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Education Committee
February 13, 2007

[LB139 LB316 LB506 LB702]

The Committee on Education met at 1:30 p.m. on Tuesday, February 13, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments, and on LB316, LB506, LB139, and LB702. Senators present: Ron Raikes, Chairperson; Gail Kopplin, Vice Chairperson; Greg Adams; Brad Ashford; Bill Avery; Carroll Burling; Gwen Howard; and Joel Johnson. Senators absent: None. []

SENATOR RAIKES: Good afternoon and welcome to this hearing of the Education Committee of the Nebraska Legislature. As you can see we are a very tight-knit committee here. We tend to agree on most everything. This afternoon we have got two confirmation hearings followed by hearings on four bills. The bills will be heard in the order listed on the notice posted outside the hearing room. We will begin with the two confirmation hearings and then go to the bills. Just a quick reminder, the bills will be introduced by a member of the Legislature. That will be followed by proponent, opponent, neutral testimony, followed possibly by a close by the introducer. If you wish to testify, please do so, and as you begin your testimony please tell us your name and spell your name for us for the purposes of the transcriber. We do use a light system and today why we will use...excuse the...okay. []

RICHARD UHING: Can you hear me? []

SENATOR RAIKES: I can, and just in a moment I will introduce you to the committee and we will begin the confirmation hearing. []

RICHARD UHING: Okay. Sounds good. []

SENATOR RAIKES: All right. As I was saying, we will have a light system. Please limit your testimony to three minutes and you will be gently reminded by a bright red light at the end of the three minutes in case that you don't keep track of it on your own. Please, also you will need to fill out a little form and throw it in the box as you come up to testify. Our committee is gradually moving in here. Here comes yet another. Soon, to my far right will be our research analyst, Matt Blomstedt; Senator Brad Ashford is from Omaha; Senator Gwen Howard is also from Omaha; but Senator Carroll Burling is from Kenesaw, a city almost the size of Omaha, I think; Tammy Barry is our legal counsel; I am Ron Raikes, District 25; our committee's Vice Chair is Senator Gail Kopplin from Gretna; Senator Greg Adams from York; Senator Joel Johnson from Kearney; Senator Bill Avery from Lincoln; and Kris Valentin, our committee clerk. So I think I have covered the preliminaries, probably, except reminding you to put away your cell phones or make them so they don't make noise during the hearing. I will also tell you that there will be members coming and going during the hearing because they have bills to introduce in other committees, so be prepared for that. With that, we will begin with the hearing, in

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particular the confirmation hearing for Richard Uhing to the Coordinating Commission for Postsecondary Education. Have I pronounced that correctly, Richard?
[CONFIRMATION]

RICHARD UHING: That is correct. [CONFIRMATION]

SENATOR RAIKES: Okay. So the way we will begin that hearing, Richard, is give you an opportunity to tell us a little bit about yourself and why you are interested in serving in this particular capacity. [CONFIRMATION]

RICHARD UHING: My name is Richard Uhing, and I grew up in Hartington, Nebraska, on a dairy farm. And after graduating from Hartington Cedar Catholic, I went to Northeast College, graduated from there, attended Chadron State, got a B.S. in education from Chadron State, and then moved to Norfolk, Nebraska, and started working at Norfolk Beverage, which is a Anheuser-Busch wholesaler. During the evening, for about seven or eight years, I went to Wayne State and got my M.B.A. through Wayne State College. In 2001, I graduated from Harvard Business School in the three-year Execs program degree. So as far as my education goes, I am a firm believer in lifelong learning and the importance of development through education. How I got interested, Senator Flood, Mike Flood, introduced me to it and also Lou Pofahl talked to me about filling out the application for this area, district 3, which is northeast Nebraska. And the more information that I am getting through attending the meetings, my interest grows and grows, and I have only attended three meetings and I am learning a lot, but there is also a lot to learn. [CONFIRMATION]

SENATOR RAIKES: Okay. Thank you, Richard. Do we have questions for Richard? I have one, Richard. How often does the Coordinating Commission meet?
[CONFIRMATION]

RICHARD UHING: Again, I am new, but it is probably every other month, but then like I'm now on the curriculum development, the academic program, and we might do a conference like between those two months, maybe one time or as needed. So I mean formally maybe some of the commission could be there and give you true guidelines, but it is approximately every other month. [CONFIRMATION]

SENATOR RAIKES: And most of these meetings are in Lincoln, or where are they held? [CONFIRMATION]

RICHARD UHING: They are trying to rotate and get a nice view of each school that they can. In the past they have gone to Chadron. I have been to Nebraska Wesleyan and then we met at the Cornhusker. But they are trying to continue the different colleges. So not in Lincoln all the time. [CONFIRMATION]

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SENATOR RAIKES: Okay. Given the difficulty we have had getting a hearing arranged, I want to make sure you feel you have enough time to attend these meetings.
[CONFIRMATION]

RICHARD UHING: I am part owner of Norfolk Beverage, so I have a lot of flexibility at Norfolk Beverage to attend. [CONFIRMATION]

SENATOR RAIKES: Okay. Are there any other questions for Richard? Okay. Well, Richard, thank you for your interest in the position and your willingness to serve. Hang on for just a moment and we will complete the hearing. Is there any proponent testimony for Richard? Any opponent testimony? Neutral testimony? Okay. That will close the hearing for Richard Uhing for Coordinating Commission for Postsecondary Education, and thank you, Richard, for being on the phone with us today.
[CONFIRMATION]

RICHARD UHING: Thank you and have a good day. [CONFIRMATION]

SENATOR RAIKES: Okay. We will move now to one Tom Baker to be appointed to the Board of Educational Lands and Funds. [CONFIRMATION]

SENATOR JOHNSON: Hey, I have seen you somewhere before. [CONFIRMATION]

SENATOR RAIKES: Senator, welcome. [CONFIRMATION]

TOM BAKER: Thank you, Senator Raikes and committee. I thought I was in Judiciary Committee here for a second. What is with the lights? Chairman can't keep us under control out here on this testifier's stand. I am Tom Baker, B-a-k-e-r. For practical purposes I won't be too long in explaining, disclosing who I am because some of it could be damaging, I guess, to my appointment. [CONFIRMATION]

SENATOR RAIKES: I would agree. Yeah. [CONFIRMATION]

TOM BAKER: I served in the Legislature for eight years, for Senator Avery I guess. I served with all the rest of you so you know something about me. Born in McCook, Nebraska, graduated from high school in Trenton, attended University of Nebraska-Lincoln, degree in agronomy and went back and got another degree in biological sciences, actually teaching certificate and taught school for a short time. And this Board of Educational Lands and Funds has been an area of interest of mine since way back when I was in college actually. I used to come down here and attend hearings and dealing with the Board of Educational Lands and Funds. Then it became an issue when I was in the Legislature, had a lot of constituent contact, being most of the school lands, what we call school lands, are in the western half of the state. So I had a lot of constituent contacts dealing with the administration, the school lands and leasing and

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so on in question. So it became one of the topics that I worked on while I was a senator and actually I think I had a priority bill one year and I don't remember which year it was. LB1010 was my priority bill which was passed dealing with values assigned to school land and the sale of the school land, potential sale, and so on, etcetera. And then Senator Bromm, before me, also had a bill that he specified, which was passed--it is in statutes, 41...I can't remember, 72-4108, I think--but setting some goals for the Board of Educational Lands and Funds, I will refer to it as BELF, to diversify our portfolio. It is held in trust, obviously, for the Permanent School Trust Fund and to benefit of the K-12 school children in the state of Nebraska, and I believe his statutory changes state that we would get that fund down to 25 percent of real estate holdings and the rest diversified investments, assuming that none of this flew in the face of good fiscal policy. So we have not made that goal. That was to be done by January 1, 2008. Of course, when I was appointed to the board, I had to go back and study the statutes a little bit as to what I was getting into. One thing you don't want to do is go from that big salary you get being a state senator to this, because it is \$40 a day. If I was smart, I would have thought about that before I got appointed to the board, I guess, but I didn't. But in a nutshell we are selling land. I say we...I have attended one meeting, BELF meeting, last month in January. There have been some school land acres sold in the last few years and it is a process, apparently works pretty well. While it has been a very, very minor part of what the total holdings has been, there has been some progress made, and I believe we are down to slightly over 50 percent of the holdings now is still in agricultural real estate. And as I said, the statutes directed the BELF Board to get down to 25 percent, assuming it was not in violation of a fiduciary duty. So there is a bit of a gray area there as to what it is we should be doing with all this school land. The rate of return on the land right now, it is advertised about 4 percent return on the appraised value. The money that is in the Permanent School Trust Fund has been returning a lot more than that, obviously; about 8.1 percent last year. It was the last figures I had from the Nebraska Investment Council. So we have some work to do over there, and I am just trying to get my feet on the ground and see where it is I think we ought to go and look at some issue and so on over there. I would be glad to answer questions. I do have some facts and figures. Each one of the senators over the year should get a biennial report from the Board of Educational Lands and Funds. I am sure you all read it from front to back. But I did bring it with me in case anyone has questions about acres or the land that has been sold the last two years. My bill directed BELF to set an adjusted value, which is used for the state aid formula, and then ratchet that up 1.25 times to the fair market value. And there is a cleanup bill, I am not sure who is carrying that, to change that since we changed ag valuation from 80 percent to 75 percent. So now we have to change that formula to 1.33, and I don't...maybe it is a committee bill. I don't know who is carrying that, but there is a bill to do that, I think, in the Legislature this session. So be glad to answer questions. [CONFIRMATION]

SENATOR RAIKES: Okay. Senator Burling and then Senator Johnson.
[CONFIRMATION]

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SENATOR BURLING: Good to see you again, Tom. [CONFIRMATION]

TOM BAKER: It is good to be back. [CONFIRMATION]

SENATOR BURLING: Do you see a good reason why that 25 percent is not going to be reached by the date set and will you push for playing catch up on that situation?
[CONFIRMATION]

TOM BAKER: Well, we don't have but less than 11 months to do that and physically we just can't do that. Now there are a lot of seven-year leases out there, and we can't go back and break those leases. I would say the policy of the board now would be to take a look at our historical rate of return on that agricultural land, as opposed to what is in the Permanent School Trust Fund, and at least make good effort to get somewhere down there. As a fiduciary representative of the trust fund, I am going to look hard at what the rate of return has been and I need to do some more research. I just know that we had considerably more return out of the money that is invested in the Permanent School Trust Fund through the Nebraska Investment Council, quite a lot higher return. It would be my goal to go ahead and get more of this on the auction block. I think we could be a little more user-friendly, and I did ask the director, Jay Gildersleeve, to get some information out to current leaseholders. The policy now is if a current leaseholder desires to buy the land that he has leased, he has to apply to the board and offer, of course, a minimum bid that is acceptable, which would be the fair market value, and then the board has to go ahead and act on that, whether they would go ahead and put that up for sale. He can break his own lease, the leaseholder, but no one else can. So until these leases expire, our hands are tied on most of this. So there is no physical way we could get into compliance, and I think what has always been an issue here is whether or not selling this school is in the best interest of the Trust Fund. That has been the issue and to me it is going to be numbers. I need to gather the numbers together from the last few years what we have returned off the appraised value of school land and so on and see where we are. So I am just getting my feet on the ground. My background, of course, has been in the Legislature. We did a lot of work on this, and I think there is some areas that need change, to be honest with you. [CONFIRMATION]

SENATOR BURLING: Okay. [CONFIRMATION]

TOM BAKER: One of them I would point out, and I may ask somebody to try and find an amendment, we meet once a month, it is in statute, we must meet once a month in Lincoln and most of the school land is in the western half of the state. It would seem to be me to be prudent to change the statutes and at least give us some flexibility so there is not a lot on the agenda, which there may be a lot on the agenda each month, but at least give us some flexibility as to when we meet and where we meet. And right now that is in statute. We can't vary from that. [CONFIRMATION]

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SENATOR RAIKES: Okay, Senator. [CONFIRMATION]

TOM BAKER: I was ready for a lot of tough questions. [CONFIRMATION]

SENATOR RAIKES: I don't want to do anything like that, but let me ask you this. You said 4-point-something percent was what was returned on ag land. Does that include the appreciation in land values? [CONFIRMATION]

TOM BAKER: No, each time a lease is sold...and the lease rates are adjusted annually by the board. So as the land goes up in value, and you know what the crop prices are right now, I am assuming, and I am still just getting my feet on the ground, that the leases rental rates will go up July 1, I believe is the date set. So those will be adjusted depending on the value of the real estate. They are adjusted annually. [CONFIRMATION]

SENATOR RAIKES: So I guess it would surprise me, given recent history and commodity prices, ag land prices and so on, that you wouldn't actually have a higher return on the ag land than what you have in more liquid investments. [CONFIRMATION]

TOM BAKER: It has appreciated in value. Although we all lived through problems we had in the early eighties where we had a decrease in value in agricultural land though too, so it goes both ways. With the price of commodities where they are, I am assuming we are going to have to adjust the rental rates up considerably, as any cash rent is going up right now. [CONFIRMATION]

SENATOR RAIKES: Well, plus the land that you are selling would probably go up in price 10 percent a year or something like that lately, or am I wrong on that? [CONFIRMATION]

TOM BAKER: I don't know. You have seen the ag land surveys the university runs. I think off the top of my head it was 8 or 9 percent appreciated increase in value in the last year. You have to understand that a lot of the land that is held in trust here is grassland too. It is not cropland. The land that had been sold, for instance, let me take just a minute here because I know you have a full schedule but... [CONFIRMATION]

SENATOR RAIKES: Which the grassland probably would not be impacted by lack of irrigation water. [CONFIRMATION]

TOM BAKER: No, and also with the cattle market and the situation is that those rents might go down. I don't know. I know grass in our area is hard to find, but most of the land that we have been selling is grassland. For instance, in 2004-05 fiscal year we sold 21,413 acres; 20,873 of that was grass. A lot of what the School Land Trust Fund holds

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is grassland. It is in the western part of the state. In fact, I think Cherry County has almost 200,000 acres of...198,756 acres of land in Cherry County. Most of that is going to be grass. [CONFIRMATION]

SENATOR RAIKES: The total holdings of land now by the trust now are how many?
[CONFIRMATION]

TOM BAKER: I should have gotten a little better organized here. Acres leased right now, 1.34 million acres. Section 16 and Section 36 for the most part, but the first meeting I attended there is some land that has been traded back and forth with the federal government around the national forest and things and there are some big blocks of land up in there around the Snake River and so on. [CONFIRMATION]

SENATOR RAIKES: So to get to the 25 percent you would have to sell half of that.
[CONFIRMATION]

TOM BAKER: Roughly, yes, and I am not advocating that we do that. I mean we can't do it immediately, but we probably should be working around the edges toward that, depending on what the return is. I am with you. I understand. I am a landowner. The value of land has appreciated considerably in the last few years so you have to take that into consideration, obviously. And some of this land, as I said, is grassland, which it has not appreciated like the farmland has. And on the other hand, there is also some land with scenic value and commercial development potential that has gone up a lot more than any 10 percent a year too. So I think we ought to hold onto some of that.
[CONFIRMATION]

SENATOR RAIKES: Okay. Any other questions? Thank you, Tom, for being here.
[CONFIRMATION]

TOM BAKER: Thank you. [CONFIRMATION]

SENATOR RAIKES: Proponents for this confirmation? [CONFIRMATION]

TOM BAKER: I doubt you get any proponents. [CONFIRMATION]

SENATOR RAIKES: I see nothing has changed, Tom. Opponents? Oh, yeah, it has changed. There are no opponents. Neutral testimony? Okay. That will close the confirmation hearing for Tom Baker for the Board of Educational Lands and Funds. And we will move on now to LB316, to be introduced by Senator Friend. [CONFIRMATION LB316]

SENATOR FRIEND: (Exhibit 3) Thank you, Chairman Raikes and members of the Education Committee. I will let you know my name is Mike Friend, F-r-i-e-n-d. I am from

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northwest Omaha. I represent District 10 in the Nebraska Legislature. I, too, was surprised by the lack of opposition to Senator Baker's...I digress. This legislation, LB316, proposes the creation of a task force, a Special Education Services Task Force, for the purpose of doing a systematic and comprehensive review of the manner in which special education services are provided and financed in Nebraska, with a view toward making recommendations for legislative and policy changes by the end of the year 2007. Chaired by the Chairman of the Legislature's Education Committee, the task force would consist of individuals representing a broad spectrum of groups with an interest in special education services, including: parents with children receiving special education services from the complete range of school districts, also in private settings; educational service unit administrators and special education teachers; a public school teacher, a special education director from a public school; a school board member; a representative of a child advocacy organization; a State Board of Education expert on special education; a representative of the Department of Health and Human Services responsible for the placement of state wards; also a representative of a private provider of special education services; and a representative of postsecondary special education. The task force would be created and would begin work prior to June 15, 2007, according to the legislation, with the Legislature's Executive Board choosing two members--one senator from the Education Committee, and one senator not a member of the committee--and all other members being chosen by the Governor. The Legislature's Education Committee and the Fiscal Analyst's Office, as well as the Department of Education, would provide staff support. The examination undertaken by the task force to be broad and far reaching, and including the application of the least restrictive environment doctrine, the availability of services across the state, the use of private providers of special education services by public schools and private individuals, and the finances of special education both here and in other states. The final report of the task force would be due by December 31, 2007. The task force would be the first major effort to assess the changes in special education both in practice and in financial support during the...I guess what would be called the turbulent decade since the last study was undertaken by Special Education Accountability Commission in 1994-1995. We believe the study is needed to determine where we stand now since 1994-1995, and where we need to go to see that the parents and students who rely on these programs are fairly and equitably served. I want to thank Senator Raikes and I want to thank his staff, I want to thank Tammy because I came to them a long time ago. I think a lot of the reason I am here not only for this bill, but for the following bill, a lot of the reason I am here is because I am carrying both bills on behalf of some constituents, not just one, actually a couple now. Senator Raikes and his staff were very open to discussing the subject matter, and as you all know, I think I always try to be big into problem identification and I guess I felt like I identified a problem here. And if a task force with some per diems and by the time they are done can come to some resolution, at least as far as a few of the problems maybe that we are dealing with, then I think it can be a success, and I also don't think it is unhealthy. I think it is healthy to address these things once a decade. I don't think there would be a whole lot of harm in that. With

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that said, in regard to LB316 I know that there are some folks that would like to discuss these issues. As you all know in regard to education, sometimes issues become emotional when you are talking about our kids. And as the father of four, I have been pretty fortunate. I haven't had to take advantage of some of the fine things that the Omaha Public School system, Millard, Ralston, private schools have to offer, but there for the grace of God and that is really all I had. I would like the committee to heard from some of the folks in regard to some that problem identification that I discussed. So I would be happy to answer any questions. [LB316]

SENATOR RAIKES: Okay. Thank you, Senator. Senator Johnson has a question. [LB316]

SENATOR JOHNSON: When does the report have to be in by? [LB316]

SENATOR FRIEND: I believe December 31. [LB316]

SENATOR JOHNSON: What I was wondering is would it... [LB316]

SENATOR FRIEND: I don't know that for sure, but I am... [LB316]

SENATOR JOHNSON: Okay. Would it be worthwhile to make it December 1? Then you would have a month in case that you need to come up with some legislation out of that, it might be easier. [LB316]

SENATOR FRIEND: Quite possibly, Senator Johnson, and that is not a bad point. Because one of the things that I forgot to point out, along with that problem identification I would like the Education Committee because I know...and I am not blowing smoke your way, I know that you guys have dealt with these issues before. Either in this body or outside of this body, and I would like your help. That is probably not a bad idea. [LB316]

SENATOR RAIKES: Senator Avery. [LB316]

SENATOR AVERY: Welcome, Senator Friend. [LB316]

SENATOR FRIEND: Thank you. [LB316]

SENATOR AVERY: I actually have served on some of these task forces and study committees, and I am wondering if you have enough time from June to December. You might need more than that. I would hate to see you have to do what Senator Burling did a few weeks ago, have to come back and try to get an extension. [LB316]

SENATOR FRIEND: Thank you, Senator Avery. I don't know. I don't have the

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experience on these task forces, and maybe you are right. I don't think that we are...and in fairness I liked Senator Burling's initiative last year. He was not necessarily asking for more money, and I don't think we would have to either. I know that there are some per diems involved, and it was kind of crafted in a fashion that we wouldn't have to go out and knock on Appropriations' door very hard. But that being said, maybe you are right. I don't know, Senator, and I would defer to your judgment on that one. [LB316]

SENATOR AVERY: The problem is you have volunteers who are trying to coordinate their work schedules with the meetings of this task force and then...that is often hard to do, and you need to meet frequently and maybe not even once a month is enough. [LB316]

SENATOR FRIEND: Yeah. We are asking a lot for a seven-month time frame, so quite possibly. I would be open to suggestions as far as that goes. I didn't mean to come in here unprepared. This is a little bit of new turf for me, especially in regard to task forces. But I appreciate that input, and if the task force could only meet once a month, that is a good question. Point well taken. [LB316]

SENATOR AVERY: I served on one that went almost two years and we probably could have used a little more time, but the statute didn't allow it. [LB316]

SENATOR FRIEND: I think part of reason, and I could be wrong and I look at Tammy when I say this, I think part of the reason it was drafted in the fashion that it was is because sometimes you can not necessarily force a task force to do something quicker than they should, but sometimes put a stick in their back and say, hey, let's get after this, we want to resolve this quicker than a normal task force would operate. It might be a bad idea though. Putting a stick in a task force's back might not be a great idea. [LB316]

SENATOR AVERY: If you would to give them a year, that would give them plenty of time then to suggest legislation that we could deal with in the next session, and that would be a 90-day session too. [LB316]

SENATOR FRIEND: I would welcome the Education Committee, if they believe that it is worthwhile that we address this subject matter, maybe committee amendments would be appropriate in that regard. Thank you. [LB316]

SENATOR RAIKES: Don't see any other questions, Senator. Thank you. Are you going to stick around? [LB316]

SENATOR FRIEND: I would like to close, and I have got some weird things happening over in Urban Affairs, so I might be ducking in and out. Can you reserve the right for me to close if you will, Mr. Chairman? [LB316]

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SENATOR RAIKES: If nothing too weird happens. [LB316]

SENATOR FRIEND: I don't think anything weird will happen in here. I am talking about a totally different room here. Thank you. [LB316]

SENATOR RAIKES: Oh, okay. Good enough. Proponents, LB316? [LB316]

ROBERT KRIST: Senator Raikes, my name is Robert Krist, K-r-i-s-t, for the record. I thank you for the opportunity to address this committee from my life experiences, my own education, and the fact that I have a special needs daughter who is now an adult that I have walked through this process. I would never pretend to stand here or sit here and tell you what is wrong or what is right with the system, but I think sometimes a simple analogy is a good way to get to a final point, so if you will allow me latitude. Expert builders of an airliner have designed the craft to minimally comply with the government standards. In an effort to be least restrictive, they have installed uniform safety features throughout the aircraft, including three 20-foot inflatable safety slides. As things happen, our craft reaches the airport, lands and had an abnormal landing. For some reason, the nose gear collapses and it necessitates the use of those slides. With the nose of the aircraft resting on the ground and the tail up in the air, riders on the first slide ride comfortably to the ground on the first ten feet of the slide and along the ground on the last ten feet unharmed and into the arms of loved ones becoming productive members of society once again. Those who were told to exit on the second slide find they are supported only to the ground because the slide is just long enough to reach, and with bumps and bruises, they complete their journey as well. Those who were told to use the third slide find that they are still ten feet in the air and the support of the slide ends. We call them in-betweeners because they are not they are not provided for from the beginning to the end; 'tweeners, if you will. This mess is witnessed at the top by those still waiting to take their ride. This results in fear and anxiety and, in some cases, incapacitation. There is another group of people who stand at the top and they don't experience hopelessness. Instead they recognize an alternative. They have a choice. They have a choice to slide down slide two or slide one. They choose to succeed. I believe our special education system is very much like this analogy, for if you listen to some experts they will say we are doing all we can, while many parents and guardians, some of them here today to talk to you, will tell you that that is not the fact. Senator Raikes and Senator Friend, I want to thank you for listening to those parents and guardians you represent and presenting LB316 to our Legislature, and to the individuals who will be on the task force, I wish you Godspeed and success. [LB316]

SENATOR RAIKES: Okay. Thank you, Robert. Questions for Robert? I don't see any. Thanks for being here today. [LB316]

ROBERT KRIST: Thanks, Senator. [LB316]

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SENATOR RAIKES: Other proponents, LB316? Mike. [LB316]

MIKE DULANEY: Good afternoon. Senator Raikes, members of the Education Committee, my name is Mike Dulaney, D-u-l-a-n-e-y, and I am representing the Nebraska Council of School Administrators, but also the Nebraska Association of Special Education Supervisors, one of our affiliate groups, and we are very much in favor of this. We feel this is a good idea, something that maybe is overdue. From a historical perspective, I think it is kind of interesting to look back at some of these studies that have been done over the years and see how long they have taken in actuality. In 1988, the Legislature passed legislation that would look at the school finance formula meaning to take only a year and it took two years. They actually had to come back and extend the duration of that commission in order to finish its work. This might be the same type of situation where it takes more time to actually complete the task, but we welcome it. We know that Senator Friend has our membership in mind on the commission, and so we welcome that and we look forward to, if this committee so desires, to have that legislation move out of committee and have a debate on it. So we would cast our support in favor. [LB316]

SENATOR RAIKES: Okay. Thank you, Mike. Questions for Mike? I don't see any. Thank you. [LB316]

MIKE DULANEY: Thank you. [LB316]

SENATOR RAIKES: Any other proponents LB316? John. [LB316]

JOHN BONAIUTO: Senator Raikes, members of the committee, John Bonaiuto, B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards. We would add our support to the task force and the study, and it is healthy to look at these issues from time to time. I think the last time that we took a look at special ed, the parameters were looking at identification and whether or not schools had a tendency to over identify, and we were also looking at funding. And so those are issue that I am sure that this task force will get involved in, along with some others. So with that, I will conclude my testimony. [LB316]

SENATOR RAIKES: Thank you, John. Questions? Thanks. [LB316]

JOHN BONAIUTO: Thank you. [LB316]

SENATOR RAIKES: Any other proponents? [LB316]

JUSTIN BRADY: Senator Raikes and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist of Girls

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and Boys Town in support of LB316, and they would ask that this committee look at making someone like Girls and Boys Town from their unique perspective of being a residential provider where the children are actually staying on their campuses as part of this task force. But they think this is a great idea and would ask the committee to move forward with it. [LB316]

SENATOR RAIKES: Okay. Thank you. Questions for Justin? So as you look through the list, you don't see someone that provides services the way they do on this list of... [LB316]

JUSTIN BRADY: Right. It talks about a private provider of special education, but that is going to, I guess, take in the whole world where we think there is such unique characteristic, not just with Girls and Boys Town, there are other providers that have residential providers where the children actually stay on campus, and to add that as another representative of the task force, a specific representative of a residential provider. [LB316]

SENATOR RAIKES: Okay. I don't see any questions, thanks. [LB316]

JUSTIN BRADY: Thank you. [LB316]

SENATOR RAIKES: Other proponents, LB316? Are there opponents, LB316? Neutral testimony? [LB316]

VIRGIL HORNE: Senator Raikes, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools. We would simply say that in today's climate of special education, there are a lot of medical types of procedures that must be performed by the individuals who are working with special ed students, and to the best of my knowledge I cannot see anyone from the medical field. There is someone from Health and Human Services, but that is for state wards. So we would just suggest to you that consideration be given to having someone there who knows medical procedures and the types of procedures that might be required of a special ed student in a public school setting. [LB316]

SENATOR RAIKES: Okay. Thank you, Virgil. Questions for Virgil? Virgil, do you think there is a practical limit to the number of people you put on this? [LB316]

VIRGIL HORNE: Well, yeah. I wondered about that as well, but I guess I would lean toward getting the people who have the expertise there and so without seeming like a crass school administrator, bureaucrat, parents bring a lot to the committee, but they bring the experience of their child in many cases. And what better advocate than the parent. We certainly don't ask them not to advocate for their child, but we are looking at a program statewide for all special ed children who have a range of potential

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characteristics that must be treated in different fashions so that if you are going to limit the membership, I would not suggest how you limit the membership, I would simply say that priority might be given to those individuals who have a level of expertise that potentially will impact all special education students of all different needs, not just one parent. And, again, I emphasize, I am not suggesting that they are not the best advocates, I am just suggesting that if you want to limit the number of people on your committee that you make sure the people who can deal with the most students in the most ways are represented. [LB316]

SENATOR RAIKES: Okay. I don't see any other questions, thank you, Virgil. Is there any other neutral testimony? Welcome. [LB316]

SARA FARRAND: (Exhibit 4) Thank you. Mr. Chairman, members of the Education Committee, my name is Sara Farrand, Sara with no h, Farrand spelled F-a-r-r-a-n-d, and I am here on behalf of the State Board of Education and the Nebraska Department of Education. We are appearing here in a neutral capacity on LB316. The State Board of Education currently has number of committees and councils that are in an advisory capacity to the State Board, and one of those is a federally required Special Education Advisory Council called SEAC, and SEAC addresses special ed topics. It is our experience that the topics proposed to be addressed in the bill are complex in nature and may require considerable deliberation, and it is our opinion that this may be possible in the short time frame that the task force is in existence. As well, many of these topics are discussed by SEAC over the years and with that in mind, the State Board would be available to offer assistance to such a task force if requested. And I will take any questions. [LB316]

SENATOR RAIKES: Okay. Thank you, Sara. Questions for Sara? So is the department included on the... [LB316]

SARA FARRAND: Yes, a member of the Department of Education with expertise in special education is a member of the task force. [LB316]

SENATOR RAIKES: Is that sufficient liaison? [LB316]

SARA FARRAND: It could be. We have a few members on SEAC as nonvoting members that are a part of the Department of Education. [LB316]

SENATOR RAIKES: Okay. All right. Well, thank you for your testimony. Any other neutral testimony? Senator Friend to close. [LB316]

SENATOR FRIEND: Thank you, Chairman Raikes. Only to quickly go over a couple of points. First of all, again, committee thank you for...I guess to the degree that you have already for addressing this issue. A couple of notes, and I again can thank Chairman

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Raikes' staff for this, particularly Tammy. The previous Special Education Accountability Commission, if you will, was created by LB520 and introduced by Senators Rasmussen, Withem, and McKenzie in 1993. Senator Avery, this speaks to a little bit of what you were discussing earlier. Legislative Bill 742, introduced by Senator McKenzie at the request of the Governor in 1995, altered the mission of the commission by adding a requirement to develop a new funding system. The commission issued its final report on September 1, 1996. So from the time of its inception in 1993, it didn't finish up until September 1, 1996. Now, in fairness it was changed, the purview or the chartered was changed, but still you are talking about over a three-year span there. Also, the Nebraska Commission for Special Education was established in 1986 to negotiate compacts for residential special education programs with neighboring states. Their final report was issued in July 1, 1998. So some of these things take a long time, and obviously maybe the foresight here would be to address that particular issue that you brought up earlier. But with that, I wanted to thank everybody for weighing in here. I apologize for ducking out real quick, and I think everything is under control in every other area of the building. So thank you. [LB316]

SENATOR RAIKES: Thank you, Senator. Any final questions? I don't see any, so that will close the hearing on LB316. And we will move to LB506 and Senator Friend. [LB316 LB506]

SENATOR FRIEND: Thank you. Conveniently positioned and a little bit different purview, obviously, with this piece of legislation. Again, my name is Mike Friend, F-r-i-e-n-d. I represent northwest Omaha District 10 in the Nebraska Legislature. The legislation here would provide an alternative means by which the state of Nebraska would meet its obligation to provide special education services by providing contract funds to parents for programs or services being provided outside of the public school system. Under the act, the state would be obliged to establish a method of reimbursement for special education related services by contract for programs that meet the requirements of the Special Education Act. At the request of a parent or a guardian of a child eligible for services under the act, the state would see that a contract was issued from the funded service provider to the institution of the parents' or guardian's choice that would provide the required services. The amount of the contract would be limited to 70 percent of the reimbursable amount for such services under the act. The contract funds would be issued under this legislation at the time of the child's transfer to the program chosen by the parent or guardian which, in his or her opinion, meets the requirements of that child's special education and related service needs. If the choice is denied, the parent or guardian may seek external review of the particular decision that denied the application. While schools can access private services for children with special education needs, there is, I guess, an idea out there that parents can not do so. Some of them without incurring substantial personal financial responsibility. This bill would in some ways level the playing field to a degree for parents of limited means seeking the best educational resources or more educational resources and outcomes

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for their children. Members of the Education Committee, I said this last year when I came in. I have said this since I have been here. I am not a huge voucher guy. People always interview you and they say well, what do you think of vouchers? I don't think we need them in this state. But some would look at this and they would say if it looks like a voucher and it smells like a voucher and it walks like a voucher, it is voucher. Right? Well, this has been introduced before in different forms and that is what happened and I understand that. But at the same time, I don't think that on behalf of my constituents that I have felt very comfortable necessarily closing my eyes and, again, going back to the problem identification. I had folks communicating to me that they had a problem, and I communicated to Tammy and I communicated it to Senator Raikes and I don't know where that takes us. But I think where we are at right now is that I wanted a voice on this issue and I think that there are some folks behind me that, I guess, to a certain degree wanted a voice on this issue as well. And making one more point really clear, I know the folks that work in this industry from a public school standpoint, from a private school standpoint. I have met them. I have talked to them. We have analyzed these things over and over again the last four years of my life. I have looked at this stuff. There are good people working in this area, and I don't think anybody is throwing down a gauntlet and tossing axes and slinging arrows. What we are doing, again, with respect to all involved is problem identification, and I think the education of our children is a problem that we can all get our hands around. So I don't mean to be too sappy about it, but I don't think this is a subject matter that is certainly taboo and I don't think it is walking like a duck and I don't think it is necessarily talking like a duck, so it might not be a duck, but we will see. And I would be happy to answer any questions. [LB506]

SENATOR RAIKES: Okay. Thank you, Senator. Questions for Senator Friend? Senator Howard has one. [LB506]

SENATOR HOWARD: Would this contract agreement for programs be limited? [LB506]

SENATOR FRIEND: Well, from a fiscal standpoint it would, and it would also be limited only, and maybe I am trying to be too coy with the answer, Senator Howard, but it would only be limited by, it is my understanding, the IEP and the individuals, the parents. I don't know that there would be any limit, but from a fiscal standpoint it would be limited. [LB506]

SENATOR HOWARD: Well, the reason I ask is I remember testimony in Health Committee, I don't remember if it was last year or the year before, from parents of a child who had been diagnosed as being autistic, and they took him to Minnesota to go to school because that is where they felt he could get the best education and the best opportunity. So looking at this, I am wondering if your contract would be limited to Nebraska or would it extend beyond that? [LB506]

SENATOR FRIEND: Okay. I understand your question, and it is my understanding that

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it would be. I don't know that we have the purview to be able to expand it out into those extraterritorial boundaries, if you will. From a statutory... [LB506]

SENATOR HOWARD: Does that specify in here? [LB506]

SENATOR FRIEND: Well, it doesn't specify it, but I am assuming unless we do from an express statutory authority standpoint, I don't think that we can. I could be wrong about that and I would defer to some legal expertise on that, but I don't think that we can tell Minnesota, oh, by the way, you are going to have contract with this particular institution or working in agreement with our IEP. Let me give you an example, if OPS is saying, hey, you know what, yeah, maybe this organization in Minnesota can...is Minnesota even obligated at all to deal with OPS under the expressed statutory authority that we provided here? My answer would be I don't think so. [LB506]

SENATOR HOWARD: Well, we do have interstate contract agreements, but I don't know if this would apply. I think the difficulty would come in more in if using the parents. [LB506]

SENATOR FRIEND: Well, good point, but I think some of the things that I have heard and the problem identification that I have been thrust into is that sometimes I think, and you might hear from a few of them, that sometimes the parent maybe doesn't feel like he or she has the voice that they have always thought that they should have. Senator Howard, that is an excellent point and that may be part of, I guess, the reason that people like me bring LB506. It is a school choice bill. We talk about school choice all the time, don't we? I mean on the floor, it seems like every other bill that every time somebody brings the issue up, that is what we are talking about. But this actually deals with it, and the money never hits the parents' hands. So there is that aspect of it, and you are going to be dealing with the parents in a different way. But I don't know that we are not, from an expressed statutory authority situation, they can do it now; it is just not necessarily...here is my point. The contracting can be done right now, it is my understanding. It is just not being done and maybe your point is the reason, that the parents are having difficulty getting with the school districts, the school districts are having trouble with getting with the parents. I am not really sure. [LB506]

SENATOR HOWARD: Thank you. [LB506]

SENATOR FRIEND: Sure. [LB506]

SENATOR RAIKES: Senator Kopplin has a question. [LB506]

SENATOR KOPPLIN: Just going a little bit further with what Senator Howard said because that immediately came to my mind also. Many times the disputes are between instate or outstate programs or residential care or home care. But basically the way I

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read this, it is allowing parents to enter into contract with somebody and send the bill to the state. Is that correct? [LB506]

SENATOR FRIEND: Well, I think unless you want to, and I don't want to break it down into semantics because I am sure we could go all day on it, but it has been my understanding that the way this bill is drafted, and there is others who understand the funding mechanisms better than I do behind me but the way this bill is drafted, and they can speak to that, but the way it is, is that part of the problem last year with the way the previous bill was drafted is that the money would come back to the parent, the 70 percent of that funding that was going to be required for that parent to be able to make that decision was going to come back into the parent's hands, hence a voucher. They grab it and say where do I want to go with this 70 percent that I got back from the state, and under the auspice of this bill the money gets automatically transferred and it never touches the parent's hand. So if somebody did chose a Brownell-Talbot or some solution that Bennington or OPS or Millard said, hey, that is probably not a bad idea for this particular kid. The funding is going to be, as you said, maneuvered in that manner. It is never going to touch the parent's hand. [LB506]

SENATOR KOPPLIN: My problem would not be if the school system that said that is a good idea will make this commit. My question would be what about the parent that didn't agree with the school system, enters into a contract with at private provider and then sends the bill to the state. I think that is possible under this bill. Am I wrong? [LB506]

SENATOR FRIEND: I don't think you are. [LB506]

SENATOR KOPPLIN: Okay. [LB506]

SENATOR FRIEND: I don't think you are but, again, I think it is semantics. I mean I don't know how functional that would operate. I mean I don't know if it would be quite that simple is what I am saying. [LB506]

SENATOR KOPPLIN: Okay. Thank you. [LB506]

SENATOR RAIKES: Any other questions for Senator Friend? Thank you, Mike. You stick around or... [LB506]

SENATOR FRIEND: I will stick around. [LB506]

SENATOR RAIKES: Okay. All right. We will move to proponents to LB506. Welcome. [LB506]

DAN MALONE: Good afternoon. Senator Raikes and members of the Education Committee, my name is Dan Malone and I am here as a parent of a special needs child,

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and I am watching the green light and realize the minutes we have. I want to try to make for you today two points that I think I hope that we all are clear on as we go forward in consideration of bill LB506. My son, Timothy, was well taken care of by the public system as a child and through his intermediate grades. It is when he then progresses onto the junior high that I want to take you to for a moment. He was assigned to a school that has an inclusionist program, and if you are not familiar with that that means he starts every day with the homeroom regular kids, if you will, of his age group. He convenes back with them and goes to lunch, he then goes to assembly with them if there is one and then they dismiss together. The rest of the time he then goes down to his wing of the school with the rest of the special ed kids. Now I just want to for a moment get you into the mind of a 13 year old boy with special needs that is now on that schedule. This is new to him. It is a new school. Timothy has got a whole house full of brothers and sisters and he is well versed in what is cool. He knows his cargo pants and he knows when to wear his hat backwards and he has got the right backpack and now he goes into this school building and he is told to go down the hall to the left and go into his regular classroom. Now I don't know if any of you have ever had the occasion that I have had to walk into a room full of strangers, but you have got to swallow hard sometimes. Timothy would walk into that room and these are his regular classmates. Now you have got to understand something that the other classmates take some time to learn. Timothy is nonverbal. He speaks about 50 words. He signs pretty well, but they don't. He has double hearing aids, kind of the big ones, not the real cool ones but that is what he can wear and that is all he can wear. He sits in that early classroom announcement period with the regular kids. He can't understand what the teacher is saying because of the background noise of the classroom. He then dismisses and goes down to the regular class and he has to come back at lunch and at dismissal. Now somewhere in the planning session of those who came up with inclusion this is a great plan. I am submitting to you, for him, and not for anybody else, this was a nightmare. This was a terrifying event. And even though I will give great credit to those young kids in those classrooms, the majority were very considerate, the minority were not. Over a period of months he became very reclusive, very combative, he is very sensitive about his hearing aids, he is very sensitive of those that make fun of him. The whole three years he was in this inclusionist program he never received one phone call from "the regular kids," he never went to one party, and he never went to one basketball game. I am not remissive of that. It seems natural to me. But the theory of this was not working for him, and his educational and his personality progress was failing badly. When we tried to find other alternatives for him we are told that he is not available for other alternatives, you go where you are told. These are the only high school kids in the state that are not eligible for open enrollment. That is what LB506 is about. Number two point, and then I will dismiss or I will quite, this child came to us without announcement and without instruction and his family and his mother and I have been progressing through this world with his limitations to try to figure out where he is going to land. I get into the shower with him in the morning to help him shave and his mother ties his shoes and fixes his hearing aid. He is 18 years old and he is very limited in what he can do.

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However, what I will propose to you is that if there are any experts in the well-being of Timothy Malone, it is me and his family. And you are now going to hear from some proponents, I suspect, today or soon that are going to tell you that parents like ourselves are not qualified to make these decisions; that they are the professionals in this matter. And I submit to you this system is not working and that there is room for this discussion and I hope we have it. I ask for you to give it good consideration. Thank you. [LB506]

SENATOR RAIKES: Thank you, Dan. Senator Howard has a question for you. [LB506]

SENATOR HOWARD: Thank you, and I feel I have to ask you this, but you may be familiar with the term "mainstreaming." If not... [LB506]

DAN MALONE: I am. [LB506]

SENATOR HOWARD: I had a suspicion. But it wasn't that long ago that people were saying we can't restrict children that have special needs and they benefit so much more from being mainstreamed, and to separate them or to isolate them really does them a disservice, and I am just wondering how you feel about that concept. [LB506]

DAN MALONE: Senator Howard, in my humble opinion of having to put 137 classroom years of children in school, the mainstreaming concept, while it may work, and I have read the wonderful stories in the paper about the special needs kid that is the homecoming king, etcetera, I submit to you that is a minority of children with special needs; that the majority of children have an inability for that to be a practical way. Can you imagine, here is Tim Malone now, he is 18. A mainstreamer would say that if I can get him a basement apartment down on Saddle Creek Street in Omaha, Nebraska, and get him to walk to the bus and go down to the Goodwill and drive a forklift and come home, he is a successful mainstream guy. Let me tell you something. This guy can't read the bus. He can't do that. I would be terrified to put him in that environment. So while that might work for those who it works, let them let it work. But let me tell you the majority of them, they need a protective shield around their lives and we are trying desperately to provide it, and these precious years in the educational system to be submitted into a system that doesn't work for them and have no options is unfair, and we need some relief. [LB506]

SENATOR HOWARD: Thank you. I appreciate your wisdom and I think you have done a terrific job. [LB506]

DAN MALONE: Thank you very much. [LB506]

SENATOR RAIKES: Senator Adams has a question. [LB506]

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SENATOR ADAMS: In the time that you were working though the public school system, were there regular IEPs and did you find those to be effective at all? [LB506]

DAN MALONE: We had regular IEPs. My wife is a special education teacher. I will tell you the classroom teachers in the public system are fabulous and we have had great coaching from them as to where we could send Tim or where we should send Tim. But as a teaching tool for IEPs for special needs kids, I think there is a little bit of cloudiness on how they are effective, and they were not effective nor were they representative of Tim. [LB506]

SENATOR ADAMS: Thank you. [LB506]

SENATOR RAIKES: Again, thank you, Dan. [LB506]

DAN MALONE: Thank you, Senator Raikes. [LB506]

SENATOR RAIKES: Thanks for being here. Other proponents LB506? Welcome. [LB506]

JEANNE MALONE: Good afternoon. Thank you. Senator Raikes and members of the Education Committee. I am Jeanne Malone, J-e-a-n-n-e M-a-l-o-n-e. I am Dan's wife, and as he told you, we have nine children. Our youngest was born with Down's syndrome. I have a double degree in special education and speech pathology. So when Tim arrived, my education and my mothering took a whole new dimension as we entered the world of the special needs child. The early intervention and grade school education was excellent. It helped support and built a foundation of reading and math and other classes, and we had high expectations for his learning abilities. The reality is he has a hearing loss which severely restricts his speech. He understands most things, but has minimal verbal communication. And being the youngest of our family, he was involved in all of the activities that all of our family attended and loved every minute of it. Outside that family setting, his communication skills leave him considerably more vulnerable. He loves being involved, but he also knows when he is being made fun of, laughed at, and can be very confrontational in that setting. Therefore, the junior high setting brought a whole new challenge to us. A child that was always eager to go to school became difficult, belligerent, and generally unhappy about going to school. Not too unusual, I surmised, as many children went to the middle school situation, so I attributed this to his age and hormones. But day by day, I continued to see that this program simply was not working for our son. As I searched for answers, I was often met with dismissive and condescending attitude from administrators reminding me of their educational expertise and found them unwilling to discuss curriculum or the possibility of alternatives. In discussion with multiple educators, many of whom knew Tim and his background, I became aware that the year Tim began junior high, a curriculum change had been designed to maintain, not to advance, the core curriculum for the moderate

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special needs classrooms. Someone had determined that these kids had peeked educationally. I was unwilling to accept that at 13 he was unable to learn anymore. His teacher gave me resources to use on my own, and when I asked to evaluate alternative curriculums, was told that he was unable to transfer. We struggled on our own and each year his IEP simply met the minimal standards, nothing more. As high school approached, we visited his assigned high school. It was to be a new program started with a first-year teacher. He was to be one of the first students and it was a 50-minute bus ride each way. We had too many concerns. We did not have the confidence that this program would be good for our son, that the environment would be safe both in the ride and in the setting. When we asked to review possible alternatives, there were none. So we simply ask that you give the special education students the same prerogative of choice that is available to all students. [LB506]

SENATOR RAIKES: Thank you, Jeanne. Questions for Jeanne? In your experience were there, I will just ask you and maybe you don't know, were there options in other public schools in your area that you feel would have served the needs better of your son? [LB506]

JEANNE MALONE: Not in our district. I believe that the schools within that district had the same curriculum prerogatives. I felt that there could have been in some of the other schools, but that was not given as a choice for transfer between the different districts. [LB506]

SENATOR RAIKES: Okay. So there was a difference between your special needs son and your other children in terms of their ability to transfer? [LB506]

JEANNE MALONE: Yes. [LB506]

SENATOR RAIKES: Okay. Any other questions? I don't see any, thank you for being here today. [LB506]

JEANNE MALONE: Thank you. [LB506]

SENATOR RAIKES: Other proponents, LB506? Welcome. [LB506]

SHARI WELLS: Hi. Thank you for having us. My name is Shari Wells, W-e-l-l-s. Thank you for letting me speak in support of LB506. I want to give you a snapshot into my son's life. A huge percentage of children with special needs have communication problems. They have feelings inside like you and I do, but they can't tell you what is going on. These kids work with lots of teachers, paras, therapists. And say a teacher wants this child to do something and he won't do it. Maybe he has no clue what fractions are, maybe he has trouble counting one-to-one correlation, or maybe someone just told him you need to do this before you can do this, or maybe this noise over here is

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just making him so distracted that he can't concentrate. Whatever, he can't tell the teacher any of those things so he just won't do it, and then they both get frustrated. Now multiply that out times five years in a small school district that primarily serves typical children, like Bennington. That is the district that we live in. At first we had a sweet, happy little boy that really loved school and they did a great job with him. They really did. But in third grade he began learning that he was different and that he couldn't do the things that the other kids can do. He started thinking that he was bad. And so as time passed and pretty soon, when the educators looked at him, they only saw his behaviors; they didn't see the real Joseph. But we know our child better than anyone else knows and we are best equipped to make choices for him. When Bennington couldn't handle Joseph's education anymore, they wanted to send him to the Brook Valley Child Development Center. It serves special needs children with behaviors that the local school districts can't handle anymore. He went on a trial basis and guess what happened? His reading scores decreased. His anger and aggression got to a level that we couldn't live with anymore. We looked at other places, along with the school district, and we said how about this small school that serves special needs children that do not have behavior disorders, and they said no. So we jumped through all the official hoops, the IEP, the IEP reviews, we wrote letters, we made phone calls. Finally, we had to hire an attorney to go through the due process which we were not at all interested in doing, and they still said no. They said Brook Valley has everything this child needs. But they would not consider how the peer group affected him, nor how his subsequent anger and aggression affected his learning process in his life and our lives. We took him out of Brook Valley and tried the new school, and now we have our sweet little boy back but now he is in a young man's body. He is learning what he needs. He is learning to be responsible. He is learning to be helpful and to do tasks. He has friends. He is on a basketball team. He goes to dances. He will never understand fractions, ever, but now he will be better equipped to be a productive member of society. Please give the special needs students of Nebraska a choice in their education. This bill is about empowering people who are helpless to fix things that are not working. Please give the people who know these children best the tools to take care of them. Please give them a voice and a choice. [LB506]

SENATOR RAIKES: Thank you, Shari. Are there questions for Shari? I don't see any. Thank you for being here. [LB506]

SHARI WELLS: Thank you very much. [LB506]

SENATOR RAIKES: Are there other proponents for LB506? Welcome. [LB506]

BRENT HODGEN: (Exhibit 5) Thank you, committee. My name is Brent Hodgen, B-r-e-n-t H-o-d-g-e-n, and I am representative for the parents who have prepared letters in support of LB506 and the following themes run through, I guess, each of these seven letters. The common thread in the seven examples is that the public school system

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which...did not provide choices that led to the success of the students. Mainstream efforts, as we have heard, as well as even self-contained classrooms were not successful options for special needs students which attempted to be educated in a public setting. Mainstreaming efforts only serve to create lower self-esteem as their educational gaps increased, and their handicaps became accentuated as they were different from others in the classroom. Several were subject to bullying, which led to one student to stop eating, another having daily stomachaches to get out of school. Another child's self-esteem suffered as she rode the short bus, which further isolated that student. Another student in a self-contained class was put in with behavioral disorder children where they were subject to behavior issues as well as unwelcome touching. In every situation, the lack of choice prevented the education and development of individuals towards independence. As parents of special needs children, we only have one hope for our children. Our hope is that we provide our children with the best alternative to achieving as much independence as possible. LB506 provides parents of special needs children the choice in selecting the best method for achieving as much independence as possible for their child. I would like to read you a letter from one of the parents that summarizes the situation the best. I am writing this letter on behalf of our 15-year-old Patrick. He has a form of autism which is classified as Asperger's syndrome, this neurological disorder, which significantly impaired his cognitive ability, social skills, communication, language comprehensive. He started in the Omaha Public School system as a first grader when he was six years old. The only choice we were offered for our son's education was to place him in a behavior disorder, self-contained classroom. I was disappointed, filled with anxiety as I knew this would not be a good place for our son. Unfortunately, Patrick has a major problem with imitating the language and behaviors of other people. Therefore, a child that has difficulties with understanding social situations and discriminating the actions of others would certainly not benefit in a classroom filled with conduct-disordered children. With no other options for our son's education in the state of Nebraska, we made the decision to place him in the behavior disorder classroom. Our son constantly came home repeating inappropriate words and gestures, along with behavioral outbursts. These behaviors continued for two years and seemed to escalate as he became older. The special education team made the decision when Patrick was in third grade to mainstream him into the regular classroom. This was done against our judgment. We felt it would be too overwhelming for Patrick. Several times throughout the year, he needed to be taken out of the classroom, as over stimulation and his inability to process the information produced behavioral problems. There were attempts to redirect him in the self-contained class. However, he had a difficult time with understanding what he did wrong. Autistic children are very concrete in their thought patterns and have a very difficult time with reasoning or understanding the process of cause-and-effect relationships. The typical behavior modification process normally does not work for these children, did not work for our son Patrick. Fortunately (sic), teachers had to restrain him by sitting on him several times throughout the year. There were times when staff members and myself had to physically carry him out of the school. One day Patrick

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became so frustrated he walked out of the school and ended up in a tunnel under Dodge Street. A woman found him and brought him back to the school. The entire school staff was out looking for him. For the next four years, we were involved with several meetings with staff and continued to express our concerns with mainstreaming Patrick in the regular classroom. Problems persisted, and by the time he was in the sixth grade, he was placed in isolation in a room with a teacher assistant. This is how Patrick ended his experience in the Omaha Public School system. It was unfortunate that Patrick did not have any other options in the state of Nebraska. Autistic children require a specialized classroom with teachers who are trained to work with their special needs, including social skills training, language and communication development, processing simple tasks, and activities of daily living. Therefore, placing children like Patrick in a behavior disorder classroom or attempting to mainstream at a young age can be detrimental to their educational experience. Children with special needs have so much potential and deserve that special place where they can strive and be happy. Patrick is now attending a new school and is very happy. He has adjusted well to the small student population and student-teacher ratio. For the first time in many years, Patrick is smiling and laughing. There is no greater gift after seeing your child struggle for years. All special needs children deserve a special place. There should be an option in the state of Nebraska to have that choice to choose the best school with the best programs for your child and to have the necessary funding to make this possible. These children have dreams and they need our help. There are many special needs children in the state of Nebraska who are sad and cannot express their frustration. They have forgotten how to laugh and smile. I hope you will propose and convince the other senators to vote yes on LB506. Please let our children laugh and smile again. Sincerely, Kelly Wren (phonetic). [LB506]

SENATOR KOPPLIN: Okay. Thank you. Are there questions from the committee? Yes, Senator Johnson. [LB506]

SENATOR JOHNSON: I would like to just make one and that is that I think there is considerable substance to what you are saying, and one of the things about it is that I think that it would be a mistake to put blame on the schools and the education itself. I think the problem goes beyond that and so that maybe they are just part of the problem. I think maybe the biggest problem is that the state of Nebraska has ignored this as a problem. And so there are a few of us, and there is a bill being heard in Health and Human Services Committee to do at least a pilot project on autism to try and get some direction for the state of Nebraska to go. So I think we have got a long way to go. I guess let's be optimistic and see if we can move things in the right direction. [LB506]

SENATOR KOPPLIN: Other questions. Thank you, sir. Are there other proponents? [LB506]

JON YETTER: Committee members, my name is Jon Yetter, J-o-n Y-e-t-t-e-r. I am a

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parent of a special needs child. I am going to paraphrase a letter written by my wife and I to Omaha Public Schools in June of 2005. We are writing in this letter to express our disappointment with the move of our daughter's classroom from Picotte Elementary to Standing Bear Elementary. We do not understand why you would choose to move a small class of students whom have found such an accepting home to a new school with new teachers and new students. Routine and structure are so important to these students. Simply put, you are uprooting their whole world. Sometimes school is the only part of their life that is stable and routine. A regular ed student will adjust to a new environment within a week or two. For these students, it may take up to six months. My daughter cannot afford six months. She has made such progress at Picotte. Her social skills are her lifeline to the regular world. We chose Picotte because of the attitude towards special education students. The principal, regular ed teachers, and staff are all very accepting of these students. They encourage their involvement in everyday activities. Even the regular ed students seem to enjoy the special ed kids. Many times we have walked the halls of the school and students and parents of regular ed kids have said 'hi' to Madison. I have had students say 'hello' to Madison while we were at the grocery store. At Standing Bear Elementary, the opportunity to be mainstreamed into a regular classroom has been drastically reduced. Although my daughter has benefited from this, it is not always a great situation. I believe that there will only be one class of each grade at this school. We would be more understanding of the move, although still disappointed, if Standing Bear Elementary were an established school equipped with teachers and staff with their own sense of community. We have had the experience working with each other and are ready to accept the challenge of special ed students. Please give Standing Bear Elementary a chance to get up and running before uprooting these kids. We waited three weeks for an answer. It never came to this letter. After several phone calls we were granted a meeting. They assured us that our concerns had been addressed and discussed before a decision was made to move the classroom to a new school. Up to this point, our experience with the staff at OPS was exceptional. With that in mind, we decided to send our daughter to the new school. But all our fears came to fruition. She regressed academically. There were several example of how special kids were not be accepted into the school community and the ratio of school teacher to student went down. The opportunities to be mainstreamed and our requests were met with much resistance. The following year we attempted to work with OPS in moving Madison to a setting we thought would be less restrictive. We even found a place for her within the Omaha school district. We wanted to move here ahead to a middle school a year early. The setting included a teacher she was very familiar with from her old school, and we were told there would be room in the classroom. She is large for here age, developed physically beyond her classmates, and only missed the age requirement by two weeks. This attempt was met with strong resistance and very little explanation, just that our request was denied. At this point, we became frustrated and decided to look for alternatives. We were fortunate enough to find an option that suited Madison's educational and social needs in a much less restrictive environment than what was available to us at Omaha Public Schools. We do feel fortunate to have

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found this alternative for Madison. However, it has put a financial strain on our family. Although we have found the means to send her to this specialized institution, many of Madison's old classmates do not have the funds to take advantage of the option available to make the choice to maximize their child's potential. LB506 addresses this, and I thank you all for hearing me today. [LB506]

SENATOR KOPPLIN: Thank you. Are there questions? Seeing none, thank you, Mr. Yetter. Other proponents? [LB506]

ROBERT KRIST: I will brief. You don't want to hear from me again. My name is Robert Krist, K-r-i-s-t. I am the father of a special needs adult. She was working wonderfully in different institutions. I am a retired Air Force lieutenant colonel. We have seen three continents and eight different states and all kinds of services providing in education, vocational training. The reason that Courtney is the person that she is today is that we had a stay-at-home mom, and we had the wherewithal to make choices outside the system. We, too, met the same resistance when we asked if we could move Courtney from one school to another or will you not move her this year. I won't go into those details for you. You have heard those. There are some horror stories. It is not the school districts. It might be the stove piping that keeps the funds inside the district itself. It might be the reluctance to look for alternatives. It might be the reluctance for the experts to listen to the parents in what has to be done to make sure that these young adults, these infants go through their educational careers, through the vocational training and become independent--from infancy to independence. Somewhere along the line that slide doesn't quite reach the ground, as I said earlier, and LB506 goes a long way. It may not pass the way it is. It may have to be amended. The 70 percent may be too much. But look at it as an option for a parent to have a choice for a special needs young man or young woman. [LB506]

SENATOR KOPPLIN: Are there questions for Mr. Krist? [LB506]

SENATOR JOHNSON: One question quick, where was the best place? [LB506]

ROBERT KRIST: Senator, I think for services and education at her age, OPS was wonderful until she hit the brick wall and she became a young lady and then there were some real issues. And I can compare it to California, Texas, New Mexico, Illinois, Missouri. OPS did a wonderful job. But they are different. They are born and they need different things at different times, and without that choice it would be tough. But I think OPS was pretty good. [LB506]

SENATOR JOHNSON: Okay. Thanks. [LB506]

SENATOR KOPPLIN: Other questions? Okay. Thank you, sir. [LB506]

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ROBERT KRIST: Thank you. [LB506]

SENATOR KOPPLIN: Other proponents. Do we have opponents? [LB506]

VIRGIL HORNE: Senator Kopplin, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools. My testimony is not intended to reflect at all on any of the proponents of this bill. This is a bill in the state Legislature. It is a bill that impacts the entire state of Nebraska, therefore all the school districts. On line 8 of page 2 of the bill, to the best of my ability to read, it says at the request of a parent or guardian of a child with a disability eligible for services under Special Education Act, the state shall ensure a contract is issued from the funded service provider--I am assuming that is a school district--to the institution of the parent or guardian's choice in the amount equal to 70 percent. In a bill previous to this bill, it was proposed to have 18 individuals who were all considered to be specialists look at special ed services in this state to best determine what is required and what should be done. This bill is now taking that bill and saying that parents and guardians for every good reason in the world, don't misunderstand what I am saying, should have the sole decision making process in this. Senator Howard talked about programs that are available for autism and there are some excellent programs available for autism, as I understand it, in Minnesota and in other places. Some people will say they are wonderful. The Autism Society of Nebraska, as I recall, did not support that bill. So there are questions about all types of treatment across the state. My concern is that there are circumstances at times when a school district can provide a very excellent education for a child but the home setting does not allow that child to be accommodated, and so there may be a decision that a residential facility for a child of special needs would best fit the family, even though the school district can supply the educational needs of the child. This would result in a direct reduction or a contract, as it is called in the bill, from the school district to whatever institution that parent chose to choose, even though the facility was there. I would point out that since 1999-2000 school year, the Lincoln Public Schools has lost greater than 10 percent of its state aid in special education. There would still be a lot of students in the school system who would not be eligible for the services available to them as readily if we have some students who require greater than the normal amount of special education needs. You also will have a bill before you even today suggesting that there are students that would come along who completely blow a budget for a school system and that if that occurs that the state should react in a faster manner. Again, this testimony is not about the students or the parents who are represented in the proponent testimony. This is about a process that while it is not perfect, it perhaps serves the majority of the people in the program that we are talking about. That concludes my testimony. [LB506]

SENATOR KOPPLIN: Thank you, Virgil. Questions? Senator Johnson. [LB506]

SENATOR JOHNSON: Virgil, is there any appeal process? That is kind of what I am

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hearing from the people is that decision is made and a couple of them even read letters that they had written and then months later why there is...it just seems like there is a lack of communication and understanding between the various parts... [LB506]

VIRGIL HORNE: Senator, I cannot speak for other school districts. For the Lincoln Public Schools, there is an appeal process implied because you have an elected member of the board of education by district in Lincoln and you can always appeal to that level. On other comments I would say that I know that the Lincoln Public Schools contracts with school districts for special education services with other districts around the area. There is other kinds of things that can be discussed. I can not address the issue of the individuals who testified prior to my testimony because in some cases the district was not identified and, quite frankly, I don't know the practices of those districts. [LB506]

SENATOR KOPPLIN: Other questions? Thank you, Virgil. [LB506]

VIRGIL HORNE Thank you. [LB506]

SENATOR KOPPLIN Next opponent. [LB506]

JOHN BONAIUTO: Senator Kopplin, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of Nebraska Association of School Boards. And my testimony in opposition of this bill in no way do I want to take away from the genuine and sincere concerns expressed by the proponents. We have a system that sometimes doesn't work the way parents would hope it work for every child, and I think that the bill that we talked about just before this one that Senator Friend introduced is an opportunity to further discuss how this system works and how it works now and how it maybe should work for students we aren't meeting their needs. I would like to sit here and be able to say that finances haven't always been a concern, but they are. A district tries to do the best it can to meet the needs of children within the confines of what they have to work with, and sometimes some services may be beyond the district's reach. And so that, I think, is maybe the biggest concern about this bill when you talk about contracting and giving parents the final say in making that determination. The fiscal note on this is going to be difficult to determine and that would surely be a concern. I don't want to add to an already complex discussion that this committee is having but in your discussion of the potential of a broader sense of options to students, in a learning community or a larger area, the issue of special education may be an issue that has not really been investigated, but could offer parents a broader range of choices within a residential area that is broader than would have normally been in a school district. You have different potential providers that you wouldn't have to contract with because the students would be a resident of that broader area. But that is something that maybe could be discussed as you look at that solution and, again, would hope that the task force would take up this issue and look at what we should be doing and could be doing

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to meet these challenges. With that, I will conclude my testimony. [LB506]

SENATOR KOPPLIN: Questions for John? [LB506]

SENATOR JOHNSON: Let me have one more shot here. [LB506]

SENATOR KOPPLIN: Senator Johnson. [LB506]

JOHN BONAIUTO: Senator Johnson. [LB506]

SENATOR JOHNSON: Well, I guess what I am trying to get at here is this is that is...and I realize it goes a lot beyond what we are talking about here today, and I think the Legislature is indeed partly at fault in where we are at. But I get the sense that it is a communication problem, and just from my own personal experiences with kids going through very good schools at home, one of the things that we constantly ran into is they put their rules in order at the first of the year, and, by God, they are going to stay with those rules no matter what, even when they are confronted with things that are obvious that they should change. But they have established the rules for the year and we don't change them until next year. Now I guess maybe I am seeing this in the attitude of what these people are saying around here is this a problem and I guess if it is a problem to regular students, so to speak, certainly it would have to be a bigger problems with special needs students. End of sermon. [LB506]

JOHN BONAIUTO: Right. And I think you have read it correctly, Senator, about establishing a criteria or maybe it is a matter of just trying to keep the lid on and that in itself creates problems. [LB506]

SENATOR JOHNSON: Thanks. [LB506]

SENATOR KOPPLIN: Other questions? Thank you, John. [LB506]

JOHN BONAIUTO: Thank you. [LB506]

MIKE DULANEY: Senator Kopplin, members of the Education Committee, my name is Mike Dulaney, D-u-l-a-n-e-y, representing the Nebraska Council of School Administrators and the Nebraska Association of Special Ed Directors. We know that Senator Friend brought this bill with the best of intentions. We do not take the legislation as an attack on public schools. We think that he, particularly when we look at the bill we talked about just earlier that we know that there is an attempt to look at what is best for the special ed students, the parents, the schools, the teachers, administrators, everyone involved. That is what we want to and so we are going to take this in the spirit that I think Senator Friend intended. We look forward to the opportunity to study special education issues because I can assure you there are special ed directors that want to

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talk to whoever will listen so that we can get their issues on the table too. When we first looked at this bill, we thought it would be great if schools got 70 percent reimbursed and wouldn't that be wonderful. Of course, that is not the case. And so we want to talk about funding issues, we want to talk about IDEA, and we want to talk about Rule 51 and all of those relevant regulatory and statutory issues, and so we would look forward to that and the prospect of having the task force passed into law. And that would conclude my remarks. [LB506]

SENATOR KOPPLIN: Questions for Mike? Senator Howard. [LB506]

SENATOR HOWARD: Thank you, sir. I would certainly see this as a real opportunity to use that knowledge that parents have. Nobody knows their child better than a hands-on parent, and these people are so committed to their children and so interested in making the educational experience really productive. I just see it as wonderful that they have been willing to step forth and offer to do this. Thank you for wanting to work with them. [LB506]

MIKE DULANEY: And thank you, Senator Howard. We are moved by the Malone family story and all of the other testifiers today and we want what is best for special ed students and for education generally, so we would look forward to the opportunity. [LB506]

SENATOR HOWARD: Well, I think we all know that success means success for all of us. [LB506]

MIKE DULANEY: Absolutely. [LB506]

SENATOR HOWARD: Thank you. [LB506]

SENATOR KOPPLIN: Other questions? Thank you, Mike. Other opponents? [LB506]

SARA FARRAND: (Exhibit 6) Mr. Vice Chairman and members of the committee, my name is Sara Farrand, Sara with no h, Farrand spelled F-a-r-r-a-n-d. I am here on behalf of the State Board of Education and the Nebraska Department of Education. The State Board is appearing in opposition to LB506. The main issue is the 70 percent reimbursement rate in this bill and that reimbursement rate exceeds the reimbursement that school districts are currently receiving for special education reimbursements from the state General Funds. Currently, their rate is lower and providing a matched certificate to parents appears to be problematic in taking away money from the reimbursable amount otherwise awarded to the school district responsible for providing that special education. Another problem is that parents may use this matched certificate to help pay for services of his or her own choosing if, in the parent's opinion, the programs meet the requirements in the IEP. The problem is that the bill offers no

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language stating that the programs and services selected by the parent be accredited or approved programs. And finally, there are avenues of dispute resolution in place in federal and state law to address service dispute matters. If the parent is unsatisfied with the IEP or feels that there needs to be changes in services that the school district offers through the IEP, the existing state mediation centers, the Nebraska Department of Education special education complaint process, or a special education due processes with an independent hearing officer are available. And with that, I will take any questions. [LB506]

SENATOR KOPPLIN: Questions for Sara? Senator Ashford. [LB506]

SENATOR ASHFORD: Just very quickly, and I missed part of that and I apologize. I had another bill. But if we were to correct those problems you would fine with the bill then? [LB506]

SARA FARRAND: I think that the State Board really felt that providing a voucher for special education was somewhat problematic. I think that they would be more okay with going forward with the special ed task force to discuss problematic issues. [LB506]

SENATOR ASHFORD: Okay. Fair enough. Thanks. [LB506]

SENATOR KOPPLIN: Other questions? Thank you. Next opponent. [LB506]

JAY SEARS: (Exhibit 7) Senator Kopplin, member of the Education Committee, I am Jay Sears, S-e-a-r-s, and I represent the Nebraska State Education Association. The page is passing to you my written testimony and so I will talk a little bit more about why NSEA is here and opposed to the bill. First of all, thank you to Senator Friend for bringing the voices of his constituents to the Education Committee once more. I was here last year, and I can't remember, Senator Kopplin, was it also snowing that night when we were here dealing with this one? [LB506]

SENATOR KOPPLIN: I am sure it was. [LB506]

JAY SEARS: I am sure it was and I said the V word and I won't say the V word and I won't say the school choice word. Those are in there. We have talked about those. I think it is important the that the people that are behind me and to the left of me care deeply about their children, like all of us do about our children, and we want to advocate for our children and get the best education, and that is up against state policy and federal policy about special education. I am sure that if we reimbursed the real costs of education, whether it is for special ed students or regular ed students, that all of us would advocate for the best education we could get our students. NSEA doesn't fault parents for doing that. I am a former special ed teacher. In about 1981 or '82 the federal government changed the IDEA and required that special ed students "not be housed" in

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buildings by themselves and segregated. At that time when I was a special ed teacher in Seward, the Seward Public Schools decided that because the federal government was probably all-knowing that they would bring back their special ed students who were in the Lincoln Public Schools at Hayward Elementary going through vocational programs. That was a great upheaval for parents because they thought they were getting the best education they could have in the Lincoln Public Schools, even though the kids got on a bus everyday and went to Lincoln to get vocational training and then they came back at night. But we built our own program in Seward, and we built that around good education. It wasn't cheap. It wasn't easy. But, again, the federal government said that is what we have to do. You, as legislators, have to come up with policy and economic policy that provides for the best education of all of our students. Even though NSEA did not testify in any position on LB316, the bill that you heard previously, I think that is the bill that will take us into the next...and we are actually in the twenty-first century now, looking at special ed and how we reimburse it, how we teach it, how we work with parents because parents of special ed students are no different than parents of any student in our schools. They want the best, and how do we make it possible in public policy that parents and teachers and administrators and school boards can sit down and come up with the best education for each individual student. That is not an easy policy but that is why you all get the big salaries, right? Again, NSEA is opposed to the bill and we would be glad to work with any committee that comes out of LB316 to study the special ed issues and make sure that each one of our children in the state of Nebraska gets the best education that we can afford. So thank you and I will take questions. [LB506]

SENATOR KOPPLIN: Thank you, Jay. Are there questions? Seeing none, thank you. Are there other opponents? Is there neutral testimony? That will end the hearing on LB506... [LB506]

SENATOR FRIEND: Senator, may I... [LB506]

SENATOR KOPPLIN: Oh, you want to close. Sorry about that. [LB506]

SENATOR FRIEND: That is okay, Senator. Thank you, Mr. Vice Chair. Just real briefly, thank you for your indulgence. We are all products, all of us, all of my colleagues, everybody in this room, products of our educational background. I am a product of the Omaha Public School system, the Omaha Catholic school system, the St. Paul, Minnesota, public school system, the St. Paul parochial school system, the Millard school system, Kearney State College, and Creighton University. Now it was all pretty cookie cutter because it could be, and I think what the proponents of LB506, just bear with me for a second, are looking for is something that is not cookie cutter. Because a lot of them feel that they can't afford cookie cutter anymore, and I don't think you heard any of them bash OPS or Millard or anybody else. That wasn't the point. I said from the outset that wasn't the point. Cookie cutter isn't enough for some of these folks. And with

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all due respect to the opponents that I know why they are here, and it makes perfect sense to me on a bill like LB506. But if we have identified as Senator Johnson mentioned, if we have identified, if we have identified that there is a potential problem here and the solution isn't here in LB506, I think that we have the creativity not only in this Legislature but particularly on this, and I am not trying to butter you up, on this Education Committee with Senator Raikes and you folks to deal with subject matter like this in a creative fashion, not a cookie cutter fashion. That is all we are asking for. And with all due respect to the opponents, the Nebraska State Education Association didn't come in and testify on LB316. That is fine. I don't hold any feelings one way or the other about that. But let me make this point and I will end, very, very clear the state Legislature makes policy. The NSEA doesn't. We don't have the League of Municipalities making policy. We don't have anybody else in this state making policy but us, and we do it as the representatives of the people in this room that came up to testify in a proponent fashion or an opponent fashion and for the 33,000 people we represent. Now we are the ones who can get creative. We make the state policy, not the federal policy, the state. So we can decide and we have the power to make those decisions. If LB506 isn't the answer, I ask with all due respect help us, because I have been working for eight months with counselors, some teachers, parents, and lawyers, and you know how much fun the lawyers can be. So the bottom line is I guess we are just asking for help and that is why some of these folks were here today on LB506. Now...thank you. [LB506]

SENATOR KOPPLIN: Thank you, Senator Friend. Questions? Senator Adams. [LB506]

SENATOR ADAMS: Senator Friend, there is a tone of urgency in your voice but I guess the question that I am asking, would it be advantageous to us in light of your introduction of LB316 that if this committee decided to move forward with that and the body did as well to complete that study before we get into the bigger issues that are brought about by LB506. [LB506]

SENATOR FRIEND: It would to me, but keeping in mind that I brought this bill on behalf of constituents that feel like they have identified a problem that LB506 solves that problem. They feel strongly about that. I do too but, again, I have been wrong before. So to answer you question specifically, yeah, I think it would be something that I believe would be prudent and maybe that is what is going to end up happening. But a lot of the folks behind me and some of the folks that I have talked to over the last eight months believed that the initiatives that were brought previous to this, and in particular the changes that were made to this initiative, they identify the problem and they think that they have identified a problem, and I guess I am not going to tell them that they haven't. Senator Johnson made a good point, he says well there are maybe a couple of problems here, one might be a communication deal, one might be other things. If this doesn't identify the problem I guess, Senator Adams, in their eyes, then maybe LB316 is the prudent answer. But I brought them both for the discussion and I brought them

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both because there was a specific, I guess, urgency on one and public policy discussion matter on the other being LB316. [LB506]

SENATOR ADAMS: And I am glad you did because I think oftentimes those study groups are good things. Oftentimes we create a kind of quasi level of bureaucracy and we take six months or two years and really to people who are in the trenches may very well have been setting right there ten minutes ago saying here's the deal. Thank you. [LB506]

SENATOR FRIEND: Thank you, Senator. [LB506]

SENATOR KOPPLIN: Senator Ashford. [LB506]

SENATOR ASHFORD: I want to follow up on Senator Adams point. I used to do quite a bit of work as a hearing examiner in special education early when I was first starting to practice law. During the time when I was very much involved in funding special ed when I was here in the Legislature before. We did a rather significant increase in special ed funding so I am sort of familiar with it, though not in the last 10 or 15 years. Let me just try to understand how this bill would work. Let me ask you this question, Mike, this is something that you are serious about LB506, you are serious about LB506 advancing. You wouldn't be here otherwise. I don't want to offend your credibility or anything. [LB506]

SENATOR FRIEND: No, I understand. [LB506]

SENATOR ASHFORD: You want this bill to move. [LB506]

SENATOR FRIEND: I do because I think LB316 deals with a very general subject matter. We talk about LB316. We have talked a lot about that today. We talk about LB506. Two totally different things. LB506 is a funding problem for some parents because special needs students require...like I said, I was cookie cutter. My parents were able to send me to parochial schools and everything else but... [LB506]

SENATOR ASHFORD: Right, but you feel that this bill, LB506, responds to a significant need in the community and that it should be advanced. [LB506]

SENATOR FRIEND: I believe it does because a lot of those folks have helped me believe that it does. But the point that I wanted to make and I think that Senator Kopplin was going around to this point earlier when he asked me that question in the opening is that is this the answer because of some of the language that we have here. Maybe we don't have the particular answer with some of the language that we have... [LB506]

SENATOR ASHFORD: Right, but if we were to clear it up... [LB506]

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SENATOR FRIEND: ...but I think that some of those people would be happy to clear that up. [LB506]

SENATOR ASHFORD: But the way this would work essentially is, as I see it, is that if you got to a certain point in the process where the parent felt that the needs of the child were not being addressed for whatever reason then there would be a process by which there would be a neutral person who would decide whether or not those services are able to be provided or not, and at that point there would be a trigger, and the trigger would be the funding of a certificate in effect to provide those services. Is that generally what would happen? [LB506]

SENATOR FRIEND: I think that is a very good assessment. I mean we are not looking for a hammer here. We are looking for, like I said, creative options to... [LB506]

SENATOR ASHFORD: No, and the comments by NSEA and others, they do a great job in my view. [LB506]

SENATOR FRIEND: Absolutely. [LB506]

SENATOR ASHFORD: But we are not trying to say that somebody at the Department of Education or at NSEA, a teacher, is not doing a good job. You are bringing a specific problem that you think needs to be addressed with a remedy. [LB506]

SENATOR FRIEND: I am, but I also recognize the fact and I certainly wasn't trying to drag them out and, like I said, drop a hammer on them. What I am saying is I am not sure that I could have brought anything that they would have agreed with in regard to stepping outside of that cookie cutter approach to dealing with these things. I mean it doesn't mean that they are bad. It just means that when you get creative you get sometimes maybe some of that kickback. [LB506]

SENATOR ASHFORD: Well, I mean I think we have a similar problem in Omaha. I think with poverty at-risk students this is not...if we say there may be solutions outside of the norm to address the problems of at-risk kids in Omaha. It is the same sort of analysis. We are policymakers. We are trying to find a solution to a dramatic problem and you are identifying a dramatic problem here. That is all I am asking. This is a serious effort on your part to address a concern. That is all I was asking. [LB506]

SENATOR FRIEND: It is, and I certainly didn't want to waste...it is not that I knew I had LB316 out there and I better drop LB506 in so I can have a hammer behind it. That wasn't the intent. [LB506]

SENATOR ASHFORD: No, I don't take it as a hammer. I just want to make sure that

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that is...okay. Thanks. [LB506]

SENATOR KOPPLIN: Other questions? Thank you, Mike. And that will then end the hearing on LB506, and we will begin with LB139. Senator Flood, would you like to make the introduction? [LB506 LB139]

SENATOR FLOOD: (Exhibit 8) Good afternoon, Vice Chairman Kopplin, members of the Education Committee. For the record, my name is Mike Flood. I am the legislative representative from District 19, which includes all of Madison County, and I am here this afternoon to introduce LB139. In a nutshell, this bill proposes to create a hardship fund for schools to use to cover the unexpected costs of special education and related services when certain conditions are satisfied. The issue I am most concerned with is when a student from district X is placed in a residential facility in district Y. Current law requires that district X continue to be responsible for the education of that student, and that could be a very expensive responsibility. This is an issue of major concern to my district. Dr. Randy Nelson, superintendent of schools for Norfolk Public Schools, brought it to my attention shortly after I was first elected. Please know that I currently appreciate what our current laws, rules, and regs on this subject are designed to do. I understand that we need to make sure all children have an opportunity for special education, if needed, even if family circumstances require that the student reside outside of the home, and I understand the value of our current laws, rules and regs when a child with special needs requires special education that the resident school district does not have the resources to provide. The reality, however, is that there have been cases where school district X has the ability to provide an adequate special education, but circumstances in the student's home lead the family to chose a live-in facility in district Y, which district X then ends up paying for. And that gets a little complicated but let me give you the long and the short of this here. We had a situation in Norfolk where a student was placed in a residential facility in Axtell, Nebraska, south of Kearney. Norfolk Public Schools ended up paying for that, but the change came during the middle of the school year. So suddenly Norfolk Public has to come up with the \$60,000 that it takes to get the youngster educated and the residential services in Axtell. On the same token, Elkhorn Valley Schools based in Tilden had this happen where three developmentally disabled kids moved into the district from outside the district and required very specialized services at Lincoln Public Schools. Well, in Tilden when that school district administrator, the superintendent, got a bill for \$97,000 on the third day of October, he looked at his budget and thought what do I have to cut right now to pay this bill and to satisfy our obligation? This bill basically sets up a hardship fund and you get your special education money when you need it as long as certain conditions are met and then it is subtracted from your state aid money that comes a year in arrears. This does not have a financial impact. It just lets the district have the money when the bill comes and takes it away so that they have time to plan and so they don't go cut choir or music or the trip to the State Capitol for the fourth graders and all the other expenses as they crimp along to pay the bill. What has to happen for this to kick in, on pages 3 and 4 of

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the green copy you will see the basic conditions. Number one, the district could not and did not reasonably anticipate the cost prior to September of the school year in which reimbursement is sought. Number two, the cost will have an extreme financial impact on the district, and number three, this impact is greater than the lesser of the following two amounts: a) three times the average per pupil cost based on the average daily membership expenditures in the state for the previous school year; or b) 5 percent of their question schools district total general fund expenditures for the previous year. Basically, this gets the money to the school district so they can pay the bill and gives them a year to plan because they won't be getting the money in their state aid calculation. It is money up front, and it is not designed to have a fiscal impact. But it is designed to allow administrators to make decisions and not totally disrupt their school year financial budget. That is all I have. Thank you and I would waive my closing.
[LB139]

SENATOR KOPPLIN: Okay. Are there questions? Senator Adams. [LB139]

SENATOR ADAMS: Senator, my experience with these in the public schools and I am asking if what you are thinking reflects this, is that typically when these transfers occur they are not based on when the school year begins and ends. They happen when they need to happen which sometimes can be within a 48 hour notice. Is that correct?
[LB139]

SENATOR FLOOD: Yes. [LB139]

SENATOR ADAMS: That is the kind of hardship you are talking about here. [LB139]

SENATOR FLOOD: Unexpected, unforeseen, you get a call November 1, superintendent and you have got a big bill coming. [LB139]

SENATOR ADAMS: Okay. [LB139]

SENATOR KOPPLIN: Other questions? I have one, Mike. [LB139]

SENATOR FLOOD: Okay. [LB139]

SENATOR KOPPLIN: To fund this fund, is this...well, where does the money come from? Does it come off the top of what the other schools would get that year? [LB139]

SENATOR FLOOD: The idea is in the first year, \$1 million or so would come off the top and then we would catch up as we subtract it down the road. But there would be a special fund set up by the Department of Education just for this purpose and it would kept whole at \$1 million at the beginning of each school year. So yes, it would come off... [LB139]

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SENATOR KOPPLIN: It would come out of present special ed funds? [LB139]

SENATOR FLOOD: Yes. [LB139]

SENATOR KOPPLIN: And you mentioned \$1 million, have you based that on something or is that a figure we are just... [LB139]

SENATOR FLOOD: The Department of Education, I worked with them on this bill and they felt that at the time that we had initially introduced this last year when it was LB880, that is what they felt would cover the unexpected situations. It may be less this year. I think they have a representative here and we have a representative from Norfolk Public Schools that has also been involved but they may have amended the number, whatever it is. They have looked at the numbers. This won't affect very many situations, but I will also say your legal counsel has been very helpful. She has recommended and we have prepared a technical amendment that I would pass out, and this addresses some of the concerns in the fiscal note that were technical in nature and are addressed by this amendment. [LB139]

SENATOR KOPPLIN: Okay. Thank you, Mike. [LB139]

SENATOR FLOOD: Thank you and I will waive my closing. [LB139]

SENATOR KOPPLIN: Thank you. All right. Are there proponents for LB139? [LB139]

SARA FARRAND: (Exhibit 9) Mr. Vice Chairman and members of the committee, again, my name is Sara Farrand. I am going to spare you the spelling this time and, again, I am here on behalf of the State Board of Education and the Nebraska Department of Education. We are appearing in support of LB139, as they did when the bill was introduced previously as LB1204. LB139 impacts a very limited number of students. However, these students in the bill would place an extreme hardship on the school district as you heard. The bill establishes an emergency for school districts that could not have anticipated the hardship that they are encountered with. The State Board of Education makes only one comment, that a separate appropriation for this emergency fund would be more desirable than drawing from the state General Fund for special education appropriation, which is currently only reimbursing school districts at a rate lower than 70 percent. And I would take any questions. [LB139]

SENATOR KOPPLIN: Okay. Thank you. Are there questions? Senator Adams. [LB139]

SENATOR ADAMS: So how many cases are we talking about? I am assuming you have access to numbers. [LB139]

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SARA FARRAND: We do. However, our access is limited. We are not able to show, because we take snapshots in special education at December 1 and June 30, we are unable to show the movement of these kids at the time they are moved and so our numbers are not real accurate, but they are very similar--from what we found they are very similar from year to year. [LB139]

SENATOR ADAMS: So what would that be? [LB139]

PETE BIAGGIO: Senator, we conducted that survey last year to determine the number of students that would be impacted by this bill. Keep in mind that some of the students are only those students who (inaudible). [LB139]

SENATOR KOPPLIN: If you are going to testify, you are going to have to come to the mic and give us your name and all of that. [LB139]

PETE BIAGGIO: I was getting pretty comfortable in that chair. My name is Pete Biaggio from the Department of Education, B-i-a-g-g-i-o. Last year we conducted a survey to ascertain the cost to implement this bill. One thing that is important to keep in mind that this bill only affects a small subgroup of students. Only those students who are a ward of the state or a court and were placed in a residential setting for reasons other than to receive an education. So this bill does not take into account those high-cost students who may come into the district, for example a parent or a family moves into the district after September 20. It does not include those students. It only includes those subgroups of students that were placed in the district for reasons other than education. Okay. If that helps. [LB139]

SENATOR KOPPLIN: Are there questions for Pete? [LB139]

PETE BIAGGIO: And that was approximately \$1 million. [LB139]

SENATOR KOPPLIN: I would have one. I agree with you that there is a small number of these incidents that would happen. But wouldn't taking the \$1 million off of the top of state aid fund affect a whole lot of students? [LB139]

PETE BIAGGIO: That is correct. The way this bill would be implemented, it is kind of like getting a no-interest loan for the first year. As you are aware, we reimburse special education a year in arrears. So what we would do is if a student were to come in and meet these criteria after September, we would appropriate that reimbursement that we would have given them the following year, the current year. So then the subsequent year, they would not be eligible for that reimbursement. So essentially what it does it gives them some time to get their finances in order for the following year so that they can have available funds. So the first year there would be some money taken off the top, but then that next year that money that was taken off the top wouldn't be

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reimbursed to those districts though. It would be back in the pocket. [LB139]

SENATOR KOPPLIN: Correct, but it would go back to the fund. So somewhere in here don't we lose \$1 million off of special education funding? [LB139]

PETE BIAGGIO: First year. [LB139]

SENATOR KOPPLIN: Okay. Other questions? Senator Adams. [LB139]

SENATOR ADAMS: So then financially the next year the school district that that student with the special needs is still there, the school district has still got to figure out how to make a go of it on their own. [LB139]

PETE BIAGGIO: That is correct. The first year usually what we do is if the kid comes in they would identify that child. They wouldn't receive that reimbursement until the following year beginning the next December in seven equal payments. This one... [LB139]

SENATOR ADAMS: Right. This allows them to get the money in time. [LB139]

PETE BIAGGIO: ...to get the money up front and then next year there would be no payment for that student. [LB139]

SENATOR ADAMS: Okay. [LB139]

SENATOR KOPPLIN: Other questions? Okay. Thank you. [LB139]

PETE BIAGGIO: Thank you. [LB139]

SENATOR KOPPLIN: Are there other proponents? [LB139]

FRANK HEBENSTREIT: Senator, my name is Frank Hebenstreit. I am the special education director for the Norfolk School District. That is H-e-b-e-n-s-t-r-e-i-t. Our district would like to testify in support of LB139. There have arisen a number of difficult situations in our area and across the state that have come about from subsection 8 of Section 79-215, which Senator Flood shared some of those examples with you, and we support Senator Flood's bill as a support for school districts that receive unforeseen high-cost student placements as a result of that section of the law, and actually it is for kids that are nonwards. If it were for wards, those educational costs would already be reimbursed from Health and Human Services. So it is for kids that are nonwards that are placed for other than educational reasons. This remedy would assist school districts in the first year of such a placement and we view this as a positive first step in assisting with this growing problem arising from this particular subsection of statute. As a special

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education director, it is sometimes difficult for me to explain to a superintendent or school board how the patrons of a district are required to pay for the educational programming of a student, often for many years, and this bill would address the first year only, when the school district had no say in that placement at all. And there is an issue oftentimes when neither the parent nor the child continue to reside in your district and you may end up, because of this placement, paying for eight, nine, particular child that Senator Flood shared with you from the Norfolk School District, we would have been paying for that for nine or ten years. But this bill would assist with the first year when we were not expecting those costs to be present in our budget and no way to adjust the budget for that, and we support that effort. [LB139]

SENATOR KOPPLIN: Thank you. Are there questions? Are there other proponents? [LB139]

JOHN BONAIUTO: Senator Kopplin, members of the committee, John, J-o-h-n Bonaiuto, B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards, support having the fund and the ability to have school boards and school administrators be able to deal with these unanticipated expenses. Without a fund of this nature, you are drawing down your reserves or you are borrowing money or you are trying to make ends meet without having the ability to have a plan for it. So we think this is a good idea. With that, I will conclude my testimony. [LB139]

SENATOR KOPPLIN: Are there questions? Thank you, John. Next proponent. [LB139]

VIRGIL HORNE: Senator, Virgil Horne with the Lincoln Public Schools. We support this. We don't think we would ever qualify, quite frankly, but our director of special education is aware of other school districts that would. We think it is a great concept, and we are wholeheartedly behind it. Thank you. [LB139]

SENATOR KOPPLIN: Are there questions for Virgil? Senator Adams. [LB139]

SENATOR ADAMS: I am just curious, in a community like Lincoln why do you think you wouldn't qualify? [LB139]

VIRGIL HORNE: Senator, I was afraid somebody was going to ask me that. Because it says right here by our special...I will have to get back to you because I really don't know. [LB139]

SENATOR KOPPLIN: Next proponent. [LB139]

JAY SEARS: (Exhibit 10) Senator Kopplin, members of the Education Committee, I am Jay Sears, S-e-a-r-s, and I represent the Nebraska State Education Association. The Nebraska State Education Association appears before you today in support of LB139. A

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number of the testifiers have already outlined for you the benefits of the bill. I have included that in my written testimony to you, and if the Education Committee feels lucky maybe you can get the million dollar appropriation and we wouldn't have to take it off the top. But I doubt that will happen. So that concludes my testimony. [LB139]

SENATOR KOPPLIN: Are there questions for Jay? Thank you. Other proponents? Are there opponents? Anybody neutral? And Senator Flood had waived closing so that will end the hearing on LB139, and we are ready to move to LB702. Senator White will introduce. [LB139 LB702]

SENATOR WHITE: Good afternoon Senator Kopplin and members of the Education Committee. Thank you for giving me the opportunity to appear here today. I am here in order to introduce LB702. LB702 would revise Nebraska special education reimbursement provisions to align it to be consistent with the current requirements of federal law by eliminating reimbursement differentiation based on the educational setting in which a child with special education needs is served. On December 3, 2004, President Bush signed into law the Individuals With Disabilities Education Improvement Act of 2004, which reauthorizes IDEA, the act, through 2011. All sections except teacher qualification requirements were effective in July 2005. Now in order for Nebraska to continue to receive federal funding for special education, the IDEA requires states to align with the federal requirements. In other words, and this is important, if we fail to do this appropriately the remedy is a loss of our federal funding under this act. IDEA promotes inclusion of special education students into the regular classroom setting wherever appropriate, and that is critically important. But it also promotes provision of a free and appropriate education that meets the unique needs of each student. That is, the balance must be worked out in the schools student by student, and IDEA now prohibits the financial penalization of schools seeking to provide a free and appropriate education through multiple and diverse settings. The new reauthorization specifically adds a requirement that state funding mechanisms cannot distribute funds on the basis of the type of setting in which a child is served if doing so will result in a provision of an education that doesn't meet the unique needs of the child. In other words, it is an effort to assist the schools at actually treating children as individuals with very different needs. Some students with special education have needs that cannot be reasonable met in a classroom situations or cannot always be met in a classroom situation and the federal law requires that the schools start responding to these students as individuals rather than in a cookie cutter manner. Now, Nebraska's funding mechanism that is currently in place does distribute funds on the basis of setting, providing significantly less reimbursement to school districts with a disproportionate number of students who need more than three hours a week of special services outside of the classroom. At the same time, school districts with lower needs children who individual education plans call for most service in the regular classroom receive no deduction, nor do school districts who are wealthy enough to place paraprofessionals for higher needs students in the regular classroom. What this means is that our

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wealthier school districts can still provide an appropriate education, albeit at a higher cost but providing special paraprofessionals or assistants in the classroom or an adjunct room to the classroom in giving the tutoring they need, even though it may be less expensive and actually more appropriate to provide those services, for example, in the home of the child. Thus, school districts that include services from least to most restrictive depending on student need are not provided reimbursement on an equal basis for students with individual needs that require at least partial noninclusion in the classroom. Underfunding school districts' special education costs due to setting in which the child is served will result in education that does not meet the unique needs of the children involved. And I am advised, and there are people who have numbers behind me and can provide it hopefully more specifically, that the differences in reimbursement are very significant. For example, Lincoln Public Schools serves approximately 800 higher-needs students while Omaha Public Schools serves approximately 2,030 higher-needs students. Yet LPS and OPS had nearly identical allowable special education costs for which they were reimbursed from the state, even though Omaha is educating over twice as many higher-needs students than Lincoln. If an individual education plan for a child calls for services outside the regular classroom setting, IDEA said that the funding system should not discriminate on the basis of the type of setting in which the child is served. In other words, if in fact OPS is meeting appropriately the unique needs of a child and they are doing it because they can best afford to do so or it best meets the needs of that child in the home or in a different setting outside of the classroom, then that is protected by federal law. LB702 aligns Nebraska law with the new authorization of IDEA by prohibiting discrimination on the basis of the type of setting in which children are served whether in the regular classroom, in special classrooms, or in separate schools. Now, this is kind of a bill that in some levels is a lawyer's bill because the remedy for this is a lawsuit. The remedy for this is the lawsuit of the districts or the parents who believe their children are not being properly reimbursed from state government and the horrifying thing is that, at least from a very superficial but probably an informed view, what the federal courts will do under the act is just take away the state's funding thereby punishing all of our students. This is not acceptable to anybody who really puts the needs of children across the state first. Nevertheless, it is my understanding that the current administration has been very slow to adopt and acknowledge the new federal mandates and they have not implemented them. This puts us in a position that threatens appropriate education for all of our children because we have not kept pace with federal law. That is why I brought the bill. I appreciate your time and if you have questions I will try to answer them, though there are people who are far more knowledgeable than I on the individual aspects of this law who will follow. [LB702]

SENATOR KOPPLIN: Are there questions for Senator White? Seeing none, are you going to want to close? [LB702]

SENATOR WHITE: I think, it is a late day, I hope to waive it but I will reserve it in case

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some issue comes up that I might be helpful only if the committee asks. But thank you for your courtesy. [LB702]

SENATOR KOPPLIN: Thank you, Senator White. Are there proponents for LB702? [LB702]

JULIA ALLEN: Senator Kopplin and members of the Education Committee, my name is Julia Allen, A-I-I-e-n, and I am the director of special education for the Omaha Public Schools. I am here today to share Omaha Public Schools support for LB702 because we believe it is important to align the special education funding system in Nebraska with the recently reauthorized federal law IDEA 2004, and this can be done by eliminating the distribution of reimbursement for special education services based upon the location of the services where the delivered. You heard earlier today mention of IEP teams. We have many, many IEP teams that are working with parents to design special education programs and services to meet the needs of infants and toddlers and children and young adults with disabilities, and every district has a wide range of services. You may have a child getting some speech therapy for an hour a week up to a child that might need most of the day spent in an alternative life skills curriculum based upon the severity of their disability, and you will see those types of services provided in lots of different locations in every district. You will see some services provided in classroom, you will see some services provided perhaps in a small resource room, and you will also see some services provided in a separate special education classroom if you were working in an alternate curriculum with your most severely disabled students. We believe it is a matter of fundamental fairness that the reimbursement for services should not be negatively impacted by where the IEP team determines those services should be delivered. We urge you to advance LB702. Thank you. [LB702]

SENATOR KOPPLIN: Questions for Ms. Allen? I have one or two. Talking about funding for just a moment because, frankly, we are funding special ed not at 90 percent, but maybe at 67 percent in the state. To do what this bill asks we are talking about lots more funds, are we not? [LB702]

JULIA ALLEN: Actually no, we are just talking about the mechanism for distributing the funds for reimbursement to districts and taking out the factor of where the services are delivered. [LB702]

SENATOR KOPPLIN: Yeah, I understand that but the money comes from one pot somewhere. [LB702]

JULIA ALLEN: We realize the pot of money would be the same but the manner in which it would be distributed would be different. [LB702]

SENATOR KOPPLIN: Okay. So you are saying it would change who was receiving the

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funds, not necessarily how much money went into the pot? [LB702]

JULIA ALLEN: Correct. [LB702]

SENATOR KOPPLIN: Okay. All right. Other questions? Thank you. Other proponents? Are there opponents? Neutral testimony? [LB702]

SARA FARRAND: (Exhibit 11) Senator Kopplin and members of the Education Committee, again, my name is Sara Farrand, and I am here on behalf of the State Board of Education and the Nebraska Department of Education. We are appearing in a neutral capacity on LB702 as we did when it was introduced previously as LB616. If the intent of the bill is to ensure reimbursement is not affected by the setting in which the child receives services, the bill would have no impact on our current reimbursement process. Currently, the Nebraska Department of Education does not consider the setting in which educational services are provided in determining the reimbursement which a district receives. Rather, it is the amount of time a student is receiving special ed services affects reimbursement to school districts. If the intent of the bill is to address the difference between Level I and Level II and III services, there would be a significant impact on the reimbursement process. Level I services refers to services provided to children who require an aggregate of not more than three hours per week. Level II services are services provided to children in excess of three hours per week, and Level III services are programs not operated by the school district. Therefore, when determining whether the services are Level I or Level II services, it is the amount of time a student receives special education that is considered. Application of the adjusted per pupil costs, the AAPC, is not required when determining Level I allowable excess costs because of the limited amount of time a student is receiving special ed services. Level III contracted services, like Level II services, require an application of the AAPC in determining the allowable excess costs. Federal law and regulation specify that a state's funding formula cannot discriminate on the basis of the type of setting in which children are served. Nebraska's formula is based on time in special education, not setting. However, to implement this bill within the current allowable excess cost formula, an AAPC deduction would be applied for on all levels of services, which would impact an individual school districts reimbursement. With that, I will take any questions. [LB702]

SENATOR KOPPLIN: Any questions? Senator Burling. [LB702]

SENATOR BURLING: Thank you for your information. In other words, you say there is winners and losers in this bill? [LB702]

SARA FARRAND: I am not sure that there are winners and losers. I am not sure I understand what you mean. [LB702]

SENATOR BURLING: Well, you have so much in the pot and if you redirect it

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somebody gets less. [LB702]

SARA FARRAND: Most likely, yes. [LB702]

SENATOR BURLING: Okay. Thank you. [LB702]

SENATOR KOPPLIN: I have a question. I think I understand where some of the differences coming, if they are running an inclusion program with an aide, that aide, if they are helping any other students, takes away from that time so they could easily be down to less than three hours a week. Would that be fair? [LB702]

SARA FARRAND: The amount of time is indicated in the IEP, and so if they are with the aide, whether the aide is with other students or not, it would be considered their time in special ed. [LB702]

SENATOR KOPPLIN: Okay. I am still a little bit confused on the funding because it just seems to me that in order to solve Omaha's problem, and I agree that they have a problem, but it is solved with money. And unless you increase the pot of money, somebody else pays. Am I correct? [LB702]

SARA FARRAND: The reimbursement all comes out of the same pot of money, yes. And so if one is taking more then the amount left for the others is less. [LB702]

SENATOR KOPPLIN: Okay. Thank you. Are there other questions? Senator Adams. [LB702]

SENATOR ADAMS: I am thoroughly confused and I am not going to drag this committee through hours of my confusion. So let me ask a simple question, why has the state not at this point complied with the federal guidelines for the reimbursement? [LB702]

SARA FARRAND: At this point, I think we are saying that we are complying with federal guidelines because we don't discriminate based on setting. We have a different reimbursement process with the adjusted per pupil cost based on the amount of time the student receives services but not based on what setting they are in. [LB702]

SENATOR ADAMS: And the State Department of Education at this point doesn't feel as though we are in noncompliance and we might jeopardize federal funding? [LB702]

SARA FARRAND: Correct. [LB702]

SENATOR ADAMS: Okay. Now, the rest of my questions I don't want to ask right now. [LB702]

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SARA FARRAND: I would say that if you have further questions to contact anyone at the department and we would be glad to try to find the answers. [LB702]

SENATOR ADAMS: I will. Thank you. Okay. [LB702]

SENATOR KOPPLIN: Are there other questions? Okay. I forgot where we are. We are on neutral. [LB702]

SENATOR ASHFORD: I think you are in the neutral area. [LB702]

SENATOR KOPPLIN: Next neutral. [LB702]

SENATOR AVERY: We are ready for John. [LB702]

JOHN BONAIUTO: Senator Kopplin, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, executive director of the Nebraska Association of School Boards. This would be positive neutral in the sense that Senator White brings an issue that needs to be looked at. The concern that and the reason that I have come up as neutral is that the fiscal note, it talks about no impact to the state and the questions from Senator Burling and Senator Kopplin are right on target because we have capped special education reimbursement. If you broaden the number of students that a district can claim for in providing services to those students then the amount of money is going to be prorated. And so it will come from the already limited amount that is probably the adequacy is in question that districts are getting for special ed, it will even lower that further. So I think that this is an issue that needs to be discussed, that as we look at where we need to be we can't keep that special ed pot capped. With that, I will conclude my testimony. [LB702]

SENATOR KOPPLIN: Questions for John. Okay. Next neutral. Senator White, do you want to close? [LB702]

SENATOR WHITE: Yes, Senator. Just one point and it is briefly. What I am advised is that if, for example, OPS provides a speech therapist or a resource teacher more than three hours outside of the classroom as opposed to in the classroom because that is the most appropriate setting given that child's needs, they then get a deduction from what they recover, and that is not consistent with the federal mandate. And I appreciate you time. [LB702]

SENATOR ASHFORD: Could you say that again, Tom. I am sorry. Excuse me, I didn't understand. [LB702]

SENATOR KOPPLIN: Well, same question I think. Deduction in the fact that you have

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to pay per pupil cost at that point when they get over three hours. [LB702]

SENATOR WHITE: Correct. That is my understanding. [LB702]

SENATOR KOPPLIN: Okay. Senator Ashford. [LB702]

SENATOR ASHFORD: No, I just didn't quite...it wasn't you, Tom, I just didn't get the point. [LB702]

SENATOR WHITE: It is all the same at three hours or less. But over three hours, if you have a child who is not being taught in the classroom but you want to take them to a separate room and teach them at home because of other issues, then they do not get reimbursed. [LB702]

SENATOR ASHFORD: And that is what we are asking for here and that is not consistent with the change in federal law. [LB702]

SENATOR WHITE: That is my understanding. Yes, sir. [LB702]

SENATOR ASHFORD Okay. [LB702]

SENATOR WHITE: Thank you. [LB702]

SENATOR ASHFORD: Thank you. [LB702]

SENATOR KOPPLIN: Okay. That concludes the hearing on LB702 and concludes the hearings for today, is that correct? Thank you. [LB702]

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Disposition of Bills:

LB139 - Indefinitely postponed.
LB316 - Advanced to General File, as amended.
LB506 - Indefinitely postponed.
LB702 - Indefinitely postponed.

Chairperson

Committee Clerk