMMERS: I really perceive that as a training and information problem rather than a-- a state level legislative problem. And I would fall back on my concern that what we, you know, what we put into law also reflects our philosophy to-- to these issues. And we-- we have some opportunities this legislative session with some bills to provide more mental health resources in schools, to put-- even put investments there so that schools have access to those sort of proactive responses to student behavior. And so unless we do those things simultaneously or even more on that end, my concern is that-- is that putting into law this piece, the reactive and the sort of permission to use physical restraint and-- and removal, sends a message in the-- in the opposite direction.

PANSING BROOKS: Especially when not tied to any kind of training or--

JULIET SUMMERS: Absolutely.

PANSING BROOKS: OK. Thank you very much.

WALZ: Other questions? Senator Murman.

MURMAN: Thanks a lot for being a voice for children. My question is, I mentioned earlier, I don't know if you were here, I keep hearing about like PE or more recess-type situations, one child is acting up. You

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

mentioned that it wasn't good to remove a child from the rest of the children.

JULIET SUMMERS: So when I am referring to exclusionary discipline, it's more the formal suspension or expulsion, the process that takes the child out of the educational learning environment in a meaningful way. If there's a child who's being unsafe on the playground or in PE and needs some cool-off time by themselves, to me that's a-- that's a different situation than when we start to take steps down the formal-- the formal pathway of you're not welcome in this learning environment.

MURMAN: OK. Other-- the in-- some of the instances I'm thinking of, it's a continuing thing. It's kind of like the same child or two, that, you know,--

JULIET SUMMERS: There's a pattern? [LAUGHS]

MURMAN: Yeah. My--

JULIET SUMMERS: Yeah.

MURMAN: My idea is that the whole class should not be punished if it's that--

JULIET SUMMERS: Yeah.

MURMAN: --or even necessarily have psychological help or what. I would be the-- the individual that's causing the problem.

JULIET SUMMERS: Yeah, absolutely. And-- and as both a parent and a former teacher myself, I-- I wholeheartedly agree with that. But particularly those kids who-- who there is a pattern, then I think that it's incumbent on the professionals who are seeing that pattern to-- to create that proactive plan for the next time. Because, you know, if it is, as someone mentioned, a certain time of day there's something going on with that kid or maybe they're coming, they haven't had breakfast that morning and they're always just off or, you know, sometimes I-- I saw in my classroom a long time ago, you know, students who had really traumatic things happening with their families at home, where all of a sudden there would start to be, every Tuesday, something's going on. And it had to do with visitation or it had to do with, you know, a family member coming into the home on that day. Those, all of those, you know, kids-- kids don't-- kids don't usually go crazy, you know, without something underlying it. And so the adults in the room have to be the ones to kind of take those proactive steps

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

to plan for that, you know, what's going to happen the next time because I-- I-- I wholeheartedly agree that every child is an individual and needs that individual response. And also every, you know, the class needs to feel safe and secure, and that involves both being able to continue with their-- their normal day to day without disruption but also to be able to trust in the teacher and the school environment that, hey, if something starts to be going on with me, that I'm still going to be welcome, too, in this, in this classroom, in this environment.

MURMAN: No, I-- I agree totally with you. And I-- I look at this bill as allowing, just what you said, the individual consultation or help to-- to be more readily available because of this bill. Thanks a lot.

JULIET SUMMERS: Thank you, Senator.

WALZ: Senator Linehan.

LINEHAN: Thank you. This doesn't have anything about suspension in it, does it?

JULIET SUMMERS: I-- the provision regarding removal--

LINEHAN: Right, but they-- OK. I'm sorry. Go ahead.

JULIET SUMMERS: Yes. So-- so in our reading of it, you know, we have the Student Discipline Act which has very formalized requirements around lengths of suspension and-- and when it requires a formal hearing, etcetera. This bill, to me, represents a sort of jump ahead of that statute and those processes by saying a teacher can decide the student is too unruly, I'm removing them from my classroom for at least up to two days, which is the limit where there is the conference required. But even after that point it's-- the bill still says the administrator may readmit the student to the classroom but shall not do that against the teacher's will, essentially. So our question is this-- is this a rose by another name, right, that you can-- you can say I'm not welcoming the student back into my classroom until we have this conference or maybe even after.

LINEHAN: But that's not what the bill says. You're-- you're-- you're reading that into the bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

JULIET SUMMERS: The bill does not call it suspension, but I don't know what else you might call it if-- if you're allowed to remove a student from class.

LINEHAN: Well, I think suspension, when people hear suspension, which is a problem, I agree with 90 percent of what you said, maybe 95 percent.

JULIET SUMMERS: Thank you.

LINEHAN: It is-- it is a problem.

JULIET SUMMERS: Uh-huh.

LINEHAN: Kids of color are suspended at a higher rate for less reasons. I agree 100 percent. But nothing in this bill has any effect on that.

JULIET SUMMERS: Senator, I-- I believe that it does, so that the-- the second part of the bill, the removal section, is essen-- is calling it removal but it-- it walks and talks and looks like a suspension, a suspension.

LINEHAN: But-- but we're already doing all-- all of this is already happening. I mean--

JULIET SUMMERS: The-- that's not my understanding. I think what the testimony I've heard and-- and my look at this, at the statute, regarding use of physical restraint or what a teacher can do, that that is-- is already on the books or happening. My reading of the second portion, the removal portion, is this would be a different process than what we have laid out in our Student Discipline Act. I'd be happy to be wrong about that.

LINEHAN: I think-- I think the reason that I understand it's in here is because you-- kids go to the principal's office and they come back and there's not communication between the teacher and the principal--

JULIET SUMMERS: Uh-huh.

LINEHAN: --as to what's going on.

JULIET SUMMERS: Uh-huh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: And whether, I think as Ms. Fennell said, whether it's because it's kids just acting like it's no big deal--

JULIET SUMMERS: Uh-huh.

LINEHAN: --or rather-- it needs to be the teacher. How are we going to assure the teacher that there's-- the child understands that there's-- they've got to straighten up, for lack of a better--

JULIET SUMMERS: Uh-huh.

LINEHAN: --in my 1960s language. How does-- how is the teacher going to be informed? It would seem like in a perfect system that's already taken care of, right?

JULIET SUMMERS: Uh-huh.

LINEHAN: But it's clearly not what's going on in many schools or at least the teachers, they're not hearing it if it's being said. So how do we get there? How does that teacher know that they're being supported? I think that's what Senator Groene is trying to do here is support the teacher that's on the front line. There's not a-- and people have talked about the group of people should come together. Well, there's not a group of people in the room. It's just that one teacher.

JULIET SUMMERS: Uh-huh. Yeah. Well, I'm not sure I have a perfect answer off the cuff, and I will say that, you know, my testimony here today, I think we can be concerned that if the system errs too much on the side of the administrator or on the side of the unruly student, we can be concerned that the system errs too much on the side of the teacher, and everyone in the situation is human and makes mistakes. So my testimony today is reflective of our concern that this goes too far in the direction of-- of the student losing, potentially losing those due process rights to what they're entitled to if they're going to be removed from the classroom unfairly by a teacher.

LINEHAN: But again, the bill doesn't say that. It just-- but, OK. I guess you're reading more into it than I'm reading into it.

JULIET SUMMERS: Right. I'm-- I think, I think so. I think we're--

LINEHAN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

JULIET SUMMERS: --we read it as if the teacher is allowed to remove students based on a perception that they're unruly or that there's, you know, that they have been consistently unruly and then does not have to ever let that student back in the classroom, that that is de facto some form of suspension.

LINEHAN: OK. Thank you. I'm sorry.

WALZ: Any other questions? Thank you for your testimony.

JULIET SUMMERS: Thank you for your time.

WALZ: Next opponent.

BRAD MEURENS: Good afternoon, Senator Walz and 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, a designated protection and advocacy organization for persons with disabilities here in Nebraska, and I am here today in opposition to LB147. To be clear, we believe the safety and security of teachers, administrators, and students is paramount. However, LB147 is, at best, largely unnecessary and, at worst, a policy which could result in more student and staff injuries because it "green-lights" immediate use of very dangerous techniques for both those being restrained and for those doing the restraining. The issues inspiring this legislation are complex and require a thorough, inclusive, and data-driven examination to identify root causes and effective policy solutions. To be accredited, Nebraska school systems must adopt a restraint and seclusion policy. I have included a few of them for your review with my testimony. While these schools' policies may differ in somewhat on the content of their policies, which is a discussion we should have but at a later time, there are a few things that they are consistent. They are applicable to the whole student body. They have a different definition of physical restraint than what is in this legislation. And they have a sharper, qualified description of when to use such techniques, for example, substantial risk, imminent danger, serious bodily injury. They do not authorize physical restraint in response to property destruction unless it creates a risk of injury to the student or others, such as throwing a book or throwing scissors. We are concerned that this bill contradicts many school districts' existing-- existing policies on the use of physical restraints in response to student behavior, sending a confusing signal to school personnel about what rules or protocol to follow. And LB147 could persuade schools to dilute their existing restraint policies to match

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

the legislation. Teachers and school staff seem all-- to already have the authority to act as LB147 prescribes, both in many of the existing school district restraint policies and in state law, which has been discussed earlier. Students with disabilities are already disproportionately restrained by physical force and we fear that the language in this bill will serve to increase incidences of restraint use. The data indicate that these students will be the students most likely to be restrained for a variety of reasons. The behavior might be a manifestation of their disability, identified or not, or it could be misinterpreted by school personnel. The authority granted by this bill to grab the hands and wrists of students, students will often struggle, ratcheting up the amount of force applied to the student, increasing substantially the risk of injury to the student, staff, or both. With no clear meaning of "becomes physically violent," "exhibits destructive behavior," or "school property," with no requirement that staff have any training to identify when a student is dangerous to self or others, with no qualifying language such as "imminent danger" or "serious physical harm to self or others," with no requirement that-- that any attempt be to restrain or de-- or de-escalate the-- the situation before restraints are used, with no requirement that staff who would be restraining students have any training in the appropriate method of exercising safer restraint practices, and with no administrative or judicial review of the reasonableness of the teacher's action, LB147's restrained first, ask questions later approach provides too much latitude and is unclear on too many critical issues to be passed. And we suggest that this bill be not advanced through the committee. I'd be happy to answer any questions that you have.

WALZ: Questions from the committee? I have a quick question. Is this a typical-- I mean they all look like they're pretty much the same type of policy. Is it a pretty typical policy that you find?

BRAD MEURENS: No. What we find is that there-- there may be some instances where there is similar language, right, but what we find for looking at the majority of these policies are they're wildly different. They, like for example, in-- I think in one of the policies that you have there it talks about-- or at least they talk about telling-- telling the parents, having the conference within a certain number of hours or days within after restraints being used. So you have a wide variety of-- of variables that are contained district to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

district. We have some districts that have a 22-page policy on restrain and seclusion use;--

WALZ: Uh-huh.

BRAD MEURENS: --we have other school districts that have a paragraph. And so while-- yes, so there are some parts of these particular ones I pulled out that have some overlap and some uniform language. But on the whole, this-- this state does not have uniformity across districts, across the state, in terms of what is included in their restrain and seclusion policies.

WALZ: OK. I just-- I find that these are-- are pretty specific, even to the point where, you know, in this one it says, if physical restraint is imposed upon a student whose primary mode of communication is sign language,--

BRAD MEURENS: Uh-huh.

WALZ: --the student shall be permitted to have his or her hands free at different times so they could--

BRAD MEURENS: Right. Right.

WALZ: So I was just curious if-- if they were, you know, kind of uniform or not, because I think that the fact that these are specific is-- is really helpful too.

BRAD MEURENS: Yeah. I mean they-- they are often very specific, but there is in term-- but there is different depths of specificity across districts and there's different components that are in some of schools' policies, in some, and not in others. So it's a-- it's truly a patchwork situation. And the only problem-- the problem is that you don't know what protections are in or what sort of specifications are in the policy until you're in the school district.

WALZ: Uh-huh.

BRAD MEURENS: And though-- and the policies can vary widely even from-- from in the same city or even within the certain sort of territory.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

WALZ: OK. And then another quick question, I've asked it a couple of times. Do you know-- do you know if every school district has a policy on this?

BRAD MEURRENS: Yes.

WALZ: OK.

BRAD MEURRENS: Under Rule 10, which accredit-- which accredits schools, it says that each school has to have a restraint and seclusion policy.

WALZ: OK.

BRAD MEURRENS: But that's it. It just says you have to have one. It doesn't tell you what has to be in the policy,--

WALZ: OK.

BRAD MEURRENS: --what the components of that policy is. It just says you have to have one, which is why we have some schools with 22 pages and some schools with a paragraph.

WALZ: OK. Thank you. Any other questions? Senator Patty Pansing Brooks.

PANSING BROOKS: Thank you. [LAUGH] Thank you, Senator Lynne Walz. I thank you for coming today, Mr. Meurrens. I'm just interested, I mean I'm seeing four different things, so seems like there ought to be some uniformity across Nebraska on what is accepted and one is not. And so you've brought four different versions of what's acceptable. The fact that one school system, I mean, or a couple of them talk about use of restraints, I don't-- when I'm reading, Senator-- this bill by Senator Groene, I don't think of-- I mean, I guess grabbing a wrist is a restraint of sorts. But when I'm seeing restraints, I'm thinking, OK, well, wow, they allow restraints. So that could include tying up a kid because that's a restraint. I mean, I'm wondering about how far it can go by some of this language. And so to me in a way Senator Groene's bill, because they've taken out "force," is more limiting in a way than it was before. And some of this really does concern me, what I'm seeing. So doesn't some of this concern you?

BRAD MEURRENS: Very much so, very much so. I mean, and that's the problem, is that these are extremely risky and dangerous techniques for both, like I said, the person being restrained and the person

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

doing the restraining. And there is no uniformity across-- across the state in terms of what is in or what is not in or what's allowable, what's not allowable in terms of-- of what-- of restraint and in the incidences that would rise to the use of such techniques.

PANSING BROOKS: So it seems to me that the bill should charge the Department of Education with setting up standards for the entire state.

BRAD MEURENS: There-- there is a-- there was commissioned a guidance document, was produced, I want to say, around two thousand-- oh, it was either one or seven. I have the document. I can send it to you.

PANSING BROOKS: 2001?

BRAD MEURENS: Well, don't quote me on the date, it was a while ago, and developed by Dr. Peterson at UNL. And that-- it-- that is a-- it's a pretty thick guidance document and it-- and it lays out suggested components and variables that schools should have or would be-- it would be advisable for them to have in their particular restraint and seclusion policies. The problem is that's just-- it's merely a guidance document, which is why when we had our-- in my report in 2014, I titled it protection-- "Only Guidance for Protection," because only thing that's protecting students from-- from those, a severity of injuries that result because of these techniques, is a guidance document that we produced, that the state produced many years ago.

PANSING BROOKS: Prior to the Supreme Court--

BRAD MEURENS: I don't know about that.

PANSING BROOKS: --case. OK.

BRAD MEURENS: I don't know about that.

PANSING BROOKS: Well, thank you for coming today. I appreciate it.

BRAD MEURENS: Sure.

WALZ: Any other questions? Thank you so much.

BRAD MEURENS: You're welcome.

KRISTEN LARSEN: Hey. Good afternoon, Senators. My name is Kristen Larsen, K-r-i-s-t-e-n L-a-r-s-e-n, and I am here on behalf of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Nebraska Council on Developmental Disabilities to testify in strong opposition to LB147. 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 federally mandated, independent counsel comprised of individuals and family members with developmental disabilities, community providers, and agency representatives who advocate for system change and quality services. The council serves as a source of information and advice for states, policymakers, and senators, and when necessary the council takes a nonpartisan approach to provide education and information on legislation that will impact individuals with developmental disabilities. LB147 is very similar to LB595 introduced by Senator Groene in 2017 that would allow the use this time of necessary physical contact to restrain or subdue a student. Our concerns then still hold true, and now we raise the question, well, who will define the terms "necessary" and "physical contact" and "destruction of school property." Alarmingly, LB147 says that the use of physical contact or restraint on a student would not be considered corporal punishment, but I-- which I would state that probably serious injuries can occur when an adult uses physical contact with a child. Even if we're talking about grabbing a wrist, that-- that situation can definitely escalate to something a little bit more. I know there's been a lot of conversation on that. Is it fair that no legal or administrative action or review of the teachers' or administrators' actions be taken in every case? Will the same be true of a student if they inadvertently injure a teacher, administrator, other student, or school property? When a teacher removes a student from the classroom, where are they sent? They're, you know, the yellow room. I mean, that-- that's where we tie it to that seclusion part, particularly if it's a student with a disability. There's no consideration given in the requirement of a student's IEP or 504 plan. You've heard some of that today. And the language in the bill also adds that the students would be not able to rejoin the class without the teacher's consent, and I-- we do like that, with the exception for students who reads-- who receive special education services related to IDEA. That additional language is helpful, but it's not sufficient to address our strong concerns over the disciplinary actions being taken. LB147 could lead to some unintentional consequences. The bill does not require staff training and knowing when, whether, or how to use any form of restraint or physical contact, identifying when an individual is considered dangerous to themselves or others, or how to deescalate a situation before the student requires intervention. It does not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

prohibit the use of a prone restraint, which research has documented and has-- that can and has led to deaths of individuals of all ages. 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 unrestricted and unqualified use of physical contact or restraint of a child. Research has identified that the use of seclusion, physical force, and restraints in schools is a dangerous practice for all students that we were talking about just a moment ago, especially those students with disabilities. I also want you to know as Nebraska lawmakers that I want you to be aware that the issue of physical force, seclusion, and restraint is being evaluated at the federal level. The council is following and supporting the passage of the Keeping All Students Safe Act, which is national legislation that was introduced in November of 2018. This bill seeks to prevent and reduce the use of physical restraints and seclusion in schools, except in those rare situations when the student's behavior poses an immediate danger of physical harm, and to prohibit the use of chemical or mechanical restraints. It would replace seclusion and restraint techniques with effective prevention practices. Some of those we've heard about today too. The council agrees with those findings that I've listed in my testimony. I'm not going to have time to go through them. There's nine of them. But if you'll go to [Congress.gov](https://www.congress.gov), those are in that bill and they're all research-based and allude to best practices. So I just say, you know, if our national leaders, including those within the U.S. Department of Education, are taking time to investigate and address this issue, then I urge Nebraska senators to also pause and explore all ramifications of LB147. Rather than creating laws that allow the physical and emotional punishment of children, we really need more mental health services to be available to students. And it's not-- the bill is just not consistent with proactive best practices in addressing the behavioral needs of students with developmental disabilities. Behavioral support should be person-centered, individually designed, culturally appro-- and culturally appropriate. It's for those reasons that we don't support the bill. And I'd be happy to try to answer your questions.

WALZ: Any questions? Thank you. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming. I appreciate it. Do you have suggestions on-- so say a child is, is-- is very upset and is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

yelling and throwing things. What are the steps that should be taken at that point? I mean [INAUDIBLE] restraint.

KRISTEN LARSEN: Well, I think it's very-- it's very person-centered and individualized. And hopefully, if it's a student with a disability that's on an IEP plan, that they have looked at this and they have a behavior plan in place. However, I think there are many parents that aren't aware that this is an option for them to do, to have a behavior plan in place, to come together as a team to figure out strategies to de-escalate. I'm also a parent. Have a 25-year-old with autism and an intellectual disability. We've dealt with this issue in school. I can tell you we had a very detailed behavioral plan. We still have a behavioral plan if he's acting out, what we do. You know, we go, we remove him, he goes outside to de-escalate. And in the school we went and walked the stairs to help give him that sensory input to help him calm down. A lot of it was recognizing the de-escalation, realizing, oh, the weather's changing, he's going to have a harder day today. What can we do to-- to use positive intervention, positive behavioral supports? I think that there's-- there is research-proven strategies out there. But again, it comes down to the funding and having the ability for teachers to get those, those trainings. It doesn't necessarily have to be the three-day Mandt training. I'm really glad that Edison brought that up. I went through that Mandt training. It's very effective. And when your two days is focused on de-escalation, I can tell you it helped immensely with our son. With other students, it's all person-centered. It can be as simple as using a five-point set-- scale. You know, is your autism at a five? That's I'm losing it. But, you know, I could be in a grocery store and say, OK, your autism is at a three. I need you to be at a two; what could we do? Let's take some deep breaths. I mean there's lots of different interventions. And I'm not an expert but I would defer to the experts, you know, the school psychiatrist and that sort of thing, that can come in and provide that wraparound support. And unfortunately, I think when Brad testified on behalf of Disability Rights Nebraska, we have an issue of uniformity. That's not-- there's not uniformity across the state when it comes to-- so I think a lot of you were surprised that the use of seclusion and restraint is allowable right now, but it really is being looked at federally to be-- that that's really not best practice. And I see how the argument of maybe this bill isn't that extreme, but for some of us as advocates, we feel like it just opens the door a little bit to where, oh, that kid, you know, I had to use-- I just had to grab his wrist to get him to calm down, next time I'm going to call on the school resource officer and we're going to go into the seclusion

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

and restraint-- you know that-- that's-- unfortunately the research shows that students with disabilities are much more likely to be at a predisposition to have that. So it does, it comes down to training, training and person-centered supports. And unfortunately, not all teams are doing that for the students that really need it.

PANSING BROOKS: Thank you.

WALZ: Senator Murman.

MURMAN: Yes. Thanks a lot for coming in, Ms. Larsen. Toward the end of your testimony I think you mentioned that this bill allows for physical or emotional punishment. I didn't see that anywhere in the bill.

KRISTEN LARSEN: No, I-- that's true. It's not noted in the bill. I guess that would be our interpretation that-- that when that removal or the physical contact is used it could feel like a punishment.

MURMAN: OK. Yeah, I read the bills.

KRISTEN LARSEN: That's our interpret-- yeah, that's personal interpretation, yes.

MURMAN: A physical or emotional restraint only when necessary--

KRISTEN LARSEN: Right.

MURMAN: --to protect both the individual and the rest of the class or the school. Thanks.

WALZ: Thank you.

KRISTEN LARSEN: Thank you.

WALZ: Any other opponents? OK. We have some letters for the record. OK, opponent.

LINEHAN: Are you going to do neutral?

WALZ: Oh, you want me to do that first? OK. Neutral. Anybody neutral? OK. Letters for the record, proponents: Charles Garman of Omaha; Kathy Wilmot of Beaver City. Opponents: Terry Werner, Executive Director, National Association of Social Workers; Rose Godinez, Legal and Policy Counsel, American Civil Liberties Union; Mary Bahney, Legislative Committee Co-chair of Social Work, School Social Work Association;

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Marge Ludden of Omaha; Virginia Magnuson of Omaha; Mo Neal of Lincoln; Kacie Ware of Omaha; Colby Coash, Associate Executive Director, Nebraska Association of School Boards; and Suzanne Swanson of Bennington. And we also have a letter for the record in the neutral position: John Lindsay, President, O'Hara Lindsay and Associates. Senator Groene, would you like to close?

GROENE: Thank you. Where do I start? Senator Morfeld mentioned what other states do this or have something similar. I'll get the-- we did the research last year on LB595. There's 24 states with some form of teacher immunity authorization of force or restraint, 3 have corporal punishment. That's 27. Student removal, 25 have in statute the parameters for a teacher to remove a student. I can get you that information with a synopsis of each state, what they do. Training's already taken place, we heard that, sporadically. NE-- SEA has mentioned that they're willing to step up and do it. I don't think they're going to charge the members or create a plan. So I think we've heard her say that. And on the survey, I have a survey here. When Jay Sears introduced it last time, he was amazed. He said they do a lot of surveys, some over the years. Seldom had they had more than 2,000 respondents out of 28,000 teachers. On this one they had 7,000. Here was the questions. It's pretty clear. Have discipline and behavior problems in your school increased over the past year? Eighty-two percent said yes of 7,009 respondents. This is from the teachers. Are unruly and disruptive students the biggest problem you face in your classroom, is it the biggest one? Sixty-one percent said yes; thirty-nine percent said no. Do you believe your principal and administrator is supportive of teachers' decisions on discipline? Seventy-one percent said no. There's a disconnect with Mr. Jacobsen and his principals organization and what the teachers are saying. LB-- this is about LB595 and this was a little harsher than what we are doing today-- would authorize teachers to remove a student from the class. If the student's behavior interferes with the classroom, absent the teacher's consent, the student would be returned-- not be able to return. The bill also prohibits legal action. You approve of LB595? Eighty-one percent said yes. Another question: Do you believe 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 towards another student or school personnel? Forty percent said yes; sixty percent said no. There's a lack of communication over the last 150 years of public schools. We keep hearing we need training, we need this. Why isn't it being done? That's-- that's why this bill is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

presented. Related statutes, this is all based on people saying you can already do it, on this bill, on this legislation passed in 1976 or it might have been 1943. Both dates are mentioned. The administrative and teaching personnel authorized actions: administrative and teaching personnel may take actions regarding such student behavior other than those specifically provided in the Student Discipline Act which are reasonably necessary to aid the student, further school purposes, or-- or prevent interference with the educational process. Such actions may include but not be limited to counseling of students, parent conferences, rearrangements of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian in such counseling or evaluations. Where's physical contact in that legislation? How is a teacher supposed to know? The only-- the Supreme Court had to define actions. Nine judges, I believe it's nine, decided it was so necessary to interpret actions that you could use physical restraint, and I don't know how they did it but thank God they did, in the Daley [PHONETIC] case. And what they defined was the Legislature has provided, however, that administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, prevent interference with the educational process. We determined that while obviously not authorized corporal-- authorizing corporal punishment, does provide authority for school teachers and administrators to use physical contact, short of corporal punishment, to a degree necessary to preserve order and control of the school environment. Moreover, this statute authorizes an acceptable level of incidental physical contact as is necessary for teachers to promote personal interaction with their students. You got this obscure court case that's related to a statute and that's what all of this hinges on. Everything you heard about seclusion, of physical contact, restraint, all hinges on this one paragraph in a court case. What LB147 does is to put that court case, that into statute and then our teachers will know, their organizations will know that they can use, as Senator Pansing Brooks says, grab a child's wrist. It's not in statute, no. As to the point that was brought up about-- bear with me-- amend-- the IEP, Senator Pansing Brooks is right. So is the fellow from Arc. I caught that, that-- that where we had about the-- the-- and, legal counsel, in the amendment I didn't mention it but here's a copy of the first version of the amendment. We rearranged where that's put so it says, unless

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

prohibited by Special Education Act or the federal Individual with Disabilities Education Act 20 1400 as such federal act existed on January 21, 2019, a teacher has the authority-- it's first-- unless there's an IEP in place. Then after, if there's one in place and there's a team assigned, the-- the lady preceding me, did you notice she said her son is removed from the environment and then after it she used the word "removed." There are a lot of IEPs out there where that is what is instructed, remove them from this, the environment, and then handle the situation. There are few that say leave the student in the classroom, but it's already been preordained that that student isn't violent. They might scream, they might be-- have autism, but they're not violent. So I trust the IEP will be correct. And if a student needs to be removed in a situation, it's already in an IEP. If not, if not I can give you a personal experience in a fistfight I had in a classroom. I wasn't a special needs class but I got removed from the classroom. But anyway-- and the other guy and me were the same size and friends and were after the fight. But whatever, those instances happen and the teacher has to react, has to react. We're just trying to help the teacher. All I hear from teachers, I do get along with teachers, I do. And they contact me and I have relatives, 50 years old they're retiring, 55. I used to think they free-- free ride. They love teaching. They're giving up. The environment in the classroom, as you heard from the survey, is getting to the point where teachers, like Senator Walz, would rather sell real estate. I'm just teasing [LAUGHS]. But anyway, it's not a comment, but anyway just a joke. But anyway, this bill is needed. We need to define it into statute. We need that instant in time. We heard about plans, we heard about seeing a psychologist, we heard about that teacher's in the battlefield. And in that instant of time they need support and they need the ability to stop the violence and they need support of the administration that they're in charge of that classroom. They're there. They know what's happening. If they want to remove a student they should be able to. Too often I heard from teachers is this: They contact the sup-- principal. He's flustered. He ran down the hall because he's been in another classroom. He sticks his head in the door. He points at the kid and says, you settle down; and points at the teacher, says, you handle it; and leaves. That should never happen. It's happening too often. That teacher should be able to remove that student from the classroom, break the tension. Principal handles it, brings the child back and says, are you willing to take the child back? And the teacher says yes or no or, yes, I will take the child back but I want that parental-- I want that conference. That teacher could do that. If we can't give the teachers that much, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

trust them with our children's education, we trust them with teaching them behavior, we trust them, and we don't trust them control of their classroom. Something's wrong with that picture. So I appreciate the passage of-- of-- I forgot the bill number, LB147, and we'll work on that amendment and we'll get it to the committee. Like I said, most of that amendment was-- was asked by the NSEA and teachers and administrators. And we'll put in the law what should have been put in the law back in 1999 when that court, the Daily court case, took place. Thank you.

WALZ: Questions for Senator Groene?

GROENE: Thank you.

WALZ: That concludes our hearing on LB147.

GROENE: LB515 is-- Senator Vargas, are you ready to open? Sorry I was sitting up here ready being able to prep for the next.

VARGAS: Good afternoon, Chairman Groene and members of the Education Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, the communities of downtown and south Omaha. LB515 amends various portions of the Student Discipline Act to improve the due process and to increase fairness for students, parents, and the entire system. Now before going into this bill I want to touch briefly on the history of the Student Discipline Act. In 1976 the Student Discipline Act was created because what had preceded it was deemed unconstitutional by Nebraska courts. Now without any rules about suspension and dismissal, students were being treated differently, school to school, district to district. The stated purpose of the Student Discipline Act was and continues to be, quote, to ensure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within an orderly and effective educational process. Now current law goes on to say that the sanctions are to be interpreted at all times in recognition of the right of every student to public education. Now what we've seen in this over the years, like many of our laws, there are some provisions of law that need to be updated in order to fulfill the original intent or mission. There was somebody that was going to be testifying but because of weather they submitted a letter/testimony which I'll make sure to enter into the record in a second. What I'm going to do is hand out this one-pager, provides a summary of some of the changes from this act. From a cleanup perspective, what we've tried to do is insert some reasonable additions, such as making sure

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

parents are told where to request a hearing and setting time frames for certain actions to happen. There were also a couple of changes. One I want to highlight has to do with hearing officers. I want to preface, and I'll talk about this a little bit more, that this process and section has been worked on with a couple of many different partners behind me so that we can come to some, not-- I don't want to say the word "compromise" but actually seeing both sides and figuring out what the right step-- pathway is forward. So this specific part of LB515 states the prerequisites for a hearing officer and lays out a process that would allow parents to request a new hearing officer if they don't agree with the choice of the superintendent. Another change to this act would explicitly allow homework and coursework completed during the suspension and hearing process to count towards credits earned. Currently some school districts accept credits earned while others do not, causing a bigger problem for the student who, in addition to being expelled, falls a semester behind. I "dred" this-- address this in LB515 by simply saying that validly earned credits, meaning from an accredited program, should be accepted. I'd also like to just touch briefly on this work on the Student Discipline Act. Now some of you were here before. Last year I brought LB999 to this committee and there were some genuine concerns raised from various members of the education community. At the end of last session I introduced an interim study, LR456, to do a deeper dive into these concerns and iron them out before introducing the bill again. I am very happy and thankful that we convened a group of stakeholders, including the NCSA, NCSB, the Department of Education, NSEA, Voices for Children, and others in a roundtable discussion last fall. What you have before you in LB515 is the work of this group that we arrived at that represents an agreement to address some of these big issues so that we can potentially move forward on this bill. I do want to thank the people behind me that took the time to make this work happen because making these types of changes has a lot of impacts on stakeholders and I'm just really thankful that we have such amazing stakeholder groups that are willing to do the work. I also want to do a special thanks to the NRCSA for working with us as well recently on some aspects of this bill which I'll talk about second. Finally, I'll mention I'll be bringing an amendment. I had an amendment and we're going make another change to it as a result of something I'm going to tell you in a second. I haven't formally introduced this amendment yet which I'm explaining but just in case there are any issues that arise in the hearing I'm going to defer to the committee once I bring this new amendment. This amendment will fix two minor issues brought to me a couple of weeks ago, well, one that is an issue. The first is we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

wanted to be responsive to the growing needs of hearing officers. They may not always be plentiful. And so in our original bill it had a list. The size of the list of potential hearing officers was five. And so what we did is we responded to both the school administrators and the rural administrators association. And so we're going to be moving with a recommendation of an additional alternative of one, responding to this feedback so that we can make sure that there is another additional option for parents and students. Second, it changes a time line from calendar days to school days to keep time lines consistent throughout the bill. There's a couple other places we'll be working on some different language that's small tweaks. For example, we're going to work on some language having to do with training and experience for hearing officers on page 10, line 14 to 17, to make sure there's some needed flexibility for different school districts. With that, I urge you to support LB515 and move on to General File. We'll be working on-- on these amendments and get them to you. I'd be happy to take any questions that you have. Thank you.

GROENE: Any questions for Senator Vargas? Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this very comprehensive bill. I really appreciate it. I'm trying to figure-- I really like the part about homework and the fact that students not be-- I mean if they're home working and doing the effort. Of course I have a personal experience in my family about this where our son who's doing fabulously was suspended for an infraction. And he-- it was right before the third quarter, third, yeah, quarter of his senior year and he got his first F's ever because there were-- he had completed all the assignments but one teacher said, I'm not going to accept any of this. So, you know, he never received that before. He was highly depressed. And this is a kid who was the vice president of National Honor Society. He was a vice president of the student council. He'd done everything right till he made this mistake, which he learned from him that's fine and it was, you know, he-- it-- it is something that we all hope that our kids learn from something. But even that, even that, having those F's from those-- those failing grades that third quarter, he brought them back up again by the end of the year, of course, but that really discouraged him. And I think about kids who don't have the good fortune of his skills and things that aren't necessarily able to rise up from a situation like this, where if-- if the kids are willing to do the work, to punish them both from remove-- have-- having to be removed from school and having to punish them on their coursework, which they've been working on steadily, it just

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

seems like almost double jeopardy. I just-- I don't understand what value that is to students who-- whom we are trying to teach and learn. And you know we made our-- our son get up and get up at 7:00 a.m. He wasn't allowed to watch TV. He wasn't allowed to use his phone or anything like that. He had to work and study and do work chores around the house. So I mean I just think that it is-- I really appreciate the fact that you looked at this and I have a real case example for you. So--

VARGAS: Thank you very much, Senator Pansing Brooks.

PANSING BROOKS: --how important it is. Thank you.

GROENE: Any other comments or questions? Sir, Senator Vargas, who-- who-- what made you bring this up?

VARGAS: A couple different things: one, my previous experience on school boards; two, somebody has been in the education field before and has worked in other states with students that have gone through this process. I also had a colleague friend that works in this space and so we talked about some different instances and then we started talking with administrators and different individuals to try to figure out what are some ways that we should be updating this that are going to make sure that it's really fulfilling the due process of what it was originally intended to do. And so I'm one of the individuals, which is actually a good segue. I'm just going put this into the record as well. This is the testimony from Elizabeth Eynon-Kokrda, who testified last year as well, and just, you know, some of her thoughts that we wanted to make sure to put into the record.

GROENE: So this doesn't take away any of the power of a school board to suspend a student--

VARGAS: No.

GROENE: --for behavior, doesn't alter that at all.

VARGAS: No.

GROENE: It just allows the student to still be a student while he's suspended or she--

VARGAS: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: --basically?

VARGAS: I'll say the majority of the changes that you're going to see are trying to make sure that we have some reasonable time lines, trying to make sure that we have clarity in some places that were unclear, also making sure that we really are-- the due process for different sections are there for the student and the parent or the parent or guardian or whoever is representing the student, given that these hearing processes are sometimes complex, so.

GROENE: So a hearing examiner, you are with OPS, how-- was there a list of them? How-- who are they? What's their qualifications? Are they the principal,--

VARGAS: Uh-huh.

GROENE: --what, school employees, the teachers or--

VARGAS: This is great. This is just like a deja vu. So last year the-- you asked the same question, which is great.

GROENE: I did?

VARGAS: So I believe it was you or-- or-- I think it was you. Somebody asked the same question last year. And so it varies from district to district and so I'm not going to speak for a different districts.

GROENE: I don't even remember the bill from last year.

VARGAS: What? Say it again.

GROENE: I don't even remember the bill from last year.

VARGAS: That's OK. So it varies from district to district. but for some large districts, they have their own in-house person that is their hearing officer. From some medium to smaller districts, they'll contract this out to a former administrator or somebody that is trained and has the experience to be a hearing officer. The Department of Ed also has a list of qualified hearing officers as a reference point. However, there are people that are trained in this or have experience in this and so we just wanted to make sure to codify some of those different components of the statute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: So presently an active school employee in that district can't, cannot be the examiner.

VARGAS: Say it again.

GROENE: Presently the-- an acting employee of the district cannot be an examiner. Is that correct?

VARGAS: I-- I believe so. [INAUDIBLE]. Yep. Provide a list of qualified hiring officers who are not employees of the district or otherwise currently under contract with the school district.

GROENE: Well, thank you. I'm going to have to ask Wallace where they find somebody out where they're at. So thank you. Senator.

KOLOWSKI: Thank you, Chairman, Mr. Chairman. Senator, how many districts did you find that it was a 15-day suspension, nothing can be happening between the school district and those kids? Did you find any districts that are set up in that particular way?

VARGAS: So we did not do a survey of every district in terms of the time lines or the average time lines for suspension. We're not dictating what, that the suspension time lines are. This is more with making sure there was just reasonable day time lines, usually school days was the consistent language we used for turnaround times, turnaround times for when a parent or guardian or student is notified. How, when-- when the school board has to make a decision after a hearing, when they need, the parent or school needs to be notified of the decision from the hearing report and other different things. But we did not do a survey. That's really less of the context of the bill.

KOLOWSKI: When you get to the complications of a-- a person that's helping those students at the high school level, you get very complicated courses sometimes. You're going to get into the high-level math or science or English or something like that, that really would necessitate their having a higher degree in that particular area. What do you do then?

VARGAS: So one component that we do change here, it's on page 5, lines 14 to 18. We wanted to make sure that when students are earning some sort of grade-appropriate credits during the term of their expulsion that they're accredited by a Nebraska accredited institution and six regional accredited bodies. This is done with the intention of trying to make sure that whatever they do have meets a standard that is a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

standard in the state of Nebraska. But I do recognize what you're saying is a difficulty, but we're not explicitly changing anything with the requirements of what level other than this specific component for expulsion.

KOLOWSKI: OK.

GROENE: Any other questions? I'm sorry, Senator Linehan.

LINEHAN: That's OK. Thank you, Chairman Groene. Can you give me an example of why a high school student would be suspended for 15 days? I mean I have no-- I-- I just-- I don't know.

VARGAS: I-- I couldn't. No, I wouldn't want to speculate about--

LINEHAN: OK.

VARGAS: --an example. But I mean there-- there are instances where it runs across the gamut. I wouldn't say it's a-- I can't say whether or not it's typical or not because we don't have data points to show that, so I don't want to misspeak on that.

LINEHAN: That's-- that's OK. I just-- how does, at least from your experience how does it work when everybody decides or someone decides they go to the alternative school? How does that happen?

VARGAS: I actually will ask some of the testifiers behind me--

LINEHAN: OK.

VARGAS: --to talk a little bit more about that process. And I'll make sure to get you a response because I don't want to misspeak because it is different for different schools.

LINEHAN: OK. I was just trying to get some feel for it.

VARGAS: Uh-huh.

LINEHAN: OK. Thank you, Senator Vargas.

GROENE: Senator Pansing Brooks.

PANSING BROOKS: So I was just try-- thank you, Senator. I was just trying to figure out about that part about that Senator Groene mentioned about hiring somebody outside the district. Number one, I--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

I missed that somewhere. Where is that because you seemed to find it [INAUDIBLE].

VARGAS: It will be on page 9, section-- well, basically lines 21 through 31 or-- yeah. And then it continues on to the next page.

PANSING BROOKS: OK.

VARGAS: So the-- the way it is right now is if a hearing is requested--

PANSING BROOKS: Yeah.

VARGAS: --the superintendent appoints a hearing examiner. And we wanted to make sure that there's just more options for-- for student or parent.

PANSING BROOKS: [INAUDIBLE] 28 and 29.

VARGAS: Uh-huh. That's--

PANSING BROOKS: So--

VARGAS: No, go ahead, Senator.

PANSING BROOKS: I'm sorry.

VARGAS: No, no. Go ahead.

PANSING BROOKS: Well, what I was wondering is, number one,--

VARGAS: Uh-huh.

PANSING BROOKS: --I guess what-- what's the theory about not having people who are familiar with the schools, familiar what's happening across the district? I'm thinking of a district as big as LPS. And I know that LPS has hearing officers within their district offices.

VARGAS: Uh-huh.

PANSING BROOKS: And I don't know, I don't know whether that's good or bad. The good part is when we went before the officer what our son did was so ridiculously innocuous compared to some of the other things for which people are suspended that I think at that point they just sort of went, oh my gosh. Because they had threatened that, wow, you could get suspended for longer than seven days. And what he did was on a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

trip, it was a field trip where they went down to Kansas and some people that were on the bus stole some alcohol, got back on the bus, he got wind of it and stayed on the bus.

VARGAS: Uh-huh.

PANSING BROOKS: They have pictures, video pictures of the kids stealing the alcohol, but it's across state lines. When the kids got back on the bus they poured some alcohol in some pop cans and then passed it around. He had a sip of it, which he admitted and they called him in. He was the first student they called him because they knew he'd be honest and tell them. He moved away. It's exactly, as a parent, what I wanted him to do, except I don't know what I would have done. But anyway, he-- he-- he made the mistake and moved away from the situation, exactly what you would hope a kid making mistakes would do. So then he was, through a whole bunch of things, suspended seven days. They ended up take him, you know, he went to LPS DO to go through the hearing process, but the whole time we're hearing there's a chance that they're going to give him more than seven days' suspension. So when-- but once we got to LPS DO, it was pretty clear. I mean he had-- and seven days is the most that they give to somebody. So even a kid that's doing drugs, even a kid that's brought a weapon to school, in my realm of-- of bad things, this wasn't as bad as it could as it could have been, really. So I think that having somebody that works with-- with the district that has an understanding of what's going on out there and has a knowledge of schools and what's happening is important, and maybe it's better to have, to allow-- I mean I'm just interested, why did you say they don't work for the district?

VARGAS: So let me clarify. So the way it currently is right now is if an individual requests for a hearing, a student or parent or guardian, the superintendent recommends an appointment of a hearing examiner.

PANSING BROOKS: Uh-huh.

VARGAS: That hearing examiner is their recommendation to the individual. There's nothing in this stipulating who that hearing examiner is or isn't, working inside or not. Later on the qualifications apply to-- so let's say, example, you're a parent and you got a hearing examiner. If you think that hearing examiner works for you and your child then you'll go with that one. Let's say you want another option. Under the way it is right now you are given the recommended appointment of a hearing examiner. This puts into statute

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

that you would get an option provided to you and that additional person would be from a list, will basically be somebody that is not an employee of the district or currently under contract. So I want you to just think of a scenario where you wouldn't want somebody that is employed by the district and you would want the option to have somebody that isn't. This gives you that option. And it's not a guarantee. The parent or guardian or the student has to then notify the superintendent of the school district and request within two school days of-- of the recommendation of the appointment. We just want to make sure there's some due process to the student to have another option. Last year we had this conversation and one of the pieces was teachers, in their due process, do have some options with the types of hearing officers that they-- that they are, you know, they have at their disposal. And we just wanted to make sure that there's some level of parity, some level of equity, not the exact same, so just some options for a student. And so it's not necessarily saying it has to be inside or outside, but it's saying that the other options would have to be outside, well, the one additional option. So right now this has five but we're making a proposal that the amendment be one so this really works across the state.

PANSING BROOKS: OK.

VARGAS: Yeah.

PANSING BROOKS: That makes sense. So,--

VARGAS: Uh-huh.

PANSING BROOKS: --I mean some school districts have more than one hearing officer. So you didn't give a choice to those kids that they might have one hearing officer, that they might want to choose another one within the district. A parent might want to choose another one within the district.

VARGAS: They might want to. This doesn't preclude them from potentially from that. It's just saying that they would be allowed to have a hearing officer that's given one. This doesn't stop a school district from providing many different options.

PANSING BROOKS: OK. I hope so--

VARGAS: But it's saying that--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: --because what I'm reading is that, if they-- if they give one hearing officer from the superintendent then they have to go to five outside the district and--

VARGAS: So upon receiving the request, the superintendent shall provide a list of at least one qualified hearing officer who are not part of the district. For this additional list, yes, if they're requesting to have somebody that isn't the existing person. If that-- if that is a sort of being misconstrued, if somebody wants to have somebody else from the school, from the district, I think that's fine. What we're saying is they should at least have an option outside the school district--

PANSING BROOKS: Uh-huh.

VARGAS: --from an employee. Because you can imagine, I want you just to imagine a scenario where you may not want to have the person making a determination for your child--

PANSING BROOKS: Yeah. I-- I get that.

VARGAS: --be from that. So we just want to make sure that-- so I'm happy to work on something that would give the flexibility to then go back to another--

PANSING BROOKS: Within the district.

VARGAS: --like that allows them to go back within the new district. But we do want to have something that says that you would be given an option, one option, not five, that is outside of the district.

PANSING BROOKS: OK. Just one other question.

VARGAS: Uh-huh.

PANSING BROOKS: So how do you have a hearing officer that isn't employed by the district and/or isn't under contract? I don't get how there could be just lined up hearing officers not under contract with the--

VARGAS: So--

PANSING BROOKS: --with the district. So I'm sorry.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

VARGAS: No, no, no, it's OK. I'll reference back to what I-- I said to Senator Groene. In some instances bigger school districts have their own person on staff--

PANSING BROOKS: Right.

VARGAS: --or they'll have contracted somebody that they just kind of have on retainer. For some smaller school districts, they're-- they will work in contract when needed. You won't have somebody on retainer that's not already an employee and then so they're find them.

PANSING BROOKS: So they will be under contract but just not a permanent contract or?

VARGAS: So right now currently, otherwise currently under contract, right?

PANSING BROOKS: Otherwise currently under contract.

VARGAS: Uh-huh. So it would be somebody else. There are individuals that are trained as hearing officers that are approved, and there's a list from the Department of Education. And then there are other people who are getting trained over time. I know some school administrators have experience with hearing, with this process and become hearing officers over time, but are not currently retained by a school district or are not working for a school district, so.

PANSING BROOKS: So otherwise currently under full-time contract with the school district, is that-- is that the difference you're making? I guess I can talk to you after, but this--

VARGAS: Yeah. No. And so the nuance here is without getting so specific where we constrain it. We wanted to-- wanted to make sure that the hearing officer option that you were given, again if I'm a parent and I want another option that's not employed by the school district for somebody that is making a suggestion determination to the superintendent is not somebody that is full-time employed as an employee of the district, and then, you know, there's definitions for that, or is under contract. So sometimes under contract might be, give an example, Omaha Public Schools has Baird Holm on retainer. They're under contract. They're not employees of the district but they are under contract. That would apply as well. So we want to make sure there's another option for due process for a parent or a guardian or the student. Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

PANSING BROOKS: OK. I-- I'm still-- I still think, though, or maybe it's just clarification how it works but--

VARGAS: Uh-huh.

PANSING BROOKS: --how many people can a small community have that could be doing this that after you've done it three times you're under contract basically? So maybe you mean not full-time contract. Or I mean I could even see that Baird Holm in a smaller community might be used to act as a hearing officer. I don't know. I don't know how. It just seems like maybe it's not under full-time contract with the school district or something. I understand your impartiality and trying to-- but you also don't want every person that walks able to hear this case, right?

VARGAS: Say that last part again.

PANSING BROOKS: I don't know, a child? Who gets to? And they're not under contract so we've gone through the-- the list of people that might be available to-- to hear this case in a small community. So how do you-- then what? If you've gone to them a couple times, are they arguably under a part-time contract with the school district?

VARGAS: So is your concern, I just want to make sure I'm clarifying--

PANSING BROOKS: Under contract.

VARGAS: --is your concern with the last piece you said about their qualifications?

PANSING BROOKS: No, I'm worried about at what point does somebody become under contract--

VARGAS: Uh-huh.

PANSING BROOKS: --because of the number of times? They-- they aren't really under contract with the schools, but because they've been asked to come in and contract to be a hearing officer then they have apparent-- apparently they-- or they really actually are under a type of contract with the district.

VARGAS: Yes. So we're happy to work on language that would address that conflict. I think the real goal was to not have somebody that is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

on like-- like a contracted, you know, entity or person that's working with the school district then and be the other option--

PANSING BROOKS: I like that.

VARGAS: --because if I'm a parent, because I'm if I'm a parent and if I got one option which maybe I didn't want to have that, somebody that was a full-time employee, but then I got another option that may have been somebody that is under contract that worked for the district a lot I want to make sure I have somebody that gives me some of the voice of potential impartiality. Even though we define it here, we just wanted to have another option. But I'm happy to work on it, trying to figure out--

PANSING BROOKS: I appreciate that. Thank you. I see now.

VARGAS: --part-time contract.

PANSING BROOKS: I just wanted it for the record what your intent was.

VARGAS: Oh no. Yeah. Yeah. So my intent is not to make it-- so we can look into trying to like work with the language so it addresses the part-time contract piece.

GROENE: Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, Senator Vargas, actually Patty's asking a lot of really good questions which were some of them I was thinking. But just so you understand, I think the vision you have works really good in Lincoln and Omaha. If we go west again, to my district, in Hay Springs, the Cody-Kilgores, the Hyannis,--

VARGAS: Uh-huh.

BREWER: --how am I going to be able to come up with this hearing officer? I worry that that's going to be a hard one.

VARGAS: Uh-huh. And so I will let a few others chime into this process. And this is exactly one of the conversation pieces we had when we originally were putting five, which seemed to be not a feasible option for everybody. Some people it can work for, some school districts; some school districts it couldn't work for. So what we went down to was one. And-- and one of the pieces here we-- we-- we are operating with this. Teachers get a certain number of hearing officers. I believe it's at least three. And so if hearing office--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

teachers are-- are provided with hearing officers. We want to make sure there's some level of parity and equity. We don't want it to be the exact same, which is why we think one additional one that has a-- meets some requirements would be a-- a possible option that works for individuals. And that's something that we talked with different entities to see what would work, both including the rural association and the state school administrators associations. That's where we came up with the one, which originally was five. We pared it down.

BREWER: OK.

VARGAS: Uh-huh.

BREWER: I-- I think I'm starting to get the vision, but we'll-- we'll kind of let things work through and then maybe it will all light up.

VARGAS: OK.

BREWER: Thank you.

GROENE: Do the--

VARGAS: Senator.

GROENE: --parents have to give reason why they don't want that hearing officer,--

VARGAS: So the way this is--

GROENE: --the one appointed?

VARGAS: --this is written is if they just have to give notice and request that they ask for a different recommendation.

GROENE: So you got a white supremacist family and they get a-- a hearing officer that's-- that's a minority, and they can reject that hearing officer--

VARGAS: The--

GROENE: --until they get the one the right color?

VARGAS: They can. That's not written out here, Chairman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: Well, but they're not giving a good reason why they can reject that hearing officer appointed by the school.

VARGAS: So in this example, well, in your example, how it's written here you can request within a certain amount of time to have a different option provided to you.

GROENE: Why?

VARGAS: For due process, to ensure that we're providing some due process and some options to students and parents.

GROENE: Do you know in a court of law there has to be a reason why that judge has to "recluse" themselves.

VARGAS: Uh-huh.

GROENE: And the perpetrator here can ask for a different judge without cause?

VARGAS: The perpetrator, we're not using the word "perpetrator" or "judge." The student--

GROENE: They got in trouble.

VARGAS: --and we're-- the student and the parent or guardian is given the option of requesting for a-- an additional option hearing officer other than the one that has been appointed to them by the superintendent. So I just want to make sure I'm using the language for this. And-- and the process we're talking about is with disciplinary action.

GROENE: But they don't have to give cause why they want it.

VARGAS: We're not at-- we did not require a cause or a form. But they do need to then do it within a specific time line and, yeah.

GROENE: All right. Thank you. Senator Linehan.

LINEHAN: Thank you, Chairman Groene. Are you basically saying you want the parents, the student to feel like there's not a conflict? If I work for the school, if I'm contracted under a school, my livelihood is from the school. The superintendent, the teacher have decided this kid should be expelled. So you-- all you're saying or what you're-- I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

think you're trying to do here is to make sure it's fair, that the person who is going--

VARGAS: Yes.

LINEHAN: --the person that's supposed to be the judge here doesn't have a conflict of interest because I work for the school.

VARGAS: We don't assume that there is always a conflict--

LINEHAN: Right, They don't assume, but in case the parents--

VARGAS: --because schools are doing everything that they can and hearing officers are doing everything they can. However, we do want to provide a process to make sure it is fair.

LINEHAN: OK. Thank you.

GROENE: Hearing last question.

VARGAS: Is every--

GROENE: One, can I ask a quick question? These hearing officers, are they-- they're paid, aren't they? I mean if they're employed at the school, they're already on payroll, right?

VARGAS: So this varies by district to district, as I said. Some might be already current staff members or employees, some might be on contract, but they're-- they are paid by the school board to then conduct any of the different duties of the hearing.

GROENE: But this could cause an additional cost for the school board.

VARGAS: The school board already takes on the cost of the hearing process.

GROENE: Well, but if they have an employee doing it, there's no additional cost. If they contract with the law firm, LPS does, they're already contracted, that law firm can't be used here. It has to be somebody that's not employed or contracted. So now there's an additional cost to the school.

VARGAS: So currently right now, and again and we're trying to have some parity with teachers, if teachers have, can then choose from people that are inside or outside the district from qualified hearing officers. One of the reasons why we moved down from five to three to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

one is to make sure that this is working for the district. There's not an automatic assumed cost. But in your-- what you just said, yes, if an individual was not employed by the district or was not on contract with the district, the district would then be paying for that hearing officer to then conduct the work from the additional one that they recommended. Right.

GROENE: Thank you, Senator Vargas. Any other?

VARGAS: Thank you very much, Chairman.

GROENE: You're not a perpetrator and I appreciate you taking the grilling anyway.

VARGAS: Oh, hey, I thank you.

GROENE: Proponents.

MADDIE FENNEL: Thank you, Senator Groene and members Education Committee. My name is still Maddie Fennell, M-a-d-d-i-e F as in Frank-e-n-n-e-l-l. I'm the executive director of the Nebraska State Education Association, here representing our 28,000 members in support of LB515. I want to thank Senator Vargas for introducing LB515 and for collaborating with education stakeholders during the interim session to make modifications to his bill. When a student's behavior causes a consequence requiring removal from the classroom, it is an upsetting situation for the student, for educators, and parents. Their removal is important to secure the safety and to preserve the learning environment for all students, but as professionals we must seek to minimize the negative impact of removal on the student's academic success. In other words, we want the student to learn from the consequence but not fall into academic failure, as Senator Pansing Brooks so eloquently shared. We must also provide fairness and equity in our discipline due process, allowing students and parent-- parents the opportunity to appeal a decision in a timely manner if they feel the decision is not merited. Senator Vargas' bill adds important clarity for students, parents, and school personnel regarding the time line and rights of students who are being removed from class. LB515 provides clarity to the time frames in which certain actions must be taken; clearly outlines that students charged with discipline violations must be allowed to complete classwork and homework, acknowledging that sometimes that might mean the classwork needs to be modified because you can't do all your classwork at home; and provides needed consistency and greater equity in student discipline hearings.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

We ask you to vote in favor of advancing LB515 to General File. I would just like to add one other thing regarding finding hearing officers in small districts. It's my understanding that sometimes districts kind of flip flop when they're close to each other. So the district might have their person that they know but the district down the road also has their person, so it might be a flip flop, acknowledging though, Senator Pansing Brooks, that consistent use of that may constitute employment.

PANSING BROOKS: Yeah.

GROENE: Any questions? Have you seen that or that the hearing officers are a problem sometimes, that they get irregular rulings?

MADDIE FENNEL: I haven't seen that but I think sometimes, and I've always been taught, perceptions are reality in the minds of people who hold them. So if a parent perceives that there's going to be a problem, it can become a problem. So giving parents the option, should they be concerned about that, I think is a good choice.

GROENE: Thank you. Any other questions?

MADDIE FENNEL: Thank you.

GROENE: Next proponent.

JULIET SUMMERS: Good evening, Chairman Groene, members of the committee. My name is still Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s, representing Voices for Children in Nebraska in supportive of LB515. Education is a key indicator of future opportunity for children and we should make every effort to ensure that our education system is setting students up for success. When disciplinary processes are structured in clear and fair ways, students at risk of drop out are better supported to succeed in their education. We support LB515 because it provides procedural protections that will keep students on track to educational success rather than pushing them out to the streets and court system. We know that schools may struggle with inadequate resources, but we must find ways to address misbehavior while allowing students to pursue their education. Even students who misbehave deserve a meaningful opportunity to continue their education and we all benefit when they do so. I've cited to some of the studies I referred to earlier here, but they're relevant here as well. That procedures and policies that rely too heavily on exclusion from school results in lower educational attainment not only for the suspended or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

expelled students but the student body as a whole. So modifying and updating our Student Discipline Act to provide heightened procedural and substantive educational protections for students who might otherwise be at risk of dropout will benefit our-- benefit our student populations as a whole. I'm here to talk a little bit about what happens when this education due process doesn't work and kids move on from there into the court system, which is really where my expertise on this issue lies. So in the 2016-2017 school year there were 625 students in public and nonpublic schools expelled, representing just .2 percent of our total student population. That's a really great statistic. It's very low. There were 36,158 students suspended. That's not unique students. That's instances of suspension, representing 11 percent. Moreover, students who missed more than 20 days of school, sometimes including the count of out-of-school suspensions or expulsions, can be referred to county attorneys for prosecution. And in fact in 2017 there were nearly twice as many youth supervised on juvenile probation for status offenses, like truancy, than there were for felonies. And in fiscal year 2016-2017, 11 percent of all youth placed on juvenile probation were for excessive absences from school, and that doesn't include any students who also had a higher level charge beyond absenteeism. An average monthly cost of \$640.20 per youth on probation with an average length of time on probation of 15.3 months for status offenses, the estimated average cost of those 512 students to our state General Fund would be \$5,015,070.72. Resorting to the justice system is a costly and heavy-handed approach to student discipline. Adding clarifications and procedural protections to our student disciplinary process at the very front end, before they hit the door to the court system, can keep at-risk students connected to their school and engaged in their education whenever possible, and that will have a direct impact on those numbers. So with that, I'd like to thank Senator Vargas for bringing this bill and this committee for all your time, attention, and commitment to improving our education system for all. And I'd be happy to answer any questions.

GROENE: Senator Linehan.

LINEHAN: Thank you, Chairman Groene. Could you get the committee the breakdown of the ages of these students, the 36,158, because it's clearly 300,000 kids in-- well, 350, so it's 10 percent, right?

JULIET SUMMERS: Yes, I will do--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: And you said they weren't-- that some could be repeat offenders.

JULIET SUMMERS: We "clar"-- yes, we clarified that today actually because it looked to us like a nearly triple jump from last year's when I testified on a similar bill. And the-- this year the number that they gave us was-- was instances of suspension rather than unique students suspended. So I will. I will follow up with our research coordinator.

LINEHAN: So ages when this starts, and then if there's a way to show us if they get suspended once, are twice as likely or three times as likely; what's the trajectory?

JULIET SUMMERS: Absolutely. I'll see whatever we can dig up on that for you.

LINEHAN: Thank you.

GROENE: Any other questions? I'm confused here on your, "in fact in 2017 there were twice as many youths supervised on juvenile probation for status offenses." That's truancy, right?

JULIET SUMMERS: That, status offenses as a category includes more than just truancy. So that's any-- it's any kind of noncriminal behavior. You couldn't be charged as an adult but you can in juvenile court. So truancy is the big one. There's also like MIP.

GROENE: But that's not related-- truancy isn't related to the suspended because they basically suspended themselves when they're truant, right?

JULIET SUMMERS: Oh, that's, yeah, that's a great clarification. Thank you, Senator. Yeah, truancy, it-- the charge for truancy, of missing school in the juvenile courts, basically they tally up the days you've missed. That is not supposed to include official suspensions but all too frequently we've seen number-- those numbers included in that count.

GROENE: Of the 30-- do you do-- you do a lot of statistics. Of the 36,158, what quartile of their class did-- academically do those kids fit into? Is it-- is it equally across the four quartiles of-- of the grades or is it pretty much one quartile?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

JULIET SUMMERS: I don't-- I don't know that off the top of my head. I'd be happy to check with our research coordinator for you, Chairman. So what quartile and then what age breakdowns.

GROENE: Yeah. Where-- what-- where do they fit in the academic achievement. Are we-- is there a relationship between suspension and achievement in the classroom?

JULIET SUMMERS: Yes. I mean we know that nationally from certain longitudinal studies that have been done. I'm not sure if we have that, you know, annually up and down for the state of Nebraska. But any information I can dig up on it I will. I'll follow up for you.

GROENE: I'm just wondering if they're already not academically inclined, if they really care about doing homework.

JULIET SUMMERS: Well, I think it can be a cycle. You know if you-- it can be a cycle of, you know, removal from the classroom, feeling disaffected from the school environment, being behind when you come back, acting out, becoming more disaffected. It can certainly be a reinforcing cycle like that.

GROENE: Thank you. Any other questions? Thank you.

JULIET SUMMERS: Thank you for your time.

GROENE: Next proponent. Opponents. Neutral. Neutral, all right.

JACK MOLES: Good evening, Senator Groene and committee members. My name is Jack Moles. I'm the executive director for the Nebraska Rural Community Schools Association, which I'll refer to as NRCSA. NRCSA is an organization of 199 member school districts and educational service units, representing over 77,000 rural public school students. I was prepared to testify against this bill, but I'm going to testify neutral and this is why, is because listening to Senator Vargas and the changes that he's recommending, they meet what we-- our-- what our concerns were. But I'd like to address those real quickly for you. First of all, we'd like to thank Senator Vargas for having an open mind on this and-- and listening to people in the education community. Our concerns were centered around, first of all, as he discussed, the number of hearing officers that would be made available if the original hearing officer was not acceptable to the parent. As he had originally five and then even talking about three, in the rural districts especially that would have been very difficult, but I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

understand it's even difficult in-- in the bigger districts. I had three people respond to me and-- or give me some-- some ideas on this. One actually served as a student services director in the-- or Omaha area and said they had a hearing officer on staff and that when that person wasn't available they had a hard time filling that position when they had hearings. So even in the metro area they had difficulty. Another is a practicing superintendent in south-central Nebraska. He said he's already done three student hearings this year alone and in a couple of those he said, do you have somebody else could you turn to? I'm really busy. They said, we can't find anybody else. The third is-- is a retired superintendent three years out who keeps getting called back to see if he would do that. And he told me, he said, I'm getting far enough away from being a superintendent or an administrator that I'm not sure I've got the expertise still. There is a concern about filling those positions. That's why, when Senator Vargas talked about going to one, we really appreciate that. It does still offer the family the option of maybe having another person, but it doesn't hamstring the districts by having to go with too many. And in reference to some of the questions on who serves as hearing officers right now, usually in the rural areas especially, away from the metro areas, it's somebody from another district. It's usually another administrator from another district that's coming to help out a school district. That school district will usually pay mileage and maybe a-- a fee to act as a hearing officer. So there's an extra cost to the districts in those situations. The other two pieces that we looked at that-- that were problematic for us is-- but they've been addressed by Senator Vargas-- is when a person would have to have experience of being a hearing officer. Well, our question was, how do you get experience if you don't actually do it? So-- and he's dressed that by saying that they have training. Currently the Nebraska Council of School Administrators does offer training for people that would like to serve as hearing officers. And talked to Dan Ernst, who usually-- who's the associate director. He said they've done about 110 trainings over the years. So there are some people that are getting training, but he said only about a third of those have actually done student hearings, so. The other issue we had was when it talked about that upon the board's final decision, had to be conveyed to the-- the family within three days. And especially in the rural, that gets to be pretty difficult if things happen to be-- because it's said by certified letter is part of it. If you had a Saturday, most rural districts, the post office isn't open on Saturday. Sunday, of course, it's closed. And then if you had a holiday on a Monday, there's three days. By going to three school days, he helped solve that issue. If I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

could add one more thing that I really did appreciate from the original bill was intent-- or put in is that students are given a chance to make up credits. I-- I always tell that to be very vital in my districts when I was doing that. That's something we did; a lot of districts do that. But I think it is important for kids that they don't be hamstrung with that. So in closing, we do appreciate Senator Vargas and his willingness to talk with us and-- and to make some adjustments. I'd answer any questions you might have.

GROENE: Questions? Senator Brewer.

BREWER: Thank you, Mr. Chairman. The training, do you know how long it is?

JACK MOLES: I actually took the training and it was several years ago and it was-- it seemed like it was a full day is what it was.

BREWER: And I'm assuming that if I was to look at the schools in my district, you pretty much have them all, don't you?

JACK MOLES: Most of them, yes.

BREWER: OK. Thank you.

JACK MOLES: You're welcome.

GROENE: Senator Pansing Brooks.

PANSING BROOKS: I'm fine. Thank you.

GROENE: I'm sorry, Senator Murman. Didn't see you over there.

MURMAN: Yeah. Thanks for coming in. How much would this training cost that's available you said through the, I think, Council of School Administrators?

JACK MOLES: You know, I don't. I don't remember the answer to that, and it's probably changed since I took it because I took it probably a dozen years ago, ten years ago, somewhere in there.

MURMAN: It would be an extra cost to the--

JACK MOLES: Would be.

MURMAN: --district, though?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

JACK MOLES: Some districts would have paid for their administrator to do that. Some probably the administrator paid it on their own.

MURMAN: OK. Thanks.

GROENE: Jack, do you know what percentage of suspensions are-- there-- they ask for a hearing?

JACK MOLES: I-- I-- I don't know the answer to that. I will tell you that 23 years of being a school-- school superintendent and 5 more of being a principal, I never had a student hearing.

GROENE: So you wouldn't be able to tell me how many are overturned.

JACK MOLES: Could not.

GROENE: So it doesn't happen that often.

JACK MOLES: It doesn't happen that often. Some are but not very often I would say.

GROENE: It's usually a kid who thinks he got caught up in a group that he was there but didn't do it.

JACK MOLES: Yeah.

GROENE: Those are the types that-- that will ask for a hearing. But it doesn't happen very often.

JACK MOLES: No.

GROENE: All right. Thank you. Any other questions? Thank you, Jack.

JACK MOLES: Thank you.

GROENE: We had one letter. Any other neutral? We had two letters of proponents for LB515: Rose Godinez, legal and policy counsel, American Civil Liberties Union Nebraska chapter; Mary Bahney, advocacy committee chair, National Association of Social Workers. Opponents, none. Neutral, none. Senator Vargas, would you like to close?

VARGAS: Chairman Groene, members of the committee, thank you very much for a great conversation. I have no idea what time it is right now, so I'm afraid I look at the clock. But I do want to thank-- like I said, this is something that we started last year. There are many individuals that came together, many organizations that lent time and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

provided perspective, and that's the way things should work. And so I appreciate that. I also do want to thank Jack and NRCSA-- I get that acronym right-- for working with us. And I mean that's again how these things work in this body; it's how it should work in the Legislature. And I think what we have is a very good step forward that provides some provisions for what Senator Linehan mentioned is about fairness and due process. I'm happy to look into some of the questions that Senator Pansing Brooks brought up around the definition with part-time contract and we'll be working on those other two changes which will be providing some flexibility for the training piece so that we're not hampering somebody that doesn't have experience from not being able to serve as a hearing officer. And we do, we already have an amendment that would change, but we have to change it, regarding the calendar days to the school days for consistency, and we'll be moving the hearing officers from five to one. And with that, I want to thank you, see if you have any additional questions.

GROENE: Senator Brewer.

BREWER: Add to your list the cost of the training, length of the training, and where the training can be conducted. That way we kind of roll--

VARGAS: Uh-huh. Just in terms of information like how often it's provided?

BREWER: Yeah.

VARGAS: OK. And then length of the training, costs [INAUDIBLE]. OK.

BREWER: Thank you.

VARGAS: Thank you.

GROENE: Any other question? Senator Vargas, I would assume the emphasis of this bill is keeping the-- that student in its coursework and not falling behind.

VARGAS: Yeah. I mean, hey, for those of you that are in I think every one of our committees touches somehow-- well, not every committee, but the majority of our committees touches some level of work force development and preparedness. We all want to make sure that our kids are graduating. We want to make sure that we are being restorative as much as possible. I know that's the constant conversation that we had in our conversations over the summer with the associations and the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

stakeholders. So, yes, the goal of this is to make sure that people are completing their coursework, they have due process, and we-- kids are coming back to school when they meet the requirements of whatever the plan is or whatever the decisions are.

GROENE: Thank you. That concludes LB515.

VARGAS: Thank you very much, Chairman and members of the committee.

GROENE: I will open the hearing on LB495 by Senator Wayne.

WAYNE: Hello. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District 13. And I'm not to be confused with Tony Vargas. His name is T-o-n-y V-a-- OK. Anyway, I'm here by myself district. This is great. We'll get this done get you guys out of here. LB495 provides a statewide data collection system on school discipline. The data to collect includes the number of students into in-school suspension, the number of school students out of school suspension, the number expelled, missed days for-- because of suspension, number of students who are referred to by law enforcement agency and other related activities, and those who are ticketed or arrested, and the number of times restraint were used. I will tell you that I am open to amendments on this bill. I think it's critical that we begin to collect data around suspension. I won't get into all the studies around prison pipeline, school-to-prison pipeline and how, particularly statewide, not just statewide but countrywide, African-American males are suspended at three to four times rates higher than their counterparts. I will say the fiscal note is \$47,000. There will be some costs associated with database. And I understand there's probably some issues with some smaller school districts being able to collect some of that data. But I think it's all workable. What I handed out to you was when I was on the school board of Omaha Public Schools we did not begin to collect this data until a group of us on the school board asked that this data start being collected, not necessarily what's all in the bill but around suspensions, disciplines. And those were some of the reports that were generated. I will note that in 2015 when I was on the school board we were sanctioned by the state for approximately \$1.85 million because we have disproportionately suspended African-American males who were in special ed. Well, because of all the data we gathered, the data you're looking where kindergartners were being suspended at high rates and particularly racial kindergartners, based off of race, we went through a process which myself, Tony Vargas, Senator Vargas, Marque Snow, and a couple other board members rewrote our entire student discipline

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

code. It was a long discipline code that we had to rewrite. We finally did. But one interesting stat came out of that the following year it was implemented. When it came to high school reassignments, not one Caucasian person was reassigned that year that we went to a discretionary student code. The implicit bias is there. It will always be there. In my thinking, till we understand the data behind it, we really don't know what we should do. So this is a data bill. Last year Senator Hansen did this bill and I was very supportive. He wasn't sure if he was going to and I wanted to make sure that this committee is aware of it and why it's so important, because we have to collect this data. I will tell you when it comes to student achievement it's really simple to me. We have to hire and keep the best and brightest teachers. But the second most important thing is time on task. The student has time on task, most of the time they will catch up again if they are behind and excel. And if they're not in school, that can't happen. That's why this bill is important to me and that's why I-- I brought it forward. I will answer any questions.

GROENE: Any questions? Senator Brewer.

BREWER: Just more of a comment. Last year you spent a lot of time on-- the last two years you spent a lot of time in Government Committee. Do you remember the grading system?

WAYNE: Yes.

BREWER: OK.

WAYNE: I got a smiley face?

BREWER: You got a smiley face.

WAYNE: That's what I'm talking about.

WALZ: I--

GROENE: Questions? Senator Walz.

WALZ: Yeah. Thanks. I hope I'm not missing this, but so once you have all the data collected, what's the goal? Like what are you-- what are you-- what's the goal of collecting that data? What are you looking for? What's the end goal?

WAYNE: Well, we know that there's an achievement gap. We can say that it's a funding gap. We can say that-- I always used to hear that in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Omaha, our less-experienced teachers are in east Omaha, and I've always been a believer that suspensions are a problem, that too many kids are sent home. We can deal with everything else but if they're not learning, time on task, it really doesn't matter. So the goal is to understand. I think going to do that first with data. And because we did it at OPS in a way where we can pinpoint disparities at the school level and systemwide, that we started to create some changes. Now are all the changes done? Probably not. But we started something, and we can only start that with data. If we look at it from a state perspective, we look at test scores, achievement gaps, and we provide interventions when those are necessary, we provide that based off of data. And right now when it comes to our suspension rates, particularly by race, income level, and school district, we don't have that data.

WALZ: We just had a-- a conversation regarding school policy when Senator Groene was introducing his bill, and there was a lot of variation of school policy and-- regarding student discipline and suspension. And so I was just curious if you were going to also look at maybe the school policies.

WAYNE: I think that's step two. For those who might know that, you know, I want to build a bridge across the Missouri River, this year I scaled it back to just do a study. So that's what I'm trying to do around this. We have to scale it back and take one step at a time. And that's where the data piece comes in. I will say that particularly in Omaha, and again one of the things that stood out to us when we asked for the data, and there was again Tony, myself, Senator Vargas, Marque Snow, and myself, we would send joint e-mails around data so we can get stuff. And that was the first time we looked at it from a school district in 2004-- '13 and '14 around arrest. We had kids literally getting pulled out of school because they missed a court date. We had kids literally getting a ticket. And one year we had 800 students ticketed for misdemeanors, and those misdemeanors are oftentimes what you guys were dealing with just a little bit ago around restraints. Kids were out of control and they would get ticketed with disorderly conduct. So now we are taking what we could deem a school act and turn it into a criminal act. But without that data, we can never have that conversation. And so that's why it's so we-- it's so important for us to get a baseline data.

WALZ: Uh-huh. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: Senator Pansing Brooks.

PANSING BROOKS: I thank you very much for bringing this, Senator Wayne. I could not agree more. Did you think about adding in the bill the purpose for which they are expelled, suspended or--

GROENE: Yeah.

PANSING BROOKS: --cited?

WAYNE: Yes. Again, this was a last day kind of dropping of the bill because Senator Hansen was deciding if he was still going to do it or not. So I literally just took his bill and put it in. So I'm amenable to anything. I just think it's important we get this, this data.

PANSING BROOKS: OK. The reason I'm asking is I'm bringing a school resource officer bill and the-- the-- the police that I have-- with whom I've spoken have said that too often there are-- there are times when the schools want them to handle disciplinary matters rather than actual law violations. And so, to me, it's really important to have an understanding, number one, of why the police are becoming involved and for what issues, and number two, I'd be interested in not-- not necessarily the-- I'd be interested in the number of teachers that are-- are sending these kids to be cited.

WAYNE: So I looked back and laughed. I looked at Miss Maddie because Maddie was there when we went through this with OPS regarding SROs. And here's why the data is so important. So based off of the tickets and based off of the number and the data, we had a clear vision of where schools were at and where people were ticketing students and where they weren't. And what we found out, which those in-- attorneys always know but not necessarily in a school setting, is a cop is a cop is a cop. They can never turn off their 24-hour cop. So if there is a law violation, they have a duty to cite or sometimes they can have discretion not to cite, but if there is a victim or if there is in this case maybe an administrator saying, no, do what you have to do, you have to cite. One, if the cop doesn't cite, you're in a bigger problem. So we spent a year and a half working with our lower law enforcement to completely renegotiate our contracts that they can't be the first person called in for anything, including a school fight. Why is that important? If there's a school fight-- and again, this all comes back to data and why data is important. If there's a school fight and the SRO intervenes first, Senator Brewer, you'll appreciate this-- now you have two individuals who are fighting with a third

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

person with a gun. And as a cop is separating two people, who has-- who has security of that weapon. Those little things nobody thought about until we really started looking at data. Why did you intervene and cite this person with a misdemeanor assault? They used to always give mutual assaults to people who are fighting. Well, because the cop showed up and broke it up. So how do we better use our security guards to do that so it stays in a school setting, not necessarily a criminal setting? But again, that all came back to-- on OPS when we were collecting data, trying to dig down. And so that's why it's important, I think, statewide we have this same conversation because if it happens in Omaha it happens everywhere. The data may be less, the data may be more, but we still have to look through the data and make sure. If there is one school that is suspending kids at four or five rates of somewhere else, let's have a conversation about it. Let's figure out how to do it. So it has to go across the board.

PANSING BROOKS: So would you-- I'm sorry I'm not. I'm sorry. So would you be willing to add language which regarding the type of--

WAYNE: Yes.

PANSING BROOKS: --infraction for which they're citing and what-- what is happening? I mean if there's one teacher at one school it's site-- that's referring to the police or the SRO 200 times and then other schools that may be the same size, it's not just one teacher, I mean that--

WAYNE: Correct.

PANSING BROOKS: --gives some information about somebody.

WAYNE: Correct.

PANSING BROOKS: OK. Thank you.

GROENE: Senator Linehan.

LINEHAN: Thank you, Chairman Groene. Does OPS still collect this information?

WAYNE: Yes, they do. I just don't have access to it where I can-- [LAUGH] like I used. It's not public information.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

LINEHAN: No, that's OK. But they still-- do you know if any other school system is doing the data collection besides [INAUDIBLE]?

WAYNE: I do not know. I will tell you that it was, we literally sat down in a-- in a conference room, the people I mentioned, and we just came up with a request in these categories. So that's kind of how it came. But I don't know if any other school district is doing that.

LINEHAN: OK. Thank you.

WAYNE: Uh-huh.

GROENE: If a student gets in a fight, are they suspended? If they get a ticket, does that mean-- is that a suspendible offense?

WAYNE: Across the state of Nebraska, we have taken the position that-- and I don't want to say zero tolerance because it's a bad name-- but if you are in a fight there are two reasons why that fight started between both of you guys, so they're typically both suspended.

GROENE: You are.

WAYNE: Yes.

GROENE: So now you don't have the police officers break the fight up. Who's breaking it up?

WAYNE: Well, it could be a security guard, it could be a teacher, it could be a principal. What we learned from the data, Chairman Groene, is that there were some schools who their SRO did not leave their office until the principal told them to. There were other schools the SRO was clearly out in the hallway and breaking up fights and doing everything, and that's where we saw the infractions of-- of tickets come in. So it's really up to that building. And so teachers, security, janitors, we call them engineers now, I mean there's ways you can design your school system where the SRO is the last line of defense.

GROENE: I got a bill that would do that. [LAUGHTER]

WAYNE: I need this bill to get out first before I comment. [LAUGHTER]

GROENE: Go ahead. I'll finish after you.

PANSING BROOKS: Oh, I'm sorry. Go ahead.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

GROENE: But-- but you said time and task?

WAYNE: Time on task is one of the most precious resources.

GROENE: But isn't some of the reasons they're getting suspended is because they're the ones creating a situation in the classroom where the other kids don't have time on task?

WAYNE: Well, sometimes, Senator Groene or Chairman Groene, the issue is--

GROENE: Senator's good enough.

WAYNE: --the issue is though why, right? So if I-- if I look at a district of mine, Hartman Elementary and Springville, and this is all hypothetical, neither one of them are doing this, but if I have 100 suspensions at the kindergarten in Springville and 100 or 40 suspensions at Hartman for the same class, I finally get to ask questions of why. And sometimes you have new principals, new teachers, and it's classroom management, to your point. But without knowing that data and how to improve that, people don't know. We're talking about the numbers I heard earlier, 10 percent of the population. So if you have a class of four-- or Hartman Elementary of 600 students, any given day 60 kids, if you use 10 percent, are in the principal's office working out their issues or having some kind of discipline issues. The principal, if there are 60 kids a day, necessarily doesn't have time to sit back and look at the data across their entire school saying where are some areas that I could add more resources? Maybe it's simply as hiring a-- or having a group come in of somebody like them to sit down and read to him. But when we don't have that data, we can't have that conversation.

GROENE: So in defense of the teacher, they can't remove the student, the principal says you handle it. So the only choice that teacher has is involve the police and then that student will leave that classroom.

WAYNE: Sometimes. But if you have data--

GROENE: So I mean if he writes a ticket that-- that student is removed from that classroom. Is that correct?

WAYNE: Not unnecessarily. He can get a ticket and stay there. First of all, if it's a kid underneath elementary, you-- you won't get a ticket. You'll be cited and released, your parents called and you get a ticket. The parent will get a court date but you'll-- you'll be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

released. You won't-- you won't be taken away from the school underneath 12 years old. So you're still there in the school setting. There is no real removal. My only point is though if you have the data to back up what's going on in the classroom you can provide interventions necessary to make sure those teachers are supported. Maybe it's only two kids, maybe it's three kids, but you don't know that unless you have the data. And I'm talking about maybe I'm looking at it from an OPS perspective where we have 400-450 kids in a school before they get an assistant principal, sometimes more now with some of the things. I can't expect that principal, nor can I expect their person above, to know all that data. Maybe in OPS, because they're doing it in some places. But statewide we could be looking at and asking same-- same kind of questions. Why is it OPS has this many suspensions? Why is it that-- but we don't even know that right now. But we do know there's an achievement gap. And if you match the achievement gap to the suspension gap, there's a correlation there. And so while we focus on the achievement gap but not dealing with the underlying cause of the suspension gap, we're missing the boat as a state.

GROENE: Senator Pansing Brooks.

PANSING BROOKS: Thank you. So just one more thing. You talked about the fact that if a person gets in the fight then generally two people have been suspended. Is that what you're saying?

WAYNE: That's typically what happens, yes.

PANSING BROOKS: So-- so when Senator Linehan and I went across the state last year and looked at reading in the schools, we went to one-- one place that said that their county attorneys have said that they must arrest or cite for every schoolyard fight. So I'd be a lot happier with suspension than with arrest or citation. So, I mean, is your bill-- you're-- you're not talking about that. You're just trying to get the data.

WAYNE: We're just trying to get the data so we can figure out the next step which could be a conversation. There are districts across the state where, especially in high school, if there's a fight there's an automatic referral.

PANSING BROOKS: This was not high school. This was--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

WAYNE: Well, I represented young women who were in fights in 6th grade that are in juvenile court system, so I understand. They were 11 years old. And that actually never even touched each other. They were yelling at each other, getting ready to fight.

PANSING BROOKS: Yeah.

WAYNE: I mean--

PANSING BROOKS: Thank you for coming--

WAYNE: No problem.

PANSING BROOKS: --and bringing this. We're on the same page.

GROENE: Thank you. Proponents.

MADDIE FENNEL: Thank you again. Maddie Fennell, M-a-d-d-i-e, F as in Frank-e-n-n-e-l-l. I want to thank Senator Wayne for introducing LB495 which we believe is a key component in determining where schools may be contributing to the school-to-prison pipeline. I'm going to leave the rest of my testimony for you to read and I just want to kind of encompass all of this because a lot of this data has already been cited. I think it is important, as we look at everything we've been discussing today, that we realize that none of the things that we've discussed alone are a silver bullet. This is a multifaceted problem that's going to need a multifaceted response. And I think that if this committee sees fit to pass all of the bills that we have discussed today, you've begun to get a handle on that. But I think another two key-- other key components of this are yet coming up this week, which is Senator Pansing Brooks's SRO bill which helps us look very carefully at school resource officers. I do believe that schools have ceded too much of the discipline authority to school resource officers. Those people were supposed to be there-- we-- the original intention was to protect us from the people on the outside that we were worried about coming into our schools and now too much is happening with the people inside our schools and putting kids into those school-to-prison pipelines. The other key concern, another key component of this is that students don't understand that this school resource officer is a peace officer and you can't talk to him and expect that what you say is not putting yourself in criminal danger later. So that's why the other bill that says that parents need to be notified when a child is brought in and talked to a peace officer is also very important, because kids need to realize that what they're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

talking about could end them up in court. We have to have our hearings that are fair because things do happen. I know a young man that was expelled from school for touching a BB gun on the bus that was being passed around and he was expelled. I know another situation, and this to me was just amazing, where a parent actually wanted to go to hearing because her daughter grabbed a child out of the cafeteria line and viciously beat her, and her daughter was cited for assault. It was a vicious assault. The other child received a concussion. Her daughter was cited for that and the parents said it wasn't fair that her daughter was the only one disciplined; if the other girl just would have fought back it would have been a dual assault. And so she was going to hearing to argue that the other girl should have fought back and then it wouldn't have been her daughter's fault. So sometimes these hearings, when parents request them, you don't know why. But it is important that they always be fair. And then we have to look at the data. Senator Wayne is right that we have implicit bias. We don't even know it exists until we can call it out. We have it in our hiring and we have it in our discipline and we need to be able to cite the data. A lot of the data that people have cited to you today is national data because we don't have Nebraska data. We need to have our own data. We need to be able to look it squarely in the eye and we need to use it as a fulcrum to go more deeply, because maybe this teacher has been doing a large number of suspensions because she's the teacher who got those kids that were in the most trouble. Maybe it's-- it's a difficult type of classroom that year. Or maybe the teacher has a problem and needs more help. But we aren't going to know to look if we aren't collecting the data. So as we work to provide safe environments for learning, we must make sure that we are not intentionally/unintentionally causing harm to those we are trying to serve. That is why we sit in favor of LB495 and ask you to advance it to General File.

GROENE: Any questions? Senator Brewer.

BREWER: Oh, thank you, Mr. Chairman. This is by far your best speech.

LINEHAN: I agree.

GROENE: But the reality is some of these kids don't belong in school. I mean they're-- they're violent or they're disruptive. So the suspension part you're not-- you're not disputing. It's why and-- why they were suspended and what age they were and history. Maybe they were suspended in the 1st grade, 4th grade, 5th grade. I mean--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MADDIE FENNELL: I think there are lots of reasons to suspend and if a child is being violent they need to be removed from the situation to keep everybody's safety. But I think it's important to look at the data around that happening, and if we don't collect that data we're not going to know.

GROENE: In other states how do they handle it? Do-- is there, you know, if you got caught with a cigarette in school or you got caught with a pocket knife, do other states have in-school suspension, I mean where they--

MADDIE FENNELL: It's just--

GROENE: --they-- study hall we used to call it where you had to--

MADDIE FENNELL: It's--

GROENE: --sit in there--

MADDIE FENNELL: It's district by district. Some things--

GROENE: --instead of putting them out on the street?

MADDIE FENNELL: Well, some things now, with this whole zero tolerance policy, we say we have zero tolerance for this stuff and we-- the intention behind it was good to have zero tolerance, but what we found is that it's end up-- it's ended up putting more kids into the system, into the judicial system, than we ever intended. Again, it's the land of unintended consequences. Things that I would have done as a kid and I would have gotten in trouble from, you know, I'd be brought to the office and talked to about it, now I'm going to be ticketed and I'm going to be in court, and that's problematic to the future of a child. Somethings should be handled in school. And we need to start looking at that data and figuring out where we're going wrong, which includes the training of. I mean you hear the discrepancy between school districts. Sometimes SROs sit in their office until they're called. Sometimes they're out and they're supposed to be the first line of defense. We need more consistency about that. And schools collect the data pretty much that they're told to collect, as I see state to state.

GROENE: So the data I'd like to see is how many are suspended and then they eventually drop out and that led to they're out there on the street with a gang.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

MADDIE FENNELL: Right, which is a problem.

GROENE: And they're on the fence.

MADDIE FENNELL: Yep.

GROENE: And then maybe they never come back. I'd like to see how many never come back after being suspended.

MADDIE FENNELL: That's a problem. That's a problem. The craziest thing I ever saw was when we would suspend kids for being tardy and absent from school. What sense does that make whatsoever? And we've finally gotten away from those things that make no sense whatsoever.

GROENE: Thank you. Any other questions?

MADDIE FENNELL: Thank you.

GROENE: Thank you. Any other proponents?

JULIET SUMMERS: Good evening, Chairman Groene, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska, supporting LB495. And I'll also be brief in light of our long day today. Ultimately at Voices for Children you can tell from my testimony that we believe in starting from the data, but to do that you need good and reliable data. And right now data on disciplinary practices from start to finish and law enforcement involvement in schools is patchwork. So there's currently a federal reporting system for schools that collect some of this data through the Office of Civil Rights and Disabilities and they have a database. And so I can tell you that in the 2013 to 2014 school year in Nebraska that database says there were 283 school-based arrests and fifth-- a little over 1,500 law enforcement referrals for school-related behavior. But with only this tool I can't tell you much more about any more recent school years and I also can't assure you that all districts reported in all categories or that all districts reported data in a uniform manner pursuant to consistent definitions. Some school districts may keep some of this data themselves. As Senator Wayne noted, OPS did it, started doing it and in the years after they started collecting this data and modifying their school discipline policies, those school-based arrests dropped dramatically in a really impressive way. So we also believe that this bill is a wonderful starting point to provide the clear and reliable data that we need to even just assess whether and to what extent

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

Nebraska kids are experiencing the school-to-prison pipeline. And we already have, you know, a data hub at the statewide level, so adding in disciplinary information in the same place where we already have information about school performance and other statistics would provide important transparency to families, stakeholders, and lawmakers about how our schools are responding to school misbehavior. And it's vitally important that we disaggregate this data by demographics, like race, ethnicity, gender, and identified disability. So with that, I'd like to thank Senator Wayne for bringing LB495 and again this committee for all your time and care for Nebraska kids.

WALZ: Any questions from the committee? Thank you.

JULIET SUMMERS: Thank you.

WALZ: Next proponent.

EDISON McDONALD: Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, with The Arc of Nebraska. We come in support of LB495. I think we talked a lot earlier. I think that this bill does a great job really taking those initial steps that we need to take a look at before we get to Senator Groene's bill. I think that this goes and helps us to start by beginning to dig into some of those issues. And as I said, you know, I think the World Health Organization has a compilation of over 50 studies that talk about the harmful effects of restraints and seclusion. As Miss Fennell said, we have a lot of national data; however, we don't have a lot of Nebraska-specific data. This is a step that other states like Connecticut have taken and I think that it's important that we take this first. I would like to ask that the committee consider some modifications in terms of specificity about some of the issues surveyed, including: where they grabbed, what training was provided, if restraint was in a prone position, ensuring follow-up data, as I talked about earlier those cases where you don't want to-- where we want to have a better understanding about what's going to happen next I think is absolutely important, if there was any harm caused, if it was included in the IEP, how long they were restrained for, and what are the current policies. I think that that data is absolutely important, trying to break this down into a more comprehensive discussion. As I said earlier, you know, there's still things that I think that we have a wide breadth of policy depending upon your school district. And I think that trying to create some better data to better understand some of these issues is important. Also I'd just say with Mandt one thing I-- I found out is that you can do some sort of special standing body hug, so providing, you know,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

data about what that training looks like if we're provided with training or if we're-- or if they're not, what that will look like for the teacher and for the student in that situation. Thank you. Any questions or do you want to get out of here?

WALZ: Thanks, Edison. Any other proponents? Any opponents? Anybody here on the neutral side of the issue? OK. I have letters for the record. Proponents: Rose Godinez, legal and policy counsel, American Civil Liberties Union; Mary Bahney, legislative committee cochair, School Social Work Association of Nebraska; and Kristin Mayleben-Flott, chairperson, Nebraska Council on Developmental Disabilities. With that, you can close.

WAYNE: I'm just here to answer any questions. Sometimes the snow is good because my opponents don't show up. So this is good.

WALZ: Senator Pansing Brooks.

PANSING BROOKS: OK. Did you-- thanks for bringing this, Senator Wayne. Did you hear the comments by Mr. McDonald from Arc?

WAYNE: Yes. I am-- I am amenable to as much data as we can get across the state.

PANSING BROOKS: OK. I think-- I think some of those things were of-- of value. So thank you.

WALZ: Senator Brewer.

BREWER: Thank you, Madam Chairman. After you gave me this collection of data from-- it's all from OPS, right?

WAYNE: Yes, sir.

BREWER: It takes on a new meaning, I guess, when you actually dig through here and find some numbers that tell you a story here. It says the average length in school days for regular education suspensions by race and ethnicity. Though I-- I'm not proud of it, but it turns out that Native Americans are 4.15 days and Hispanics 3.05, or blacks 3.15. So what it does, at least helps you to understand the issue and how it compares. So I guess that's why you got the smiley face.

WAYNE: Thank you. I just want to point out on the packet the last, last page. This was suspension in 2013-2014, and as you'll note in kindergarten we suspended over 100 kids. Head Start, which is 3- and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

4-year-olds, we suspended five. That documents suspended. Now this was 2013-2014. I can tell you the data hasn't moved much more. That was just the quickest one I can print off upstairs colored before I came down here. But the data is real and the data is, if you go to page 10 on the last handout, and I'd end with this, so it's like three pages from the back and it says suspension by behavior type, page 10. These are 2007-- 2016-2017 data, you will see pre-K through six, assault, 1,500-- 1,053. I will tell you most of that data when you look further is 3rd and 4th graders and it's behavior, classroom disruption, fighting. So since this came out, when we started collecting this data we came up with an entire new process called MTT something. I can't remember because I'm not there anymore. But we took a targeted approach to start talking about how to deal with behavior, how teachers should deal with behavior, how principals should deal with behavior. And then our parent-teacher conferences, parents, we need your support to reinforce to deal with behavior. And I can tell you some of the schools that implemented it dropped dramatically. But what this data also told us at the high school level is there were a lot of kids being reassigned to one particular high school and their suspensions always seemed to stay high. Well, that high school became the default alternative school for OPS. I won't mention the name because I don't want it-- because it's changing and doing a lot better now. But had we as board members never had that data, we-- we couldn't have forced the administration to do something about it. And there's only two schools that had lower enrollment, so you can figure out which two of the schools it probably was that had space for students to go to. But if the principal just didn't want to deal with somebody no more, they just reassigned them. And we saw all these suspensions go up at one school and we figured out why. All of our troubled kids got reassigned there. And we didn't provide more resources for that school so we had to change that policy and fix it. So you had a question, Senator Walz?

WALZ: Oh, I was just curious about the-- the last page, 945 and then 5 students were suspended. What's 53 percent?

LINEHAN: Point 53.

WAYNE: Point.

WALZ: Oh, point. OK. We're done. [LAUGHTER]

WAYNE: Point 53.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 11, 2019

WALZ: Sorry. Well, it didn't add up to me. Sorry.

WAYNE: Thank you all and I look forward to you guys to "execing" and kicking this out tonight. Appreciate it.