

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: [RECORDER MALFUNCTION] public hearing. My name is Dave Murman. I'm from Glenvil, Nebraska. I represent the 38th District, which is eight counties in the southern part of the state. I serve as Chair of this committee. The committee will take up the bills in the order posted outside of the hearing room. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. We do ask that you limit handouts. This is important to note: if you are unable to attend the public hearing and would like your position stated for the record, you must submit your position and any comments using the Legislature's online database by 12 p.m. the day prior to the hearing. Letters emailed to a senator or staff member will not be part of the permanent record. You must use the online database in order to become part of the permanent record. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please turn off cell phones and other electronic devices. The order of testimony is introducer, proponents, opponents, neutral and closing remarks. If you will be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written materials that you would like distributed to the committee, please hand them to the page to distribute. We need 11 copies for all committee members and staff. If you need additional copies, please ask a page to make copies for you now. When you begin to testify, please state and spell your name for the record. Please be concise. It is my request that you limit your testimony to three minutes. If necessary, we will use the light system: green for two minutes; yellow, one minute remains; red, please wrap up your comments. If your remarks were reflected in previous testimony or if you would like your position to be known, but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. Please speak directly into the microphone so our transcribers are able to hear your testimony clearly. I'd like to introduce committee staff. To my immediate right is research analyst, Jack Spray. Also to my right at the end of the table is committee clerk, Kennedy. The committee members with us today will introduce themselves beginning at my right.

SANDERS: Good afternoon. I'm Rita Sanders. I represent District 45, which is the Bellevue-Offutt community.

LINEHAN: Good afternoon. I'm Senator Lou Ann Linehan and I represent District 39, which is Elkhorn and Waterloo in Douglas County.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: Hi. Joni Albrecht, District 17: Wayne, Thurston, Dakota and a portion of Dixon County in northeastern Nebraska. Welcome.

BRIESE: Good afternoon. Tom Briese. I represent District 41.

CONRAD: Good afternoon. I'm Danielle Conrad. I represent north Lincoln's Fightin' 46th Legislative District.

MURMAN: And I'll ask our pages to stand up and introduce themselves and tell us what they're studying and where they're studying.

AUDREY FLAKUS-MAHONEY: Hi, I'm Audrey. I am a junior studying political science and criminal justice at UNL.

ISABEL KOLB: Hello. I'm Isabel and I'm a sophomore studying political science pre-law at UNL.

MURMAN: Thank you. Please remember that senators may come and go during our hearing, as they may have bills to introduce and other committees. Refrain from applause or other indications of support or opposition. For our audience, the microphones in the room are not for amplification, but are for recording purposes only. And with that, we will begin the hearing with Senator Arch, LB708. Welcome, Senator Arch.

ARCH: Good afternoon, Senator Murman, members of the Education Committee. For the record, my name is John Arch, J-o-h-n A-r-c-h. I represent the 14th Legislative District in Sarpy County and I am here today to introduce LB708. LB708 is the result of an interim study conducted last year and proposed by LR438, which was introduced by the Health and Human Services Committee. The purpose of the study was to identify potential policy changes to improve communication and sharing of case-specific information among state and local agencies responsible for the care, custody, treatment of systems-involved youth with the goal of improving efficiency in treating youth who transitioned from the care of one agency to another. The study involved a series of roundtable discussions to identify barriers to communication and information sharing with respect to this group of youth. Our study group included: Senator Walz-- appreciate very much her, her attendance and leadership with that-- myself, former Education Commissioner Matt Blomstedt, representatives of the Department of Education, DHHS CEO Dannette Smith and representatives from that agency and State Court Administrator Corey Steel and representatives from the courts and Probation. First, when we talk

about system-involved youth, we had to define exactly which youth we were talking about. System involved turns out to be a pretty-- to be pretty broad. We started-- we decided to start with looking at the care of court-involved youth. This would include those in foster care, those in our YRTC system. We divided the study into two components, education and clinical. LB708 reflects the education component of the study only. With respect to education, we started with three key questions. What information is already being shared? What opportunities do we have to improve the education of these youth? And third, what barriers exist to improving communication and coordination of this piece of youth's care? LB708 is the next step in answering those questions. Under the bill, the Department of Education, the Department of Health and Human Services, the Office of Probation Administration and the State Court Administrator would be required to enter into a memorandum of understanding for the sharing of data relevant to students who are under the jurisdiction of the juvenile court. The memorandum is to include the intent for the State Department of Education to contract with an outside consultant with expertise in the education of court-involved students. The consultant will assist in the development of policies that identify and define the population of students whose data should be collected and shared, define the specific types of data to be collected and shared, identified a shared data system, identify the entities and persons for which the data should be accessible, identify federal and state legal responsibilities and confidentiality and develop a uniform approach for the transfer of educational credits. A collaborative effort to develop policies and procedures for the sharing of data for such students shall include, but not be limited to, the State Department of Education, the Department of Health and Human Services, the Office of Probation Administration, the State Court Administrator, the juvenile court system, the superintendent of schools for the youth rehabilitation centers, public school districts, educators and court-involved students and their parents. On or before December 1, 2024, the Department of Education shall complete a final report detailing the recommendations of the consultant and any policies and procedures that are being considered for adoption. For any youth, graduating from high school is hard enough. Who we are talking about here are a very vulnerable population of students. They may be facing a multitude of challenges: problems at home, mental health issues, behavioral health issues. And now they're in the court system, which oftentimes results in multiple living placements and multiple school placements. Being able to share data will help prevent these youth from getting lost in the system and better facilitate a successful

educational experience, which in turn will give these youths a better chance of becoming a successful adult. This will be an ongoing effort. I want to recognize the dedication of those individuals who have worked on this issue, who have committed to continue to work on this issue. As is the nature of government, positions change, leadership changes and LB708 provides an assurance that these entities will continue to work toward improving the educational outcomes of court-involved youth. Thank you and I encourage you to advance LB708 to General File.

MURMAN: Thank you. Are there any questions for Senator Arch at this time? If not, we'll ask for the first proponent of LB708.

DEB MINARDI: Good afternoon, Senator Murman and members of the Education Committee. My name is Deb Minardi, D-e-b M-i-n-a-r-d-i. I'm employed with the Nebraska Supreme Court Administrative Office of the Courts and Probation. I am the probation administrator. I'm before you today to provide testimony in support of LB708. Thank you to Speaker Arch for introducing the bill. And in addition, my appreciation to Senator Arch and Senator Walz for including Probation and the courts in this conversation that has helped to inform this bill. I don't want to reiterate what the Senator has already discussed about the challenges surrounding these youth. I just want to emphasize the fact that educational attainment, in particular for youth involved in the juvenile justice system, is one of the top predictors for recidivism. That's why the court in particular is interested in obtaining this information so they can make not only the decisions necessary, but can assist those youth in attaining those academic achievements in which those youth are so in need of. With that, I would say to you that the Nebraska Supreme Court Commission on Children and Families and the court's education subcommittee developed a Nebraska juvenile courts education court report to assist juveniles in-- to assist judges in ensuring the academic needs of the courts and the youth are, are addressed. The youth of these educational reports promote the expectation that juvenile professionals have an ongoing communication with the youth's school and are prepared to update the court on an ongoing, on, on an ongoing basis. However, to do these reports, it is manual. It requires, as an example, an officer to obtain first authorization from the parent, then to go to the various schools, as was indicated, oftentimes multiple schools in order to obtain the information. And what we're trying to do as part of LB708 is to expedite, to ensure and to make sure we have as much comprehensive information as possible to make sure that the courts are making good

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

decisions with the youth. With that, I'm happy to answer any questions that you may have.

MURMAN: Thank you. Any questions for Ms. Mindardi? Thank you very much. Other testifiers for LB708.

LARRY KAHL: Good afternoon, Chairman Murman and members of the Education Committee. My name is Larry Kahl, L-a-r-r-y K-a-h-l, and I am the chief operating officer for the Department of Health and Human Services, DHHS. I'm here to testify in support of LB708, which will require the establishment of a memorandum of understanding for sharing of data relevant to students who are under the jurisdiction of the juvenile court between the Nebraska Department of Education, NDE, the Department of Health and Human Services and the State Court Administrator and Juvenile Probation. LB708 provides-- also provides for the hiring of a consultant, as Senator Arch had articulated, to provide recommendations addressing several issues such as identifying and defining specific types of data to be collected and shared, the population of students, shared data systems, federal and state legal responsibilities and confidentiality parameters. This past fall, with LR438 and the workgroup, I was very pleased to be able to be a part of that workgroup and we worked to identify the potential policy changes for improving communication and sharing case-specific information among the various state and local government agencies responsible for the care, custody, treatment and rehab of youth in Nebraska. LB708 is a continuation of the work that was completed in LR438. While these successes are great steps in the right direction, there's still more work to be done. Two of the specific issues that relate specifically to the YRTCs are as follows. Number one, there remains a lack of consistent education data regarding students coming into the YRTC school from previous district and issues when they return to their home district. The issue also reflects children as they enter the foster care system. The proposed consultant will be tasked with developing a method, method of education data sharing to assist with this process. Ultimately, the primary need for this data sharing is to support youth and to better facilitate their education path towards graduation. It is imperative that youth are being placed in the proper courses and that their education progress be available as they continue to move towards graduation requirements. Students move during the semester many times and assignments they have completed at one school should have a means of being able to apply to the same course in another school in a manner that keeps them progressing towards graduation. It's no secret that graduating high school is essential to their future success and the more consistency that can be provided to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

make sure their educational efforts are leading towards graduation, the more likely they are to be able to actually meet that important goal. Number two is that there's not a legal definition of the YRTC school as a school district, nor as a local education agency for state or federal purposes. This leaves uncertainty on educational responsibilities between school districts, the state and the YRTC school. Some specific areas of uncertainty are responsibilities for special education, educational data, credit transfers and funding. DHHS supports the further exploration of this issue to determine the best course of action moving forward, acknowledging that there are pros and cons to being identified as either. So in summary, the goal of DHHS and the YRTC schools is to best serve the youth and their educational needs. Processes that can be developed by a consultant to better accomplish that goal would be welcomed. DHHS stands ready to partner with Nebraska Department of Education, the courts, Probation and to continue this important work. We respectfully request the committee advances LB708. Thank you.

MURMAN: Any questions for Larry Kahl.?

CONRAD: I have one.

MURMAN: Yes, Senator Conrad.

CONRAD: Thank you so much, Chairman Murman. Director Kahl, sorry, I don't want to catch you off guard. And if you don't know off the top of your head, I can follow up. But I was looking through the materials and I didn't hear it mentioned yet. I'm sure it ebbs and flows, but about how many kids at any given time are we looking at in these systems? If, if you happen to know.

LARRY KAHL: I can answer partially.

CONRAD: Sure.

LARRY KAHL: For the YRTCs, we're running typically a census of about 80 kids--

CONRAD: OK.

LARRY KAHL: --at any one time within our state-run facilities. For Children and Family Services and the number of kids within the foster care system, that number, I'm sorry, I can't give you--

CONRAD: Of course.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

LARRY KAHL: --but it's much larger.

CONRAD: Yes, that's very helpful. Thank you so much.

LARRY KAHL: Yeah. You bet.

MURMAN: Any other questions for Mr. Kahl? Thank you for testifying. Other testifiers for LB708?

BRIAN HALSTEAD: Good afternoon, Chairman Murman, members of the Education Committee. For the record, my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm deputy commissioner for the Nebraska Department of Education. We are here as a proponent on LB708. As previous testifiers have indicated, this has been ongoing work of all of the agencies involved in juvenile justice, child welfare. It has been work that we've enjoyed doing with Probation, DHHS, the court system. Everybody's trying to better identify and streamline so that the children who find themselves in those situations have success and can exit successfully to be productive citizens of the state of Nebraska. So the department is here as a proponent on the bill that furthers work that the Health and Human Services Committee has done the last several years on the very topic and just dealing with education at YRTCs that was not well defined. And we appreciate the work that Chairman Arch and members of the Legislature did then to establish a better educational system for these kids in those unique settings. So with that, I'll take any questions you might have.

MURMAN: Any questions for Mr. Halstead? I have one. As was mentioned earlier by Mr. Kahl, there's a lot of people-- a lot of kids in this situation. Is there anyone that I guess advocates specifically for the students? I know, you know, there-- for instance, there's a superintendent, I believe, that the YRTCs and, you know, several agencies involved. And of course, if they're in foster care, the families are involved, but they move around so much, you know, it looks like there would be a need for someone to just advocate for the students.

BRIAN HALSTEAD: Well, so if you're in the juvenile court system, the juvenile may have a guardian ad litem appointed to represent the juvenile, which would be separate from the attorney for the parents or whatever. I would imagine the Court, Court Administrator's Office would have the best source of data about the parties in juvenile court. How many guardian ad litem might be involved in that, I-- we wouldn't, at the department, have that specific information. And I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office

Education Committee February 28, 2023

Rough Draft

sure there are other data reports out there as to how many children are in the child welfare or juvenile justice system in any given year. I know the Foster Care Review Office, I believe, produces reports annually for you and others on the effects of the juvenile court and the child welfare system, so.

MURMAN: OK. Thank you. Any other questions for Mr. Halstead? Thank you very much.

BRIAN HALSTEAD: Thank you.

MURMAN: Other proponents for LB708? Any other proponents for LB708? Any opponents for LB708? Anyone wish to testify in a neutral position for LB708? If not, Senator Arch, you're welcome to come up to close.

ARCH: Thank you to the-- to Chairman Murman and the, and the committee for hearing this bill today. I just want to-- I want to, I want to talk for a second, what we heard this summer, Senator Walz, you know, and some of the, some of the issues that we have. We-- the same youth, it can move across these systems, right? And so I saw this at Boys Town where this, this youth could be a referral from the court system to the PRTF and then, and then maybe moves to a group home and then maybe moves to a foster care and then maybe moves, and, and, and at times what can happen is that a child could be placed in foster care in the, for instance, the central part of the state. And, and Monday morning, that child's in school in that school district. And so, and so the question then becomes, well, how do I get information on where this youth-- I mean, where--what, what's going on with this youth's credits? What classes has this youth been taking? These, these kinds of questions. And so what happens-- and, and, and there is actually a person that is assigned to, for instance, to the Omaha Public School District because there's an-- there's a larger number of youth there, larger number of students there. And so that person does nothing but act as this liaison back and forth between a school that's asking about a youth that just came from OPS and, you know, great. That's, that's great. That's one person, right? And that was, and that was the issue of the LR is we don't have a system of sharing that information. And so, and so the, the youth can become very frustrated, obviously, because like in the middle of algebra 1, this youth is moved to a different foster care home, different school district. OK, so-- well, you need to start over. You need to start over algebra 1. Well, that's discouraging. Tough enough to graduate from high school and not take algebra 1 multiple times, but, but that's-- you know, because we don't have-- and, and so one of the things in here is talking about credits,

the transferring of credits. We don't have that system so that we don't discourage the youth from pursuing that high school graduation because, like, I gotta do this again. I have to start all over. Well, is there, is there a way that we can actually agree on credits? Give you a little more background because there is-- there is a shared data system from my understanding with-- within the Department of Education, but it's limited. It is-- it's a limited amount of amount of fields and most of it is, is requirements for reporting to the federal government and so forth that's gathered. But the nice thing is that, is that, from my understanding as well within our school system, there's really about two primary pieces of software that, within the schools, are gathering a lot more information. So the ability to interface-- and I'm hopeful that if, if we can do this, consultant can help us understand the ability to interface is, is pretty strong when you're only talking about two major pieces of software within the public schools that is already gathering this information. So now it's a matter of interfacing to a data set where people can access with authority, with, you know, with, with approval and and all of those things have to be covered in this. But then it allows instead of simply, well, I know so-and-so over at that public school, I'll call him or her, it now is a system that people can go to and pull up this information Monday morning and say, here are the classes that this youth need to be placed into. And yes, they can continue in algebra 1. They're halfway through it. They can pick up where this class is and, and continue. So that's the desire. These, these, these youth are moving across systems, moving, moving across our state into different public schools. You, you heard me introduce at the beginning of this, a discussion-- we really had two goals. We, we had to-- we wanted to talk about the education information and that ability to share and we had high hopes for clinical information at the same time. Well, that was a little tougher. And, and so we just said, OK, we'll-- we will focus at this point on the education information. The clinical information, unfortunately, doesn't have two pieces of software within, within our clinician population. It is multiple and some have no software. And anyway, we'll tackle that at another day. But this one is specific to education. I just want to make sure I covered my last points here. Yeah, that-- those are really, those are really my points, but I wanted to help you understand better. So with that, I would answer any questions if, if, if the Chairman would ask-- would like.

MURMAN: Thank you. Any questions for Senator Arch? If not, thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ARCH: Thank you. Thanks for your consideration.

MURMAN: That will close the hearing-- letters for LB708: no proponents, one opponent, then no neutral. And we will close the hearing for LB708 and open the hearing on LB550. Welcome, Senator Ballard.

BALLARD: First time in the Education Committee. It's exciting. Good afternoon, Chairman Murman and members of the Education Committee. My name is Beau Ballard. For the record, that is B-e-a-u B-a-l-l-a-r-d. I represent Legislative District 21 in northwest Lincoln and northern Lancaster County. I'm here today to introduce LB550. As this committee knows, every child deserves access to the absolute best education, regardless of their family's income or zip code. Families should be empowered to make the best educational decision for their children. LB550, LB550 prioritizes this need for-- of every child by working to ensure that they can access the best educational experience available in open enrollment policy. LB550 accomplishes three goals. Number one, it allows students to transfer schools at any time during the school year and as many times as needed. Number two, it ensures that parents are no longer charged for sending their children to public school, either in or outside the residing district. Or number three, allows students to work with their districts they, they want to attend without permission from resident district in which they with, with-- they wish to transfer from. Under current law, students can only transfer once in their K-12 career. LB550 changes that to allow students to option enroll as many times as a, as student needs to. Parents need the ability to change direction by allowing students to make more than one change at any point in the year when the child needs it most. The state is establishing a policy that creates flexibility for families and encourages the districts to be more responsive to the family's needs. With an individual student with individual student's needs when they're in kindergarten is much different than what they need during their middle or high school career. Adopting an open enrollment policy allows parents to respond to their child's ever-changing needs. This is family first, child-centered-- a child-centric approach treats students as individuals, honoring their needs and allowing them the access to any educational experience in which they can thrive. Additionally, under the current law, parents can be charged transportation fees for sending their child to public school in or outside of the residing district. LB550 eliminates a school district's ability to charge a transportation fee. Public education should be free to residents of the state and parents should not be penalized a transportation fee for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

residing outside of a certain zip code. Finally, a resident district currently has a say in whether students can leave. They introduce-- this introduced legislation changes that as well, allowing students to work with the district in which they want to attend without permission from the resident district. I have had conversations with school districts around LB550. They have revealed concerns about open enrollment which impact capacity issues in certain school districts and high school athletics. I understand and agree with some of these issues and am willing to work with all the opponents to figure out an amendment that fits their needs as well as the needs in LB550. Ultimately, this bill is about providing our students with more choices and opportunities. Students may have unique interests, talents or needs that are not currently being met at their current school. Allowing open enrollment gives them freedom to find a school that better fits their needs, interests and learning style. This can lead to better out-- academic outcomes, increased engagement and a more positive school experience. I appreciate the committee's time and encourage the advancement of LB550.

MURMAN: Thank you. Any questions for Senator Ballard? If not, thank you very much. Proponents for LB550. Any proponents for LB550?

SHANNON PAHLS: Good afternoon, Chairman and members of the committee. My name is Shannon Pahls. That is spelled S-h-a-n-n-o-n P-a-h-l-s and I represent Yes. Every Kid. We are a nonprofit dedicated to creating an environment where every student has access to an individualized learning experience and that's why we're here today because we support LB550, which allows students to attend the public school that best meets their unique needs regardless of attendance boundaries. We believe that a zip code should never dictate a child's opportunity and we appreciate your willingness to focus on this important issue. I will say Jessica Shelburn with Americans for Prosperity was planning to be here today, but was unable so she wanted me to express her support for the following comments. So in Nebraska, where a child attends school is almost always determined by where he or she lives. This results in severe geographic inequities that can negatively impact a child's future success. Every district should be open to students and no district should be allowed to discriminate against students based on their address or socioeconomic status. Educational opportunities are often determined by where families can afford to live. This was acknowledged by Congress in a 2019 joint economic committee report that stated families are faced with the reality that attending a high-performing public school often requires paying more for housing and many students' educational opportunities are limited

as a result. Currently in Nebraska, students are only allowed to transfer once during their entire K-12 career. This is far too restrictive. By allowing families to make more than one change at any point in the year, LB550 provides families and students with the flexibility to change direction if needed. In addition to increasing flexibility for families, this bill ensures that resident districts don't have a say in whether students can, can transfer to another public school. This bill breaks down those barriers by allowing students to access the school that best fits their individual needs, learning environment and specialized programs. Before closing, I would like to highlight some research taken from other states that have open enrollment policies in place. For instance, research on Ohio's open enrollment program showed achievement benefits. It increased on-time graduate-- graduation rates for transfer students who consistently used open enrollment, particularly, particularly those in high-poverty urban areas. In California in 2016 and 2021, the California's nonpartisan legislative analyst's office found that students use the cross district option to transfer to schools that offered AP or international baccalaureate courses, specific instructional models or emphasize career preparation in particular fields. That report, report also showed that most participating students transferred to schools with higher test scores. Not only did it look at the academic benefits, but it also showed that students who participated in the program were attracted to the program because they were bullied or did not fit in at their assigned school. So I think this shows that it not only benefits students on the academic front, but also on the social and emotional front as well. So in closing, you know, we believe that students should be able to access any public school, regardless of their family's income or zip code. And this legislation will expand opportunities for Nebraska students while empowering their families to make decisions that are in the best interest of their child. For those reason, reasons, we respectfully ask for your support of this legislation and I'll stand for questions if needed.

MURMAN: Thank you. Any questions for Shannon Pahls? If not, thank you for testifying.

SHANNON PAHLS: Thank you.

MURMAN: Other proponents for LB550. Any opponents for LB550?

KYLE MCGOWAN: Good afternoon, Chairman Murman and members of the Education Committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n. Today I'm testifying on behalf of the Nebraska Council of School

Administrators, the NSEA, NASB, STANCE, GNSA and NRCSA. Our opposition to LB550 really center arounds the difficulty for schools to plan for all students. Currently, there isn't one option allowed in Nebraska law. March 15 is the deadline by NDE, which can be extended by schools according to their policies. The concern that it seems like I'm, I'm hearing is how many times should a student be able to option to a new school and apparently even option multiple times during the same school year? The senator brought up transportation, but there appears to be no limit on the transportation. So the school would be responsible for paying for transportation regardless of, of the distance. Again, schools are trying to plan. They're trying to set up reasonable class sizes and also to accommodate any special programming that their students have. So in order-- if a student comes in-- and, you know, we need to remember about two-thirds of our schools are not very large. They may only have one section of first grade and that class might already be full. Now, if someone moves into their district, they're going to serve that child. But opening this up for encouraging more movement just makes it very difficult to plan. Also, there's some language in LB550 Section 79-238. Each school board shall adopt a resolution specific standards for acceptance and rejections of applications for enrollment and for providing transportation for option students. Standards shall only include a random selection process and the interests of the student and the student's parent or legal guardian. So we're not sure what that means. I'll just end my testimony here since-- and try to answer any questions.

MURMAN: Thank you. Any questions for Mr. McGowan? If not, thank you very much. Other opponents for LB550.

JASON BUCKINGHAM: Good afternoon, Chairperson Murman and members of the Education Committee. My name is Jason Buckingham, J-a-s-o-n B-u-c-k-i-n-g-h-a-m. I'm an assistant superintendent for the Ralston Public Schools. Testify today on behalf of the Ralston Public Schools and appreciate the opportunity to appear before you today to speak in opposition of LB550. Ralston Public Schools fully supports the concept of school choice and to that end, we provide an opportunity and alternative to the larger school districts in the Omaha metro. Currently, nearly one in four of our students come from outside of our district boundaries. They come to our district for a variety of reasons, some of which include smaller class sizes, smaller building sizes, coarse programming and the opportunity that many have to participate in several activities within our district. Although we have many option enrollment students, we feel that we still owe a duty to our resident patrons and students to maintain manageable sizes in

each of our programs and grade levels. One of the components of LB550 removes the discretion of a school district to determine how and when classes or programs are at their maximum capacity. As an example, if we currently have-- are at capacity in second grade classrooms across the district but have room in third grade classrooms, LB550 effectively takes the ability of the school districts to exercise any discretion in option enrollment process. Our district would be forced to accept students based on random lottery rather than our ability to serve them well. We use this discretion to right size our classes and to provide smaller learning environments most of our students and parents desire. Another issue of concern for our district would be the removal of preferential admission for siblings of current students. As you can imagine, most parents have a desire to have all their children attend schools in the same district and ideally in the same building. LB550 also strips away the ability of school districts to give that preferential treatment to families already attending. This could force families into situations where they have students attending multiple districts. The current window of option enrollment spans from September 1 to March 15 of any school year. This allows a district the time to analyze the trends in option enrollment and to determine if capacity will be reached and if additional staffing may be needed. Under LB550, the option enrollment window disappears and allows students the ability to apply and transfer at any time during the school year. The detrimental effect of changing the option enrollment window is that it effectively eliminates the ability of school districts to forecast enrollment and to properly staff our buildings in advance. The uncertainty in enrollment would-- could cause a district like ours to restrict option enrollment out of fear of possibly, possibly creating class sizes beyond our program capacity. This, of course, has a chilling effect on school choice and is contrary to the spirit of school choice here in the state of Nebraska. Thank you for your time and your continued commitment to the people of the state of Nebraska and I'll try and answer any questions you have at this time.

MURMAN: Thank you. Any questions at this time? Senator Linehan.

LINEHAN: Thank you, Chairman. How do you-- if there are-- let's say there are four kids that want to come into the second grade, four students, and you've only got a slot for two. How do you pick which two?

JASON BUCKINGHAM: In the order that they applied for their option. So the ones who applied earlier.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

LINEHAN: So it's always first come, first served.

JASON BUCKINGHAM: That's the way we run our district if we run up against program capacity.

LINEHAN: So it's always first come, first served.

JASON BUCKINGHAM: Um-hum.

LINEHAN: OK. Thank you.

JASON BUCKINGHAM: And then we'll, we'll-- just to further, we'll keep those option enrollments on file if we would have students that would withdraw and we have space in our capacity and they haven't found another district yet. We'll go back and contact them and ask if they're still interested.

LINEHAN: OK. Thank you.

MURMAN: Any other questions? Senator Walz.

WALZ: Thank you, Chairman Murman. I just-- I'm trying to look at the process and how it works. And I'm not saying-- maybe you know, maybe you don't. Is there-- are you seeing any timelines for the student that's leaving the school to let them know?

JASON BUCKINGHAM: No.

WALZ: OK, so--

JASON BUCKINGHAM: So they, they-- under my understanding under LB550 as presented, they could leave at any time.

WALZ: OK and so there's no plan for transferring informate-- OK. I was just curious. I didn't know if I missed it or if that was just not part of the bill. All right, thank you.

MURMAN: Any other questions for Mr. Buckingham?

CONRAD: Can I--

MURMAN: Yes, Senator Conrad.

CONRAD: Thank you, Chairman Murman. I was just-- I wasn't planning to ask a question, but then while we have you in the hot seat, I was--

JASON BUCKINGHAM: Sure.

CONRAD: --hoping maybe you could perhaps help us or the committee to get a better understanding maybe of how your district looks at or defines or applies issues around capacity. Because I know that we have a variety of different options before the committee when it comes to option enrollment. And I was just hoping maybe you could help us get a little bit better understanding of it. Is it by policy in elementary, 25 kids per class or is it we have a little bit of extra elbow room in the third grade classroom so we can put another desk in? Like, how, how, how do you go about kind of defining and then kind of implementing issues around capacity for--

JASON BUCKINGHAM: That's a great question. So--

CONRAD: --option enrollment purposes?

JASON BUCKINGHAM: Our, our primary purpose, of course, is to serve our in-district or resident kids first. We try and stay at our primaries. We don't want to exceed, if we can help it, 23 or 24 in our kindergarten, first grade, second grade. Then as we get a little bit bigger, we can expand those sizes and increase those capacities. By the time you get into fourth, fifth and sixth grade, we really don't want to get much over 24 in our district. But I will tell you, it does happen. We have a small elementary and we're-- our school districts, like any others that have multiple schools, we have residential areas that can attend certain schools. We had a year where we were at capacity and we took the option enrollment students we did. And then the first week of school, we had three new students move in all in the same grade that was already at capacity. So there are some things that happen that are a little bit beyond our control, but we have numbers that are set based on what we feel is the, is the right size for us to program and right size for our classrooms too. We have some buildings that were built at different times that have larger spaces and some that have smaller spaces.

CONRAD: OK. So-- and I don't want to put words in your mouth, but it does sound like you do more of a case-by-case kind of assessment rather than kind of a blanket rule. Is that fair? Or--

JASON BUCKINGHAM: No, I'd say--

CONRAD: --even maybe a combination actually.

JASON BUCKINGHAM: Yeah, I'd say--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

CONRAD: OK.

JASON BUCKINGHAM: --it's more of a, of a blanket across grade levels.

CONRAD: OK.

JASON BUCKINGHAM: So it may vary a little bit between second grade and sixth grade, but between-- we have six elementaries in our district. Between those six elementaries, they're all pretty much the same.

CONRAD: OK. Thank you so much.

JASON BUCKINGHAM: You bet.

MURMAN: Any other questions for Mr. Buckingham? If not, thank you very much.

JASON BUCKINGHAM: Thank you for your time.

MURMAN: Any other opponents? Good afternoon.

CONNIE KNOCHE: Good afternoon, Chairman Murman, members of the Education Committee. My name is Connie Knoche. It's C-o-n-n-i-e K-n-o-c-h-e, and I'm the education policy director for OpenSky Policy Institute. We're here testifying in opposition to LB550 because of concerns over what happens if a school district cannot deny enrollment option applications because of capacity. Current standards allow school districts to deny applications because of capacity of a program, class or school building or the availability of the appropriate special education programs options-- operated by the option school district. These standards protect, protect the option students and the option school district. The option student is protected from attending a school district that is overcrowded or does not have the ability to provide the services that they need. The school district is protected because they're not forced to increase class sizes or spread limited resources even further. Rather than allowing option enrollment to be based on a random selection process based on the interests of the students and their parents, we believe that the process should also consider the capacity of the school district to meet those needs. For these reasons, we're opposed to LB550. And thank you for your time and I'm happy to answer any questions.

MURMAN: Thank you. Any questions for Ms. Knoche?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

CONNIE KNOCHE: Thank you.

MURMAN: Thanks very much. Other opponents for LB550? Good afternoon.

DUNIXI GUERECA: Afternoon, Chair Murman, members of the Education Committee. My name is Dunixi Guereca, D-u-n-i-x-i, Guereca, G-u-e-r-e-c-a. I am the executive director at Stand for Schools, a nonprofit dedicated to advancing public education in Nebraska. We appreciate the work of Senator Ballard on this issue. Stand for Schools is here in opposition of LB550 with the hopes that we can work together to address some of the concerns with the senator. First, Stand for Schools is concerned that LB550 will prove unworkable and create instability for Nebraska students. As currently written, Nebraska's option enrollment program allows each Nebraska student to attend a nonresident school district once before graduation, further laying out certain circumstances when enrollment, when enrollment outside the student's home district will not count against the limit. LB550 will allow a student to transfer as often as they desire at any time during the school year. LB550 further eliminates the requirement that an option student must attend the option school district a minimum of one year. We are concerned that the shopping for a new school district if a student gets a bad grade or doesn't make a team will become common under this bill. While we want to encourage students and parents to find the school that is right for them, the legislators' priority should be promoting policies that encourage stability for students. We believe this could be accomplished in a number of ways, including limiting the number of times per, per year a student may change districts or by reinstating some of the exemption previously mentioned for students who are continuing at a school. Changing schools and school districts is a major decision that parents should make with care. We believe a balance can be struck between supporting the needs of families and encouraging decisions around enrollment to be informed and carefully considered. You all have a full schedule. For the sake of brevity, I'll just focus on that point and the committee to read my testimony if there's any questions.

MURMAN: Any questions for Mr. Guereca? Senator Wayne.

WAYNE: I mean, do we think these parents are just going to randomly transfer students out of district just, just to be transferring?

DUNIXI GUERECA: I mean, I think, you know, I-- not being a parent myself, but I mean, that-- there could be that possibility of abuse. And that's why, you know, we agree we want to increase the options.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

But that's-- as written, we just have some concerns about there is a possibility for abuse.

WAYNE: What's your, what's your position on option enrollment and the funding that's associated with option enrollment?

DUNIXI GUERECA: You want to--

WAYNE: And specifically the disparity that exists inside of Douglas County. Specifically, we can go to Omaha, if you want to get more narrow, between Westside, Omaha Public Schools and any other school district. That if a kid in north Omaha moves to Omaha North, the state only gives them roughly \$5,200 to \$5,400, but if a kid goes to Westside from that same community, the state gives \$10,500. Why, why-- what's your position on why a student in Omaha should be valued differently just because they attend one of the most richest districts?

DUNIXI GUERECA: I can certainly get back to you, Senator. I'd need to look at the numbers and see why the funding was structured that way or why the numbers are structured that way.

WAYNE: Well, we've had three bills and you've testified on all of them and it's been the same question. So I'm trying to figure out what your guys' position is--

DUNIXI GUERECA: I don't believe you've asked me that question before, Senator, but I'll certainly get back to you.

WAYNE: OK, so--

MURMAN: Any-- oh.

WAYNE: Go ahead. No, no.

MURMAN: Any other questions? Senator Linehan.

LINEHAN: Thank you, Chairman Murman. So if I'm reading or understanding you right, you're not against having them be able to do it more than once.

DUNIXI GUERECA: Correct, Senator, yeah. We just--

LINEHAN: So you think once is probably not enough.

DUNIXI GUERECA: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

LINEHAN: But any time, all the time is too much.

DUNIXI GUERECA: Correct, Senator.

LINEHAN: Do you have an idea of what you think would be appropriate?

DUNIXI GUERECA: I-- you know, I think that there-- a little more flexibility is-- would be good, but I would leave that up to, you know, this committee and then body to, to sort of--

LINEHAN: But--

DUNIXI GUERECA: --work with--

LINEHAN: OK. So you do think more flexibility would be good?

DUNIXI GUERECA: Absolutely, Senator.

LINEHAN: OK. Thank you very much.

MURMAN: Any other questions for Mr. Guereca?

WAYNE: So if we don't allow them to transfer, who's going to bear the cost? So here's what I mean by that. So you have a person who is-- a school may not have worked out for them so they transfer to a different district. Rent goes up so they transfer to a different district. In order to keep that kid at that school, somebody is going to have to send a bus to pick that kid up or that kid is going to transfer to another district. Who's going to bear the cost of keeping that kid in that same district if they're not allowed to transfer?

DUNIXI GUERECA: You're specifically talking about the, the transportation cost?

WAYNE: Yeah.

DUNIXI GUERECA: You know, certainly we-- you know, we feel at Stand for Schools that more funding certainly is important, especially when it comes to the transportation cost to ensure that the kid is able to receive an adequate education.

WAYNE: Thank you.

MURMAN: Any other questions for Mr. Guereca? If not, thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

DUNIXI GUERECAL: Thank you, Chair.

MURMAN: Other opponents for LB550?

JOSEPHINE LITWINOWICZ: Thank you, Chairman Murman and members of the Education Committee. My name is Josephine-- legal name, Vincent-- but Josephine is J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z, and I represent Higher Power Church. I was just-- to what the last person said, you know, bearing the cost of bus and transfer, you know, in the larger context, I worry about, I worry about being-- the state paying for parochial education and even funding the buses for that. And so also I guess in short, I just-- I don't need to talk long on this, but it says the student's-- OK, student's residential address, provided the student is a resident of the state, any capacity or, you know, discriminates against a student based on a student's race, ethnicity, socio-economic status or any protected class. And as a transgender student, I-- what-- I don't know where that that fits in. I don't know why-- we're going to have a bill tomorrow, LB169, where I state for the record the Attorney General, the present one, discriminated against me. For the record, I'm going to go into that tomorrow. And say we-- it's going to prove that, you know, Ricketts said, you know, I'm not going to sign such a bill because it's-- we don't need it. OK. So he discriminated against me against the-- maybe he couldn't be here. He discriminates against-- targets me too from a phone call I have recorded. And so this proves-- proving the need for this. And so I don't know, you know, I think we're going to-- in the future, we're going to be paying for parochial schools with this 1500. It's going to offset the cost. More people can afford it. That's what I'm assuming. Maybe I've missed some details, but, but, you know, not including these kids in a protected class is troublesome to me and so-- because we exist. And I mentor one that has problems and, you know, I think they should be included because we're not faking it. I'm not. I promise you. And it's not-- hasn't been a lot of fun to deal with it. Thank you. Any questions? I don't think so.

MURMAN: Thank you. Any questions?

JOSEPHINE LITWINOWICZ: All right.

MURMAN: OK. If not, thank you very much.

JOSEPHINE LITWINOWICZ: Thank you.

MURMAN: Any other opponents for LB550? Other opponents? Anyone want to testify in a neutral position? If not, Senator Ballard, you're welcome to close. And while you're coming up, there-- online, there were five proponents, five opponents and five neutral.

BALLARD: Thank you, Mr. Chairman. I'll be brief. I think Senator Linehan got to the point of this bill. It's just giving parents more choice. It is creating educational opportunity for a student that may-- a school district may not fit their needs at this present moment and so they, they need the option to transfer-- to option enroll more than once. Like I said in my opening, I'm willing to work with the school districts to tighten up some of this language. And I look forward to working with this committee on advancing LB550. I'll be happy to answer any questions.

MURMAN: Any question-- any other questions? If not, thank you very much.

BALLARD: Thank you.

MURMAN: That will close our hearing on LB550 and we'll open the hearing on LB528, Senator Ben Hansen. Good afternoon, Senator Hansen.

HANSEN: Good afternoon, Chairman Murman and members of the Education Committee. My name is Ben Hansen. That's B-e-e-n H-a-n-s-e-n. Thank you for the opportunity to present my bill, LB528. In 1989, Nebraska passed what they called free-choice legislation and created the optional enrollment program for children in our state. The goals spelled out in the hearings and during floor debate were very specific. With option enrollment, parents would be able to make academically oriented choices for their children. The statement of intent stated the purpose was to increase parental involvement in the education of their children and make public schools more responsive to the concerns and needs of the families, improving the quality of education. Nebraska saw a need for accountability in the schools. But most importantly, if a student wasn't served-- wasn't being served well in a school district, the state didn't want to force their education to suffer by keeping them in a less than ideal situation. The senators voted to help keep the students to a school that would best serve their educational needs. The basis for their option enrollment program is the thought that for some reason, the learning environment at a school might not be beneficial to a student. Still to this day, we use option enrollment and when used correctly, individual education needs are prioritized. In October, there were 24,585

students that were optioned into the-- into another district. For each option enrollment student, a district receives a statewide basic funding per student formula, which is \$10,625.10. The total funding used for the program this year is \$125 million with-- excuse me-- with \$59 million of it being used for nonequalized districts-- I'm allergic to option enrollment-- and \$66 million funding equalized districts. While the program is serving thousands of students, there's evidence that many are being denied. Schools are not required to accept option enrollment. When the legislation was first made law, it was a requirement to record how many students were being denied. That is no longer the case, which is concerning in its own right. And I want to thank Senator Conrad for a bill that you introduced, I believe LB414, to help address that. Thank you for the water, by the way. But what do we know-- but what we do know is that the first question on option enrollment forms is does the child have an individualized education plan, also known as IEP? And we also know that the school districts, not the parents or children, hold the cards when it comes to where a child is allowed to go to school. You will hear from testifiers today about both of these issues. Ultimately, these students who are denied option enrollment are forced to return to the same school that the state acknowledges is not the best learning environment for them. LB528 is written for these students. I want to create options within option enrollment, guaranteeing that there's a path forward for students who have been denied. As it sits now, a student may be struggling for a variety of reasons. Perhaps the school is too big or too small. Perhaps they moved recently but have roots in their old district. Perhaps they want a fresh start or-- and we have to be honest about this-- perhaps there are better sports teams that they'd like to join. If they see a different school district as a better option, they can apply for a, for a transfer through the option enrollment program between September 1 and March 15. If the, if the desired school reviews and accepts the application, money will follow the student out of their district and to their new school. If the school denies the application, they must provide a written notification to the parent stating the reasons for their decision and the instructions on how to appeal the denial through the State Board of Education. The parent has 30 days to file a written repeal request along with a rejection notice. The board then determines if proper procedures have been followed and if so, the student must return back to their assigned district and the situation they were trying to leave, the situation that the State Legislature has tried to help them leave through the option enrollment program from the start. I have brought LB528 to help students who have been placed in these

unfortunate circumstances. With this bill, when a student is denied option enrollment, the school would give the parent the rejection notice, the appeal information and the instructions on how to request an optional enrollment tuition account. The parent then has 30 days to make a request for an option enrollment student account to the Board of Education. If the board finds the student eligible, they will create an account and deposit option enrollment funds within 15 days. I hope my mom isn't watching this. As before, the money will follow the school to their new school. Geez Louise. To be eligible for this option enrollment tuition account, one must agree to comply with all the requirements of the program and use the funds for tuition and fees only at a private denominational parochial school. Thank you, Senator Linehan. The amendment clarifies that these schools must be approved or accredited by the state. And it be clear for the record any nonpublic school receiving an optional on account student must be fully accredited or approved by the Nebraska Department of Education. This means that they must meet standards for curriculum, instructional hours, teacher certification, safety and more. Nebraska highly regulates their nonpublic schools and they continue to perform for kids. And for the benefit of the Nebraskans who choose them, LB528 will open up more opportunities for this option if and only if the public schools are willing to allow option enrollment to take place. We must also be honest that just like public schools, not every nonpublic school can take every child. With a universe of learners, we need a plurality of schools. That's why LB528 isn't about making every school fit every kid. It's about every kid having a chance to find a school that best fits them. When opening for floor debate during the option enrollment conversation in 1989, the Education Committee Chair, Senator Wilthem expressed the importance of option enrollment. He said that the Legislature discusses school funding, districts and issues that affect institutions. With this legislation, though, they actually dealt with the student, the quality of education and the parent's right to get their kids quality education. He challenged the body to consider where their concerns stemmed from. Was it about individual student needs or the education system? We should prioritize the student. LB528 does just that by expanding their options when the state validates the need to transfer through the option enrollment program. With that, I appreciate the time you have taken this afternoon to listen to me cough and to consider this important piece of legislation. I ask that you advance LB520, I'll do the best answer to any questions if I don't cough my lungs out first. Thank you.

MURMAN: OK, anybody want to torture Senator Hansen with a question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

HANSEN: Please do.

MURMAN: Senator Linehan.

LINEHAN: I'll talk long enough for you to suck the lozenge before--

HANSEN: Thank you. Geez Louise.

LINEHAN: So if I understand option funding correctly, it doesn't actually-- the school that the child leaves doesn't lose any funding unless they're equalized and then they lose the child for count.

HANSEN: Yes.

LINEHAN: So all the option funding for option students comes from the state.

HANSEN: Yes.

LINEHAN: So if this program were started, it would be state funding. It wouldn't take anything away from the district from which the child-- except they wouldn't be counted--

HANSEN: No.

LINEHAN: --if they're equalized.

HANSEN: Yep, we're using the same kind of funding that we currently already use in option enrollment--

LINEHAN: OK.

HANSEN: --from TEEOSA.

LINEHAN: OK. And then-- that goes into account and then is there-- does the-- do the parents have to enroll them? I think you said this, but just to clarify, it has to be an approved or accredited school.

HANSEN: Yes.

LINEHAN: OK. All right, thank you very much. And I appreciate very much the history.

HANSEN: Yeah. Thanks.

LINEHAN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: Any other questions for Senator Hansen? If not, thank you very much.

HANSEN: Thank you. I'll do my best to answer any questions after my lozenge takes into effect. Thank you.

MURMAN: Proponents for LB528.

DAWNELL GLUNZ: Good afternoon. Thank you for having me. Dawnell Glunz, D-a-w-n-e-l-l G-l-u-n-z. I have been in special education teacher for 36 years. I've taught in Florida, Pennsylvania and the great state of Nebraska. In May of 2020, I retired from public education after 33 years and I'm blessed and honored to be an instructor at Grand Island Central Catholic for the last three years. LB528 and option enrollment are not about politics or public versus private education. It's about finding the right fit for our scholars, period. Currently, I teach speech, algebra and provide intervention to middle and high school students on an IEP, 504 plan or other identified students who are disadvantaged struggle academically or emotionally. I came to GICC in August of 2020. At that time, we had 11 students receiving intervention. I now serve 26 students, including three middle school students diagnosed as traumatic brain injury, hard of hearing and autism. Students deserve an education which is tailored to their specific needs. This rings true for all students, but in a unique way for students who are on an IEP or 504. I've seen many students necessitate change in school for various circumstances, behavior, academic or peer relations. I have never encountered a family who randomly decided to change schools. There is motivation behind their decision. It is difficult when a parent is told that their school of choice is unwilling to accept them. This is especially true when our state's public schools, which are funded by our tax dollars, blame financial viability or special education staffing to deny option enrollment. During my time serving at GICC, we've accepted students with a myriad of needs beyond the regular classroom. In turn, we've received no state funding. Instead, families, some of whom have been denied option enrollment in public schools, have made financial sacrifices to enroll their students in a private school where their student thrives. The question to be answered today is simple. If public schools refuse to accept students, shouldn't the student be able to choose a private school or choice while receiving financial support? A school choice where their needs will be served without burdening families' financial status. Today you're going to hear from one of my students who has experienced rejection from public schools. I hope when you hear his story, you'll understand how private schools

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

are far more inclusive than many public educators are willing to admit. We open our doors to students whose needs are not being met in their current situation. Please advance LB528 so we can continue offering the right fit for students. Thank you.

MURMAN: Thank you. Any questions for Dawnell Glunz? I have one.

DAWNELL GLUNZ: Yes.

MURMAN: With-- from your experience, do you think the parents know what's best for their child or the school system knows what's best for a child?

DAWNELL GLUNZ: Absolutely. As educators, we see that child for eight hours. They've seen them their entire life. Of course, they're their child's best advocate.

MURMAN: Thank you. Any other questions? Thank you very much.

DAWNELL GLUNZ: Thank you.

MURMAN: And I've got a list here of testifiers: Nolan Bernt. Is Nolan Bernt here?

NOLAN BERNT: Chairman Murman and members of the Education Committee, thank you for giving me this opportunity to be here today and talk-- speak to you about LB528. My name is Nolan Bernt. I'm a freshman at Grand Island Central Catholic. Up until seventh grade, I attended school at my local public school district, but due to troubles I was experiencing, it was decided the time had come to find a new school to go to. As a student on an IEP, my mom and I found it very difficult to find a school that would accept us. We spoke with multiple public schools about option enrollment in and around Grand Island. At four different public school districts, we were told applying for enrollment was not an option, as students on IEPs are not being accepted in the option assess process at the public-- at the schools we turned-- toured. The only school that entertained an enrollment was GICC. Today I am here with my teacher Ms. Glunz. Ms. Glunz teaches at GICC and has helped me thrive as a student there. Not only am I able to get help I need when I need it, but I was actually able to move from an IEP to a 504 plan with the help of her and others at GICC. So I'm so thankful for the time and effort they put into me and the, and the opportunity they've given me to be a student in their school. My mom is a hardworking, dedicated parent. She raised me well and I'm seeing her make huge sacrifices to make my education at GICC a

reality. As a matter of fact, she was unable to come today because she was-- she could not get off work, though she did not submit-- even though she did send a letter from-- for the record anyway. I can't help but wonder what might have been if any of the other schools would have considered me as a student. But I know I am where I am meant to be now. I have a simple question for you to consider. How many other students are there like me who have faced a difficult decision and have not been able to find their perfect placement due to their families' and ability to afford an education they deserve, in a local school or public. And the-- if the local school-- local public schools did not want to accept me as an option student, that's understandable. They're following the letter of the law, but this law has consequences for our family. It means an enormous sacrifices had-- made for my mom to afford education simply because other schools are not able or willing to take me. That's their loss and GICC's game. But it's not right. I hope you will lend your support to LB528. Nebraska students deserve the right to an education that lifts them to their fullest potential, regardless of their circumstances. Thank you for your time and God bless.

MURMAN: Thank you for your testimony, Nolan. Any questions for Nolan? If not, thank you very much for testifying. Angie Knutson-Smith.

ANGIE KNUTSON-SMITH: Good afternoon. My name is Angie Knutson-Smith, spelled A-n-g-i-e K-n-u-t-s-o-n-S-m-i-t-h. My husband and I have four children. Will, who is here today, is now 19 and our youngest. Will was diagnosed before the age of one with a chromosome disorder called 9p Minus. This is a deletion of his ninth chromosome from the P section to the end. The disorder has presented a multitude of obstacles for Will and our family to overcome. One of the largest issues is Will's ability to learn and comprehend. We live in Omaha and are in an Omaha metro public school district. Since he has always had a different way of learning, he has had special education services since the age of one. In our district, once Will started kindergarten, he was assigned a classroom that had normal kids in it, as well as special needs kids. He would get extra help either in the class or pulled into the special education room for different instruction. Once he reached fifth grade, his special education resource teacher suggested we look at sending Will to Madonna, a private school that was just for special education kids. She had visited Madonna and was impressed at the services that they offered these types of kids. I'm a professional business owner and my husband in an educator in a different Omaha school district. We have seen and know that no one will know more than us and fight more than us for what's best for

Will. We decided that the smaller classes at Madonna would probably be a better fit for Will to be able to learn more on how to become a productive member of society. We started at Madonna-- Will started at Madonna as a sixth grader when he was 12 years old. At that time, there was not a well-established program at his public school so they helped in transferring Will to Madonna, with the costs being paid by the public school district. While at Madonna, he has had one-on-one instruction in all the classes he's been involved in. They even have music therapists that instruct each kid on a specific instrument. All the staff at Madonna have really helped empower Will to become the best he can be. They structure each lesson to the specific way of learning that is best for Will. While the instruction at his old public school was not terrible, Will has experienced greater gains in his cognitive levels at Madonna. At Madonna, all the teachers are experienced with special needs students in every subject. This has helped with his progress in many areas. In the public school, they would send Will to regular art, music and PE classes to interact and learn with the other students in a streamlined process that was developed by the state. While this may have had some positives, there were also some negatives. Competition in education can be a good thing to find the best learning environment for each student. We believe we found this better experience for Will at Madonna. We're a patriotic family with veterans in three generations. We know sacrifices have been made for the choices and freedoms we have. One of the choices that could be expanded with LB528 is the choice to send our children to the school that best serves their needs without an added burden of cost to the family. We have been fortunate enough and appreciate the fact that our public school district does pay for Will to attend the school that best serves his needs. Thank you for your time.

MURMAN: Any questions for Angie Knutson-Smith? I have one. I haven't read the bill carefully enough. The state would provide some of the funding for a student that would go to a different school. Would that funding cover a large part of the funding that you would need at Madonna or--

ANGIE KNUTSON-SMITH: I believe so.

MURMAN: --just a small part or--

ANGIE KNUTSON-SMITH: Our situation, our school-- public school district pays for Will to go there. So I don't know the exact cost, but I believe it would.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: OK. Thank you. Any other questions? Thank you very much for testifying.

ANGIE KNUTSON-SMITH: Thank you.

MURMAN: Allison Heitman.

ALLISON HEITMAN: My name is Allison Heitman, A-l-l-i-s-o-n H-e-i-t-m-a-n is my last name. I brought my son, Jb, today. Jb has autoimmune encephalitis. It wasn't a disease that he was born with. It can cause brain swelling, seizures, learning disability of all different degrees, muscle pain, social immaturity, struggles with, like, the fast-paced environment of public schools. Unlike a child born with some other disabilities, Jb's advanced-- advancements is unknown. He is constantly improving brain functions and abilities. He missed two years of school while he was sick. He was in an induced coma. Elementary-- the elementary school that he attended in Ohio, they did not follow his IEP that was created for him. It was created by his doctors at Nationwide Children. We were advised at the time that if we were going to stay in the school district, that we should seek a lawyer to sue for his needs, basically, and his accommodations. When we moved to Nebraska, the school district told us that they could accommodate him, which to them meant that he sat in a classroom being disruptive while trying to make him do grade-level work with extra help without truly understanding his limitations and adapting the curriculum to his changing needs. Madonna, although costs us out-of-pocket, it addresses, it addresses his needs, his educational and social needs while adapting and changing as he does in a loving, experienced and safe environment. Their support will help him in the workforce and help him get his first job. Because of the lack of experienced and qualified teachers in the public school system, these opportunities would not be available for him. Our choice to send Jb to Madonna is to make sure our child because-- becomes a productive member of society and he should not be limited by the available-- by the availability in the public school system. If they cannot fill his needs, which we have already seen they are unable to, the money the public school gets should have-- should be made available to whoever can provide the environment and education he needs. We have five children and huge medical month-- medical expenses monthly for Jb. I am unable to work because of Jb's medical needs and support he needs. We are a one-income family. When Jb got sick, we all had to make financial sacrifices for not only his medication and medical care, but now for his medical-- or his educational needs at Madonna. My husband

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

is a police officer and works off-duty jobs two weekends-- the two weekends he's off to help cover his needs.

MURMAN: Thank you.

ALLISON HEITMAN: Yeah, thank you.

MURMAN: Any questions for Allison Heitman? Senator Albrecht.

ALBRECHT: Thank you, Chair Murman and thank you for being here with your story.

ALLISON HEITMAN: Thank you.

ALBRECHT: And I guess I'm kind of confused why one parent would get it covered and the other one not. Did they--

ALLISON HEITMAN: Sure.

ALBRECHT: Did the school system tell you--

ALLISON HEITMAN: They did not. We actually-- so we're in the same school district as well. And they just told us that they felt they could basically cover what he means, but unfortunately, they're not able to. They're -- they just basically blanketed him as one thing and they did not provide what he needed, but they felt they were providing what he needed.

ALBRECHT: So did you ask the school?

ALLISON HEITMAN: We did.

ALBRECHT: And what did they tell you? That they--

ALLISON HEITMAN: They told us that the funding wasn't available for him to go to Madonna through their school district.

ALBRECHT: Can I ask what school district you're in?

ALLISON HEITMAN: So we are in the Bennington School District.

ALBRECHT: Thank you.

MURMAN: Any other questions for Ms. Heitman? If not, thank you for your testimony.

ALLISON HEITMAN: Thank you.

MURMAN: Jon Burt.

JON BURT: Good afternoon. Thank you for this opportunity to testify. My name is Jon Burt, J-o-n B-u-r-t. I serve as president of Madonna School and Community-Based Services. My testimony is going to primarily focus on the second page of my written testimony. I just kind of want to jump to a policy issue. And I also want to state, first off, that it takes everybody in the special education realm in order to cover all the bases right now. And I think that that, from Madonna's perspective, is our primary reason to be here. We partner with public schools across our programs and we have an interesting array of programs, a very unique array of programs from pre-K-12, transition for 18-21 year olds, as well as a certified adult service agency here in the state of Nebraska. So we have a pretty unique lens. And I can tell you the witness of our families and the dozens upon dozens of families who attend other schools and who want a Madonna education who unfortunately can't move or they can't afford it is, is really clear. They just want their students' needs met. They could care less about how far away we are. They could care less about whether we're Catholic or public, parochial or nonsectarian. They just want their kids', kids' needs met. When it comes to option enrollment and the denial of option enrollment for students with IEPs, I think the question is, is well, how does this funding mechanism work? And I wanted to, to very quickly point out for you that Nebraska State Constitution Article VII-11 allows for public funding of private education and services, quote, for the benefit of children under the age of 21 years who are handicapped. This policy has been governed for decades by the Nebraska Department of Education special education service provider system. This system insures private special education service providers meet all state certification requirements. The Nebraska SPED service provider system also provides clear bill rates based on the providers, certified special education staff and support staff. School districts are reimbursed when they are contracted with an approved SPED service provider to service all or portions of a student's IEP. So this is a great benefit to both public schools, private organizations and families. There's only one problem and it's a huge problem: this choice, this choice of where to point public funds for the benefit of students who are handicapped, especially when they are denied option enrollment. This choice is in the hands of the local school district, not the student and their family. Through Article VII-11 and within the clear parameters provided by the Nebraska SPED service provider system, when students under the age of

21 who are handicapped are denied option enrollment, public funds should follow the student to an approved SPED service provider of their family's choice. Because the SPED service provider system already has clear process for reimbursement for school districts when approved SPED providers are leveraged, funding or the loss of funds is not an issue for local districts. Thank you so much.

MURMAN: Well, I would ask you if you have more to continue about how special funding works at Madonna, to continue--

JON BURT: Sure. Absolutely. I can provide a couple of examples and you heard two today. And it does become kind of a confusing discussion when we have an opportunity to have families who currently attend a local school district and they are looking for options. Oftentimes, these families reach out to Madonna after they have attempted option enrollment. We have great public schools. We all know that. We have exceptional public schools. We would agree to that. We see ourselves as an extension of the entire school system, and we're always happy to be there of service. But unfortunately, this oftentimes is a burden to those who are not affluent. So if a family reaches out to us, they, they are not being-- having their, their child's needs met within their local school district. They've tried option enrollment into another district of choice and are denied because of capacity reasons and due to their child's IEP and the resources that are going to be required, as you've already heard. Then it just becomes a matter of can they afford a private education or can they not or can they move-- pick up and move into their desired school district of choice? So it becomes really difficult to have a discussion with these families and explain to them your school district can contract with us and we do have room and can serve your student, but they will not. No major school district within the Omaha metro area will contract with a private school such as Madonna. It's too bad. All of them have at some point in their history. Usually it's a very similar situation to what we heard today as a school district is building the capacity of their special education system. And before they've reached that capacity, they'll reach out to private entities like Madonna. They're totally fine whether or not we're Catholic or Christian or whatever denomination we are. But as soon as they hit that point where they feel like they have a full built-out system, then they're no longer going to contract even when families come to them and say, your system is not working for us.

MURMAN: Any other questions for Jon Burt? I have another one. Oh, go ahead, Senator Sanders.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

SANDERS: Thank you, Chairman Murman. Thank you for your testimony. In the, in the world of dreams, is this the bill or is there something better for that child?

JON BURT: Well, I think, I think for us, we are in support of the bill writ large, but we are here to testify that at the very least, at the very least, students who are disabled, who are 21 and under, if they have sought option enrollment in another school because their current school district cannot serve them. There is not only a cause, but there is a proven system with clear guardrails to make sure that those funds, if channeled through a family, only go to approved special education service providers. So it's really fail safe here. This is, this is, this is a policy that's been on the books for nearly 50 years and a process that's been, been in process for nearly 50 years. And it doesn't just cover special education schools like Madonna. It call-- covers speech-language pathologists who have their own LLC, you know, any type of therapy. So the public school system has been using these partnerships for years and it's great. The confusing thing is where the choice is. Only the district can decide currently to contract with Madonna or any other private SPED service provider that is approved by the state. It's a little bit of a conundrum.

SANDERS: Thank you.

MURMAN: Senator Albrecht.

ALBRECHT: Thank you, Senator Murman. OK, so tell me a little bit more about Madonna. How many locations do you have? How many children are enrolled?

JON BURT: Sure. We are not a panacea. We are small. We serve a population of mild to moderate individuals with intellectual and developmental disabilities, autism and other health impairments. And you heard a couple of cases of other health impairments here today. Madonna has been in existence since 1960. We are an accredited school under the Nebraska Department of Education. You know, we've been at this for, for quite a long time. Currently and throughout most of our history, our population has been relatively small. But we are expanding through partnerships with local Catholic schools and helping those Catholic schools expand the special education services that they currently provide. What we have found within our partner schools is that their desire to expand special education services is there. It's really just a matter of resources.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: So that's my other question. How are you funded?

JON BURT: Currently, right now, we are funded through tuition. We are funded through public school contracts. We currently serve students from three different public schools in the surrounding areas of Omaha, not major public school districts within Omaha. And then--

ALBRECHT: Do they have to live--

JON BURT: --private philanthropy.

ALBRECHT: --in the area, in those three schools-- the districts that you work with?

JON BURT: No. No, we'll contract with anybody. We've had families and schools contract with us from as much as of-- of an hour or 90 minutes away. We're really kind of a very unique opportunity for families and so--

ALBRECHT: And do those families bring the children--

JON BURT: --many people seek us out.

ALBRECHT: --do you go pick them up or--

JON BURT: It depends on whether they are, are privately enrolled or whether they're public-- you know, through their public schools. So we have had public schools transport students as, as far as 45 minutes to an hour one way. And we had a family two years ago that traveled 90 minutes each way in order to provide their student. Interestingly, that particular family also was in a situation where, for safety reasons, they could no longer have their child within their local public school district. They reached out to other districts who, due to the needs of their child, were pretty significant. And so they private paid and drove 90 minutes each way in order to provide their child with an education at Madonna.

ALBRECHT: Thank you.

MURMAN: Any other questions? Senator Linehan.

LINEHAN: So Madonna has-- thank you, Chairman Murman. I'm sorry. Thank you very much for being here today.

JON BURT: You bet.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

LINEHAN: So Madonna in the 1960s started. That would have been before IDEA passed.

JON BURT: Yeah. Sister Mary Evangeline Randolph, our foundress, was ahead of her time. She had a master's in special education in 1960, which didn't exist. So as far as we are aware, Madonna was one of the first special education programs in the state of Nebraska.

LINEHAN: And because it was evidently fulfilling a need historically before IDEA passed, schools contracted with Madonna.

JON BURT: Yes. As they were-- if they didn't have a special education program or typically as they were building theirs out.

LINEHAN: OK.

JON BURT: So it was truly just 100 percent a matter of capacity for them, which I think is, is one of those themes that we keep hitting is that should it really just be about capacity or should it be about whether or not this is the right fit for the individual student? So once they hit capacity, even though they've had no issue with us being a Catholic organization and a private school for years or decades, as soon as their school district hits capacity, they no longer offer those families. I will say, too, interestingly, it works both ways. We currently serve a family right now who is irate that their school district cannot serve them in their local school. And they let us know they love Madonna, but they're irate that the school district has said to them, Madonna's the only place you can go. And we would agree with that. The choice is in the wrong spot. There is a proven constitutional pathway and decades long practice through the Nebraska SPED service provider system to make sure that there are clear guardrails for these funds.

LINEHAN: Thank you very much for being here. Appreciate it.

JON BURT: You bet.

MURMAN: Any other questions? Senator Walz.

WALZ: I just have a quick question. Thank you for being here.

JON BURT: Yeah, absolutely.

WALZ: Appreciate everything that you do, really. Speaking of capacity, can you talk a little bit about your capacity and plans for growth?

JON BURT: Sure. We are currently within two-- so we, we operate secondary and transition as well as adult services on our home campus. We are currently trying to grow partnerships with local Omaha Catholic schools. We have two right now. Our strategic plan calls for us to form eight to ten partnerships over the next ten-plus years. We're-- primarily because there, there are no pathways for public funding, we're doing that through philanthropy. We have had people step up. Expanding special education in our private schools has been a real passion of many people for a long time. And in reality, most of our private schools have been expanding capacity over time. You know, when I compare, you know, where schools were at 20 years ago and where those schools are at right now in terms of teacher assistants, resource teachers. I know that there's at least one Catholic school in Lincoln that has three full-time special education teachers. You know, people are finding a way to make it work, but we have to continue to grow that capacity very slowly because it's, it's, it's driven by philanthropy. There's also then that huge risk there when it's driven by philanthropy, when you are only counting on private donors in order to provide that, you know, a lot of things could swing in the other direction. An economy like we have today might be one of those. So, you know, it's, it's a difficult thing.

WALZ: Yeah. Can I ask one more--

MURMAN: Yes.

WALZ: What was it-- OK. So you talked about your partnerships with--

JON BURT: Yes.

WALZ: --schools. Are employees from Madonna going into schools? Are they starting-- how does--

JON BURT: Both.

WALZ: OK.

JON BURT: So we are kind of in a transition right now where we're, where we're-- in, in educationese, we are moving from operating purely as a school to operating both as a school and an ESU. Just kind of a private school ESU. We'll have to talk a little bit with policymakers on, on that in order to make sure that we can continue to, to grow in that capacity because there really are no private school ESUs and, and private schools can access ESUs, but we have to pay for it. So we're trying to, to come in and do very similar things that the ESUs do:

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

program capacity building, set up an evaluation, professional development and then providing consultation and access to resources. We are also then, through our philanthropic efforts, underwriting some of the special education resources, including special education teachers who serve the population that in the past, Madonna would classically serve just within our building. The great thing is, is we are providing families through this process with that shared family experience of school, which is what they want.

WALZ: All right. Thank you. I would love to come visit sometime.

JON BURT: Yeah, absolutely. We would love to have you out.

WALZ: Thank you.

JON BURT: OK.

MURMAN: Any other questions for Jon Burt? If not, really appreciate your testimony.

JON BURT: Thank you.

MURMAN: Any other proponents for LB528? Any other proponents? Any opponents for LB528.

JOSEPHINE LITWINOWICZ: Hi, I wondered if we could wait for the light until I'm done with about 40 letters long. Good-- hello again. My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z/ And you know, I really feel bad for these kids that that need, you know, attention and, and so forth. Governor Pillen, you know, you know, we have a pretty good year. We're going to have to big-- I think we can afford it, you know? I need a little more time too because I'm having trouble. But we can afford this. You know, we got to belly up and pay for it. Now, I could see exceptions, you know, particularly in rural, rural areas. I mean, that's sensible. But I mean, you know, the Catholic convention here or whatever you call it, you know, is one of the biggest organizations against people like me. And in fact, I mentor and I asked if, you know, if I could first mentor at a parochial school. And, you know, and I realize that they don't have-- that was a miracle. I mean, I got-- they're wonderful there, but that was a no go. And so the problem is, is that there's this account set aside. And if somebody wants to ask questions, I could-- there was a-- I can't write stuff down as people go. But, you know, I'm worried about what if these kids don't want to go to a parochial school? What if their parents don't want them to go? You know, maybe they do

because they're the only one that can provide services. In that case, that's wonderful. Because I don't have a-- I'm pretty moderate, but I don't want-- see, I-- the last bill I talked about, it was a segue to this one. I talk about I'm worried about, you know, the mosaic of bills that are going to, you know, turn this into a parochial state or a religious state. I'm sorry, I don't mean to-- but because-- but, you know, so I, I'm speaking this one after and showing the evidence of this happening, you know? And so-- and I think we should just belly up, pay for it, you know? And especially in the urban areas. You know, why don't we have these services? I understand that irate parent. What the hell are we doing, you know? And so I don't get it. We're itching forward to-- you know, I went to high school and I went to, you know, Brothers of the Sacred Heart, Brother Martin and they were-- I had a great education and people were great, But I was different then too. I was picked on a lot and, you know, you know, from before puberty even. I was only lucky because I was somehow very good at football and went to a major program. And, you know, these people that made fun of me, I could just knock 'em, you know? Just-- anyway. The thing is some of these kids don't, don't have something that, that saves them, you know? And so they're going to a parochial school maybe because they have to even, you know? And so I just have a prob-- there was a few more things. I just can't write stuff down as we go. And I'm just, you know, my tears, you know, I can't seem to put them here, but, you know, just in supplication, I just hope that we can amend this bill to make it more sensible. And we got to think about actually using some of that money for some of these services. OK.

MURMAN: Thank you. Any questions?

JOSEPHINE LITWINOWICZ: Anybody have any questions? There was a bit more and that's OK. Thanks.

MURMAN: Thank you. Any other opponents for LB528?

CONNIE KNOCHE: Good afternoon, Chairman Murman and members of the Education Committee. My name is Connie Knoche. It's C-o-n-n-i-e K-n-o-c-h-e and I'm the education policy director at OpenSky Policy Institute and we're here testifying in opposition to LB528 for a few reasons. We're particularly concerned about how the enrollment option tuition account will be funded and the long-term sustainability of the program. LB528 creates an enrollment option tuition account through the Option Education Savings Account Program [SIC] and students whose enrollment option application has been rejected can apply to the State Board of Education for these funds. And the parents have to sign an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

agreement saying that the child will not enroll in a public school district. The funds in the scholarship account can only be used for tuition and fees for at a private denominational or parochial school. The bill does not provide a source for funding for the program. And in establishing the program, it appears that the state is going to be paying for both private and public education. It's not clear whether the student must apply for and be denied option enrollment each year in order to receive enrollment option tuition funds. And in addition, there's no accountability on how taxpayer dollars are being spent once they're deposited into the enrollment option tuition account. For these reasons, we're opposed to LB528. And as with any proposal to fund K-12 education, we encourage the Education Committee to invest time in exploring what additional funding is intended to achieve in terms of student outcomes to ensure that the state invests wisely and for the long term in a manner that centers on children and their learning needs. Thank you for your time and I'm happy to answer any questions.

MURMAN: Thank you. Any questions for Ms. Knoche? Senator Linehan.

LINEHAN: Thank you, Chairman Murman. So in OpenSky's opinion-- a parent, they try to opt into another school, they get turned down. What-- so they have no options? That's OK?

CONNIE KNOCHE: No, it's not about the option enrollment. It's about the savings accounts that are established that go to the parents. There's no funding mechanism or any accountability for once it gets into those accounts. That's what we're concerned with.

LINEHAN: But they have to use it for the child to going to school, right?

CONNIE KNOCHE: That's what it says, but there's--

LINEHAN: Right. They have to use it for the child to go to school. So we have a child who tries-- is not getting the services their parents want them-- they need. As one witness said, they get wrapped in a blanket and sat in a corner all day. That's the services they're getting. So the parents go to another school district and try to opt in who may have a better program. But the school districts, as we all know, don't take kids with IEPs for the most part. So what is that parent supposed to do?

CONNIE KNOCHE: I think their option is to-- I have a child that has a disability as well so I know how this works. And you have to work with the school district and be an advocate for the child and, you know, make sure--

LINEHAN: I'm pretty sure that somebody who's looked at option funded has probably tried to work with the school. The other thing you said is you don't know where the funding would come from. Where's the funding come for option enrollment now?

CONNIE KNOCHE: Through the TEEOSA formula.

LINEHAN: Right. And at what part of it-- is there any school district monies involved when it comes to option enrollment? Who picks up the bill for option enrollment?

CONNIE KNOCHE: The state does.

LINEHAN: One hundred percent, right?

CONNIE KNOCHE: Right.

LINEHAN: OK. Thank you very much.

MURMAN: Any other questions for Ms. Knoche? If not, thank you very much. Good afternoon.

JACOB CARMICHAEL: Good afternoon. My name is Jacob Carmichael, J-a-c-o-b C-a-r-m-i-c-h-a-e-l. I just misspelled my own god-damn name.

WAYNE: Don't worry.

JACOB CARMICHAEL: Been a long day already, folks, sorry.

WAYNE: Don't worry.

JACOB CARMICHAEL: C-a-r-m-i-c-h-a-e-l, just the actual, actual name, and I'm here in opposition to LB528. I'm pretty sure all of you have seen me testify before. This one will not be as organized, as I do not have any written statements in front of me. But this bill is-- I mean, congratulations to Senator Hansen for sneaking in school vouchers into a couple of lines and a completely separate bill from Senator Linehan's-- I haven't checked through Senator Hansen's finances, but I'm sure that there's probably at least \$100,000 from the Nebraska Federation for Children in there so that wouldn't be surprising.

Senator Linehan, the way that you just treated the representative from OpenSky was not becoming of your office. And I would just ask this committee where your funding goes. Now, when these accounts are created, you are pulling funding from school districts so what happens to the students that are currently enrolled in the school districts? Good job on obfuscating your responsibility to students, putting that off to parochial schools and having them have absolutely no anti-discrimination clauses. They can deny students. Parochial schools are actually the ones with licenses to deny students with IEPs, as they can deny students for anything, whereas public schools are required to provide an education for all students, Senator Linehan. And yeah, Madonna works with Saint Pius and Saint Leo, which their representative failed to mention. They are a Catholic organization. Their plans are to work with Catholic schools and the Archdiocese of Omaha, which they would be working with has art-- pro discrimination clause that they have been criticized on by multiple other Catholic organizations that they have refused to step down from that fully allows them discrimination against LGBT students, trans students specifically, which is despicable. It's absolutely despicable. And as I have testified before, good-- Catholic schools are incredibly good at making LGBT students broadly suicidal and contributing to large societal problems. So I congratulate you all and obfuscating your responsibility, pushing education out to religious organizations and not doing what this committee is designed or supposed to do at all. Thank you.

MURMAN: OK. Any questions for Mr. Carmichael? If not, thank you. Any other opponents? Any other opponents for LB528? Any-- are you opponent or neutral? Go ahead if you're opponent--

DUNIXI GUERECA: Opponent.

MURMAN: --opponent.

DUNIXI GUERECA: Yes.

MURMAN: OK. Thanks.

DUNIXI GUERECA: I just walked in. I hadn't heard if you had said proponent. Gotta make sure. Thank you, Chair Murman, members of the Education Committee. My name is Dunixi Guereca, D-u-n-i-x-i, last name Guereca, G-u-e-r-e-c-a. I am the executive director of Stand for Schools, an organization for advancing public education here in Nebraska. Stand for Schools stands in opposition to LB528. As

constituted, LB528 creates a voucher or tuition credit program for students whose option enrollment request at a Nebraska public school is denied. LB528 mandates that within 15 days upon receipt of a rejection notice and request, the Board of Education shall create an account and deposit an amount, quote, equal to the adjusted average per pupil cost the preceding year. If the student denied option enrollment requires special education services, such student is entitled to additional funds equal to the reimbursement rate of the student's resident public school district. First, Stand for Schools has serious concerns about the oversight mechanisms or lack thereof present in this bill. LB528 does not require that students use their voucher at an accredited or approved school. In fact, LB528 specify-- specifically instructs that the bill shall not be construed as giving additional authority to regulate the education of nonpublic school students. Taken together, these sanctions mean that the state will have no ability to evaluate academic performance, that the spending will produce no ability to ensure the funds are being spent effect-- effective and efficiently and the Nebraska students will not be protected from discrimination in private schools. Furthermore, while Section 3, subsection (3) requires that parents must sign an agreement promising certain compliance, there are no processes as to how the Board of Education shall review this compliance and minimal repercussions for noncompliance. Next, Stand for Schools is concerned about the legal consequences of LB528. Section 3, subsection (3)(a) requires that a parent agree to not enroll their student full time in a public school district. It's unclear if this promise would be-- constitute a waiver of certain rates of IDEA. Even if it is not a waiver, the U.S. Department of Education has recently clarified that parentally placed private school students with disabilities attending private schools through a state-funded voucher or scholarship program must be considered for equitable services in the same manner as any other parentally placed private school student with disabilities. As such, LB528-- should LB528 become law, local public schools will still be responsible under federal law for ensuring that private school students receive an adequate and appropriate education. So it's, it's unclear if public schools providing such services will be reimbursed from the option enrollment tuition account or if the federal law requires, instead, it become an under-funded mandate placed on public schools in Nebraska. For those reasons, we opposed LB528. I'm happy to take any questions.

MURMAN: Thank you. Any questions for Mr. Guereca?

WAYNE: I got a question.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: Senator Wayne.

WAYNE: So you agree with the Article XI-- Article VII, Section 11 that our constitution does allow the state to contract out with private, private education providers for the benefit of under the age of 21 for the-- for those who are handicapped.

DUNIXI GUERECA: That, that's the state law. Yes, sir.

WAYNE: OK. So that, that's been in our constitution since 1900s, 1976 was Section 3 so I don't think it dealt with that one. So when looking at your objection, it's about controls around the, the accounts. What controls do you-- would you-- would get you to a yes?

DUNIXI GUERECA: That's certainly something that we can discuss, but I mean it's, it's a lot of-- I mean a lot of concerns that we have, Senator.

WAYNE: Well, I understand that, but it seems like-- and this is not just in your committee. I deal with the county attorneys in Judiciary. It's easy to come in and say no, but it's-- but what I would like organizations to do is to say if these are your objections, then give me some answers or how to, to correct them. And if we correct them, does that move you? Because that's a, that's a completely different conversation because there could be an amendment that addresses your concerns, but I don't know what you want. You just say no and, and so what--

DUNIXI GUERECA: I mean, certainly know that that is a long conversation I'd be willing to have with the author of the bill [INAUDIBLE].

WAYNE: This is the third bill that you've, you've said you're going to give me information and we're going to talk later. And I understand that and we're--

DUNIXI GUERECA: Yes, sir.

WAYNE: --there's committee hearings and a lot of other things.

DUNIXI GUERECA: Yes, sir.

WAYNE: But in the meantime, there are kids who can't get services and are stuck. What do we tell those parents? Here's why I say this. It's always interesting-- I'm not blaming you and I'm going on a tangent.

Just deal with it because you, you're good at what you do. You know, Martin Luther King did-- he always posed this, justice delayed is a justice denied or a right delayed is a right denied. But these kids' rights are being delayed. Where's that same energy to make sure that these rights are being fulfilled? And it can't just be anymore give more money to education. That can't be the-- there has to be more than just that. And I'm saying, what does that look like? Because we could throw more dollars into education, but nothing's requiring the local school district to raise teacher salaries or hire more special ed. So from a state's perspective, what can we do? Because the families that I represent, I've told them now for almost 12 years, we're going to change some things in OPS. And that ship is not-- that's a big ship to move.

DUNIXI GUERECA: Yes, sir.

WAYNE: And while it is, it is improving, there are still kids being left behind. And there are kids who are in this where they are-- and I represent some of these families who navigating OPS is very hard and they try to get outside the district and they can't get outside the district because they have an IEP. So what do we tell those parents today? Wait?

DUNIXI GUERECA: Well, sir, I mean, I think our big concern is, as written, this will-- you know, it's sort of a slippery slope that leads to a situation where a lot of other students will be affected. And what we've seen time and time again in situations in state after state is that when you see mass-- large-scale implementation of certain privatization policies, there's a disparate impact on communities of color and lower-income communities. So I, so that-- sorry, sir,

WAYNE: The privatization argument doesn't work, right? So everybody's against police being privatized, but if you bring a bill that says you shouldn't allow the Humane Society to give tickets out, well, that's OK to privatize that part because it's about animals. So, like, the slippery slope argument doesn't work. We have kids who need options. That's, that's the only-- I have two years left. I don't want to keep saying let's wait. I need an answer for these families who I've had one kid go all the way through the school system, another kid who now is in, in juvenile court in an IEP and not doing well. And now the same parent who has a special needs child and she's saying, what do I do with my daughter now? You've told me for 12 years-- and we've put more money into OPS. We've passed bonds. We've done everything to

upgrade those schools and they're doing better, but there are still kids being left behind. And this bill is targeting a special needs population and we're coming in with no, but we're not talking about how to improve.

DUNIXI GUERECA: Senator, the, the-- in my understanding, I could be mistaken, but this is open to anyone that is denied option enrollment. So not necessarily a specific class, right? And while one of my concerns is specifically dealing with special education students, it really is more than that, right? It opens it up to anyone that has been rejected. There's nothing to stop, say, a parent applying to the most impacted school district in the state and then taking that money and sort of shopping it around, going against the spirit of the constitution where it says pub-- public funds shall not be used for private schools. And, and, Senator, what I will say is that public schools are not perfect. And certainly I know I'm been in here in opposition to a lot of bills, but I really, I really would be willing to sit down and really see what we can do and what things we can do beyond the legislator and how we can work with, you know, the Douglas County commission-- board of commission, the city council, the school board to implement things that actually affect-- well, not actually-- that will help better the situation for kids and particularly communities of color than me and both you come from, sir.

WAYNE: But again, we're talking another five years. That's an entire generation. That's another prison that I'm building. You're-- we're not solving the immediate need for a parent who's saying, I need to go somewhere now.

DUNIXI GUERECA: And again, Senator, the concern that I have with this bill is the, the detrimental effect to our communities further down the line.

WAYNE: For who's community down the line? Because historically, if you look at every category, my community is behind and down at the bottom of the line right now. So who are you protecting? Because you're not protecting my kids. We're already getting suspended at the highest rate. We already have the highest achievement gap. We're already the most over incarcerated. So who-- what community are we protecting? Because it's not me and-- McKinney's and I.

DUNIXI GUERECA: Sir, we-- and I can send-- certainly send you the, the data that shows that communities of color, when we see implementation of large-scale privatization policies, are the most affected. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

certainly we're not, not in the conversation that we're going to be able to solve here, sir, but--

WAYNE: I understand.

DUNIXI GUERECA: --you know.

WAYNE: I understand.

DUNIXI GUERECA: I can certainly get you that data and we're still got to get that cup of coffee and talk it over, so.

WAYNE: We'll get, we'll get it--

DUNIXI GUERECA: Yeah.

WAYNE: --next recess day.

DUNIXI GUERECA: Yeah.

WAYNE: All right. Appreciate it.

DUNIXI GUERECA: Thank you, sir.

MURMAN: OK. Senator Linehan.

LINEHAN: Large-scale programs, do you think this is a large-scale program?

DUNIXI GUERECA: You know, I think it-- one, it-- like I said, there, there is a potential for abuse where a parent applies to--

LINEHAN: But it would have to be-- these kids have to be turned down by a public school before they would qualify for this program.

DUNIXI GUERECA: Yes, ma'am.

LINEHAN: They want to opt in and they get turned down. Do you think that's a large group of kids?

DUNIXI GUERECA: I think if a parent would want to access this money, they could absolutely figure out which school districts in the state are at capacity and apply to that school, get denied and be able to use that money, yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

LINEHAN: So you, so you don't trust the parents that are looking out for their kid. You think they're going to game the system?

DUNIXI GUERECA: Ma'am, I'm just-- Senator-- sorry, Senator, I just--

LINEHAN: That's fine.

DUNIXI GUERECA: --I'm just bringing up the concerns that I have with this bill and the potential--

LINEHAN: So you're concerned parents will game the system. And then you talked about our constitution. What part of our constitution says we can't give money to private schools?

DUNIXI GUERECA: Off the top of my head, Senator, I don't remember the exact part, but I can certainly get you the language in the constitution that shows that.

LINEHAN: I think it's the Blaine Amendment. Because if you read the beginning of our constitution, it's very clear that schools are important--

DUNIXI GUERECA: Yes, ma'am.

LINEHAN: --and we should support schools, including religious schools. And then along in the early 1900s, when people didn't like the Irish and the Italians and the Catholics, they had a Blaine Amendment that got adopted, which has been overturned by the U.S. Supreme Court. So is that the amendment you're talking about?

DUNIXI GUERECA: Yes, Senator, and, you know, certainly know that--

LINEHAN: So you do-- so you-- Stand for Schools supports the Blaine Amendment?

DUNIXI GUERECA: No, ma'am. I, I'm not saying that. The no, ma'am, was a--

LINEHAN: You don't support the Blaine Amendment.

DUNIXI GUERECA: I'm specifically dealing-- testifying here on behalf of LB528 and so the--

LINEHAN: So you don't have an opinion on the Blaine Amendment.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

DUNIXI GUERECA: I will certainly get back to you on that, Senator, for a--

LINEHAN: OK.

DUNIXI GUERECA: --well-verbal-- written statement, Senator.

LINEHAN: OK. Thank you very much.

DUNIXI GUERECA: Yeah.

MURMAN: Any other questions? OK. Thank you very much.

DUNIXI GUERECA: Thank you.

MURMAN: Any other opponents for LB528? Any neutral testifiers for LB528?

DAVID LOSTROH: Senator Murman, members of the Education Committee, my name is David Lostroh, spelled D-a-v-i-d L-o-s-t-r-o-h. I serve as legislative coordinator for the Nebraska Christian Home Educators Association, the NCC-- NCHEA. I want to thank Senator Hansen and others for wanting to help some families obtain nonpublic education. It's been interesting listening to the hearing today. I'm not sure how much of what I have to say actually applies to this bill. I'm assuming that some of the students that are not able to do the options-- are they, are they all the situations that we've heard today, Senator Hansen-- maybe, maybe what I'm worried about doesn't apply to this bill.

MURMAN: You can't actually ask questions.

DAVID LOSTROH: OK. I'm sorry. All right.

MURMAN: Sorry.

DAVID LOSTROH: That's, that's OK.

WAYNE: It was smooth how you did it.

DAVID LOSTROH: Well, I'm trying to decide if I'm wasting your time. That's what, that's what I was, what I was asking. My, my testimony then is about the vouchers that would be used for home education. And Senator Hansen has amended the bill to remove home education out of it so I'm here to testify neutral. I don't think I'm going to read through my testimony. I would encourage you to, to look at it. We're

mostly concerned about homeschool freedom and that's what makes homeschooling work because the parents, I think, know what to do. And the threat of, of vouchers for the regular homeschooling community and all that, I think potentially down the road, presents the controls that typically go with government funds. And so if that happens then, what happens is pretty soon, there is no homeschooling freedom. And in fact, if it's all nonpublic schools go that way, there will be some regulations and then there won't be any school choice down the road. So we're concerned about government-funded vouchers for that reason because down the road, there will be a control. Some parents may take money and then when the controls start to come, they're hooked on it and they're not able to resist and actually change what's working well because of money that might be involved. And so that is my concern here. I think that really has limited application of what we're talking about today. So thank you for bearing with me.

MURMAN: Thank you. Any questions for David Lostroh? If not, thank you for your testimony, testimony. Any other neutral testifiers? Any neutral testifiers? OK, Senator Hansen, you're welcome to close. And while he's coming up, we-- on online comments, we have six proponents, six opponents and one neutral position.

HANSEN: Thank you. Thanks for the questions too-- I appreciate it-- from both Senator Wayne and Senator Linehan and others. We tried to-- we've been working on this for the last year or two, trying to come up with a simple bill to help those students who have been denied enrollment from a public education to look for other options that they-- that them and their parents would see best for their family. We're not completely reinventing the wheel with this bill. We're-- the funding-- I know there's some question about the funding. The funding actually comes [RECORDER MALFUNCTION] TEEOSA formula. It's already allocated by general funds. We're not taking money from a public school to fund the student to go somewhere else. None of that changes. And if I remember right, I don't know if I had any opposition from the NAACP or the teacher's union. I can't remember if I did or not. But I don't-- I'd have to look and see. But reminders-- from what I remember, I don't think I did, which might be telling, but I just wanted to clear that up because we had some concern about the funding mechanism of this. We are not taking money from schools to fund the student to go somewhere else. This is already in the TEEOSA formula, formula, allocated by general funds, when somebody applies for option enrollment. It's different every year. They may have more, they may have less one year, they-- it's allocated this money and they use the free option enrollment So we're not reinventing the wheel. We're using

the whole same-- we're using the same thing. They're just having a different choice when they can't go to a public school. And I think the one thing that makes this bill unique, I think that not any other bill that I can remember, coming in front of Education, has had is that they already have to have a denial from a public school. So they talk about a voucher program-- a voucher program is we give money to a student to go somewhere. They have to actually have a denial from a public school first, before they even-- can have the option of using this. And it can only be used for tuition and fees. So if they go to a private school and it costs them-- the tuition is \$6,800 dollars, plus some transportation costs, they don't use-- they don't get to use all the money that a student from option enrollment, from one public school to another, would be able to use. And I hate to, hate to use the term that this is a public-private partnership, but it kind of is. And we have all kinds of public-private partnerships in government, all over the place. Education-- it's just that we don't have any education, but we have it pretty much-- you go to every committee and you go to almost every program, there's somehow-- there's some kind of public-private partnership. That's exactly what this is. So nothing new. And I think Senator Wayne, kind of, touched on this a little bit and the testifier that he was asking questions of, the majority of the children that will be helped with this bill will be those with an IEP. It's open to everybody. But honestly, most of the ones that are going to get help from this are the ones with an IEP, just like the testimony you heard today from the kids. Behavioral issues, they try to go to another public school to see where they might fit better, they get denied. They go to a private school or somewhere else and it works out great for them. And they thrive and they become a great functioning member of society, because they had an option. And some people mentioned about oversight on the private schools. Private schools have to be accredited and approved by the state. That's called oversight. So it's not like they just willy-nilly can do whatever they want and get rid of whoever they want and bring whoever they want, they still have to be accredited and approved by the state. And the funding for this, actually, is controlled by the Board of Education. They're the ones who decide how, how this is going to work. We lay out the parameters. They come up with a form. They say, you need to follow this stuff. I'm sure they're going to have some kind of legal counsel there, making the form to make sure that the parent follows it. And if they don't, there's recourse. But the Board of Education is the one who, who deals with this. We lay out the parameters of it. They follow it and they have the relationship with the parent to make sure things are happening like they're supposed to in the bill. So I just had to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

bring up some of those points, because that's what I heard in the testimony. This is a simple bill and I hate to say that, because I'm never supposed to say that. To some, it may not feel like it, but it is. I-- like I said, we're not reinventing the wheel. We're using the same funding system we, currently, already use. They have to get denied from public school and they get, they get a choice to go somewhere else. So with that, I'll try to take any other questions that I can, since I can talk now.

MURMAN: Senator Linehan.

LINEHAN: Thank you, Chairman Murman. Would you be willing to consider an amendment that it is-- because-- they were turned down because of an IEP?

HANSEN: Possibly.

LINEHAN: If that would address some of the concerns, because there are some schools-- I live in one. There's others that-- they are chock full and overcrowded or having to build new schools all the time. So-- which is weird because-- but if it, if it would-- we limit it to this one group of students who get turned down because they had an IEP--

HANSEN: Um-hum.

LINEHAN: I can't--

HANSEN: It would make it much more specific.

LINEHAN: Right.

HANSEN: Yeah.

LINEHAN: OK. Thank you.

HANSEN: I think it would still help a majority of the people that were trying to-- that were [INAUDIBLE].

LINEHAN: Right. I agree. Because I think-- yes, I agree.

MURMAN: Any other questions for Senator Hansen? Senator Albrecht.

ALBRECHT: Thank you, Chairman Murman. And thank you for bringing the bill, Senator Hansen. So this amendment that you're showing us, is this-- did this come after your bill was ready to be presented and you visited with some folks or?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: Yes. This was to help clarify some of the concerns that the Homeschool Association had. And that's why I said an approved and accredited school, so that narrows it so that kind of leaves them out of it.

ALBRECHT: Very good. OK. Thank you.

HANSEN: Um-hum.

MURMAN: Any other questions?

HANSEN: Senator Wayne, this is your chance right here, to get after me.

WAYNE: No, I--

MURMAN: Senator [INAUDIBLE].

HANSEN: Oh, gosh. Yeah.

MURMAN: Senator Wayne. Excuse me.

WAYNE: No, I mean, you know, I'm not fully-- I mean, there are some tweaks, I think, to the bill, some of the people talked about, we, we need to address. But, but, you know, never mind. I don't need to go on a rant. I'm just--

HANSEN: This is your bill, this is your bill, Senator Wayne.

WAYNE: --it's easier for people to say burn a system down because of racism, because of this, because of that. But then when it comes to public education, it's like, well, let's wait. Let's not burn the system down. Let's, let's wait another 20 years. Like that-- that's the part that I'm, I'm-- I mean, no disrespect to the testifiers. And the, and the, and the guy from Stay In knows that. I-- we've talked quite a bit, but we got to do something different. I ain't smart enough to say I know what the answer is, and if we can figure out small niches to provide help for students who aren't being served, I think that is our job. And I don't have the answer. I look forward to working with you on this bill. But we can't just keep coming here and saying no. We got to figure out a way to do something different. And that's all I'm-- kind of where I'm at.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

HANSEN: I would love to work more with you, Senator Wayne, on this bill. If we can climb a mountain together, we can tackle this mountain, too. I'll make a bumper sticker for you later. [LAUGHTER].

MURMAN: Any other questions for Senator Hansen? If not, thank you very much.

HANSEN: Thank you. Thank you for listening. Appreciate it.

MURMAN: OK. That'll close the hearing for LB528. Well, excuse me. And we're going to take a quick ten-minute break.

WAYNE: I am introducing a rule you can't be on Education and Judiciary. You just can't, you just can't do both, because all you hear [INAUDIBLE].

[BREAK]

MURMAN: So, so we'll open up the hearing again for LB356. And thank you, Senator Walz, for being here.

WALZ: Thank you, Chairman Murman and fellow members of the Education Committee. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I represent District 15, which is made up of Dodge County and Valley. Today I am introducing LB356, which provides clarification to the Nebraska Opportunity Act. The Nebraska Opportunity Grant is intended to be awarded to Nebraskans attending a Nebraska college that demonstrates financial need. The changes in LB356 are brought on behalf of the Coordinating Commission for Post-Secondary Education. First, the bill clarifies what "located in Nebraska" means. So this requires that the post-secondary institution must have a physical location in the state where students may receive instruction, and maintain an administrative office in the state that enrolls students, provides information about the institution and provides student support services. This is simply to update statute by taking into account online universities. Second, the bill just aligns a federal change that was made in, in 2020, that changes expected family contribution to student aid index under FAFSA. With that, I'd be happy to answer any questions, but Mike Baumgartner from the Coordinating Commission will be coming up here, as well, to answer questions.

MURMAN: OK. Thank you. Any questions for Senator Walz? If not, thank you very much. Proponents for LB356.

MIKE BAUMGARTNER: Good afternoon, Chairman Murman, members of the Education Committee. My name is Mike Baumgartner, M-i-k-e B-a-u-m-g-a-r-t-n-e-r. I'm the executive director of the Coordinating Commission for Post-Secondary Education and I'm here today to testify in support of LB356, which, as she had men-- has mentioned, Senator Walz brought on behalf of the Coordinating Commission. I'm handing out some information about the student aid index and FAFSA simplification. It's, it's brief, but you can look at it at your leisure, because I know that you are also considering some other FAFSA information. And I think this is, this is very helpful in understanding what some of the changes are in FAFSA, going forward, that, that are necessitating some changes. LB356 updates the Nebraska Opportunity Grant Act to address two issues that have recently manifested. The first update is an elaboration of "located in Nebraska." When the Nebraska Scholarship Act was passed in 2003, which became the Nebraska Opportunity Grant in 2010, we were in the early years of online education. Almost all colleges and universities were brick and mortar and "located in" may have been self-evident to the bill's author and the Legislature. That is no longer the case. Online education is pervasive and by the clear definition of "located in" and the Nebraska Opportunity Grant Act, we may find ourselves besieged by low quality out-of-state institutions wanting to participate in the NOG program. Proposed change would require that from the effective date of the change, every institution participating in the Nebraska Opportunity Grant must have an official-- an, an administrative office in the state and a physical location where students may receive instruction. The second update to the NOG Act is necessary to conform to the change in federal title for financial aid information-- I'm sorry, administration. As you are aware, information from the FAFSA is used to determine eligibility for the Nebraska Opportunity Grant, as well as the Pell Grant and most institutional aid. Currently, the NOG program uses expected family contribution to determine eligibility, the same measure of family ability to pay for college that is used to determine eligibility for Pell Grants and other federal aid. In December of 2020, Congress passed a Consolidated Appropriations Act, which included provisions of the previously proposed FAFSA Simplification Act. One result of the change is that EFC has been replaced by Student Aid Index, SAI, beginning with the financial aid year '24-25. Students will be filing FAFSAs for 2024-25, beginning in October '23. As the students in colleges will no longer be receiving an EFC, it's imperative that the NOG Act change to refer to the new Student Aid Index. The proposed change continues the Nebraska Opportunity Grants practice of extending eligibility to students with slightly higher EFCs or in the future,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

SAIs, than would qualify for Pell Grants. All right, I think that they're, they're pretty, I hope, clear and after this explanation, self-evident. But I'm happy to answer any questions that you might have on the changes that we've requested.

MURMAN: Thank you. Any questions for Mr. Baumgartner? If not, thank you very much. Any other proponents for LB356?

TREVA HAUGAARD: Chairman and members of the Education Committee, my name is Treva Haugaard, T-r-e-v-a H-a-u-g-a-a-r-d. I am the executive director of the Council of Independent Nebraska Colleges, also known as CINC. The Council of Independent Nebraska Colleges is supportive of LB356 and appreciate Senator Walz for introducing this bill that, if passed, will provide clarification to the Nebraska Opportunity Grants. CINC represents all 13 of Nebraska's private colleges and universities. Collectively, the private colleges in Nebraska enroll over 30 percent of students who are Pell eligible, in addition to a strong percentage of students who are first-generation college students. LB356 provides important language stating that a post-secondary institution will have an established physical location in the state, which serves as an administrative office, for the purpose of enrolling, providing information, educational support services, as well as facilitating-- providing facilities where students may receive academic instruction. CINC believes these are minimal qualities to a physical location is necessary when providing any educational services to our Nebraska students seeking a quality education. CINC believes that any institution of higher education which is eligible to participate in the NOG funding, should also contribute to our economic priorities in Nebraska, CINC member institutions provide \$1.7 billion impact annually and employ over 17,000 individuals in seven cities and towns across the state. In addition, CINC collectively contributes to Nebraska's brain game. During the '21-22 academic year, nearly 22,000 out-of-state students actively enrolled into our 13 institutions. It is notable that more than 52 percent of these students will remain in Nebraska after graduation. This is a significant impact to Nebraska and it is possible because CINC institutions have a physical presence and establish campuses across our state. LB356 is also including language which ensures that Nebraska Opportunity Grant program implements the federal guidelines, with respect to the free application for student Federal aid. In closing, the Council of Independent Nebraska Colleges supports LB356 and asks you to please advance this bill.

MURMAN: Thank you. Any questions for Treva Haugaard?

TREVA HAUGAARD: Thank you.

MURMAN: Thank you very much. Any other proponents for LB356? Any opponents for LB356? Anyone want to testify in the neutral position for LB356? And if not, Senator Walz is welcome to close. She waives closing. There were three proponents online, zero opponents and zero neutral testifiers.

ALBRECHT: Senator Murman will open on LB811.

MURMAN: Good afternoon, Vice Chairman Albrecht and members of the Education Committee. My name is Dave Murman and I'm on this side of the desk today to introduce LB811. Our state has very recently been dealing with a massive teacher shortage stemming from several causes. It's no secret that this committee is making a package of several bills to incentivize teachers to, to enter the workforce through increased pay and bills that would permit new ways to obtain teacher certification. LB811 is attempting to tackle a different area of this problem, which is behavior in the classroom. The Nebraska State Education Association brought this bill to me and it doesn't take a deep dive to figure out why. I have printed out and presented all of you with three stories from the Omaha World-Herald. The first story titled, Nearly 700 teachers are projected to leave OPS by July 1, by Lauren Wagner, was a story that sent shockwaves across Nebraska. But what was the underlying cause of this exodus? The second article I presented to you with its title, Blunts in bathrooms, skipping all the time: OPS students, staff confirm rising misbehavior. Common phrases in this story include fight, which is mentioned 21 times. Substance abuse drugs was mentioned six times. Anxiety is mentioned three times. One student from Central High School is quoted in this article as saying, It's kind of off the rails as far as behavior. They're bad. Bad. They're naughty. However, this problem is not unique to Omaha Public Schools or high schools. The third article I have presented you with is titled, Defiant, aggressive students disrupting Nebraska elementary school classrooms. We blew up the graph on the front page so you can all get a better look at it. The graph is entitled, Number of referrals for problem behavior by students. This data was collected by North Platte's Lincoln Elementary, Bellevue's Fort Crook Elementary and Fremont's Grant Elementary. In every single school, physical, physical aggression for over 400 teacher referrals at three elementary schools. Friends, we have got to do something, do something here. Undoubtedly, these acts of physical aggression have disrupted the classroom learning environment, with teachers and students battered and bruised. The sad reality is these acts have left several people

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

traumatized and looking for a new line of work. LB811 will allow teachers to use reasonable physical intervention to prevent harm to the student, another student, a teacher or any other school personnel from physical injury. The goal must be to return the student who is perpetrating the incident to the classroom as soon as reasonably possible. You will all-- also notice on page 7, line 20-22, the bill specifically outlines that any infliction of bodily pain as a penalty for disapproved behavior is strictly prohibited. LB811 also includes language that will allow for evidence-based training, through the lottery fund, to ensure all school personnel, like administrators, counselors and paraprofessionals, are given a basic awareness of the strategies and goals to carry out this task. Another previous hold up in this bill has been what has been called qualified immunity for teachers. Today, we introduced an amendment to LB811 that removes the last sentence of Section 5(4), found on page 7. This will ensure that teachers act within each school district's policy for implementing LB811 and provides a safeguard for children, so that they are not harmed discriminant-- discriminately or indiscriminately. This is a problem that the Legislature cannot throw money at to fix. We have to allow teachers to defend themselves, their students, their classroom and their school hallways. Without this long overdue language, I fear Nebraska teachers will continue to leave the education workforce. We need to do our best by our teachers. I ask the committee to advance this bill to General File and I'm happy to answer any questions.

ALBRECHT: Thank you. Senator Murman. Any questions from the committee? Seeing none, we'll take proponents. Are there any proponents wishing to speak? Oh, very good. Thank you.

ISAU METES: Thank you.

ALBRECHT: Hi.

ISAU METES: Hi.

ALBRECHT: Welcome.

ISAU METES: Thank you, Senator Albrecht, members of the Education Committee. My name is Isau Metes, I-s-a-u M-e-t-e-s. On behalf of the Nebraska State Education Association, I am speaking in support of LB811. Senators, I'm asking you not to throw out the baby with the, with the bathwater. While the description of the bill uses the word restraint, it's actually not in the bill. Senators, the NSEA is not asking for language to restrain students or children, we are asking

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

for language to protect children. This bill provides infrastructure and training that will help students across the state learn in safe learning environments without the threat of violence. It allocates lottery funds to provide behavior awareness and intervention awareness training. This training includes signs of trauma, verbal intervention and de-escalation techniques. Senators, I received my teaching license almost 15 years ago and I do have a master's degree in curriculum and instruction. I have never had official training in any of these areas, not in my teacher prep program, not in my master's work, and not on the job. Lots of educators must have-- must seek this training out on their own. Educators across the state are begging for training and sound policies and procedures to ensure safe and productive learning environments for all students. It create-- it would create a central place to provide guidance to school districts on school safety for every school district across the state. School districts would have to provide annual reports and be held accountable through this office. School violence is on the rise across the state. Students do not have the ability to cope or self-soothe when triggered. Educators do not have the tools to help support their students and ensure their safety in the classroom. This bill is about protecting students. I'll be blunt with you, Senators. I can take a punch. I'm not in fear of my own safety. I'm in fear for students. When a student can no longer cope on their own and turns their rage against other students, it can get violent pretty quickly. Educators have-- may have 25-plus students in their classroom that all become targets in a split second. We are asking for the ability to protect other students in the classroom by having the option of a reasonable physical intervention. We are, we are not asking that no one act-- acting in any reasonable manner-- I'm sorry. We are asking that no one in-- acting in a reasonable manner, given the situation, should be subject to professional or administrative discipline. Moreover, we're asking for the resources and guidance. Thank you. And I'll answer any questions.

ALBRECHT: Thank you for being here. Any questions from the committee?

WALZ: I have one.

ALBRECHT: Senator Walz.

WALZ: Thank you. Thanks for being here today. You mentioned reasonable twice in the last paragraph. Can you, can you just give me an idea of who decides what's reasonable?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ISAU METES: Sure. And I'm just going to say it right now that I'm not an attorney, but I am an educator. And reasonable to me means reasonable to the-- to reasonable people. Right. So within reason, there's-- there are also-- Senator, I should add that there are investigating agencies that would decide if the interventions are reasonable. For instance, there's the Professional Practices Commission of the Nebraska Department of Ed. There's also-- every person who holds a certificate is a required reporter. So if another adult or person in that room feels like something unreasonable happened, they have the obligation to pick up the phone and call CPS.

WALZ: Can I ask one more?

ALBRECHT: You bet.

WALZ: Thank you. Thank you. The other question I have is about policies to remove students. Do schools right now have policies in place?

ISAU METES: Not necessarily. No, not necessarily. So there are-- there, there are lots of school districts. Some have very strong language about policies removing students, in what happens, but not all those policies are necessarily clear. In some places they're not existent.

WALZ: OK. That's all for now.

ALBRECHT: Thank you, Senator Walz. I do have just a couple quick questions. I know this has been on the floor of the Legislature for a few years now. And you're saying that wherever you have worked in the school in the last 15 years, they didn't have any type of training, any policy for you to follow?

ISAU METES: There was policy, but there wasn't training. Like some of these-- so there's policy about how to handle student behavior, as far as, like, tears and, tears and like, suspensions and office referrals for students for disciplinary action. But I was never taught about trauma or triggers or de-escalation techniques. Those are not something that a school provides or a teacher prep program provides.

ALBRECHT: Do you think teachers are leaving because of some of these problems in the schools?

ISAU METES: Absolutely. So we do-- we-- I do know, because of my role now. So I'm not in the classroom anymore. I've left the classroom and

I work at NSEA full time, as the director of advocacy. And so, some of the things that I see from members is that, you know, in the last couple of years, we've had a lot of members that just simply put their keys on the desk and say, I can't do this anymore. And it's because of some of the violence that they're seeing in stu-- in the classroom and not necessarily violence directed towards them, but amongst each other-- students amongst each other.

ALBRECHT: And I'm glad to hear you say that you want to protect the students.

ISAU METES: That's right.

ALBRECHT: I think that's great, but these teachers also need to be protected.

ISAU METES: I agree.

ALBRECHT: Because I mean, I know of some teachers, you know, that have left because they just-- they can't take that punch that you might be able to take. And just to protect the children in the classrooms, I think that that is the reason that the bill keeps coming forward. I remember some of the teachers that went to the NSEA just asking for help. It's either we need help or we're leaving. And I do remember that article and I don't know if you were teaching at the time or not, but--

ISAU METES: I do.

ALBRECHT: --but it does hit home that we're lose-- losing teachers for a lot of reasons but this, I think, would be in the top, top three. But I appreciate your testimony. Any other questions from the committee? Hearing none, thank you very much for being here.

ISAU METES: Thank you.

ALBRECHT: Next proponent.

BEN WELSCH: Thank you, Vice Chair Albrecht, members of the Education Committee. My name is Ben Welsch, B-e-n W-e-l-s-c-h. As an educator and parent from Hastings, I'm here today to speak in support of LB811. Our goal in schools is to ensure all students and staff can learn and teach in a safe and supportive environment and I believe LB811 will help schools and districts in achieving that goal. There are three main points I want to emphasize about how LB811 can help schools get

the most positive behaviors out of their students. First, we need collaboration with school stakeholders to define behavioral plans and procedures, to teach students what we want them to know and be able to do within the school setting and how those interactions affect school staff and their peers. Having those conversations and sending up those plans, before students even enter the school or classrooms, provide the most positive behavioral outcomes for students. Systematically setting aside time for training in each school district allows conversations about best practices. Teachers can then approach each situation and be ready to react in a way that promotes the most positive learning outcomes for students, even when chronic negative behaviors present themselves. Teachers can app-- LB811 would provide that level of preparation to help the students in my district, as well as my own kids. I am sure other parents across the state would also agree. Second, when students are taught the school and classroom rules and procedures, there are no gray areas that are left up to interpretation. When students are provided feedback on their positive behaviors and the emphasis is on what they do well, there will be less time spent on having to work with the problem behaviors within the school. The same works for teachers, as well. When positive feedback is given to teachers during the behavioral awareness, training, practice and review process, we make sure each behavioral situation will get the same consistent intervention, no matter who or where you are in your school district. Getting adequate training is the most important aspect of preventing problematic behaviors in the first place. Lastly, using the lottery funds to establish the Behavioral Training Cash Fund will allow school districts to continue to establish best practices in their current systems or look for new alternatives that current district funding could not meet. I know that, currently, there is also a patchwork across Nebraska of schools and districts that currently use PBIS, positive behavior, interventions and supports. Some schools were able to solicit grants to start those programs and may now be running those programs themselves, once those grants were gone. I know we have talked with this committee before about the funding inequities for schools and it would be great to use the Behavioral Training Cash Fund to level the playing field when it comes to positive student behavior systems in our school. I conclude with a story that resonates as a parent and making sure the needs of all students are being met in our educational environments. Take, for instance, when a student throws objects, chairs or desks in a classroom and the intervention is that the teacher and all the other students must vacate the room. If that is the protocol once or twice, it is probably not a significant issue.

But if this is happening two or three times a week, when does the priority switch to protecting the learning environment of those other 20 kids and making sure that there is a way to keep them learning, while the single problem behavior is being processed somewhere else? I would want my kids' learning to be protected from that one student with a problem behavior. I believe LB811 would protect kids and staff and I hope it would be advanced out of committee. Thank you and I'd be happy to answer any questions.

ALBRECHT: Thank you, Mr. Welsch, for your testimony. Any questions from the committee? Seeing none, thanks for being here.

BEN WELSCH: Thank you.

ALBRECHT: Any other proponents? Any other proponents? Seeing none, any opponents?

BRAD MEURENS: Good afternoon, Senator Albrecht 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 am the public policy director with Disability Rights Nebraska. We are the designated protection and advocacy organization for persons with disabilities in Nebraska and I'm here today in strong opposition of LB811. Students with disabilities comprise about 13 percent of the national student population, but represent 80 percent of the use of restraints. Children with disabilities can suffer serious bodily injury, harm and even death when being restrained. Students with disabilities get swept up in seemingly neutral school policies on discipline, including restraint. Quote, restraint involves physical intervention or force used to control a student by restricting their freedom of movement. Also, when a school official physically restrains a student, she or he is using force for the purpose of controlling a disruptive student who poses an imminent threat to his or her own safety or the safety of others. That language mirrors the language in the bill, which means that this also deals with restraints. Also, one of the most significant mantras in the disability community is nothing about us without us. However, to the best of my knowledge, LB811 has never had any input from families with students of disabilities or those who have been restrained, disability advocates included. The language has not changed much, if at all, from previous years, despite the consistent and persistent language recommendations posited by us and others. For all the professions of the need to listen to the second house, the eight-year history of this bill runs completely counter. We are not convinced this bill is necessary. As Senator Walsh hinted, Rule 10, schools are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

already required to have a policy on the use of restraint to control disruptive or potentially injurious student behavior, for any and all students, not just those with disabilities. For example, the Millard Public Schools policy says any student who poses a significant, imminent risk of injury to him or herself or others may be physically restrained, according to-- or placed in seclusion by school staff. Most of these school, school policies are already [INAUDIBLE], more detailed and prescriptive than the language in this bill. What happens to those policies? Which one should teachers follow? We continue to have problems with the vague language of the bill. We are wary of reasonability. That standard is way too lax and subjective. Such subjective interpretations increase the risk of the use and dangerousness of increased restraints. We-- or there needs to be qualifying language such as imminent threat or serious bodily injury. What happens if a school personnel violates the pain/punishment prohibition? LB11-- LB811 is completely silent. Accountability is critical, as protections are only effective when those administering them are held accountable for their actions. Who decides reasonability? Who decides that before the teacher is not held to or school staff is held to account? There are various alternatives, not this bill. We'd be happy to entertain a discussion with parents, advocates, teachers, administrators and etcetera, to develop a more comprehensive and reasonable, workable approach to the regulation and restriction of restrained seclusion. I'd be happy to answer any questions you may have.

ALBRECHT: Thank you very much. Appreciate the comments. Anyone have any questions from the committee?

WALZ: I have one.

ALBRECHT: Senator Walz.

WALZ: Sorry. I'm sorry.

ALBRECHT: Nope, You're fine.

WALZ: Thank you. Restraints can include physical, mechanical, mechanical, chemical, seclusion.

BRAD MEURENS: Yeah.

WALZ: Do you think, in your reading this bill, are all of those permissible under this bill? Would they be?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

BRAD MEURENS: Yes.

WALZ: OK.

BRAD MEURENS: The bill admit-- the bill, the bill makes no distinction between any of those types of restraints. And I think it would be dependent upon what the school policies-- or the school policies will indicate restraint-- mechanical restraint is not acceptable. I think Millard says that. It excludes mechanical, it excludes chemical and more importantly, it also excludes prone restraint, which the evidence indicates is most likely to kill students because it obstructs their airways. When you put them on the ground, face them and sit on them, it kills them. That bill-- this bill does no-- doesn't even talk about that. And everybody in the literature pretty much agrees, uniformly, that you should outright ban prone restraint, because it is a huge risk to the lives of kids with disabilities or kids in general, period.

WALZ: Right. And then I had another question regarding the training. Through the IEP process, it doesn't say anything in the bill, I don't think, about educating parents at the IEP meeting, what kind of restraint--

BRAD MEURENS: The--

WALZ: --what pol-- OK.

BRAD MEURENS: Yeah. There's nothing in here about, you know, helping parents and making sure that there-- well, LB-- it talks about how a school personnel would have to sometime, somehow, whenever they feel like it, try to contact the parents, let them know that restraint happened. But there's no talk about debriefing. Like why-- what can we do to prevent this from happening again? And the, the, the, Disability Rights Washington most recent report indicates that debriefing is extremely important, because it allows parents and those affected to talk to teachers and those who are doing it to figure out why this is happening and how we can stop in the future. None of that's in this bill. That's why it's-- this bill is not a good idea.

WALZ: Thank you. That's a-- you know, thanks.

ALBRECHT: Thank you, Senator Walz. Question. Thank you so much for all the information you've given us here.

BRAD MEURENS: Sure.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: So would you agree that the schools, throughout the state of Nebraska, obviously are not-- if they don't have policies already, something has to be done.

BRAD MEURENS: Well, they do.

ALBRECHT: So would you, would you entertain this bill if there were some amendments, too? What you-- what you're asking us or what you're suggesting would be the right thing to do, because we have to start somewhere, right? Because, believe me, I want to protect the children and I want to protect the teachers and I want to retain the teachers. But what is it, what is it that we can do in this bill to make that work? We've been here for eight years talking about it.

BRAD MEURENS: Yeah.

ALBRECHT: So what's-- so, so it would be great. I would love to see yourself and anyone else who's interested, in making certain that we are protecting those that need to be protected. Every child needs to be protected, but I understand where you're coming from. I certainly do have some personal reasons to say that. So are you, are you willing to sit down and visit about that?

BRAD MEURENS: I--

ALBRECHT: Or do you prefer not to have anything at all--

BRAD MEURENS: I think there's a couple--

ALBRECHT: --if we do nothing, we do nothing. So--

BRAD MEURENS: --well there's--

ALBRECHT: --what would you suggest?

BRAD MEURENS: --a couple, I think, a couple of different things. The first is that if you were to, I think, if you were to amend this bill, you would have to completely strike the entire bill and start fresh. This bill has way too many loopholes and way too many vague language for it to be workable and usable, especially considering that the existing standard, the requirement of every single school in this state to have a policy that is often more restrictive or more detailed, that talks about what processes are supposed to happen before we can restrain students, conflicts with this bill. You'd have to rewrite the entire [INAUDIBLE]. The other thing is that the

policies that are already in place in schools are, are not uniform. The Rule 10 requirement only says you have to have a policy. It doesn't say anything about what that policy has to contain. Now, I would also-- to, to compare that to the language, in this bill, that talks about the, the, the services and other things that were provided to students when they're removed from the classroom, but none of those-- and extended resources or any other things that are, that are talked about, provided to students who are removed, none of that is in the language of restraint, of restraint or seclusion. And it-- and it's up to the school to put those in. So I think that, not only would you have to rewrite the entire bill, but also, it would be important if you wanted to go a different route is to, is to have something that says that these-- the school policies have to be uniform or that there is some standard, a minimum standard, expressed in state statute, that would make these more protective and more uniform across the board. For example, West Side's policy is, like, 21 pages long; Bellevue's is five-- is a paragraph. And it has, it has no proscriptions in there. It just says we will restrain students if we feel like it. So we have a, we have a patchwork of protections existing in this high school, for every single school in the state that are not uniform, which means that your students' protections is pure-- is purely based on their zip code or what school they go to and how progressive or how thought-- or how far thinking that school happens to be. Or there needs to be-- or if you, if you are, are-- if you are dead set on having something in statute, I think that it might be a good idea to start at developing a framework, instead of actually making some sort of, like, these very restrictive and prescriptive things in the-- in this particular bill. So, for example, you'd say things like it would be the policy of the state to maximize the opportunities to minimize the use of restraint and or seclusions, especially when they're done inappropriately. There will be no positive-- there will be no prone restraint or supine restraint. You know-- and that-- you know, so you can put a framework in place and then, have those bodies and those institutions that are more connected to the literature, who are more knowledgeable of the policies of restraint, the, the, the, the risks, risks and all those things that go along with those, should be making the policy. So I think there's a few options we can do here. This bill is not one of them.

ALBRECHT: I do appreciate you more than you know, Disability Rights of Nebraska. So have you ever been invited to, to talk about this bill--

BRAD MEURRENS: No.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: --in the last eight years with anyone?

BRAD MEURENS: No. We, we-- there was a meeting. There was a meeting that was, that was called by Senator Pansing Brooks. Senator Walz, I think, was there and Senator Groene was-- appeared at the meeting, but that was so many years ago. I can't remember how many years ago that was and--

ALBRECHT: OK. Thank you. Thank you very much.

BRAD MEURENS: --and nothing really-- I don't think anything really resulted from that, in terms of--

ALBRECHT: OK.

BRAD MEURENS: --concrete changes to the language.

ALBRECHT: Great. Thank you so much. Senator Linehan.

LINEHAN: Thank you. Vice Chairman Albrecht. Would you agree there needs to be more training though?

BRAD MEURENS: Oh, yes. By all means--

LINEHAN: OK.

BRAD MEURENS: --yes, definitely. And I would suggest that there was really good language in some of the Law Reviews that I was looking at in preparation for this meeting that provides some examples, not only in other states, but also some pretty descriptive examples of what that training might include. Let me go back to the-- my research and provide some of that extra--

LINEHAN: OK. Thank you very much.

BRAD MEURENS: --data for you.

LINEHAN: Appreciate it.

ALBRECHT: Thank you, Senator Linehan. Anyone else? Seeing none, thank you so much for being here.

BRAD MEURENS: You're welcome.

ALBRECHT: Appreciate it. Any other opponents?

MOLLY JARESKE: Good afternoon.

ALBRECHT: Hi. How're you doing?

MOLLY JARESKE: My name is Molly Jareske, M-o-l-l-y J-a-r-e-s-k-e. My son, Caiden, is eight years old and a former student of Heritage Elementary. Caiden has high functioning autism. He had an IEP that was not implemented, resulting in the use of seclusion and restraints. His story has recently been covered on the news, as well as the Omaha World-Herald. My son was placed in an isolated classroom for the month of November. They knew I was against this idea, as it was not his least restrictive environment. They also had made their seclusion room into his classroom, the room where Caiden had his strongest emotions; they expected him to sit alone and learn. But they had me cornered, as they refused to transfer him, refused to send him back into a general education setting and reassured me they were confident and positive going forward with the right things in place. My hands were tied as truancy was brought up. I had kept Caiden home from school following the news broadcast in late October, due to the extreme bullying I knew was to come, as it had already begun. Caiden would not have been safe. He attended schools 11-- school 11 days in November, before I decided enough was enough. I needed to homeschool. In those 11 days, Caiden describes being restrained on eight different occasions. The school only documented four. On Caiden's last day of attendance, Caiden had some marks on his arm and stated that his teacher hurt him. My son describes the teacher pushing a door hard enough into him to leave red marks and bruises while trying to seclude him. This was after restraining him undocumented, multiple times that day. I'm sorry. I lost my spot.

ALBRECHT: It's fine. Take your time.

MOLLY JARESKE: OK. The Department of Education, the Department of Education did an investigation into Caiden's school career at Heritage. The district was found in violation of several things, including but not limited to restraint and seclusion, as well as not using positive behavioral interventions. Seclusion was not even included on his BIP, though they used it regularly in October and November. In November, while my son was alone in a room with special education teachers, Caiden describes being physically pulled apart by two teachers. He showed me exactly what they did to him. One teacher would stand on his right foot and pull his right arm in one direction and another student would stand on his left foot and pull his left arm in the opposite direction. They were not only ripping him apart

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

mentally, but physically, as well. This also conveniently happened where there are no cameras. My child deserved the least restrictive environment to obtain an education and instead, he was hurt, demoralized and made to feel as though he was a burden to this world. I watched my son, who was seven at the time, come home defeated, scared and with depleted self-worth. To listen to your child say, I am the dumbest kid at school. I should just leave and I'm not meant to be here, is devastating to hear. My son walked into school daily in survival mode. He was already set up for failure because he was questioning how he would be hurt that day. Caiden was fighting for his life. He was scared and knew he was not in a safe place. I had 15 meetings with the school in a two-month time period, almost all per my request. Seven of these 15 meetings were in the 11 days that Kayden was isolated. There were also numerous emails, phone calls and check-ins throughout the school days. My son now struggles with trusting adults. He has extreme anxiety interacting with them and is frequently uneasy when approaching the school to pick up my daughter, who still attends Heritage. He recently had to enter the building and I've never seen my child shut down faster than when he walked through those doors. He would not look up. He would not talk to anyone and he clenched my hand the entire time. He was scared as to what could happen next, being back there. It is appalling to know that this is happening to students daily. Our entire life was changed due to Caiden being secluded and restrained in school. It's a barbaric practice that needs to come to an end. These students need to be encouraged, empowered and inspired, not degraded, weakened and destroyed.

ALBRECHT: Thank you for your testimony.

MOLLY JARESKE: Yes.

ALBRECHT: Appreciate it. Senator Conrad.

CONRAD: Thank you so much, Vice Chairwoman Albrecht. And thank you so much for being here and sharing a very painful and powerful family experience in regards to this measure. I know that's not easy--

MOLLY JARESKE: It's not.

CONRAD: --but it, it definitely is impactful and it informs the process significantly. So please know how much we all appreciate your testimony. I did have a chance to read about this a little bit in some of the news coverage and I appreciated you bringing some more

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

information to the committee today. But if you're able to say, has your family-- now that you're homeschooling, is that right?

MOLLY JARESKE: Um-hum.

CONRAD: OK. Have you had an opportunity or ability to pursue mental health counseling or support or things like that?

MOLLY JARESKE: Oh, absolutely. I mean, before this had even happened to Caiden, we were working closely with Munroe-Meyer Institute.

CONRAD: Oh, very good.

MOLLY JARESKE: He has a therapist there. He has an occupational therapist there. I have a therapist. All of those things were in place before this happened.

CONRAD: OK. Yeah. I was just-- I mean, obviously it's very traumatic. So I just, you know--

MOLLY JARESKE: Yeah.

CONRAD: --wanted to see if, if you had access to those services. And then, you know, just to be clear, too, I mean, perhaps some of it predated the incident at school, but your family is paying for those services, the school district is not?

MOLLY JARESKE: For?

CONRAD: For, for those--

MOLLY JARESKE: Oh, correct. I'm paying for them. Yeah.

CONRAD: --those therapeutic services.

MOLLY JARESKE: Correct.

CONRAD: OK, Very good. Have you thought about or maybe it's beyond the immediate needs of your family, pursuing legal option against the teachers involved or the school involved? And if-- I don't want to put you on the spot.

MOLLY JARESKE: It has, it has crossed my mind. We're kind of at a point that we want it to be over.

CONRAD: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MOLLY JARESKE: It, it was a really hard thing. And, you know, now, even being out of school and away from this situation, his dentist and pediatrician have asked me, what happened? He's doing amazing. He's doing so good. He's thriving. We are seeing so many positive things. I'm like, he's been out of school for three months. He's been home getting positive things. I mean, he's not a violent child. We go to Altitude every week. We go to all these social events. There's never, ever been an issue. He was pushed to this point by the teachers. And I-- it, it just, to me, it's not appropriate. It's not OK. He's seven and most of these restraints happened when he wasn't even near other students. He was alone. So it-- it's not, it's not OK.

CONRAD: It is not OK. I have a child that's very similar age and one not too far away from that, as well. And it is unimaginable, to me, to think about allowing somebody to place their hands on my, on my children.

MOLLY JARESKE: And, and with this bill, those teachers are allowed to do that. They're allowed to do it. The way that-- I mean, you can't do it to an elderly person. You can't do it, you can't do it to anybody else in the world. But here is our future-- go ahead. It's free game. No, that is not how it should be.

CONRAD: Thank you so much. Thank you.

ALBRECHT: Thank you, Senator Conrad. Any other questions? Senator Linehan.

LINEHAN: Thank you, Senator Albrecht. Thank you very much for being here. I know it's very difficult. Is there-- does-- I know a little bit about Munroe-Meyer, just to be dangerous, but do they have a full-day program?

MOLLY JARESKE: They do. It's a six-plus, six-plus month waitlist and Bennington denied. They said we can put him on the waitlist, but that's not our top option and they did not start that process.

LINEHAN: OK. Thank you very much for being here. Appreciate it.

MOLLY JARESKE: Yeah.

ALBRECHT: OK. Just, just real quick--

MOLLY JARESKE: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: --I do want to thank you again for sharing this.

MOLLY JARESKE: Um-hum.

ALBRECHT: Because this bill, if, if we talk about it and we figure out what we need to do-- I would like to know if that school actually had and I'll check into it, you don't have to; I'd like to know what type of policies they do have, currently. And even when you were going, did you ever ask them, you know, I mean, when you enrolled your child, what type of-- how they would-- how would they work with your child?

MOLLY JARESKE: With it-- so I didn't-- I was under the understanding that it would never be an option, because it was never included on his IEP or his BIP or any, any of that. So I didn't feel like I had to question them about it because it wasn't-- I mean, his IEP, he probably had almost 50 things on it that they could try first. And they-- rather than trying, you know, checking off those 50 things, they just said, let's put our hands on him. We're tired of dealing with him. So, I mean, it wasn't even a situation where he was around other students. It's--

ALBRECHT: So again, I know you're an opponent to what happened with your son, but, but with a bill like this, we, we do have to figure out what we need to do to protect him, to protect the children in the class, to protect the teachers. Something-- we're missing a huge piece of our puzzle, here, that is not coming clear to me, as-- being on Education for the first year. But a story like yours helps me to understand we, we have more questions to ask and I really do appreciate you being here today.

MOLLY JARESKE: Yeah. Absolutely. And I, I have to say, I think that training-- and it can't just be the special education teachers or the paras or-- it has to be any child [SIC] that's going to be interacting with an inclusive kid needs to know how to do it.

ALBRECHT: Yes.

MOLLY JARESKE: I was a para for Bennington Elementary. I wasn't even allowed to see their IEPs. There has to be training. Clear and distinct. Nothing vague. It has to be to the point and, and very, very detailed, as to what needs to happen. Because with the vagueness, this is what is happening. I could name three other kids at this same school that the exact same thing is happening to.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: OK. Thank you again. I really do appreciate hearing your testimony today. Anything else from anyone? Thanks again for being here. We appreciate it.

MOLLY JARESKE: Thank you.

ALBRECHT: Any other opponents? Good afternoon. Thanks for being here.

LAUREN MICEK VARGAS: Good afternoon, members of the Education Committee. My name is Lauren Micek Vargas, L-a-u-r-e-n M-i-c-e-k Vargas, V-a-r-g-a-s. It's quite long. I'm executive director of Education Rights Council. We are a nonprofit organization that is dedicated to ensuring that all students can stay in school and thrive. We work to create systemic change by removing all legal barriers to educational equity. I am here today to testify against LB811, because it does not create educational equity. In fact, it creates inequity and puts the health and safety of our most vulnerable children at risk. The focus of Education Rights Council concerns deal with permitting physical intervention as a permitted discipline and the fact that LB811 takes away student due process rights that currently exist. First, LB811 permits any, not just teachers, any school personnel, whether trained or not, to use physical intervention against a child to allegedly protect people or property if, in the subjective mind of the school personnel, the child poses a threat to people or property and the physical intervention is quote unquote reasonable. In this definition, threat is undefined. Physical intervention is undefined. Reasonableness is undefined. In fact, every critical aspect of the part of the proposed law is vague and that vagueness can lead to harm or even to death of a child. If you look across the country, just a simple Google will tell you what has happened to disabled children across the nation who have been restrained or who have had physical intervention imposed on them. It can-- they can lead to stroke, panic attacks and they can-- even have died at the hands of school personnel. I am an attorney, but I also am unique because I'm a former teacher and a special education teacher at that. The cases that Education Rights Council currently sees across the state and we've had several, from every area of this state, have involved restraint, usually are situations in which they are our youngest children: four, five, six and seven year olds. This is where I see that restraint happening and it's normally a child with a disability who has not been appropriately served by the school and acts out. LB811 would permit any employee to restrain any child, even children with disabilities, who IEPs specifically say no restraint. And there is no remedy to this. LB811 doesn't even bother to apply

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

federal and state protections for the disabled to its grossly permissive use of physical intervention. Not only is this a violation of law, it is dangerous and LB811 doesn't permit anyone to be held accountable when it all goes wrong. I see that I have met, met my time. May I go on?

ALBRECHT: I-- if someone wants to ask a question, you certainly can.

LAUREN MICEK VARGAS: Thank you.

ALBRECHT: OK. We have questions. Senator Linehan.

LINEHAN: Please go on.

LAUREN MICEK VARGAS: Thank you. As if it weren't enough, LB811 also guts the Student Discipline Act's due process by permitting a school district, at any time, to remove a student from class, with no limits on how many hours, days, weeks or months this removal would be applied and without any of the protections we give to students, such as notice of what they allegedly did wrong and an opportunity to then appeal that punishment of removal. LB811 doesn't even require that a student violated the code of conduct to remove that student. Removal does not require a rationale. It does not require data tracking to determine if removal is being applied discriminate-- in a discriminatory way and doesn't require that it be reported to the state or even to others. LB811 seeks to ensure that all children do not stay in school and thrive and creates legal barriers to educational equity. Nebraska deserves better because our children deserve better. I urge you to please not move this bill.

ALBRECHT: Thank you. Any other questions? Sorry.

BRIESE: Thank you, Vice Chair Albrecht. Thanks for your testimony here today. You speak of educational equity. Are there times when educational equity is implicated when we have a disruptive classroom, a disruptive child in the classroom, an unruly child or group of children?

LAUREN MICEK VARGAS: Are you speaking to the students who may not have-- be that child? Is that--

BRIESE: Yes.

LAUREN MICEK VARGAS: --what you're speaking to?

BRIESE: Very much so.

LAUREN MICEK VARGAS: I think that there's current protections that are in the law for both of those children. What I would state is that Child Find, which is a federal and state law, seeks to look at that child who, potentially, is causing that disruption. It urges-- and the school already has an obligation to say, hey, this kid might not be in the right environment and so we should assess that collectively. Through that assessment, which can come through an MDT process or an IEP, that child may then be removed and put into what is called the least restrictive environment. That doesn't mean that every child should be in a general education classroom. That means what is that individual setting for that child?

BRIESE: OK, very--

LAUREN MICEK VARGAS: And--

BRIESE: Very good.

LAUREN MICEK VARGAS: Thank you.

BRIESE: You bet. And you also speak of vagueness. Are, are there times when physical intervention is warranted in the classroom?

LAUREN MICEK VARGAS: I think that, currently, when physical intervention is utilized in the classroom, it is explicitly utilized. So, for instance--

BRIESE: So there are times.

LAUREN MICEK VARGAS: --there have been times and it's in specific schools.

BRIESE: How, how, how do we define those times or when those times are appropriate if we don't use a standard like reasonableness?

LAUREN MICEK VARGAS: Yep.

BRIESE: How do we define that?

LAUREN MICEK VARGAS: I think that-- I can, obviously, give you some of that language that can be utilized. But currently, what that looks like is through that process of IDEA, when we're looking at when are those times that physical restraint and seclusion should be utilized,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

it's in the very last resort and it is very, very specified. And specific training should be offered during those times.

BRIESE: OK. OK. Thank you.

LAUREN MICEK VARGAS: Thank you very much.

ALBRECHT: Thank you, Senator Briese. Anyone else?

CONRAD: I just--

ALBRECHT: Senator Conrad.

CONRAD: Thank you so much, Lauren. Good to see you. Thank you for being here. I don't know if you had a chance to hear the previous testifier. I think you did. I think I saw you there. But I was just wondering, from your vantage point in running an organization where people can reach out in need of legal assistance, it wouldn't surprise me in the least that families who may be aggrieved, under current law, wouldn't necessarily pursue all legal options for a lot of different reasons. One, just kind of triage for what's happening at home. Maybe they don't know about different options. It can be expensive and uncertain. Could you just talk a little bit, just very generally, about, like, how many families you serve with different, kind of, restraint type cases and, you know, just the, the process therein? You know, how long do those cases take to-- I know it varies, I'm sure. But if you could just help the committee maybe understand, you know, why there would be concern in changing the law and why some of those existing legal remedies may not actually be available or accessible to families that are aggrieved or hurt?

LAUREN MICEK VARGAS: Thank you for your question. I think that education law is extraordinarily nuanced. It is dealing with state and federal law on many, many levels. And there's an expectation for parents to understand that when they come to sit at an IEP meeting [INAUDIBLE] to a table. And to be frank, despite socioeconomic, racial, any background, most families, even teachers, do not understand. We train teachers, and myself, being a former teacher and an attorney, have had to learn through this process to understand how to help and assist families. And the families that we have worked with, where restraint and seclusion have been involved, in those instances, it has required multiple, as the parent mentioned, 15-plus meetings to go through the IEP process, to then start a due process complaint. As part of that due process hearing, you have to, by law,

exhaust all options under IDEA, ADA and 504, which are the federal and state laws. So it is not something that can just be simple and fixed quite easily. It's something that requires a process and can take up to a year. Recently, I'm not sure if you have noticed, but there was a case that, currently, is in Nebraska City, where a teacher harmed a student physically, over and over and over again, repeatedly, which led to felony charges. Under LB811, that teacher would not be charged or held criminally liable, based off of the vagueness of how we have it laid out here.

CONRAD: Yeah.

LAUREN MICEK VARGAS: Does that answer your question?

CONRAD: No. That's, that's very helpful. Thank you. And I did see that Nebraska city case in the news. And I was hoping somebody would bring up, you know, how this, perhaps, may alter the legal landscape in regards to that very egregious case. So, so thank you. The other thing that I wanted to ask you, Lauren, if you don't mind--

LAUREN MICEK VARGAS: Yes.

CONRAD: I know you have a lot of expertise on this issue and I appreciate it. Just to follow up on Senator Briese's good question, you know, one thing that I've never really understood about prior measures that are kind of related to, to, LB811 that have moved through the body is-- you know, just from a general sense, the law expects and anticipates and appreciates that people act reasonably. Right. And that's a pretty standard concept in tort law or gosh, even in criminal law to a certain degree. Right. So anything that goes beyond that, kind of, existing reasonableness standard is something new or different. Right. Which is one thing that I've just never understood about these proposals because I don't-- like, I would like to hear your perspective. Are teachers being punished for acting reasonably today?

LAUREN MICEK VARGAS: Not in my experience, not in those instances. And I think to Senator Albrecht's concern about teachers being harmed in the classrooms and so forth and having organizations come to the table to discuss how do we resolve that, I want to say that LB811 isn't the resolution to that. There are so many other resolutions that I believe have been discussed in the past, when our organizations have come to Senator Walz and Senator Pansing Brooks in the past. And none of those resolutions that were proposed for their disability organizations are

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

currently in this bill. And so when we look at that and when we talk about, not only for-- what is happening to teachers, but also if they're being punished in that arm, no.

CONRAD: Right. That's very helpful. Thank you. And I think there's no doubt, in this very long-running debate that our state has had, there's a ton of common ground around resources and training and making sure all the stakeholders, kind of, understand the lay of the land and have the resources they need to follow best practices. So I'm, I'm, I'm grateful that you've reaffirmed that. The last, very final, last question I have: Lauren, we did hear from previous testifiers, Mr. Muerrens at Disability Rights, in particular. And, and I think maybe Senator Murman might be onto something here, as well. But there's a real lack of uniformity, in regards to the policies across the state, probably for a lot of different reasons: local control, resources, capacity. If the measure were to solely focus on, kind of, like a model like Senator Briese has or Senator Vargas has had in the past, in directing the State Department of ED to develop a model policy for utilization, would that be an effective strategy or solution that the committee could or should consider that would remove some of your concerns or opposition? And if you need to think about it, that's fine too. I'm just brainstorming.

LAUREN MICEK VARGAS: Yeah. I, I don't want to speak to effectiveness.

CONRAD: Sure.

LAUREN MICEK VARGAS: I, I definitely think that it's a possibility. I think that, currently, when we look at student discipline-- and Senator Wayne had a bill that was proposed and--

CONRAD: Yes.

LAUREN MICEK VARGAS: --passed last year, to develop and gather that information. I don't believe us as a state yet--

CONRAD: OK.

LAUREN MICEK VARGAS: --based off of that bill, even have enough information to demonstrate or see what is happening in terms of physical restraint, seclusion, based off of those discipline measures. Because we haven't seen the full result of what Senator Wayne's bill was in the previous year. So maybe that is also a time to pause and see what we're-- get more data and information to see and then, potentially, create that policy.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

CONRAD: That-- that's very helpful. Thank you. And then just one final thought, if you'd like to weigh in. I know the Education Rights Council deals with a lot of different issues in the education sphere, helping individual kids and families, kind of, navigate special education needs or restraint needs or option enrollment or just a, a host of different factors. And I know all of those are important and really challenging. One thing that's always struck me about this debate is how divisive it is. I, I, I know that there are strong and passionate feelings about so many aspects of our public education system and, and that's not all bad to have that kind of robust debate. But it is-- it has been so striking to me how visceral and how divisive the debate around this measure is. I mean, in your education law practice, can you think of other issues that are, perhaps, as divisive as student restraint and seclusion and physical intervention?

LAUREN MICEK VARGAS: I, I think that there's several--

CONRAD: OK.

LAUREN MICEK VARGAS: --but I think in this instance, in regards to the restraint and seclusion and when we're talking about this bill, I think part of it is because the lack of understanding of how these laws intersect and the-- a lack of understanding of education law in general. So how does the federal and state law interact with what is currently being proposed or what is happening, even teachers themselves. I train teachers on a weekly basis, making sure that they understand what those laws-- and how to implement those, is something that doesn't always happen. So I, I guess when we come back to LB811, I think that it's really important to understand the comprehensiveness of what is at play.

CONRAD: Thank you so much.

LAUREN MICEK VARGAS: Thank you.

CONRAD: Thank you.

ALBRECHT: Thank you, Senator Conrad. Thank you for--

LAUREN MICEK VARGAS: Thank you.

ALBRECHT: Any other questions? Seeing none, thank you for being here.

LAUREN MICEK VARGAS: Thank you so much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: Opponents? Any other opponents? Hi.

SHAVONNA HOLMAN: Hi. Good afternoon, everyone, Vice Chair Albrecht and members of the Education Committee. My name is Dr. Shavonna Holman, S-h-a-v-o-n-n-a H-o-l-m-a-n, and I'm appearing before you today on behalf of the Omaha Public Schools to testify in opposition to LB811. The Board of Education understands that behavioral awareness and interventions in relation to student discipline have been an issue that this committee has been reviewing and discussing for many years. It is an issue we have a mutual interest in. We also recognize that these types of behavioral issues are often closely tied to other mental health concerns. We applaud the efforts of this committee and the Legislature to address the issues raised in LB811 and other related legislations. We agree with the goal of improving safety in the classroom. However, we have significant concerns with any legislation which permits and/or encourages the use of physical intervention in the classroom. We believe that physical intervention with the student should be an option of last resort and one which teachers generally should not have to find themselves having to consider. We are concerned that LB8-- excuse me, LB811 will increase the likelihood that a classroom teacher will utilize physical interventions, rather than de-escalation and other techniques. In our experience, physical interventions are more likely to escalate a situation with the student than de-escalate the situation. Escalation of these types of situations increases the likelihood of injury to both the teacher and the student. More importantly, physical restraint of a child in the classroom environment, by a teacher or a trusted staff member, can break the trust previously established, making school hostile for educators and unsafe for students. We also agree that it is the responsibility of the school district to provide training for its staff on the use of appropriate techniques to deal with these types of difficult situations in the schools. The Omaha Public Schools currently dedicate significant resources to train our staff. The requirements of LB811, LB811, with respect to training, are significant and are very similar to a program that the district has been utilizing for some time, called Mandt. The Mandt system is a behavioral crisis interaction training, giving teachers tools to manage themselves and help them teach others to manage their own behavior, recognizing early warning signs of potentially violent behavior and intervening proactively through de-escalation techniques and positive behavior supports. Our district already employs 25 staff members who have been trained to deliver Mandt training. We very much appreciate the funding allocated in LB811. However, LB811 allocates

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

approximately \$290,000 to our district, which is far short of our estimated cost of \$2,524,000 to train the 6,766 staff members affected by LB811. In light of the foregoing, we ask that the committee not advance LB811. And thank you for your time and I'm happy to answer any questions you might have.

ALBRECHT: Thank you for your testimony.

SHAVONNA HOLMAN: Absolutely.

ALBRECHT: Any questions? Senator Linehan.

LINEHAN: Thank you. Vice Chairman Albrecht. Did you-- I think you said, but I just wanna make sure.

SHAVONNA HOLMAN: OK.

LINEHAN: I tried to write it down here. Our district believes it's the responsibility of the district to train staff. And our district has 25 Mandt trainers who are going to train all your staff?

SHAVONNA HOLMAN: So, yeah. So right now we have 25 staff members that are currently trained to do the training for the Mandt-- for our staff members currently.

LINEHAN: OK. So your goal is to have-- I mean, I know you'll never get everybody trained because there's always new members coming, but what is your goal to have your training completed or have--

SHAVONNA HOLMAN: Well, they have to get trained yearly, I believe. It's not just a one year and you're one and done. You have to get retrained to update your, your certification for Mandt training.

LINEHAN: Is it for all your staff or just teachers?

SHAVONNA HOLMAN: All of our staff is available for this Mandt training.

LINEHAN: And you're paying for that out of grants or general funds?

SHAVONNA HOLMAN: I don't know for sure. I can get that information for you to-- give you that. I don't want to give you the incorrect information--

LINEHAN: That's OK. That's fine.

SHAVONNA HOLMAN: --but I [INAUDIBLE].

LINEHAN: Thank you very much.

SHAVONNA HOLMAN: Absolutely.

LINEHAN: Appreciate it.

ALBRECHT: Any other questions?

CONRAD: Thank you.

SHAVONNA HOLMAN: OK.

ALBRECHT: Thanks for being here.

SHAVONNA HOLMAN: All right. Thank you all so much.

KYLE MCGOWAN: Good afternoon, Vice Chair--

ALBRECHT: Hello. How are you doing?

KYLE MCGOWAN: --Albrecht, and members of the Education Committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n. Today, I am representing the Nebraska Council of School Administrators, NASB, STANCE and NRCSA. Our groups have opposed previous bills like LB811 for a few years, primarily because their premises, physical intervention in the classroom, won't make schools safer or students more obedient. We believe the current Student Discipline Act, 79-258, already permits reasonable, physical interventions. In part, the law states administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes or prevent interference with the educational process. Over the years, our organizations have supported efforts for additional training. Senator Walz has offered those. Actually, previous bills has offered that. LB811 has additional training. We fully support those efforts and we appreciate it. However, our organizations will not support any efforts which attempt to encourage or even insinuate that more physical intervention between school personnel and students creates a better learning environment. I'm also speaking to you as a 30-plus year educator, teacher, principal, AD, superintendent, that has had to use physical intervention with students in the past. And I can tell you, when you take that step, kids are not melting in your arms. You have just

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

created a situation that could escalate the wrong way very quickly. So I do think that there are alternatives. LB811 is the wrong message for our educators.

ALBRECHT: Thank you for your testimony. Questions? Senator Walz.

WALZ: OK. Thank you. Because you have had 30 years of experience, I'm wondering if a bill, LB811 was passed, how, as a superintendent, would this work in your school?

KYLE MCGOWAN: Well, the, the-- when the term physical intervention is added to the bill, that looks to us as you're encouraging physical intervention. When you have language that says no teacher or other school personnel should be subject to professional or administrative discipline, that appears to try to give license to more physical intervention. The-- it's not getting easier to be in the classroom, so definitely recognize that. And I would say every school, by law, is required to have a policy. I would not go so far to say every school does a great job of training their teachers or informing their teachers. I would like to think the vast majority do. We're, we're putting schools in more difficult situations every year and more physical intervention is not going to help. What could help is smaller class size, more professionals, more mental health training. So this, this is the, the wrong plan at the wrong time and we'll go the, in our opinion, the wrong direction.

ALBRECHT: Any other questions?

WALZ: Great. Thank you.

ALBRECHT: Do you have one? Sorry. Senator Walz.

WALZ: I have one more. We talked a little bit about uniformity on policies and procedures coming from the department. Can you just kind of talk about your feelings on a uniform--

KYLE MCGOWAN: I, I do think there-- because I have been involved with some senators in the past and actually, Senator Arch on Boys Town training, too. So there are research strategies that are helpful. All right. Hey, if anything worked at 100 percent level, we wouldn't be having this discussion. Right? But there are trainings for professionals that will help de-escalate and work with students that are particularly troubled. But I would-- I'm here to tell you also, we cannot take away the existing law that allows a reasonable

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

interaction-- physical interaction. I'm not, I'm not advocating that at all, but I'm certainly not trying to add to what already exists.

ALBRECHT: OK. Are you finished then, Senator Walz.

WALZ: Yeah. Sorry.

ALBRECHT: OK, No problem. Senator Conrad.

CONRAD: Senator Briese-- it looked like Senator Briese had his hand up.

BRIESE: No, go ahead.

CONRAD: OK. All right. Thank you so much. Thank you, Vice Chair Albrecht. Could you tell me, do you think it would be beneficial, kind of, from your vantage point-- you work with a lot of schools, a lot of diversity there, in terms of size, resources-- do you think it would be beneficial to direct the State Board of Education or the Department of Education to develop a model policy so that there's more uniformity amongst districts? Or does that get us kind of crosswise with local control issues, but could you speak to the--

KYLE MCGOWAN: Well--

CONRAD: --uniformity or the policy development piece, perhaps?

KYLE MCGOWAN: You're talking about a framework.

CONRAD: Yeah. That's right.

KYLE MCGOWAN: Yeah. So--

CONRAD: Yes.

KYLE MCGOWAN: --there's schools that, for years, have been on a process of training their staff. And they buy into a program, PBIS, Mandt training, Boystown. So those programs all have some universal constants that should be implemented. So I do think it would be very appropriate for NDE to state, this is the framework that we will help you train your staff with. And when I say help, you know, use the ESUs or whatever other systems, to make sure that everybody at least had a common understanding of strategies at work. But please understand, it's-- nothing's 100 percent. Right?

CONRAD: Right.

KYLE McGOWAN: So.

CONRAD: Yeah, because I, I was listening to Mr. Meurrens' testimony and I was thinking on the one hand, like, wow, maybe it's great to have a really lengthy, detailed policy. On the other hand, maybe a paragraph isn't enough. But then, I'm thinking about how exigent these situations are, where something really scary is happening in the classroom and, you know, how do you find the right balance between providing enough information and guidance in the policy, but also recognizing, you know, what happens with human nature when there's kind of a--

KYLE McGOWAN: You know--

CONRAD: --a tough exigent situation?

KYLE McGOWAN: --the other tough discussion: policies are only as good as the people that implement them.

CONRAD: Sure. Yeah.

KYLE McGOWAN: You know, so there has to be accountability. And I firmly believe that people get into education to be-- and when I say education, I'm not just talking teachers--

CONRAD: Yes.

KYLE McGOWAN: --I'm talking about principals--

CONRAD: Yes.

KYLE McGOWAN: --superintendents and the whole group-- to help. It's somewhat of mission work, but that doesn't mean everyone should be doing it. So there has to be an accountability to make sure that we have the right people working with our kids. So I'm all for policy, but I'm also for great accountability, to make sure that we're following those things.

CONRAD: Very last. I'm sorry.

ALBRECHT: Go ahead.

CONRAD: I said last and then I had-- one more popped into my brain.

WALZ: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

CONRAD: But this is the real last. Kyle, can you talk to me, too, about how a measure like this really, perhaps, ties the hands of administrators? If there is a teacher that acts unreasonably or hurts somebody, either under-- OK.

KYLE McGOWAN: Right.

CONRAD: Well, you heard some of the current law--

KYLE McGOWAN: Yeah.

CONRAD: --kind of issues.

KYLE McGOWAN: No.

CONRAD: But--

KYLE McGOWAN: Right.

CONRAD: --you know, under current law, you have an administrative procedure, a licensure procedure, a civil procedure, what have you. If it doesn't rise to the level of--

KYLE McGOWAN: Right.

CONRAD: --of a criminal, kind of, accountability measure to, to deal with those situations and then, how does this tip the scales or turn the tables--

KYLE McGOWAN: Right.

CONRAD: --for those--

KYLE McGOWAN: And, and let's talk about that, in terms of not just teachers--

CONRAD: Yes.

KYLE McGOWAN: --because there can be administrators misusing physical restraint, also.

CONRAD: OK.

KYLE McGOWAN: OK. So I, I don't, I don't want this going on.

CONRAD: Yes.

KYLE MCGOWAN: However, we would expect for what we're describing, a building principal to oversee or his or her staff, that their-- the expectation of how we're working with more difficult kids is in their best interest. And it appears to us, this language would make it more difficult for, in this scenario, the administrator to take corrective action.

CONRAD: OK. Appreciate it. Thank you very much. Thank you.

ALBRECHT: Thank you, Senator Conrad. Senator Brieese.

BRIESE: Thank you, Senator Albrecht. Thank you for your testimony here today. But you're suggesting that this bill, Senator Murman's LB811, it encourages and promotes the use of physical intervention, physical restraint?

KYLE MCGOWAN: Yes.

BRIESE: OK. But then, you're also relying on 79-258. And you suggest it's already covered in there, the use of--

KYLE MCGOWAN: Right.

BRIESE: --f reasonable physical intervention.

KYLE MCGOWAN: Correct.

BRIESE: But it also allows physical restraint, as well.

KYLE MCGOWAN: Currently, you can use physical restraint.

BRIESE: And that would be covered by 79-258?

KYLE MCGOWAN: Correct.

BRIESE: OK. Very good. Thank you.

KYLE MCGOWAN: Did I sound like I'm saying two different things?

BRIESE: Well, I, I, I think we have a proposal here before us that makes no mention of physical restraint, whereas we have a bill here that we're relying on to allow intervention that also would allow physical restraint, that.

KYLE MCGOWAN: I'm, I'm taking physical intervention as also meaning physical restraint.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

BRIESE: It seems, it seems like some of the previous testifiers have tried to distinguish the two, but anyway. Matter of semantics, I guess. Thank you.

KYLE McGOWAN: Yep.

WAYNE: I have a question.

ALBRECHT: Senator Wayne.

WAYNE: So what is the current law of the land when it comes to physical intervention?

KYLE McGOWAN: Right. So your school has a policy. This policy, if-- a school policy, under state law, currently, would allow physical restraint and intervention.

WAYNE: So what is the current law on if you were to say, is that a reasonable standard?

KYLE McGOWAN: Yeah.

WAYNE: Is it a subjective or objective reasonable standard?

KYLE McGOWAN: You're the attorney. You tell me.

WAYNE: I mean, you practice in this-- you're in this field. Right?

KYLE McGOWAN: Right.

WAYNE: So-- I mean, I hope you know what the standard is in the field that you're in. But whether you're--

KYLE McGOWAN: I'll put the standard as I know it when I see it.

WAYNE: So if that's the current standard, then the, the, the term reasonableness is no more vague than what you're saying right now.

KYLE McGOWAN: So I'm just quoting the law using the, the verbiage reasonable. If we make a school policy and this is where they might-- you just heard one district had a ten-page policy another district has a paragraph. So they-- a, a, a school may go into more detail of how they define reasonable.

WAYNE: But that's-- but even a policy doesn't supersede law or case law--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

KYLE McGOWAN: Right.

WAYNE: --because it's below it, right?

KYLE McGOWAN: Right.

WAYNE: So what is the current law of the land-- in Nebraska, when it comes to intervention? It's a reasonableness standard, right?

KYLE McGOWAN: Right.

WAYNE: And that reasonableness standard, I believe it's subjective, in the sense that you take what that teacher knows and everything that teacher knows about that student, when they intervene at that time.

KYLE McGOWAN: I would agree with that. I, I would--

WAYNE: I don't necessarily like that standard. That's the standard--

KYLE McGOWAN: No.

WAYNE: --police use. So I'm just-- I guess-- I'm not saying I agree, but.

KYLE McGOWAN: But the caveat might be in terms-- there may be some schools that say you do not touch another-- a student. There may be that. So that would be more--

WAYNE: So maybe-- there may be a policy out there that says you, you can't intervene. But that policy, I mean, isn't your defense, in that policy, that you have a right to defend somebody, a third party? That's, that's, that's case law out of statute. Right.

KYLE McGOWAN: Right.

WAYNE: I'm not saying I'm in favor of this bill. I'm just-- I'm getting--

KYLE McGOWAN: Yeah.

WAYNE: --confused on the arguments that we're making.

KYLE McGOWAN: Sure.

WAYNE: We're making arguments that reasonableness is vague, but that's the current law.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

KYLE McGOWAN: Correct.

WAYNE: So I guess I wouldn't be opposed to that. I would try to figure out how to make the current law not vague. I'm just, I'm just--

KYLE McGOWAN: No, I see where you're going.

WAYNE: --I'm too logical. I'm trying to follow the steps here.

KYLE McGOWAN: Well, you shouldn't be in the Education Committee. OK.

WAYNE: Clearly, I found that out this year.

KYLE McGOWAN: Our position on LB811 is that it's taking the schools the wrong direction, in trying to make students safe and, and have a culture of learning.

WAYNE: If the, if the training part was by itself, you would support it?

KYLE McGOWAN: Yes.

WAYNE: So if the training-- here's the question. And I'm going to get-- I'm sure Spike will break it down to me later. But if, if the current law is reasonableness standard to intervene, so if we just had the training, wouldn't that be LB811?

KYLE McGOWAN: Oh. Eight-- well, well-- if what you just said is--

WAYNE: If this bill only dealt with the training--

KYLE McGOWAN: --yes.

WAYNE: --based off of 79-258--

KYLE McGOWAN: Right. 79-258. Correct.

WAYNE: --right. If we just did the training--

KYLE McGOWAN: Right.

WAYNE: --and kept the current law, isn't that essentially eight-- LB811?

KYLE McGOWAN: Yeah. I mean-- yeah. LB811 has a, a, a, a nice training piece to it. Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

WAYNE: OK. I'm, I'm trying to figure out what I'm--

KYLE McGOWAN: Yeah.

WAYNE: --what I'm thinking.

ALBRECHT: Thank you, Senator Wayne. Any other questions? Seeing none, thanks for being in the hot seat for a while.

KYLE McGOWAN: Thank you.

ALBRECHT: Next opponent. Hi.

ALICE SHILLINGSBURG: Hello. My notes are tiny on here, but I'll be brief. My name is Dr. Alice Schillingsburg. I am a clinical child psychologist, a board--

ALBRECHT: Can you spell your name real quick? Sorry.

ALICE SHILLINGSBURG: Yes. A-l-i-c-e S-h-i-l-l-i-n-g-s-b-u-r-g.

ALBRECHT: OK. Sorry.

ALICE SHILLINGSBURG: I'm a licensed psychologist. I'm also a board certified behavior analyst. I am also the mother of three children in the Nebraska public schools. I also have a nephew with autism, with some behavioral concerns, in kindergarten in the Nebraska public schools. I am currently employed at the Munroe-Meyer Institute. However, I am here today as a private citizen, predominantly because of my background working in states that do have regulations related to restraints, seclusion and removal from schools. And I have several years of experience working in schools that serve children with adolescence with severe and challenging behavior, firsthand knowledge of the need for clear, thorough regulations to ensure restraint and removal are used only as a last resort and is followed by clear and transparent reporting, which is not possible when the definitions are vague. Today's question is not whether restraint or removal is sometimes necessary as a last resort to keep a student or a teacher safe. Today's question is whether LB811, as written, will actually ensure teachers and students will be kept safe and misuse of restraint or removal or other physical intervention will be prevented. And the answer to that, from my perspective, is no, that LB811 does not contain specific definitions as to what does and does not constitute a physical intervention. What does and does not constitute a restraint does not clearly define under what circumstances these procedures can

be used. Does not provide clear definitions as to when a restraint should be halted. Does not outline what procedures cannot be used under any circumstances. LB811 does not specify a specific time frame during which reporting to a caregiver must occur, leaving open the possibility that a student may be restrained on several occasions before a caregiver is notified. By using terms such as reasonable, which I won't go into tons of detail about that because it's come up quite a bit, but it leaves open the very real likelihood that these procedures will be misused, either intentionally or by accident. What one person thinks is reasonable will vary. And when that happens, what we consider to be a physical intervention may or may not be documented and may or may not be reported. In states where clear regulations have not been put forward, significant misuses of restraint and removal have been documented and may disproportionately affect students of color. My critique of this proposal is this legislation should not be taken as a critique of a teacher's judgment or their good intentions. I have worked alongside teachers and aides who have had to use restraint quite often to promote safety. And I can tell you that every single one of them have humongous hearts and are coming at the work that they do with very good intentions.

ALBRECHT: We have to wrap it up real quick.

ALICE SHILLINGSBURG: All of them relied on clear guidance and regulations to make those good judgments. Thank you.

ALBRECHT: Thank you very much. Appreciate that. Senator Linehan, do you have a question?

LINEHAN: Thank you. Vice-Chair Albrecht. Thank you very much for being here. I appreciate it very much and I appreciate what you do--

ALICE SHILLINGSBURG: Thank you.

LINEHAN: --in your profession. Aren't we kind of in a no man's land already, back to Senator Wayne and Senator Briese's "this is the law?" So, we're kind of like, reasonableness and restraint are already in the law.

ALICE SHILLINGSBURG: Yes. I would say that I think that the portion, here, that makes us, you know-- documenting and reporting and having systems in place to report if-- you know, the purpose of that, from my perspective, would be to determine, perhaps, where schools might need more support or resources or training. But if one school is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

considering X, Y and Z restraint or physical intervention and another school is considering something different and at the end of the year, your reporting is this school's had a thousand and this school has had 200, you can make no sense of that. And you can't make decisions for what to do to support those schools or those teachers in terms of, you know, is the funding enough, which we heard from a, a previous testimony that, perhaps, it's not. And so I think that, you know, not to debate what's currently the law, but I don't know that this clarifies it or makes it better. And if that's the spirit, perhaps that's what should be worked on.

LINEHAN: I think we're just trying to figure out what we need to do. But-- so in your position at Munroe-Meyer, do you work with several different schools?

ALICE SHILLINGSBURG: Here?

LINEHAN: In Nebraska.

ALICE SHILLINGSBURG: Well, I am new to Nebraska.

LINEHAN: Oh, OK. Welcome.

ALICE SHILLINGSBURG: I've worked with-- thank you-- with Millard and certainly familiar with some of the others. But in my, you know, previous roles in other states, have a lot of experience with the vagueness of-- with the ways that these are written and it just leaves open a lot of problems.

LINEHAN: Vagueness of the way the school policy is written or the way the state law is written or both?

ALICE SHILLINGSBURG: The way the state law is written.

LINEHAN: OK. OK. Thank you very much for being here. Appreciate it.

ALBRECHT: Any other questions? Seeing none, thanks for being here today. Any other opposition?

KAREN BELL-DANCY: Good evening.

ALBRECHT: Hello.

KAREN BELL-DANCY: I am Karen Bell-Dancy, that's K-a-r-e-n B-e-l-l-D-a-n-c-y. I am the executive director of the YWCA of Lincoln.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

We have the mission of the elimination of racism, empowerment of women and girls. My testimony is coming around, but I did want to highlight one point that I think we haven't discussed enough and that is the children who would be mostly affected if this is moved further and it does become law. And that would be those children of color and I think, in particular, those girls of color. I also serve on the county committee of Racial and Ethnic Disparities and working with children that are, hopefully, not moving any further into the system. And I think if we move this type of legislation forward, we will start to increase those particular students that are already susceptible of moving into the pipeline of prison. And we also, we talk about-- we've heard earlier with the introduction about the protection of teachers. I don't think that the language is identifying enough of those that would be most affected and that's-- are those children. I started my career as an educator in the classroom: kindergarten, first grade, fifth grade, high school and then higher education. I've also been trained in BIST and PBIS, as well. And I'm thinking that the emphasis on the kind of training and working with these educators that are in these buildings that have to work with these children every day, we haven't really touched on working with soul. And I'm speaking to working with a real cultural understanding, working with students that we know that already, they or their families are in certain categories when it comes to demographics, when it comes to socioeconomic status, there are different strategies that, when we have that kind of understanding, then we can really work to de-escalate children. And we don't have to move toward this type of legislation. To me, this is perpetuating violence and we don't need to do that anymore. We already need to talk about reform, as it works with those that are placed in schools to help restrain students. This is not the answer. And as a representative of the YWCA of Lincoln, we strongly oppose LB811 and I would entertain any questions and offer myself as a point of reference, as well.

ALBRECHT: Thank you for being here. Thanks for your testimony. Any questions? Thank you very much for being here.

KAREN BELL-DANCY: Thank you.

ALBRECHT: Are there opponents? No problem.

DEWAYNE MAYS: Good evening, Senator Albrecht and committee. I'm Dewayne, Dewayne Mays, D-e-w-a-y-n-e M-a-y-s, and I'm a resident here of Lincoln, Nebraska. I'm representing the Lincoln branch of the NAACP and we're in opposition of LB811, which authorizes, authorizes the use

of force against the most vulnerable students in our public schools, while providing broad immunity to those who may be using this force. In other words, it gives a free hand to persons who can harm those who are-- who we are obliged to protect. The NAACP is the largest civil rights organization in this country and has advocated for the rights of all citizens for over 100 years. It is our mission to advocate, to encourage and support fair and equitable treatment, treatment for all people. Through our collaborative efforts with community partners, we have determined that there is a need for more efforts toward assuring all students are treated fairly, regardless of race, creed, color, national origin, religion, hairstyle, religious headgear or LGBTQ plus status. The state of Nebraska must not pass laws that are flawed and make one segment of our population more vulnerable than others. Statistics have shown that in our schools, students with disabilities and students of color are disproportionately more harshly disciplined than other students. LB811 will exasperate SIC] discipline issues and promote the schools-to-prison pipeline. The potential for heightening trauma and all students will be increased. Because of this heightened risk to teachers and to students alike, LB811 provides a poor choice for Nebraska. Instead, we should provide schools with resources that address the needs of the most vulnerable students, such as social, social and mental services and many more have been listed by other, other participants today. Therefore, we are asking you, the Education Committee, to vote no on LB811. Thank you for all that you do in serving all Nebraskans.

ALBRECHT: Thank you for your testimony, sir. Any questions? Seeing none, thanks for being here. Appreciate it.

JACOB CARMICHAEL: Hi. My name is Jacob Carmichael. J-a-c-o-b C-a-r-m-i-c-h-a-e-l. I spelled it right this time, so that's a good start. I am in opposition to this bill, LB811, today. The simple fact of this bill is that it will kill students. There are numerous studies tracking it. There are numbers. I can email the committee multiple, multiple studies from universities, over decades, of how incidents of these restraints that are taught in behaviorals-- in these kinds of trainings that this would be providing, these types of prone restraints, especially on autistic children during non-verbal meltdowns, which I have had. I have luckily never been subjected to a prone restraint, but it is terrifying that it is an option and that I would not be able to advocate for myself and possibly asphyxiate to death. Having that hanging over students' heads is unacceptable. As some people have mentioned, Senator Albrecht, as you have brought up, there are policies in place over it. And you have the ability to talk

to school districts and talk about these policies. And in all honesty, in this session, this bill isn't likely to get through. So if you want to get something done faster, you're better option is to talk to the state board, talk to somewhere like Boys Town and develop policies that deal with these things and then, talk to school districts, individually, in your districts across the state, using your existing laws to make them and enforce those laws. Put these types of policies in place if you're truly concerned about that. But expanding this training and creating, and creating a law that allows restraints, whether it's mentioned in the bill or not, it's mentioned in the introduction, and I haven't gone to law school yet, so I'm not an attorney and not the best, but it's mentioned in the bill and that would be a strong argument in a court of law for any challenge. But, but the simple fact is this bill's going to kill kids. If you want to truly address these issues, you have the abilities now and you aren't going to get to it this session. So that's it for today. Thank you.

ALBRECHT: Thank you for your testimony. Any questions? Seeing none, thanks for being here.

JACOB CARMICHAEL: Thank you.

ALBRECHT: Any other opponents?

DENISE GEHRINGER: Good evening, Senator Albrecht and members of the Education Committee. My name is Denise Gehringer, D-e-n-i-s-e G-e-h-r-i-n-g-e-r. I'm here today in opposition of LB811, a dangerous piece of legislation. I'm the mother of a son with Down syndrome and president of the Board of Directors of the Down Syndrome Alliance of the Midlands, which is what brings me here today. Did you know that oh-- Idaho and Nebraska are the only two states in our country that do not have legislation in place that greatly restricts or prohibits the use of seclusion and restraint in educational settings? Why would we move in the opposite direction of 48 other states and introduce legislation that removes a large piece of accountability and oversight of school employees that will lead to an increased use of harmful methods and long-term trauma for students? There must be a better way. A multitude of experts say there are better ways to manage classroom difficulties. Abundant formal research can be found suggesting that the use of restraint and seclusion can be reduced drastically, by focusing on meeting students' needs and defusing tense situations before they escalate. It makes more sense to legislate resources that invest in new models for addressing tense situations in the classroom, then putting in place legislation that eliminates the legal liability

of school employees and that inevitably fosters more use of mentally and physically harmful practices. LB811 allows for barbaric, outdated practices that disproportionately impact students with disabilities. It lacks clear language and does not define what is and what is not reasonable intervention. In October 20-- 2022, Hearst Media Group article called When Schools Use Force: a National Investigation, says federal data shows that nationwide, these practices are used disproportionately on students with disabilities, black students and boys. Students subject to restraint and seclusion tend to be in elementary school, while some are preschoolers as young as three and four years old. Roughly 80 percent of the students subjected to restraint and seclusion were students with disabilities and about 82 percent were boys in 2017 and 2018, which is the most recent year of federal data that was available. However, students with disabilities accounted for just 13 percent of the student population and boys, 51 percent nationwide that year. Students with developmental disabilities often lack good communication skills and frequently, their frustrations that go along with this difficulty can result in behavior that is misinterpreted as aggression. Using restraint or seclusion as discipline for communication frustrations leads to physical and mental damage, as well as long-term trauma. Restraint methods do not prevent future occurrences. In fact, they cultivate them. Students that are restrained or secluded do not feel safe, nurtured or understood. I don't want my children, grandchildren or any children to be afraid of the school staff that are supposed to be there to make them feel safe. I'm sure you don't either. I ask that you vote no to moving LB811 to the floor, so all Nebraska's children can feel safe while they're in school.

ALBRECHT: Thank you for your testimony.

DENISE GEHRINGER: Thank you.

ALBRECHT: Any questions?

CONRAD: Thank you.

ALBRECHT: Seeing none, thank you for being here. Next opponent.

ROSE GODINEZ: Good afternoon.

ALBRECHT: Hi.

ROSE GODINEZ: My name is Rose Godinez, spelled R-o-s-e G-o-d-i-n-e-z, and I'm here to testify on behalf of the ACLU of Nebraska in

opposition to LB811. I think we can all agree we all want safe schools. Also understand that there are serious challenges being faced by students, parents, and staff in our society and in our schools. We fully support efforts to improve training, awareness, and educational support for staff, students, and families in need. However, this bill, beyond the awareness and training components, is simply another rehash of the bill that has been unsuccessful in sessions past. First, the bill purports to give teachers individual absolute decision to eject students from class. This is inconsistent with other laws in Nebraska relating to compulsory education. This bill provides no guidance for when a teacher is authorized to remove a student from class or give limitations as to how long a student will be removed from class, or if those-- they are subject to the student discipline hearing process. The ACLU published a report a couple of years ago called: 11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools and found that both black and indigenous students lose more days in instruction than white students in Nebraska and across the country. Studies show that many children who suffer trauma at home have discipline or behavior problems in school. Instead of trying to help those children succeed, this bill seeks to eject them from school. A very unfortunate consequence of this legislation will lead to the physical discipline, expulsion, and referral to law enforcement that we already know is very present and affects students of color and students with disabilities the most and continues to funnel students into the school-to-prison pipeline. We urge you to give greater consideration to the profound inequities and days of lost instruction due to disciplinary actions in Nebraska schools. Second, the enforcement activities, including the physical intervention contemplated by this bill in school should be limited to issues involving clear violations of criminal laws and not school disciplinary rules. And such enforcement should be done by police officers not school staff for those instances when it is appropriate for officers to intervene and their responsibilities and authority is clearly outlined. I also want to touch just really quickly, I know Senator Wayne isn't here, but I know Senator Conrad also had similar questions about what's in the law already. We have 79-295 which prohibits corporal punishment. We have 79-258 which outlines that staff may take actions regarding student behavior which are reasonably necessary to aid the student, further student [SIC] purposes, or prevent interference with the education process. And then lastly, there's, of course, the Daily Supreme Court case, which also gives a little more detail on what staff members can do. Third, LB811 would also provide blanket professional and administrative immunity for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

teachers and administrators. And I see my time is out. So just with that, I urge the committee to indefinitely postpone this bill.

ALBRECHT: Thank you for your testimony. Any questions? Senator Linehan.

LINEHAN: Thank you, Vice Chairman Albrecht. You mentioned the Daily Supreme Court case. Am I saying it right?

ROSE GODINEZ: Correct.

LINEHAN: So could you just a little bit explain what that said?

ROSE GODINEZ: Yeah, sure. So the Daily Supreme Court case is from 1999, and it had to do with a teacher who was subject to disciplinary action and the Supreme Court case was basically analyzing what corporal punishment was. So that's how they distinguished and outlined what is corporal punishment versus what is reasonable physical restraint. So I have a quote actually of where they go into that analysis and it says: It provides authority for school teachers and administrators to use physical contact short of corporal punishment to the degree necessary to preserve order and control in the school environment. Moreover, the statute authorizes an acceptable level of incidental physical contact as is necessary for teachers to promote personal interaction with their students. A certain amount of incidental physical contact is virtually unavoidable for people working together in a social environment. So all in all, we believe the law already encompasses what the intent is in this bill.

LINEHAN: Thank you very much. So going back to the training practice itself [INAUDIBLE] back down, wasn't there conversations somewhere along the line that part of the training should be explaining the Daily case to teachers or administrators so there wouldn't be so much confusion about what the law is?

ROSE GODINEZ: I don't recall that piece, but I'm happy to get that for you, Senator Linehan.

LINEHAN: Well, I don't know that it ever got-- I just remember we've had this hearing and it seems like several times.

ROSE GODINEZ: Oh, I see.

LINEHAN: And one of the things that came up during hearing, I was just wondering if you would remember if that was part of what we should do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

is make sure that administrators or somehow we explain to people what the current law is because it seems to me there's a lot of confusion about that.

ROSE GODINEZ: There must be because even-- I, I know I've testified on this before and we have a current case where we discovered in discovery and, and depositions and such that it's not required because the, the staff member that we deposed had not taken any de-escalation training.

LINEHAN: Yes, I think it's been well established it is not required.

ROSE GODINEZ: Yeah.

LINEHAN: Thank you very much for being here.

ROSE GODINEZ: Sure.

ALBRECHT: Any other questions? Seeing none, thank you very much for being here.

ROSE GODINEZ: Thank you.

ALBRECHT: Next opponent.

ANAHI SALAZAR: Thank you, Vice Person Albrecht and members of the Education Committee. My name is Anahi Salazar, A-n-a-h-i S-a-l-a-z-a-r, and I am the policy coordinator for Voices for Children in Nebraska. But today I'm representing myself as a former educator. I was an educator for seven years and I oppose LB811 because physical intervention and seclusion are not the answer for school safety. I had students with high behavioral needs who would on occasion become so upset that they would throw crayons and a couple of times even throw chairs. What the students needed was not their boundaries of personal contact crossed without consent. What they needed were strategies and social emotional learning on how they could communicate what they were feeling. These students wanted to be in class and they wanted to participate with their peers. I also wanted them in class. I also wanted them to have these social and academic experiences with their peers. And I had built rapport with these students so we luckily had great special education teachers who were teaching these students communication and social behavioral skills so they could identify when they needed space and how to communicate that effectively, as well as to what to do when they needed to de-es-- when we needed to de-escalate or when they felt their anger heightened. If something

were to become escalated, our administration, counselors were trained in PBIS, which has been mentioned a couple of times, Positive Behavioral Interventions and Supports, Tier 3 interventions. So they knew what was correct or incorrect to do with the student to make sure they were safe. As a school community, we already had everything in place, policies to help the student be successful. LB811 directs funding to interventions that are redundant at best and harmful at worst. As a teacher, I would never want to be, want to be placed in a situation where I was expected to restrain or seclude a student. I know that if teachers were placed in such situations, rapport with students would completely erode and every teacher that cares about their students would tell you that if there is not a positive relationship with the student, the student will not succeed in the classroom. Most of the professional development that we go through as teachers was built around the positive relationships teachers must develop with their students. I also want to acknowledge that if teachers were to physically restrain or be in a position to physically restrain a student, what does that communicate to the other students around? What does that communicate to what they should do to other students? So as teacher-- or students and teachers should not be placed in such vulnerable situations. Increasing trauma experiences in both students and teachers, teachers' lives does not make school safer or more welcoming. What schools need to become safer is more funding. Funding for mental health resources, access to psychologists, social workers, and more adults in each classroom. There are students that need that one-on-one support. Students with needs such as behavioral disability, disability needs should have trained supportive staff. Increasing funding for staffing would make school safer. Teachers go into the field of education because they want to support children in their learning. And I also wanted to, before my time is up, address the Omaha World-Herald article. The, the very last one that was published on defiant and aggressive students, and at the very end of the article, it states that students would cry after they would, you know, have these explosions of feelings and they would be remorseful. And I think we have to remember that it's-- these are little kids, sometimes big adult, or they're still young and their brains are still developing and I think social emotional learning plays a huge role into it. So I'm open for any questions.

ALBRECHT: Thank you. Yes, Senator Walz.

WALZ: OK. You talked-- thank you-- you talked a little bit about the policies that you had in the school that you taught. Did you feel that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

those policies helped prepare you then in the classroom? Did you feel like the things that you were getting were very helpful?

ANAHI SALAZAR: Yes. So we had steps to support students, individualized plans. So the students I'm thinking of, because they had behavioral needs, were on IEPs and we did everything we could in order to keep the students in the classroom because we know that that's how they'll learn and how they'll learn to interact with others if that's like a main issue for them.

WALZ: OK. All right. Thank you.

ALBRECHT: Thank you, Senator Walz. Senator Linehan.

LINEHAN: So-- thank you, Vice Chairman Albrecht-- so were you taught-- how many years did you teach?

ANAHI SALAZAR: Seven.

LINEHAN: So were you taught-- you got all the training?

ANAHI SALAZAR: So we were taught in PBIS, but only-- there's three tiers to it. Tier 1 and Tier 2 were what was mostly covered. If we had students that were Tier 3 students, is what we would call them, then we would have strategies in place, but it's not that we were taught like all of the interventions or we didn't go to like specific training, but because if the student wasn't on IEP, we had strategies in place in the classroom and outside the classroom in order for the student to be successful.

LINEHAN: So did you just teach in one school district or you've been in other school districts?

ANAHI SALAZAR: I've taught in, in Nebraska and I taught in Washington State.

LINEHAN: Do they both have this training?

ANAHI SALAZAR: Washington State had very similar training, but there's is called PBIS-- or there's another acronym in there. It's very similar, though,--

LINEHAN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ANAHI SALAZAR: --and it was the same thing, very structured, but it was based on the school which is what I'm hearing from everyone else that it's not "uniformal".

LINEHAN: So I know maybe you don't want to have to answer this and you don't, but can you tell us what school district you were in in Nebraska?

ANAHI SALAZAR: Yeah, Omaha Public Schools.

LINEHAN: OK. Which matches what Omaha Public Schools said. OK, thank you very much.

ALBRECHT: Great. Thank you, Senator Linehan. Any other questions? Seeing none, thank you--

ANAHI SALAZAR: Thank you.

ALBRECHT: --for being here. Next opponent. Hi.

KRISTEN LARSEN: Hi. Well, I can't say good afternoon. I'll say good evening, Senators. My name is Kristen Larsen. It's K-r-i-s-t-e-n L-a-r-s-e-n, and I'm here on behalf of the Nebraska Council on Developmental Disabilities to testify in opposition to LB811. Although the Council is appointed by the Governor and administrated by DHHS, the Council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. When necessary, we take a nonpartisan approach to provide education and information on legislation that has the potential to impact students with developmental disabilities. And LB811 is similar to prior student discipline bills that have failed in previous years and includes minimal changes from past bills. It does-- also does not include recommendations or address concerns shared by disability advocates from previous hearings. At first glance, LB811 addresses the behavioral training needs of school personnel, but it still contains alarming language related to the authorized use of physical contact and/or the removal of a student from a classroom. It echoes previous attempts to not hold school personnel or professionals to administrative discipline for the use of physical intervention or for classroom removal of a student. While we understand the need for teachers and administrators to maintain control on school property and keep all students and faculty safe, we cannot condone the use of these practices. The Council's legislative and advocacy committee chair wanted to be here today. His name is Stephen Morton, but he was able

to be here and he submitted comments online and I urge you to review them. He shares astute insights from his years as a retired principal as, as well as a director-- or a parent of a young man with a disability. He'll tell a story in there and it reflects to the previous testimony that it's connection before correction. It's about the relationship that needs to be developed with the students. LB811 fails to recognize the national reports and research consistent-- that consistently describe dangerous consequences, including death and serious injuries resulting from the use of physical intervention. Although some argue that the bill will not impact students with disabilities, we strongly differ. And then I provided some research points in my testimony. I'm going to skip one of them because Brad and Denise have both giving you that-- the, the Office for Civil Rights. You know, how many students with disabilities and their-- how many-- that they're more likely to be put into a restraint or secluded. LB811 does not include any essential safety measures to protect schoolchildren, including prohibiting the use of a prone restraint or restraint that would impair students ability to breathe; putting a clear time limit on the length of a time a child could be restrained; or requiring that parents be provided with written notification following the use of this. Nebraska is the absolute outlier in the United States and that our State Legislature has repeatedly attempted to expand the ability of school staff members to restrain and seclude students. This is coupled with Nebraska's presence among the minority of states that have not, either through legislative or regulatory process, developed the use of functional behavioral assessments and behavioral intervention plans as a way of supporting the behavioral needs of students with disabilities. I still have more, the other pieces that I've mentioned are talking about the removal of students from the classroom and how that leads to the school-to-prison pipeline and that students that end up in the juvenile justice system are more likely to have disabilities, mental disabilities, sensory disabilities, that sort of thing. And so the bottom line is we love the component of training in the bill and we like, like the, the training bill, LB705. We just cannot marry it to with the language that's in here currently. It's just dangerous. And we would recommend that there be a legislative resolution where you could broaden stakeholders to come to the table. I've not been invited. Others have not been invited. And more importantly, people with disabilities who have, who've gone through this, been exposed to this, have not been at the table so we would encourage that. And again, even the funding with, you know, the, the, was it LB535, the Governor's bill to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

increase funding would also help. It does come down to funding, comes down to training, that sort of thing.

ALBRECHT: Thank you, Ms. Larsen. Thank you. Any questions? Senator Linehan.

LINEHAN: You said we're the abso-- thank you, Vice Chairman Albrecht. And thank you for being here. You said we're the out-- what'd you-- outlier, the absolute.

KRISTEN LARSEN: Yeah. I think we're the outli-- we're the outliers in the United States because we, we keep trying to expand the use of school staff members to restrain and seclude students. And we're only one of five states that does not have any statewide statutes or regulations in place to define and limit the use of restraint and seclusion practices in schools. So when you talk about what needs to be done, we need to get something in state statute that at least defines it, then we wouldn't have the replay of the record and the same song but a different verse. I think that would be a step in the right direction.

LINEHAN: So I believe it's been the NSEA that's brought this bill. So have you worked with them at all?

KRISTEN LARSEN: No. I mean, no, the Council hasn't. We just follow legislation that potentially could impact and try to comment. I, I do know that we have great partners in our disability field who have tried to work with them. I think Edison McDonald has done some conversations with them and, you know, trying to, trying to stress the importance of training that we need good training on things like Mandt and PBIS.

LINEHAN: But there have been people who've tried to work with them?

KRISTEN LARSEN: To my understanding, yes.

LINEHAN: OK. Thank you very much.

ALBRECHT: Thank you, Senator Linehan. Any other questions? Seeing none, thank you for being here.

KRISTEN LARSEN: Thank you.

ALBRECHT: Any other opponents? Come on up so we know how many are left, please, to the front row. Hi.

DEANNA HOUSE: Hi. I'll keep it brief. I know you all need to get out of here. My name is Deanna House, D-e-a-n-n-a H-o-u-s-e. I'm here representing myself and also speaking as an advocate for my son. I'm a parent of a child that's diagnosed with high functioning autism. And as you may or may not know, autism is a, a spectrum and so basically it presents differently in everyone. For my child, he actually struggles with communication. He struggles with emotional regulation. He struggles with physical touch, and then also being shut in a seclusion room, which we haven't really talked about what those are but I'm happy to answer questions related to that. In his case and many others, behavior is communication. So when he is escalating, touching him and forcing him to go into a seclusion room will escalate him. Policies and training, even though they are in place, do not always ensure that when a crisis is happening, because these things escalate very quickly, that those policies will be followed. My child has been injured going into these rooms and I worry about his safety when he is not with us. As parents, we already have very little recourse when something gets out of control. So this bill takes away my rights to advocate for my child being that it takes away the accountability for, for the, the school district. So the bill does not take, as we've heard earlier today, does not take the individual with a disabilities perspective into account. And so really just looking at root cause behaviors to prevent any escalations rather than just, you know, putting them in seclusion is, is definitely necessary and also utilizing evidence-based practices for de-escalation. So I am going to leave you with just a little quip because there's something that we say in the software development world. We make the analogy of good, fast, cheap, and we say you can only have two of the three. So if you want it to be good and fast, it's not going to be cheap. And in this case it would be fast and cheap, but it's not going to be good.

ALBRECHT: Thank you for your testimony. Any questions? Senator Conrad.

CONRAD: Thank you so much, Vice Chair Albrecht. And thank you for being here and sharing your family's experience. I really appreciate it. I've continually been struck by the very powerful testimonies provided by families, particularly children of color and children with special needs and sometimes children of color with special needs about the trauma that they've experienced or anticipate worsening under a measure like this. And I know it is sincere and heartfelt, and I know that there's probably anything in the world you'd rather be doing than tangling in the political arena today so I just wanted to give voice to that and, and thank you for being here.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: Thank you, Senator Conrad. Thank you for being here. Next opponent.

EDISON McDONALD: Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm the executive director for the Arc of Nebraska. We advocate for people with intellectual and developmental disabilities across the state. We are opposed to LB811. I'm not going to read my testimony to save you all. I have repeated a number of the points that have already been made. But I want to just say again, and I've said this to the committee I think every time I've been here this year, we're in a special education crisis. Our families are suffering. The use of restraint and seclusion is skyrocketing and these kids are getting hurt. And the real answer is not this bill. We need to really work on "reshifting" and reframing. I want to go back to an earlier point. There was a question about, well, is this about restraint or physical intervention? Well, if you look back at LB147, it said restraint in that bill. However, after a conversation I had with Senator Groene, it was shifted to the word intervention and it never had any definition change with it. So intervention is supposed to be a nonforceful, nonviolent intervention, which was supposed to be separated out, but that was misunderstood. And I think it really serves as an analogy for how this bill has gone over the last seven years. It was a bad answer to start. We've tried to modify it piece by piece. This isn't the way that we need to go. There's been so much confusion because there are over 27 organizations that have been opposed to this bill. And as you heard from earlier testimony, only a handful of us have been included in discussions and a lot of them have other points that should be included in discussions. So Senator Albrecht and Senator Wayne had indicated that you all really want to get to finding answers. So I want to talk more instead about answers. First, we need to focus on funding. LB583 and LB385 will help to fund more teachers thanks to Senator Sanders and Linehan. LB705 provides the training that we need. LB46 by Senator Dorn provides extra funding for ESUs and that extra support. One key piece we are missing of the new cases of restraint and seclusion, 90 percent of them that have had issues that have been reported to NDE have been with paras, not with teachers. And we don't have anything extra to provide that extra support and funding for paras, which is a huge shortage. So I hope that you'll go and look instead at focusing on those bills this session and then have a real interim study where we have a broad array of people and conversations. I've tried to start, as you heard from Ms. Larsen. Last year I tried to pull together a bigger stakeholder group, just happened to be the day after Senator Groene resigned and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

so a number of people thought that this bill wasn't going to go anywhere. So I'd encourage you to have an interim study and focus instead on figuring out how we can move this forward. I have been talking to the NSEA, happy to talk to the NSEA and anybody else about ways that we can clarify the rights-- or I'm sorry, clarify how teachers can protect students and themselves. But that's already in the law. But if they feel they need clarification, then we can do that. But the real thing that we need to do is make sure that we are protecting the rights of students with disabilities. Thank you. Any questions?

ALBRECHT: Thank you for your testimony. Any questions from the committee?

WALZ: I have a quick question--

ALBRECHT: Senator Walz.

WALZ: --and it's kind of off what you just said,--

EDISON McDONALD: Yeah.

WALZ: --but I was just cur-- I'm just curious, Edison, do you have any idea what it cost to train somebody in Mandt?

EDISON McDONALD: I-- I've submitted that in previous testimony. I don't remember it off the top of my head right now.

WALZ: Somebody said it was like \$5,000, but I--

EDISON McDONALD: It's, it's significant. And, you know, there'd been this idea with this bill that we would have training and then train the trainers sort of stuff. My understanding from Mandt trainers is that that doesn't really work well and really you need to have that constantly re-upped. And I think the other thing is just with that example, most of the new issues are coming from paras. It's making sure that everybody has that training and this bill would eliminate their liability whether or not they had the training.

ALBRECHT: Thank you, Senator Walz. Any other questions? Thanks for being here. Next opponent. How you doing?

DUNIXI GUERECA: Thank you, Vice Chair Albrecht, members of the Education Committee. My name is Dunixi Guereca. That is D-u-n-i-x-i, Guereca, G-u-e-r-e-c-a. I'm the executive director of Stand For

Schools, a nonprofit dedicated to advancing public education in Nebraska and Stand For Schools is here in opposition of LB811. For the sake of brevity, I will actually keep it short and not read my testimony but, you know, a couple parts of LB811 that we applaud, especially the training and reporting components, but Stand For Schools in particular opposes Section 5, which allows for physical intervention to manage student behavior in certain circumstances. And like a lot of folks before me said, it doesn't really define a lot of things while at the same time applying for a liability shield and that's a big concern for us, but I'll take any questions.

ALBRECHT: Thank you. Any questions? Seeing none, thanks for being here.

DUNIXI GUERECA: Thank you.

ALBRECHT: Next opponent.

JULIET SUMMERS: We've made it. Good evening, Vice Chair Albrecht and members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska here today to oppose LB811. We have been involved, I think, in every iteration of this bill along the way so I can try my best to remember pre-COVID and share some of that history. I'm submitting my written testimony, which has data in it regarding disparate use of physical intervention as well as removal, particularly for students with disabilities, students of color. You've heard that. I'd like to use my time instead to try to answer some questions that I've heard crop up. So specifically on the question of what does the current law allow and how does this bill differ? As Ms. Godinez mentioned, we have 79-258, which allows for, for, for teachers and administrators to use a variety of different interventions with students and says they may take actions regarding student behavior other than those specifically provided. This is the section of statute that we would insert the words "physical intervention" into-- in LB811. There is a related bill that Ms. Godinez has also mentioned called Daily v. Morrill Board of Education from 1999 that interprets this section of statute to set-- to include physical contact to the extent necessary in order to manage classroom order and classroom safety. So our concern with LB811, and I'm happy to go into further detail about Daily again if I can, if I can remember, but we believe that this bill, first of all, it doubles down on, on any vagueness that's there in that old case. And second of all, it, it potentially even goes farther. So Daily applies specifically to teachers and administrators. LB811 gives that

permission to any school personnel while simultaneously only requiring the training element for certain school personnel. So we're concerned about that, that we're saying any person who works in a school is now empowered and has that immunity from professional or administrative discipline, which is also not, not precisely in the Daily case. And I think ultimately, you know, to, to Vice Chair Albrecht's questions about safety, I think every single person in this room is talking about safety and wanting safety for our students, all of our students. And what we, what we know from the, from the evidence, from the research, from best practices is that doubling down on physical intervention, restraint, removing students from class without due process goes the wrong direction. When what we really need to be doing is increasing those connections which so many students have, have lost over the last couple of years. I'm happy to answer any other questions that you may have, but I know we're all here late so I'll wrap it up with that.

ALBRECHT: Thank you very much. Any other questions? Senator Conrad.

CONRAD: Thank you so much, Vice Chair Albrecht. Thank you, Juliet. I actually am glad that you truncated your remarks so that we could have a broader discussion about the lay of the legal landscape because I think Senator Linehan was right on it. That was actually, I think, a focal point of previous debates and there seemed to be some consensus around making sure people kind of already knew what was available or appropriate under the existing law. So-- and you talked about it in terms of application to different parties and how this would be broader than perhaps what existing law would mean. But like if the measure were to be amended to simply codify existing law, would that remove some of your opposition?

JULIET SUMMERS: I think-- I don't think so.

CONRAD: OK.

JULIET SUMMERS: Because I think part of our concern is that by codifying it at all, we are, we are saying this is where our priority lies as a state and, and what we are, what we are focusing on and what we think the solution is going to be. And we, we know that ultimately doubling down on physical contacts in statute is not going to be the solution.

CONRAD: Right,--

JULIET SUMMERS: So--

CONRAD: --kind of as the previous test-- oh, I'm sorry,--

JULIET SUMMERS: Oh, yes, yes, yes.

CONRAD: --I didn't mean to cut you off.

JULIET SUMMERS: Yeah, exactly, as the previous testifier said.

CONRAD: Very good. The, the other thing that-- it's been a little while since I've read that case so I will definitely go back and, and reread it. But that's really in terms of the application in regards to the prohibition on corporal punishment and kind of how that interplays with physical contact in, in a learning environment. But if you remember, and if you don't that's OK, was the teacher involved in that case then subject to other penalties, administrative or professionally, do you know?

JULIET SUMMERS: I believe that, that Morrill was the teacher who was appealing the, the administrative discipline that was imposed on him after bopping a student on the head, I think is the language of the, of the case.

CONRAD: Right.

JULIET SUMMERS: And there was some, there was some, I think, question about exactly what that meant, how the student experienced it versus how the teacher experienced it. But ultimately, I believe, I believe Mr. Morrill was-- or the teacher, it was coming out of a professional discipline. And so the Supreme Court of Nebraska was specifically distinguishing a situation like this does not rise to the level of corporal punishment where it is intended to inflict pain--

CONRAD: Right.

JULIET SUMMERS: --for the purposes of, of disciplining a student. I personally disagree with the, the, the finding that bopping a student on the head would, would be considered reasonable physical contact but we're also a long way from 1999, so.

CONRAD: Yes, that's, that's a fair point. I know you practiced as a public defender before you got involved in public policy work on behalf of kids. And I think there's perhaps a lot of parallels, maybe in terms of issues the committee might be struggling with or previous

Legislatures might be struggling with, where I think there's a general desire to allow people to protect themselves, right, whether it's a, a para or a teacher and if there's an exigent situation happening we want to make sure that people can protect themselves and others. So I think there's-- I mean, that's just like a very common thread that flows through our criminal and civil law. Right? Does-- is there anything in the current legal landscape that would prevent somebody from acting reasonably to protect themselves and others?

JULIET SUMMERS: No, no. Oh, at least from my experience in the criminal context, we all have, we all have a right to self-defense.

CONRAD: Right.

JULIET SUMMERS: And that is a-- is an affirmative defense at law.

CONRAD: Right.

JULIET SUMMERS: So anyone is empowered to act reasonably in order to defend themselves or others--

CONRAD: Yes.

JULIET SUMMERS: --in any situation.

CONRAD: Right, right, right, right. And then the last piece that is striking to me and, I think, that we've maybe seen in prior versions of this, is that it allows for that same concept of self-defense to be extended to property, which is a bit in opposite from what we might see in other areas of the law, for example. And again, it's not particularly defined. So if it's me writing with the Sharpie on my desk, which would be a destruction of property, right, but that could still provide a prompt for physical intervention. And I'm not sure that the senator's intent in bringing the measure forward, but I'm just trying to, you know, work through all the hypotheticals like we're trained to do in, in law school so I, I just wanted to see if you had any particular insights as to the, the component that allowed for basically a, a license to utilize intervention for protection of property?

JULIET SUMMERS: No. I mean, I think that-- I think if that is how we read the bill it would go beyond what, you know, in law we have in terms of self-defense. I think to be fair, from my perspective, reading that paragraph, I, I interpreted it as securing the property because the property was a danger somehow to others.

CONRAD: OK. All right.

JULIET SUMMERS: But what I will say is I think we are two lawyers who both interpreted that section in different ways and I think that gives an example of the precise vagueness that we're concerned about.

CONRAD: Right.

JULIET SUMMERS: And then also in those exigent circumstances, what constitutes securing the property, because it's a danger in securing the property because I'm frustrated with this kid and he's still waving this pen around. And we know, we know, we know from all the data that any vagueness we have in terms of, of interactions like this in schools the students who are going to be harmed are students with disabilities and students of color. They're, they're pushed out of the learning environment more frequently whenever there's vagueness left in.

CONRAD: Very good. Thank you.

JULIET SUMMERS: Yeah.

ALBRECHT: Thank you, Senator Conrad. Senator--

BRIESE: Thank you, Vice Chair Albrecht. Thanks for your testimony. But unless I'm missing something here, the portion that refers to securing of property, that is: if the possession of such property poses a threat, right, and only if it poses a threat to somebody.

JULIET SUMMERS: That-- that's what-- that's how I read it.

BRIESE: OK.

JULIET SUMMERS: I do-- yeah.

BRIESE: Very good. Thank you. And you spoke of immunity. A previous testifier spoke of a liability shield. But don't those only come into play if this conduct of the teacher or the employee is deemed reasonable by an objective fact finder?

JULIET SUMMERS: I think one question that the bill leaves open is who the objective fact finder is and when that consideration occurs. So I think that's a, that's a concern that we have. And I think that, again, putting it, putting it into statute in this sort of proactive

way emphasizes go ahead and try it and then we'll determine later if it's reasonable or not.

BRIESE: Fair to say that an employee that embarks upon physical intervention restraint does so at their own risk, though, correct? They better hope that their conduct is sometime down the road deemed reasonable. If not, they're going to be subject to administrative or professional or legal jeopardy.

JULIET SUMMERS: I think under the current law, yes. My concern is that LB811 shifts that dynamic just enough, potentially, no.

BRIESE: OK, very good.

ALBRECHT: Thank you, Senator Briese. Any other questions? Seeing none, thanks for being here.

JULIET SUMMERS: Thank you so much for all of your time tonight.

ALBRECHT: No, not a problem. Any other opponents? Any other opponents? Seeing none, anyone in the neutral position? Seeing none, Senator-- actually, we have letters here. We have 15 proponents, 48 opponents, and one neutral. So, Senator Murman, you're here to close.

MURMAN: OK. I think even according to a dairy farmer, we're getting into the evening this time of year. If it was later in the spring, maybe it'll still be late afternoon. But anyway. Two, two words that brought-- were brought up a lot during this discussion was "reasonable" and "restraint" and reasonable, of course, is current law and that's what's in the bill. And restraint is not even mentioned in the bill. So I, I just can't understand why those two words were brought up so much. But I'm going to just go through, I took a lot of notes, so just kind of go through the notes. Disability advocates and administrators have had eight years to bring a bill to address the problem that's in our schools. And I think we, we can all say that there's a problem in our schools with disruptive students interfering with, with education so-- and no other bill has been brought up, only this one. And the NSEA has brought this up to me now again this year. To be honest with you, I wasn't even going to bring this bill this year, but the NSEA brought it up to me. You know, I've-- I'm just kind of tired of fighting over it. We had two-thirds support in the Legislature. We couldn't get a vote on it. But, you know, I think there's a lot of support for it. But, you know, with their encouragement, I did bring it again because, again, they're on the

front lines, the teachers are on the front lines. And then we also heard, first of all, that it's way too vague. And then I think it was the same testifier that said, but it's too prescriptive, so I'm not sure which it is. You know, it was deliberately left vague or a little bit vague at least for schools to have their own policy on, on discipline. So that was on purpose. And then also we don't want to be too prescriptive because all, all of the IEPs that are with students that have IEPs, you know, you want to be able to follow the schools, want to be able to follow those IEPs exactly how they should be followed. And I have met with disability groups. I have met with a, a lot of these groups. And then seclusion was brought up a lot. And the only-- I think the only place it's mentioned in the bill about seclusion is it says that when students are pulled out of the class, the goal is to return them to class as soon as possible. So there was testimony that, oh, we had to have a certain time, you know, they should be brought back to class. Well, I didn't want to say keep them out of day, a week, you know, whatever it takes. I said get them back into class as soon as possible. And then bullying was brought up. Well, this bill should protect students from being bullied because it says physical intervention can be used for protection. So if a student's being physically bullied or anyone's being bullied, you know, this bill should allow for easier protections in that situation. I noticed-- I'm not sure if we had any teachers testifying. I don't think any pro-- any proponents, but well, maybe we did, not sure. But anyway, not too many. But teachers are really afraid to testify because of what might happen if they're in here testifying. We did have a interim study on this. I know Senator Linehan was there. It's probably been three, three years ago or so. And we heard about teachers that got broken bones, concussions, all kinds of injuries from the violence that's happening in our schools. Training, of course, is in the bill. And the reason it says that new teachers-- or, or it's not necessary to have the training to have the physical intervention is because, of course, like I said, the only time physical intervention can be used is to protect the classroom and protect others in the classroom. And it's possible substitutes, new teachers, and so forth that haven't had the training yet, it might be necessary for them to protect the classroom. So that's the reason we had the exception there. Mandt training was mentioned and, of course, the training of Mandt is, is some of the training that can be done with the funding from the lottery. Also, I have worked with some of these groups here. And by the way, all of them have been invited to work with me on this bill. I have talked to the lobby for some of these groups that are represented here today, and they have told me

there, there isn't any room for compromise, so. But they all are invited. And if they don't realize it, I'm inviting them now. I would love to work together with them. But I have worked together in the past with Senator Arch, with Boys Town, with the ACLU, and the ESUs also. So, of course, the, the most important thing in this bill is protecting the learning environment, you know. Like I said, kind of in the-- in earlier disruptive behavior is really interfering with the learning environment in our schools. And I think somebody mentioned that parents don't have to be notified and it says parents have to immediately be notified when a, a student is removed from the classroom. And then there was a lot of complaints about the funding is just not enough for the training. Well, I agree it's probably not enough. But right now there's no funding from the state for specifically for, for behavioral training. So this is a, a-- I don't have the exact figures, but anyway, a lot of funding is being provided through this bill through the lottery. Also, you know, again, about the specificity, leaving it up to school districts to be more specific on their policy. It does allow for schools with certain demographics to, to have a policy that they feel does fit their demographics of their school. And liability was mentioned. As long as a teacher or a school employee educator acts within the student-- or the school policy, they will not be sued. If they're outside the school policy, they can be sued. But if they're acting in the school policy, the school can be sued so lawsuits aren't restricted either. You know, we, we heard testimony from a lot of disability advocates, and I'm personally a disability advocate. I've got a child who went through the whole school system and she's on the autism spectrum, by the way, on the-- not the good end of the spectrum. But when she started school we told the educators that if she was ever disruptive-- first of all, she wasn't very often, but it, it could happen, if she's ever disruptive in the school in the classroom to take her out. You know, she, she doesn't want to disrupt the classroom and we don't want her to disrupt the classroom either. So she was included as much as possible, especially when she was younger, with her class. And that's always the goal. And, you know, that's the goal of this bill also. So property was mentioned and, and Senator Briese did bring it up, but the only reason property is there is if that property was a threat of injury to someone in the classroom, so. Protecting the classroom, the hallways, you know, how can, how can we have a good learning environment when there's disruption in the classroom, bullying in the hallways, smoking dope in the, in the bathrooms and setting off the smoke alarm? So those are the kind of problems that this bill is-- hopefully will go a ways to, to encourage to, to protect. So I know I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

went pretty long especially with as late as it is, but I'll sure take some questions.

_____ : You did a good job taking notes.

ALBRECHT: That was quite the recap. OK. So, Senator Conrad.

CONRAD: Thank you so much, Vice Chair Albrecht. And just to-- I wasn't here for your opening because I had a bill before Urban Affairs so I didn't get a chance to ask the questions before, but I just had, had a couple, Senator, and I appreciate your clarity that you brought this because NSEA asked you to. And I've expressed my frustrations and disappointment with their, perhaps with their focus on this measure. And, and I, I know that we all keep an open dialogue with different interest groups, and when our interests align, we bring bills forward. So I, I just wanted to, to let you know that as well. I-- one part that you noted in your closing was, you know, that some testifiers have talked about restraint versus physical intervention. And I know maybe it was based on previous versions of the bill, and we're all kind of replaying that through our, our head because we've been through those battles. But I did a very, very quick Google search during your closing and the first two things that came out-- came up in regards to, you know, sample definitions for physical intervention, one from Department of Health and Human Services and one from a legal dictionary included physical restraint in the actual definition. So those aren't necessarily authoritative, but it was just a quick Google search. So I understand there's limitations there, but I think that perhaps that might be part of what's causing the confusion is there a difference without a distinction, for example. I don't think that you would disagree that physical intervention could include restraint, would you?

MURMAN: I don't have the bill right from of me--

CONRAD: Sure.

MURMAN: --but I think the only time physical restraint can be used is for protection of others in the school, so.

CONRAD: OK. And just, generally,--

MURMAN: So it could be physical.

CONRAD: Sure.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

MURMAN: It could be restraint if to protect the-- physically protect the school.

CONRAD: Very good. I--

MURMAN: Students.

CONRAD: --yeah, I appreciate that.

MURMAN: Students or teachers or both.

CONRAD: And then-- and I just wanted to be clear, too, I, I think that we're all concerned about social problems in our school, whether that be illicit drug use or bullying or things of that nature. But this bill wouldn't allow a teacher or other school professionals to use physical intervention if they saw bullying or somebody smoking marijuana would it?

MURMAN: Well, if there's an actual fight they could to protect the-- I mean, we-- a video went around a couple of years ago, probably before your time here, but-- or between your times here, but of students actually fighting.

CONRAD: OK.

MURMAN: It was a couple of girls actually and, and it was a, a tough fight. And teachers were standing back and didn't know what to do.

CONRAD: They felt like they couldn't intervene.

MURMAN: Yeah, they couldn't.

CONRAD: Yeah.

MURMAN: Yeah. So that-- you know, this bill would make it more clear to them that they can physically intervene in that situation. As far as smoking in the restroom, no physical intervention would be allowed.

CONRAD: Right.

MURMAN: But I hope we can control that some way.

CONRAD: Yes. Yes, I think so. There's probably other aspects of the juvenile law or student code of conduct that would cover those measures. Yeah. And I just wanted to make clear, because I don't think you were suggesting that this bill would allow for physical

intervention in those issues, but just wanted to make that clear there, too. You know, and, and I think to your point, Senator, you're right, there's a lack of uniformity and there's a lack of awareness and understanding about, you know, what the current law entails. So it does seem to me, whether it's some of the data pieces Senator Wayne has worked on or some of the other policy or funding pieces that Senator Walz has worked on and I think there are measures pending this year to address funding and resources for training and awareness. Is that-- that's a fair "assertation"?

MURMAN: Well, I'm not sure about other bills. I think--

CONRAD: OK. Well, you mentioned the lottery bill that you brought last week.

MURMAN: [INAUDIBLE]. Yeah. Yeah, the lottery bill that it does.

CONRAD: Yeah, that can consist of some of that training. Very good. Very good. Well, I, I appreciate your time and attention and, and thank you so much for your answers.

ALBRECHT: Thank you, Senator Conrad. Any other questions?

WALZ: I just have a real quick one.

ALBRECHT: Yes, Senator Walz.

WALZ: OK. I just want to make sure, NSEA just asked you to bring the bill just this year?

MURMAN: Well, they asked me to bring it back again this year. I mean, you know, it's not exactly like it's been in the past, but a form of the bill again this year.

WALZ: OK. And were they involved with the drafting of the bill?

MURMAN: Yes.

WALZ: OK. I just wanted to make sure. And then I don't know if you know this or not, but I see that there's a white copy amendment that takes out the behavioral point of contact for each school. That was something that we just passed last year. And so, I don't know, there's a--

_____: [INAUDIBLE]

WALZ: OK, I just wanted to make sure because a lot of the issues, you know, have to do with kids and their mental health so I wanted to make sure that that was something that maybe it wasn't intentional. We'll talk later about it. Can I ask one more question? I'm sorry. So what-- I'm hurrying Heath-- is there a chance that you, you could sit down with the department and work on guidelines that the department could put out as opposed to, you know, just counting on this bill and then figuring out how the best way would be to find out whether the training, whether it's through the ESUs, because I don't know if there's going to be enough funds to train everybody in the Mandt training, if that's something that you guys were looking at. But just wanted to see if that was something that you would be willing to do is talk to the department and see if they can come up with a uniform--

MURMAN: Well, sure, my door is always open to the department or anyone to, you know, discuss amendments or whatever it takes--

WALZ: Right.

MURMAN: --to, to get this bill across the finish line.

WALZ: Whatever groups are interested. OK. Thank you, Senator Murman.

ALBRECHT: Thank you, Senator Walz. Anybody else questions? Seeing none, thank you for the bill.

MURMAN: Thank you.

ALBRECHT: And we'll go on-- we'll close LB811 and move on to LB703. Senator Murman. Senator Murman, LB703. Go ahead and open.

MURMAN: Yeah, I can talk loud. Good evening again, colleagues. My name's Dave Murman and I'm on this side of the desk to talk about LB703 as amended by the sheets I've handed out to you. LB703 was initially a placeholder, and I've added a cleanup language on behalf of the Nebraska State College System. The intent of this bill is pretty simple. We're trying to remove statutes that are no longer applicable to the state colleges. First, existing bond covenants reference the capital improvement fee, which will replace the term "facility" in the statute. Second, the state colleges will be exempted from compliance with statute numbers 85-601 through 85-605. The employees who would be covered by this are already in compliance with the Industrial Relations Act and the State Employees Collective Bargaining Act, which would ultimately not apply to students. We've made further changes to exclude the university and the state colleges

from general procurement, recycling, and surplus property revisions of the state-- of the Department of Administrative Services Materiel Division, a practice that has already been in use. These changes are good cleanup language that reflect how the State College System is operating and the State College System Chancellor Paul Turman is here to testify on behalf of this bill as amended. Thank you and I'll try to answer any questions you might have now.

ALBRECHT: Thank you, Senator Murman. Any questions from the committee? Seeing none, proponents.

PAUL TURMAN: Good evening, Vice Chair Albrecht, members of the Education Committee. My name is Paul Turman. That's spelled P-a-u-l T-u-r-m-a-n. I'm the chancellor of the State College System, certainly here to speak in support of LB703 and the amendment that is being proposed. Had the opportunity to work with Senator Murman and his staff to bring forward what we see as additional cleanup items on top of some cleanup legislation that we proposed through Senator Slama last year. Various elements of the bill, the first kind of subsections and, and trying to go in order that tie directly to the Materiel Division. As we look at the way in which we implement our policies in the State College System, we're going through a comprehensive review of that-- those policies right now, checking that with the legal interpretation of the state statutes and always trying to make sure that we're in strong compliance. The one thing that we've noticed is that through DAS of which they are supportive of what's being proposed here is that for quite some time we've been relatively excluded from three different subsets of their ways in which procurement occurs, not only the purchasing requirements, the way in which we manage, keep track of, and code purchases that we have within our system, which also apply to the university system as well as when we surplus property, that right now we are normally traditionally not included in the other state agencies. I think partly because we have a combination of funds that drive most of the purchasing that we have. It's either through auxiliary systems or our revenue bond. So we buy and purchase items for our residence halls and, and facilities that are not funded by the state. We also have through our foundations as well, in addition to funds that come from direct student fees. And so we have been traditionally excluded. So if we want to get rid of a piece of product-- property, the Materiel Division says you will utilize your own existing processes to manage that of which we have very strong policies within our system to, to accomplish. We also are asking to be excluded from a range of items on 85-601, 85-605 that tie directly to disciplinary procedures connected to how people occupy and utilize

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

existing facilities and restrict building access, which stem back to the late 1960s, early 1970s. We worked in collective bargaining with our faculty and staff, 75 percent of which are embedded within unions, and we have established policies and procedures to manage those processes within our student handbook as well, which go into much, much greater detail about how we facilitate that disciplinary process, what due process rights individuals have, how they can grieve that. And then I think most importantly, what opportunities for appeals they have with the Board of Trustees in the State College System. With that, I'd certainly ask that you'd support not only LB706-- or LB703, but also the amendment that's being proposed in conjunction with that as well. I'd be happy to answer any questions that would come from the committee.

ALBRECHT: Thank you very much. Any questions? Senator Wayne.

WAYNE: So is this removing from the CIR, CIR?

PAUL TURMAN: Maybe ask you to restate.

WAYNE: Does this remove you from the CIR?

PAUL TURMAN: No, it does not. No. We still fully comply and actually have just gone through the process of renegotiations with all three of our unions in conjunction with the Industrial Relations Act, as well as the State Employment [SIC] Collections [SIC] Bargaining Act. Of which and I-- I'll maybe expand a little bit, my-- the yellow kicked up there quicker than I anticipated. Right now, we have a variety of timelines that are structured for a whole range of grievances of which this would fall in, and its starting to create discrepancies in the timelines for that and the goal would be to allow us through our collective bargaining processes to allow greater consistency and not confusion when it comes to our employees and our students.

WAYNE: So this is, this is actually a change from, from what you're currently doing. I mean, this isn't a cleanup bill.

PAUL TURMAN: It would be or it's excluding us at least from that subsection of 60-- 85-601 as it relates specifically to the seizing or attempting to seize property by force, preventing others from engaging in their normal duties on how we manage that process.

WAYNE: Yeah, but like on page 6, Section 5, 85-102, that's removing you, right, because it's only, it's only going to apply to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

University of Nebraska. I'm-- oh, I'm assuming you're not University of Nebraska.

PAUL TURMAN: Correct.

WAYNE: OK.

PAUL TURMAN: Yeah.

WAYNE: So that [INAUDIBLE]--

PAUL TURMAN: So which page again, sir?

WAYNE: Page 6,--

PAUL TURMAN: OK.

WAYNE: --Section 5. All right, so if it says such institution without knowing all the headers, I'm assuming that applies to all public secondary, second institution, which would be you. And now you're removing yourself and only applying it to the University of Nebraska.

PAUL TURMAN: That section, 102-- I think that's-- those are related specifically to the purchasing processes.

WAYNE: Right. So you would no longer fall underneath that process. You would-- you're excluding yourself out of, out of that process, right? Because Chapter 85 is State University Colleges and Postsecondary Education. So if they're, if they're using the word "such" institution, they're referring to all postsecondary institutions. And if you just delete that and put university, then you're saying you no longer apply to that and only the university does.

PAUL TURMAN: Yeah. So as a-- and this is why I'm, I was confused, but that was the original language that Senator Murman had brought forward as the shell bill for LB703. That was not an element that we had incorporated, and it might be a question that the senator might be able to answer at the, at the end of the testimony and follow up. But that was-- nothing there to exclude us. I think it's, it's capturing--

WAYNE: No, it's, it's statutory clean up. I'm going through statutes because we're doing it. The header of the statute is the University of Nebraska so they're just making that-- but I can't tell on this white copy amendment on the day of of what the headers are and what the, what the words are so it's going to take me a minute. So, like, right

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

now on page 7, is this, is this part of the same language that we're following Senator Murman's cleanup, not part of yours?

PAUL TURMAN: It would, Senator.

WAYNE: OK.

PAUL TURMAN: I think--

WAYNE: So what, what part deals with you?

PAUL TURMAN: The-- it's specifically to-- well, you have a number of state statutes that combine and reference both the community colleges, the state colleges, the university system together. And so that was-- we had proposed is there opportunity here to incorporate some cleanup, specifically for state colleges and excluding us as it relates to disciplinary procedures, as well as the way in which we do procurement, which would apply to both the university system and the state colleges. And those were the front sections of the proposed amendment.

WAYNE: So what's different about your disciplinary process if this were to-- bill were to pass versus the current law?

PAUL TURMAN: Is that-- the, the law doesn't go into the level of detail that begins to align with how we manage those processes with our students and our faculty currently. Right now, we have a, a pretty wide range of detailed processes for steps that students and our faculty whenever discipline occurs, whenever grievances begin to occur, things like expulsions, how we handle misconduct and then what would be included here, interference in operations. And then from there, we provide a notice of those allegations. We provide individuals evidence that's being developed against them, give them the right to a hearing that is within normally ten class days, which begins to align much closer with Title IX regulations that are out there. And so it's trying to allow us to have better alignment in the way in which we would manage those that doesn't conflict with what the state statute is asking us to do.

WAYNE: So then, then the university would be conflicting with, with federal law?

PAUL TURMAN: I'm not saying that that would be the case. I know that what you'll hear from testimony that follows is that they would like more time to be able to evaluate whether or not they have agreement

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

work from their faculty and/or students to remove that subsection completely.

WAYNE: Thank you.

ALBRECHT: Thank you, Senator Wayne. Any other questions? I just had-- see that on that. So when we sat down, we had this green sheet right here. So you're saying that LB703-- AM606 the amendment will become the new bill, right?

PAUL TURMAN: Correct. Yes, ma'am.

ALBRECHT: So I just see a lot of "shalls" crossed out on that front page. Is there any reason why the "shall" would come out instead of just say it just means this? Does that preclude you from rolling through everything the way we used to do it?

PAUL TURMAN: Senator, that's a, that's a very good question. What we had proposed to Bill Drafters in working with Senator Murman did not exclude those. That was the result of what they brought forward in their recommendations. If the belief of the committee would be that "shall" should be there, then we certainly would not be opposed to that.

ALBRECHT: OK. Very good.

PAUL TURMAN: Open to conversation.

ALBRECHT: Thank you. Any other questions? Seeing none, thanks for being here.

PAUL TURMAN: Thank you, Senator.

ALBRECHT: And by the way, nice going with your son on wrestling.

PAUL TURMAN: Oh, thank you.

ALBRECHT: Other proponents?

DOUG CARLSON: Good evening, Vice Chair Albrecht and members of the Education Committee. My name is Doug Carlson, Doug, D-o-u-g, Carlson, C-a-r-l-s-o-n, and I have the honor of serving as the chief procurement officer for the University of Nebraska System. I'm here today in an official capacity in support of AM606 to LB703 on behalf of the University of Nebraska System. We want to thank Senator Murman

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

for introducing this white copy amendment on behalf of our friends in the university-- in the Nebraska State College System and the University System. In short, the university supports the sections of AM606 that update both the inventory and surplus property sections outlined in Sections 1, 2 and Section 4 of the white copy amendment. I cannot speak to Sections 7, 8, and 9 as the university needs to engage in these cleanup items through our shared governance processes as it relates to dismissals and expulsions. The changes in Sections 1, 2 and 4 would simply clean up the existing process of continuing to allow the university tag, mark, and stamp all property with property of Nebraska-- excuse me, property of University of Nebraska in comparison to property of State of Nebraska. AM606 would also allow the university to continue selling our surplus property through a procurement operation in comparison to utilizing Department of Administrative Services surplus property. Once again, I want to thank Senator Murman and his legislative aide for working with the Nebraska State College System and the university on these important changes. Thank you again for your time today and I'll be happy to answer any questions you may have.

ALBRECHT: Thank you. Questions from the committee? Yes-- oh, sorry.

SANDERS: Not, not a question, just a statement.

ALBRECHT: Senator Sanders.

SANDERS: Thank you, Vice Chair Albrecht. Good, good evening. Good to see you again. I actually just wanted to thank you for your 20 years of service to the Guard and the community.

DOUG CARLSON: Oh, thank you very much.

SANDERS: Really appreciate it. He is now retired.

DOUG CARLSON: I, I am. And I've started growing a beard for the first time in my life. [LAUGHTER]

SANDERS: And you landed a civilian job quickly, you're back in the game.

DOUG CARLSON: Yes, ma'am.

SANDERS: Appreciate you staying here in Nebraska and the community.

DOUG CARLSON: Thank you very much, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

ALBRECHT: Thank you, Senator Sanders. Thank you for your service.

DOUG CARLSON: Thank you.

ALBRECHT: Seeing no other questions, thank you very much for being here.

DOUG CARLSON: Thank you.

ALBRECHT: Any other proponents? Any opponents? Seeing none, anyone in the neutral? Doesn't look like, come on up. Then we will look at-- there were no comments online. So, Senator Murman, you can close on LB703.

MURMAN: Yeah, I think there might be some issues with the introduction of my shell bill.

ALBRECHT: Is that it?

MURMAN: Yeah, but with the amendment. So--

ALBRECHT: OK.

MURMAN: --we'll fix that.

ALBRECHT: Very good. Thank you. Any other questions? Seeing none, thank you very much and we'll close LB703 and open with LB700.

WAYNE: We have another one.

ALBRECHT: One more.

MURMAN: OK, LB700 is, is only a placeholder bill, so.

ALBRECHT: OK, very good. Thank you very much for LB700. Oh, we still do have to ask is there any proponents? LB700. You want to talk? Any opponents? Seeing none, any-- anyone in neutral for LB700? OK. OK. Here we go.

COURTNEY WITTSTRUCK: Except my name is very long, so you can blame my parents for that extra minute. Oh, yeah, sorry. OK. Hello, Vice Chair Albrecht and members of the Education Committee. My name is Courtney Wittstruck, C-o-u-r-t-n-e-y W-i-t-t-s-t-r-u-c-k, and I represent the member colleges of the Nebraska Community College Association. The only reason I'm here today is to testify, to testify in the neutral is because with this being a shell bill, just wanted to make it known,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Education Committee February 28, 2023
Rough Draft

hopefully it already is, but in case isn't, that if anyone would have any interest in, in amending this bill in the future, just-- we're more than willing to work with them. Just please contact us in advance and we'll be happy to get involved and provide any, any information we can. That's it. Thank you very much.

ALBRECHT: Any questions from the committee? Seeing none, thank you very much for waiting out.

COURTNEY WITTSTRUCK: Yeah, it took me longer to spell my name.

WALZ: Yeah.

ALBRECHT: We did have just one person in neutral on the online comments and no comments on proponents or opponents. And that will-- and Senator Murman waives closing on LB700. That, that will be the end of the Education Committee.