

**WALZ:** Welcome to the Education Committee public hearing. My name is Lynne Walz, from Legislative District 15. I serve as the Chair of the committee. The committee will take up the items in the order-- order post-- on the posted agenda. I do have my glasses on. Today's hearing is for invited testimony only. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please turn off or silence your cell phones or other electronic devices. Move to the chairs at the front of the room when you are ready to testify. If you have written materials that you would like distributed to the committee, please hand them to the page to distribute. We need ten copies for all committee members and staff. If you need additional copies, please ask a page to make copies for you now. When you begin to testify, state and spell your name for the record. Please speak directly into the microphone, so our transcribers are able to hear your testimony clearly. Finally, please be concise. Testimony will be limited to five minutes. We will be using the light system. Green equals five minutes remaining; yellow, one minute remaining; and you'll wrap up your comments when you see the red light. The committee members with us today will introduce themselves beginning at my far right. Just in time.

**MURMAN:** Hello. I'm Senator Dave Murman, from District 38. Was in south-central Nebraska, now it's shifted a little more toward right along the Nebraska-Kansas southern border.

**LINEHAN:** Good afternoon. I'm Lou Ann Linehan. I represent Elkhorn and Waterloo, but now Senator Walz has Valley.

**DAY:** Good afternoon. I'm Senator Jen Day. I represent Legislative District 49, which is now north-central Sarpy County.

**SANDERS:** Good afternoon. Rita Sanders, District 45, which is the eastern part of Sarpy County, the Bellevue-Offutt community.

**WALZ:** I'd like to introduce the committee staff. To my immediate right is research analyst Nicole Barrett, and to the right end of the table is committee clerk Noah Boger. And our pages today are Jenna. Wave, Jenna. Please remember that senators may come and go during our hearing as they have bills to introduce and other committees. I'd also like to remind our committee members to speak directly into the microphones and limit side conversations and making noise on personal devices. We are an electronics-equipped committee and information is provided electronically as well as in paper form. Therefore, you may

see committee members referencing information on their electronic devices. Please be assured that your presence here today and your testimony are important to us and crucial to our state government. And with that, we will open with LR180, introduced by Senator Walz. It's an interim study to examine the identification of at-risk and economically disadvantaged students as a qualification factor for state-funded, education-related programs. So I'm just going to do my opening here, if that's all right. Good afternoon, colleagues. This interim study was introduced to help us as a committee better understand the use of free and reduced-price lunch as a measure of poverty in our education statutes. There are numerous occasions in statute where we use free and/or reduced lunch as eligibility-- as the eligibility standard for other programs, for example, free use of musical instruments, waiver of activity fees, and eligibility for access college early-- Access College Early scholarship. Despite the U.S. Department of Education for decades advising against using free and reduced-price meals as a measure of poverty for eligibility for such programs, it has been repeatedly enacted in Nebraska education statute. And we are not alone in that. States across the country are facing the same challenge that Nebraska is. That challenge, the U.S. Department of Education has developed the Community Eligibility Program, also known as CEP. CEP allows schools with a minimum 40 percent free and reduced-lunch population to offer free meals to all students. While this is a very positive program in terms of feeding our students, it makes it more difficult to target finite resources to the kids most in need for other programs. Today, I've invited a few people to speak with the committee to offer their perspective on the problem or other possible solutions on how we might consider eligible-- eligibility for these types of programs in the future. And with that, do I take questions? It's weird being both. I'll try to answer any questions that you have, committee members. OK, then we will open with our first testifier, Mike Baumgartner from CCPE.

**MIKE BAUMGARTNER:** Good afternoon, Chairwoman Walz, members of the Education Committee. My name is Mike Baumgartner, M-i-k-e B-a-u-m-g-a-r-t-n-e-r. I'm the executive director of the Coordinating Commission for Postsecondary Education, and I'm here today to speak about how at-risk and economically disadvantaged students are identified for eligibility in our three need-based financial aid programs, with a particular focus on the Access College Early scholarship program. I will address the Community College Gap Assistance Program and Nebraska Opportunity Grant programs first briefly. Both serve adults, that is, post-high school students in postsecondary settings. The Community College Gap Assistance Program pays for noncredit programs and short-term, for-credit,

non-Pell-eligible programs for students who have a family income at or above 250 percent of federal poverty guidelines. Applicants must provide recent pay stubs as proof of income and form 1040s as proof of family size. The Nebraska Opportunity Grant program provides aid to Nebraska undergraduates with demonstrated financial needs and uses the Free Application for Federal Student Aid to determine eligibility, otherwise known as FAFSA. Demonstrated mean-- need means that a student has an expected family contribution equal to or less than 110 percent of the maximum expected family contribution to qualify for federal Pell Grants in an award year. For '21-22, the maximum EFC for Pell eligibility is \$5,846, so the NOG maximum is \$6,431. Using FAFSA makes perfect sense for NOG because it is required to access all federal Title IV financial aid programs, most prominently Pell Grant and direct student loan programs, and much student aid from the institutions. A couple of points I want to make about the FAFSA. First, many students or potential students who need financial aid the most, particularly at high schools with large populations of low-income students, don't fill out the FAFSA, and the problem has worsened because of the pandemic. As of Monday, only half of 2020-21 high school seniors in Nebraska completed the FAFSA; only one OPS high school had exceeded 33 percent of FAFSA completion. Second, changes made to the 2021 FAFSA Simplification Act will reduce information needed to complete the FAFSA substantially starting in '23-24 and allows students whose families don't file taxes and students eligible for means-tested benefits, SSI, SNAP, TANF, WIC, Medicaid and housing assistance, to skip all asset questions. That should increase the number of students who complete the FAFSA. Importantly, for the NOG program, the U.S. Department of Education's calculation of EFC will be replaced by calculated Student Aid Index. We want to get a statutory change for NOG eligibility in 2023-24 to replace EFC with the Student Aid Index, but we're awaiting additional information from the federal government before we can bring a proposed change. That will probably be in the 2023 Legislative Session, but 2022 is also a possibility. Our third program is the Access College Early Scholarship, which pays college tuition and fees for low-income high school students enrolled in dual credit or early enrollment courses. This scholarship program served 2,433 students taking 4,518 courses last year. High school students may apply for funding under this program by completing the ACE student application online, which is reviewed by the Coordinating Commission for award consideration. For the past several years, we have limited to students for two courses per year to serve more students, but increases in funding this year and next allow us to go up to three. To qualify for the scholarship, the student or student's family must be approved to participate in or receive free or reduced lunches,

supplemental Social Security income, TANF, SNAP, WIC, have experienced extreme hardship that affects family income, in which case we request additional information, or be participating in a designated career education program as established by the Nebraska Department of Education. Free and reduced-lunch eligibility is by far the most common way of qualifying. In fact, between 97 and 98 percent of students qualify that way annually. This exposes the program to potential problems if the community eligibility provision is widely adopted by the eligible school districts, or if state and federal law changes to make all students eligible for free lunches under the U.S. Department of Ed Nutrition-- Nutrition Programs without means testing. With a limited amount of funding for the ACE program, we simply must direct scholarships to students who need them most. We discussed this issue with you in con-- with you in the context of LB950 in 2020 and came to a partial solution that you included this year in LB528, allowing us to request that the Commissioner of Education verify student eligibility for free and reduced lunches. That can work when a small number of high schools, such as those currently participating in CEP, when it's small, but what if the larger districts adopt CEP and we're suddenly dealing with tens of thousands of additional students? Or what if the state and federal program changes mean and NDE no longer collects information on free and reduced-lunch students? At that point, I think we'd be facing several options. First, we could strike free and reduced-lunch eligibility from the ACE statute and rely on eligibility for the other named federal programs, perhaps adding Medicaid as-- as other programs might. We don't know how many students might be eligible as a result of this, but it would be significantly less than free and reduced lunch, because the poverty guidelines for those programs are much more restrictive than free and reduced-lunch programs. Second, we could undertake that option and develop eligibility criteria that mirrored free and reduced-lunch eligibility with a new application added to our online ACE application system. That would require us to collect and verify family income in a way we currently do only for hardship cases, which would be overwhelming if we weren't able to automate the process through data-sharing agreements with other families. We'd have to go back to something like I mentioned we do with the Community College Gap Assistance Program, which is paystubs and 1040s. We do not want that information, or we would have to get information perhaps directly from the Nebraska Department of Revenue. I'm not-- not excited about that prospect, either. Third, we could undertake the first option, knocking out free and reduced lunches, and add a qualification of FAFSA to replace free and reduced-lunch eligibility. In other words, a student that didn't qualify under the remaining federal means tests could complete the FAFSA to qualify for

ACE. I know that using FAFSA to qualify for ACE is an unpopular idea with schools, but the FAFSA simplification I mentioned earlier would make the process easier and would familiarize the process-- students with that process and thereby increase college going. Fourth, the state could come up with an entirely new measure coming out of this study or others that we could add to the ACE statute and integrate into our system. Or finally, we could make dual credit and early enrollment free for all students in the state, building on the additional money that the Appropriations Committee has put into the community colleges over the past several years and allocating current ACE funding to that appropriation. So right now, we have \$2 million going into dual credit. Next year, the Appropriations Committee, the Legislature and the Governor put in \$3 million for the community colleges for tuition for dual credit. Add the million and a half from ACE and we would probably have to double that amount in total, but we could get to free community college that way and dispense with this issue of free and reduced-lunch eligibility altogether. Be happy to answer or attempt to answer any questions you have.

**WALZ:** Thank you. Questions from the committee? Senator Linehan.

**LINEHAN:** Thank you, Chairwoman Walz. I have a lot of questions here. This is really helpful information. So your last line, that would put us on par with many states that offer dual and early enrollment opportunities at no cost to high school students. Do you know how other states pay for that? Do you have a, like a study that you can share with us, these states and how they do it?

**MIKE BAUMGARTNER:** Yes, I can-- I can get that to you.

**LINEHAN:** OK.

**MIKE BAUMGARTNER:** Iowa does it through school districts. Minnesota does it through a combination. Colorado does it with state funding. Ohio and Indiana do it with state funding; Idaho, state funding. So some of it is-- but some of it is coming from what's allocated to the school districts or what they raise, and some of it's coming directly from the state. But I will get the most current information--

**LINEHAN:** But all of those states that you just mentioned provide it for free?

**MIKE BAUMGARTNER:** Yes, they do.

**LINEHAN:** Regardless of the student's income or--

**MIKE BAUMGARTNER:** Yes, regardless of the student's income.

**LINEHAN:** Well, that sounds like a good plan. OK, thank you very much.

**WALZ:** Other questions? Senator Murman.

**MURMAN:** Yeah, just to clarify, other states do that for free for all students, not just for targeted--

**MIKE BAUMGARTNER:** Yes. That's right.

**MURMAN:** --occupations.

**MIKE BAUMGARTNER:** Yeah, yeah. I mean, there are others that do fewer students, but there are quite a few states that have-- have free dual credit for all high school students in the state.

**MURMAN:** To the state colleges and--

**MIKE BAUMGARTNER:** Usually at--

**MURMAN:** --not just community colleges.

**MIKE BAUMGARTNER:** --usually at the community college level. But Indiana, they-- they will pay a set amount if-- if you don't do-- take it at the community college.

**MURMAN:** So-- so these other states do it on the community college level.

**MIKE BAUMGARTNER:** No-- usually, not exclusively, but usually.

**MURMAN:** OK.

**MIKE BAUMGARTNER:** Yeah, I'll-- I'll make sure that we have the most current information for you from-- from all the states. Education Commission for the States does a lot of work on this, and I'll get that from them.

**MURMAN:** Thank you.

**WALZ:** Senator Linehan.

**LINEHAN:** I'm sorry. One more question. So you would agree-- I think it was Senator Vargas who had a bill last year to make the FAFSA part of graduating requirement. You kind of sound like maybe you would agree with that would be a good idea.

**MIKE BAUMGARTNER:** We did testify on behalf of that two years ago.

**LINEHAN:** OK.

**MIKE BAUMGARTNER:** I-- that is gaining currency. It is in four states, five states right now: Alabama, Louisiana, Illinois, Texas; Indiana is partway there. So it's hard to see what the results have been because of the pandemic just messed everything up. There are ways to do that. You could have it as-- as Senator Vargas's bill did, where students can opt out. Indiana was looking for grants to schools to address the issues that they had with the counselors' time, trying to make it less onerous. I do find it very problematic and disturbing that at our poorest schools sometimes a quarter or a third of the students will fill out the FAFSA, which means that they are unlikely to go on. And we know the college-going rates of students by free and reduced lunch, speaking of an income indicator that is problematic. But we know that and we know that it's much less than the students who are not on free and reduced lunch. So I-- you know, we might want to see how that rolls out more in other states first, but I--

**LINEHAN:** But you support it, so that's [INAUDIBLE]

**MIKE BAUMGARTNER:** I do support it.

**LINEHAN:** OK, thank you very much.

**WALZ:** Any other questions? I have a question, and maybe I missed it. But it said that the FAFSA has been simplified and they skip all asset questions. Is that--

**MIKE BAUMGARTNER:** For many students, for students who are in means-tested federal benefit programs or who do not file taxes at all, are liable to be in the same situation, or for students with AGI below 225 percent of poverty in a single-parent household. Got-- got the information, I'd be happy to provide to you on-- on-- but, yes, there will be a lot of students who don't have to provide asset questions. And part of the idea behind FAFSA simplification was that if I am a beneficiary of a means-tested program, I already know that I have a zero EFC, so completing the FAFSA is going to be pretty easy. And I know if I have a zero EFC, this is what I can expect from a Pell Grant. It was an idea to help them plan out education in-- in-- late in their high school years before they got to the senior year and really started worrying about how they're going to pay for college.

**WALZ:** So it does still allow them to target the kids who are in most need?

**MIKE BAUMGARTNER:** Oh, yeah, yeah. It-- it targets that even more. So the ones that you just expect won't have much in the way of assets given income, they can skip those questions because that's where people really get hung up and go there's 110 questions [INAUDIBLE]. So it's--

**WALZ:** OK. I just wanted to make sure.

**MIKE BAUMGARTNER:** Yeah.

**WALZ:** All right. Any other questions? I don't see any.

**MIKE BAUMGARTNER:** Thank you.

**WALZ:** Thank you so much for coming today. Our next testifier is Bryce Wilson from NDE.

**BRYCE WILSON:** Good afternoon. Bryce Wilson, the administrator of financial and administrative services for the Department of Education. I would say this is a very well-timed hearing. One of the issues we possibly may have coming up this next year with TEEOSA, the funding formula, is free lunch counts. With the pandemic this last couple of years, we've had free lunches for all students, right? So we are-- I requested the data. We don't quite have it ready yet, so I don't know exactly what the free lunch counts are going to be. Those lag behind two years that we use in TEEOSA, and so we may have right now, coming up for this next calculation of TEEOSA, a free lunch issue as far as counts. Students may not have completed those applications, so school districts' free lunch counts may be significantly off of what normally we would see for those school districts. So we might have funding issues going on there for the poverty allowance, which uses the free lunch count. So it is one very interesting piece to this, I think, that-- that may play into some of this as well, is we've already been kind of exploring and looking and kind of going out and seeing what are other states doing just because of this issue. The-- the-- currently, the poverty allowance uses both the free lunch counts that we get through the nutrition program and also looks at low-income numbers that we get from the Department of Revenue. We compare those two different counts, the-- the numbers that come from-- the low-income numbers that come from the Department of Revenue are adjusted because those would be total amounts in a district. Obviously, not all kids go to a district school there, so we-- we average it with the census count of kids in there to adjust

it up or down accordingly, so it's more accurate of how many low-income kids are actually in the district attending there. So we have districts-- I don't know exactly what that breakout is of how often we use free lunch versus that low-income number, but we definitely use the free lunch significantly more than the low-income count. So usually, the free lunch counts are higher when we look at, when we compare those for the poverty allowance. And that's what the poverty allowance has us do, is take the greater of those two numbers. One of the things, too, that's also interesting in how we do the school finance piece and uses the free lunch counts, is that we're currently already using a different method. Because you started to hear the term, you threw out the term "CEP," well, when we have districts that have elected or school buildings that have elected to use CEP for their building, we no longer have free lunch counts for those buildings. And so we've used-- essentially there's what we call direct certification, where we have programs like SNAP, TANF, F-- FDPIR, Federal [SIC-- Food] Distribution Program on Indian Reservations, Medicaid. Homeless, foster care and migrant programs collect those low-income-- or those-- those students, and then we come up with these students that are directly certified as being low income. What we've used those numbers for is to come up with a rate for that CEP. Ultimately, when-- when CEP first became a thing in our state, we looked at those counts and did calculations out for every school building and district across the state to see what would-- what would put them back in the same kind of place. When you have direct cert you're not going to have as high a number as you will when you have just-- when you're taking free lunch counts, it's going to be a little bit less. There's some kids that kind of fall through the cracks as far as those other programs, but their parents, they may-- may fill out the free lunch application and qualify. And so to do that and look across the state and try and keep schools that were electing CEP whole without hurting them by going to that program, we did calculations at the department to determine what needed to happen there to put them whole. And-- and at that time, which was eight years ago, I think, it was-- we added a 1.1 multiplier in the-- in the state statutes to try and put school districts back to the whole. We just recently ran those numbers again for OPS, and it seems like that multiplier is still working very well. It came out very close to where their current-- if they went to a districtwide CEP, they would come out very-- almost-- very, very close to where the calculated amount not being CEP is. So things like that are-- we've already taken care of, and so there could be shifts to things like direct certification. A lot of-- some states are using just direct cert. There's-- across the nation, we have states using everything from free lunch as still the predominantly used one, but they're starting

to mix and match. Some use combinations of both. Some have just, there's four or five states that have went to just direct cert and kind of are using a multiplier to get back to something similar to those free lunch counts. The other piece financially that this plays into is the Title I allocations. Title I uses those free lunch counts to determine how those-- those funds are distributed out to schools and-- and within districts, how that's going to specific schools. Districts over 20,000 switching from-- districts over 20,000 don't use free lunch counts to determine their allocations; districts under 20,000, it is part of the calculation used to determine those Title I allocations. But that free lunch count, even in those districts above 20,000, does determine where those funds must be used at in the district. So for your large districts like an OPS, that will determine how, if you elect CEP or non-CEP, where those funds should flow within the district. So there's a lot of implications financially. And I see the red light, so I don't know if there's questions. I can go a million different directions on this topic and-- but I'd be glad to answer any questions that you guys have.

**WALZ:** All right, questions from the committee? I have a question. Is the department gathering that information and disseminating out to school districts regarding TANF, Medicaid, or is it the school districts that are doing that?

**BRYCE WILSON:** HHS actually gathers the direct certification information and shares it with our nutrition team. So it actually comes through the Department of Health and Human Services.

**WALZ:** OK. All right, thank you. Senator Linehan.

**LINEHAN:** So when you said Medicaid, would that be if the children are on-- on CHIP, they're covered by CHIP? Is that the same difference?

**BRYCE WILSON:** I don't know what the qualifications are to fit in the Medicaid program for the direct cert. I'm not sure on that.

**LINEHAN:** It's 250 percent of poverty, isn't it, on CHIP? I think it's higher than free and reduced lunch. I'm not-- because free and reduced lunch is 180 percent, right?

**BRYCE WILSON:** I couldn't tell you that, either.

**LINEHAN:** OK, we can figure that out.

**BRYCE WILSON:** But we do, for TEEOSA purposes, we only use free lunch. We don't use reduced. It's just--

**LINEHAN:** Oh.

**BRYCE WILSON:** --free lunch students for TEEOSA purposes.

**LINEHAN:** OK. OK. But as you said before, there's not that much difference, right, between free and free and reduced numberswise?

**BRYCE WILSON:** I don't know off the top of my head how much--

**LINEHAN:** OK.

**BRYCE WILSON:** --how much-- how many fall into the reduced category.

**LINEHAN:** OK, that's fine. Thank you very much.

**WALZ:** Any other questions? Thank you.

**BRYCE WILSON:** Yeah, no problem.

**WALZ:** Have a good day. All right, our next testifier is Danielle Conrad from ACLU.

**DANIELLE CONRAD:** I've got a lot of paper. OK. Hi, good afternoon. Happy Friday. Hi, my name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska, and clearly it is Friday, because I almost forgot how to spell my name today, so-- and that's particularly embarrassing in front of the Education Committee of all places. So anyway, my dear friend and colleague Spike Eickholt would have been here otherwise, but as soon as you finished your redistricting work, he made a point to get out to hunting season. So I'm sure that many of you are eager to return to some other activities as well, and we want to commend you for staying and conducting this important work and this important hearing after just working through a-- a very arduous special session. So I passed out a lot of information to you for your files. There's a lot of really thoughtful, brilliant, talented testifiers here today to-- to provide their specifics and expertise, and we just kind of wanted to keep it really top lines and, you know, really ground the importance of this study in terms of educational equity and in terms of racial justice and in terms of ensuring equal access for all students to the programs and services they need so that they can be their best selves and achieve at their-- their highest levels, which are-- which is critical for their success and our shared prosperity. So that being said, think about some of these really big concepts. When you think about educational equity, you can think about the guarantees of Brown v. Board of Education, for example, in

regards to equal access on-- on the basis of race. You can think about the guarantees under the Americans with Disabilities Act, for example, for students that are living with disabilities, and the special protections that they-- that emanate from that civil rights law. And then, of course, we'd be remiss if we didn't also note our specific provision in the Nebraska Constitution, which of course has perhaps even a stronger guarantee to Nebraska students and families to secure a high-quality educational opportunity without-- at-- at-- on a free basis. And really, you know, when you look, speaking very again, top lines, at some of the jurisprudence in Nebraska that's really kind of tested that provision to figure out, like, what does that mean when it comes to student funding issues, and-- and what the court has generally said is that that's your decision, that's your decision as a Legislature to really breathe life into that provision for the most part. And again, this is very kind of cursory overview of that. And that's why I think this-- you know, a continual investigation and examination of these issues is so important to upholding that duty, to make sure that how we assess these issues in terms of access, you know, really makes sense in a modern world. And so the ACLU has passed out a recent study by the Urban Institute, which actually details a really nice overview of how different states look at some of these issues and provides kind of a nice analysis of what some of our sister states are doing that might be-- might be worth taking a look at. Of course, you know, putting a finer point on things, looking at things like the-- the school lunch program or for free or reduced lunch can be a rational way to-- to take this up, of course, with some wrinkles from the pandemic that we heard about earlier, which will need to be taken into account. Other states maybe are pegging access and eligibility for some of these programs more consistent with other safety net programs like Medicaid or SNAP or childcare programs. And so that's another kind of familiar level that-- that you might want to take a peek at. And then of course, it's, I think, been a bit of time since it's been updated, and I know there might be some other testifiers behind us here today, but there are other ways to really look at family need, like, for example, the state-specific Nebraska self-sufficiency standard, which really looks hard at family size and location to really get a better understanding of what families in Nebraska need to keep their head above water. And it is a kind of more modern alternative look at some of those issues outside of the traditional federal poverty guidelines. So with that, I think I got it all in. And Spike would probably be satisfied with that, so happy to answer any questions.

**WALZ:** Questions from the committee? Senator Day.

**DANIELLE CONRAD:** Yes, hi.

**DAY:** Thank you for being here today.

**DANIELLE CONRAD:** Sure. Thanks.

**DAY:** I appreciate your testimony. What did you say that last tool was that you mentioned that was an alternative to using federal?

**DANIELLE CONRAD:** Yeah. And this is really kind of a walk down memory lane. So I started my career at Nebraska Appleseed before I joined the Legislature. And during that time, they worked with folks like Voices for Children to put together what they called a-- a family self-sufficiency standard.

**DAY:** OK.

**DANIELLE CONRAD:** So it really looked at things like family size, the specific location of where folks lived, and took into account, you know, the fact that childcare makes up a big bulk of a modern family's expenses versus some of the traditional kind of federal poverty guidelines, which-- which have a different way of calculating eligibility and maybe don't take into account things like that, so.

**DAY:** Wonderful.

**DANIELLE CONRAD:** Yeah.

**DAY:** Thank you.

**DANIELLE CONRAD:** Yeah.

**WALZ:** Any other questions?

**DANIELLE CONRAD:** Thank you.

**WALZ:** Thank you. Thanks for coming.

**DANIELLE CONRAD:** Thank you so much for your time and for the generous invitation. We appreciate it.

**WALZ:** Sure, thank you. Good information. Our next testifier is Eric Savaiano from Nebraska Appleseed.

**ERIC SAVAIANO:** Good afternoon. Hello. My name is Eric Saviano, E-r-i-c, Savaiano, S-a-v-a-i-a-n-o, and I am the economic justice program manager for food and nutrition access at Nebraska Appleseed.

Nebraska Appleseed is a nonprofit law and policy organization that fights for justice and opportunity for all Nebraskans, and I'm happy to speak with you all today about this important issue. I think I'll reiterate some of the points made by previous speakers and probably defer some questions to the following speaker. But I am happy to share our experience as advocates for the National School Lunch Program, School Breakfast Program, Summer Meals Program. We-- we work within the child nutrition programs within Nebraska and nationally in partnership with the Department of Ed and nutrition services generally, so happy to answer questions about certain things as well. I think I'll reiterate, first of all, off script, that I'm a-- I appreciate this conversation about poverty levels being linked to the free and reduced-price lunch application. I think there's a challenge when we're talking about poverty measures used for the 30, 40, 50 different things that school districts use all the time with those numbers, and also the reality of child hunger that programs like CEP designed to support students and districts in eliminating all administrative burden and in helping kids actually get fed are-- are paramount to our advocacy efforts at Appleseed. And appreciate this opportunity to consider different options when-- with that in mind, that these originally were designed to help kids eat. All right, so maybe back a little bit to script. So we are advocates at Nebraska Appleseed for the-- the community eligibility provision, and again, it is an option that allows students and parents to receive meals, breakfast and lunch, at no cost to the family. The-- to reduce administrative burdens, it does require that districts not use the free and reduced-price lunch meal applications and use an alternative poverty measure instead. The alternative poverty measure used with CEP could be an alternative with supplements for the free and reduced-price lunch application, as previous speakers said. Direct certification is what most of this testimony talks about and how it could be a fairly simple switch over, although a growing pain, most likely, for districts, as we've seen with CEP takeup. Again, I'll just reiterate some of the pieces of it. Direct certification data matches DHHS data with-- to allow students to directly qualify without a free and reduced-price lunch application, so they would receive free meals if those students receive or are on means-tested programs run by the state, public benefits such as the SNAP program, the Medicaid program, TANF, called ADC in Nebraska, FDPIR, or Food Distribution Program on Indian Reservations, Head Start, foster care, homeless, runaway and migrant. Those categories of data are already kept by districts around our state and managed in part by the Department of Health and Human Services and the districts themselves. So by pulling data from these existing and verifiable state sources, direct certification eliminates most of the annual paperwork for the

free and reduced-price lunch meal forms. It saves times for parents, and it saves time for the schools and districts who have to recollect all those forms. There are some challenges I wanted to note, specifically about the direct certification problem. It tends to undercount immigrant populations. As we said, these are programs that are means-tested and so participation in staff-- SNAP requires an income requirement, as well as a immigration status requirement. So in-- in areas that have a high free and reduced application population, they might have a lower, relatively, direct certification population. That's not to mention those who are eligible but not participating in programs for various reasons. The direct cert does not capture all of those folks. Another challenge we've seen is just the switch over, and as it disrupts the 30, 40, 50 things that districts use with free and reduced applications, and-- and we've seen pushback for the CEP program from administrators who are getting ready to make that switch. I think in general, I'll answer a quick question from Senator Linehan and open it to any others. But the-- to qualify for free meals in Nebraska, you have to be under the 130 poverty-- 130 percent federal poverty level. For reduced-price meals, you have to have 185 percent free and reduced-price meals. The direct certification system uses Medicaid data in Nebraska, and the Department of Health and Human Services allows districts to count the Medicaid-free population. They actually separate all-- they don't allow all CHIP kids. CHIP-- so kids on CHIP are Medicaid populations. They don't allow all those kids in, just the kids that meet the income requirement of that 185 percent for direct certification. So that's a lot of numbers. And open, happy to answer any other questions. Thank you.

**WALZ:** Any other questions from the committee? Senator Linehan.

**LINEHAN:** Thank you very much.

**ERIC SAVAIANO:** Sure.

**LINEHAN:** So the CHIP eligibility is higher. It's like 200, and you--

**ERIC SAVAIANO:** I think it's about--

**LINEHAN:** --obviously you know these numbers, so.

**ERIC SAVAIANO:** I think it's 2-- between 210 and 220, is what I've been told.

**LINEHAN:** OK, so since you work in this, what are you hearing on the national level? It seems to me that we'll probably never go back to

charging children for lunch or breakfast. Is that what you're hearing on the national level? Is there a push?

**ERIC SAVAIANO:** I'd be excited about that. I've been hearing that, well, the most recent legislative proposal, the reconciliation bill, has the option to allow us to go to increased CEP participation options. I believe the USDA has the option again to make meals free continuously, but I think they would probably appreciate a congressional action to make that happen.

**LINEHAN:** So let me ask this. Is there a sunset-- so lunches are free for all students now.

**ERIC SAVAIANO:** Correct.

**LINEHAN:** Is there a sunset on that? Is that to end at some certain time?

**ERIC SAVAIANO:** At the current time, it's set to end at the end of this school year.

**LINEHAN:** OK.

**ERIC SAVAIANO:** Yeah.

**LINEHAN:** OK. So this school year being May, June?

**ERIC SAVAIANO:** Yeah. Correct.

**LINEHAN:** So they have plenty of time to change that, extend the sunset?

**ERIC SAVAIANO:** They do and--

**LINEHAN:** OK.

**ERIC SAVAIANO:** --they'll probably make a decision based off of the COVID numbers and economic numbers at that time.

**LINEHAN:** OK, thank you very much.

**ERIC SAVAIANO:** Yes.

**WALZ:** Any other questions from the committee? I see none. Thank you so much--

**ERIC SAVAIANO:** Thank you.

**WALZ:** --for coming today. Our next testifier is from Voices for Children, Alfonso Vaca-Lubischer. Was I close?

**ALFONSO VACA-LUBISCHER:** That is perfect, yes.

**WALZ:** All right.

**ALFONSO VACA-LUBISCHER:** Hi, good afternoon. My name is Alfonso Vaca-Lubischer. I'm going to try to attempt to spell it: A-l-f-o-n-s-o, and then Vaca-Lubischer, V, as in "Victor,"-a-c-a-L-u-b-i-s-c-h-e-r. Yeah, good afternoon. I am the research coordinator for Voices for Children in Nebraska. At Voices for Children we work to build pathways to opportunity for all children and families through research, policy and community engagement. I'm glad to be here today to share a little bit about exploring alternative measures to free and reduced lunch as a proxy of student need for state-funded, education-related programs, as proposed by this legislative resolution. A big challenge for education systems across the state, as in much of the country, is closing the persistent and growing opportunity gap between different groups of students. Among all high school juniors in Nebraska, for example, half are proficient in math, yet 15 percent of migrant students, 13 percent of homeless students, and 19 percent of African American students in Nebraska also in the same grade can claim the same. This is more than a 30 percentage point gap between the students. In order to understand gaps like this, we must acknowledge that there are environmental factors outside of the control of the school that affect student performance and attainment. These factors include economic hardships, racial and disability discrimination, exposure to violence, illness and parental death, among many, many others. These type of adverse childhood experiences are linked to negative impacts on education, relationships and overall health. According to the CDC, the toxic stress from adverse childhood experiences can change the brain development and affect things as attention, decision making, learning and response to stress. While the current free and reduced-lunch metric may partially describe the economic disadvantage, it does not and cannot possibly capture the depth of adversity that many of our students face. A simple alternative for replacing free and reduced lunch would be to use a metric from the U.S. Census Bureau, such as the poverty rate in areas where children attend schools and neighborhoods where they live. The poverty rate is a relatively equal proxy for determining student needs. This would determine-- would eliminate the administrative burden currently placed on schools and districts with regard to collecting applications and free and reduced meals. I'd also like to

highlight that the proposal that my colleagues have presented before me also sound great to me on-- upon hearing them. However, replacing free and reduced-lunch data with single metrics such as poverty rates still faces-- fails to capture the complexity of student needs that I have described previously. In the long run, a better way to determine school needs would be to create an adversity index. An adversity index would account for a unique set of experiences of each student that may have a negative impact on their education and well-being. The first step to build such a framework is to capture the number and magnitude of obstacles a student must overcome in order to be at a similar starting point as their classmates. An index would recognize that not one variable causes, and therefore could fix, the opportunity gap. The great thing about building such an index is that it would not require much more data than that which already exists and is highly reliable, such as that from the U.S. Census Bureau, the CDC, USDA, and the Nebraska Department of Education. Some of these variables include student-level data such as race, gender, migrant and disability status; school-level data such as student mobility rate and proficiency rate; and community-level data, including the life expectancy, poverty rate and food accessibility in the neighborhoods where the students live. I have personally worked in prototyping such an index while in my previous job working alongside Chicago Public Schools, and I can attest that it is an attainable task. Additionally, and I think more importantly, this is something that has already been implemented in different school systems. Chicago schools, for instance, which serves around 300 and-- 340,000 students, recently implemented an opportunity index to ensure the equitable distribution of \$525 million in new funding to ensure that those most impacted by inequity have strong, vibrant and healthy school communities. Nebraska could also adopt an approach the-- that-- an approach that invests in our students and schools holistically. In conclusion, students across Nebraska face a set of diverse-- a diverse set of adverse experiences that can negatively affect their educational outcomes. The number and depth of these adversities are not captured by our current free and reduced-lunch metric, which is used to determine-- determine need for state-funded, education-related programs. In the short run, a metric such as the poverty rate could serve as a proxy for determining school needs. In the long run, we need a new framework to understand and address all the obstacles our students face in order to invest properly in strong, vibrant and healthy school communities where all our students can flourish. Thank you, and I'd be happy to take any questions.

**WALZ:** Thank you. Questions from the committee? Senator Day.

**DAY:** Thank you, Chairwoman Walz. And thank you for being here today. I appreciate your testimony. The idea of an adversity index, I think, is a fascinating concept because, like you said, it's multi-faceted, which would be a more accurate-- you would end up with a more accurate depiction of-- of the highest needs. And you said that you previously worked on prototyping such an index while working alongside Chicago Public Schools. In what capacity were you working at that time and what would that look like in the state of Nebraska? Who would be developing this type of index?

**ALFONSO VACA-LUBISCHER:** Yeah, absolutely. Yeah, so I was working for a nonprofit that pretty much worked hand in hand, would try to do kind of like a consultancy with Chicago Public Schools with different projects and kind of would try to introduce new-- new things that we've seen. So we kind of got this idea from the San Antonio Public Schools who have applied such a thing. And so with-- with that, in my capacity as an analyst for that, it was just kind of taking some of their data and then just developing how it would look if we would invest a certain amount, say \$100 million, how each school would get the money, so in the sense it was just kind of partnering with their equity office and then kind of working alongside them to see if this is something that would be a right fit for them. I left the position before they implemented this opportunity index, but it was part of those conversations that we had with them. In terms of how we implement it here, I mean, Voices for Children is more than happy to collaborate, but I think having a coalition of people who work together to approach this more scientifically, right, as to what are the metrics and variables that affect educational outcomes and how have do we apply them in a, you know, policy setting. So I think, I mean, our organization would be more than happy and I'm sure others would be happy to [INAUDIBLE]

**DAY:** OK. Wonderful, thank you.

**WALZ:** Any other questions? Senator Murman.

**MURMAN:** Thank you. Your-- you've got a list there of hardships that determine, you know, how well students perform. You've got parental death in there, but I noticed you don't have anything that, you know, if it's a two-parent family or a one-parent family or divorce, that type of thing. Do you have any research on that at all?

**ALFONSO VACA-LUBISCHER:** Yeah, absolutely. And in the previous-- in the prototype that I built in Chicago, we used a single-parent household, mostly because it-- those families do get to have a little bit more challenges in terms of other things like transportation

and-- and childcare and stuff. So definitely there are many variables that we have looked at before. But, yes, single-parent households and-- and divorces is one that does affect education.

**MURMAN:** Well, how about divorce, is--

**ALFONSO VACA-LUBISCHER:** So--

**MURMAN:** --is that one way or the other or-- or do you know?

**ALFONSO VACA-LUBISCHER:** So divorce, specifically, we-- we just look at single-parent households. We don't know if it's divorce or never married and stuff.

**MURMAN:** Yeah.

**ALFONSO VACA-LUBISCHER:** But it does definitely have an effect on educational outcomes.

**MURMAN:** Thank you. Have one more question.

**WALZ:** Yes, Senator Murman.

**MURMAN:** In the adversity index-- well, no-- no, I guess it's not the adversity in-- index. The simple alternative for replacing free and reduced lunch, the-- kind of the top of page 2 there, you talk about the poverty rate in the school district where the student attends.

**ALFONSO VACA-LUBISCHER:** [INAUDIBLE]

**MURMAN:** I can see maybe a problem with that where you would encourage, or if that would happen, it would encourage students to stay in low-performing schools where-- rather than if they do have the opportunity to move away or attend a school in a place away from the poverty area.

**ALFONSO VACA-LUBISCHER:** Sure.

**MURMAN:** Do you see that as being a problem using that criteria?

**ALFONSO VACA-LUBISCHER:** Generally, and-- and specifically when I have kind of worked with parents, essentially what they try to do is try to get out of those neighborhoods, right, and try to go to different schools who already have better programs, have much more resources. And so I'm sure it could-- could happen, but for the most part, pretty much, people vote with their feet. Ones that have enough resources, they want to move to a different neighborhood that that

takes them away from certain communities or certain places that-- where the children do experience, as I was talking about, the adverse childhood experiences where, you know, get away from poverty or get away from these places that definitely do affect their-- their development. So I do think from what-- from what I've seen, it does not deter people from, you know, changing their-- their-- kind of where they-- from moving, per se, once-- once they have the means to, you know.

**MURMAN:** In other words, it-- you don't think it would encourage families to keep their student in a low-performing, poverty-area school?

**ALFONSO VACA-LUBISCHER:** No, I don't think so, unless, of course, that school is improving, right? And then we see that because of the new research coming to the school with a new index, for example, of how we distribute the funds. They might see, well, this school where my kids have friends or whatever, they-- it looks like it's coming together and it's-- it's improving. So that may actually help, which is essentially what we want, right?

**MURMAN:** Sure.

**ALFONSO VACA-LUBISCHER:** We want people to stay in their schools if they want to, as long as we can improve the quality of the schools.

**MURMAN:** Sure. Thank you.

**WALZ:** Senator Linehan.

**LINEHAN:** Thank you. Chairwoman Walz. So does the U.S. Census data, do they do continual, every-year data on these things? So it's-- it's-- so you wouldn't like once every ten years. This would be every year it would be updated or [INAUDIBLE]

**ALFONSO VACA-LUBISCHER:** Yeah. And when I say the U.S. Census Bureau, they collect many different types of data. I mostly would be using the American Community Survey, which comes out every year, with a little caveat that 2020 was a little different. They're doing some experimental data now. But for the most part, they-- they come out with it every year. And so that's what we use. And usually what I have done in the past is use it at the census tract level so we could identify where the students live, we can just kind of narrow it down to more specific geographies as opposed to kind of like an entire county or an entire school district, so it can get pretty granular.

**LINEHAN:** Census blocks, yeah. OK, thank you very much.

**ALFONSO VACA-LUBISCHER:** Yes, of course.

**WALZ:** Any other questions? I see none. Thank you so much for coming today.

**ALFONSO VACA-LUBISCHER:** All right. Thank you so much.

**WALZ:** And that will end our hearing on LR180. And we will open on LR182, introduced by Senator Walz, an interim study to examine the school enrollment options available to students. All right, good afternoon, colleagues. This interim study was introduced to help us as a committee better understand the option enrollment program in Nebraska, strictly from a policy perspective. Over the last several years, option enrollment, which provides public school choice to students across the state, has been a focus on-- of introduced legislation, floor amendments, and policy discussions. I believe that it is important that we take time-- some time during the interim to better understand this policy. What is working? Are there aspects of the policy that could be improved upon? I want to specifically focus today's discussion on the policy surrounding option enrollment and reserve the funding of option enrollment for a future discussion. Like you, I'm excited to hear what our invited testifiers have to share on this topic. With that, we will open-- what happened to my list-- with the first testifier, Dr. Andy Rikli from Papillion La Vista Schools.

**ANDY RIKLI:** Good afternoon and greetings from Sarpy County, where it's always blue skies and downhill and shady. My name is Andy Rikli, my last name is spelled R-i-k-l-i, and I am the superintendent of the Papillion La Vista Community Schools. Senator Walz, members of the Education Committee, thank you for introducing LR182 and taking the time to examine the issue of option enrollment and its future in the great state of Nebraska. I represent the fourth-largest public school district in Nebraska, with over 12,000 students spread across 21 school buildings. In a previous role, I served as the director of administrative services for the Westside Community Schools, where I oversaw the option enrollment program. Finally, I bring the perspective of a researcher, having analyzed the impact of option enrollment programs as part of my doctoral dissertation, which I completed in 2007. My purpose here today is to provide an overview of the program, highlight some of the benefits and challenges associated with option enrollment, and to outline a sample of research findings that were related to my doctoral research. Option and open enrollment programs, which I'll kind of use those terms interchangeably, but as

the committee is probably well aware, open enrollment does have a distinction that is directly related to the learning community law. We can talk about that if you like. But broadly defined, these programs allow students to attend a school district or a school building that is found outside their regular attendance area. According to the ECS, 47 states and the District of Columbia currently offer some type of option enrollment, so these programs are very common; they're very pervasive. Generally, option enrollment programs are typically classified as either intradistrict, which allow students to-- to transfer between districts, or interdistrict, which allow students to transfer within a district from one building to the next. Some states offer both. Nebraska is one of those. Furthermore, some states across the union do allow transportation, and in fact, some require transportation, again, which makes reference to open enrollment. The Nebraska Legislature established its program in 1989 and implemented the program fully in 1990-91. Incidentally, I was an option enrollment program student. This program allows K-12 students from any school district in the state to attend any other public school district in the state of Nebraska as long as there is capacity. There are limits to our program, as this committee is aware, which are outlined in State Statute 79-234. Students are generally limited to one move per address. Families may request a specific school building, but the district may decline if capacity doesn't exist, or in some cases they may say, we do not have room at this building, but there is capacity at that building. So that's a very important limitation. Transportation or reimbursement for transportation is required only for those students who qualify for free, not reduced, lunch. And finally, receiving school districts may establish standards, including capacity, which we previously mentioned, but school districts are not allowed to take into account other factors, such as a student's individual athletic accomplishments or academic record. A review of educational research lists many benefits associated with these types of programs, including enhanced parent and student satisfaction and increased academic outcomes for students, which I'll talk about in just a little bit. By most measures, Nebraska's program has been a great success. Thousands of Nebraska students every year attend public school districts outside their regular attendance area. Likewise, many school districts have been able to maintain or increase their student population through option enrollment, with several districts across Nebraska having sizable numbers of option enrollment students. Finally, option enrollment offers Nebraska families choice. Nebraska has a robust offering of school choice options, including option enrollment, but would also include private and parochial schools, magnets, focus schools, online schools and, of course, homeschooling.

Option enrollment programs are not without criticism, of course. It's been suggested these programs do not lead to increased in student achievement, nor are they a universal option for all families, particularly those that lack the capacity to provide transportation for their student. Others complain that option enrollment siphons away students from districts who count on student enrollment for operational efficiencies. Lastly, it's been suggested that some families have used option enrollment to attend schools for athletic reasons, rather than academic ones. There are valid arguments on both sides of the issue that warrant future studying consideration. Before I close, I would like to provide just a few brief snippets from my doctoral research. Though my research is quite limited, it's almost 15 years old and it was focused on the Westside Community Schools' program, which had about a third of its students are option enrollment, but I think there are still lessons to be learned today. My study looked at three different academic outcomes: academic progress, engagement and behavior. In short, on all three measures, option enrollment students performed equal to, and in some cases better than, resident students. That's a really important distinction, since sometimes within some districts there is tension between resident families-- I'm a taxpayer here-- compared to students that come in from the outside. They're not paying taxes here, they should have a lower level of service. The results of this research support the assertion that all students, both residents and option, perform at comparable levels regardless of address or residency status. It is my opinion that this program has been a great success, but there certainly is room for improvement. I see that I'm at red, so I'll wrap up my comments. But I'll gladly take any questions from the Chair or members of the committee, and thank you for allowing me to speak.

**WALZ:** Thank you. Questions from the committee? Senator Day.

**DAY:** Thank you, Chairwoman Walz. And thank you, Dr. Rikli, for being here today representing my alma mater, Papillion La Vista. You said, when you did research on Westside, you said approximately a third of their students were option enrollment?

**ANDY RIKLI:** Correct.

**DAY:** How many option enrollment students does Papillion La Vista have?

**ANDY RIKLI:** So we have a relatively small number of students. We have 12,000 total. We have a net gain of just under 200 students. The reason why our number is significantly smaller than Westside

Community Schools is Westside is a mature district, that is, it's done growing. It is landlocked. Papillion La Vista, as you well know as a proud graduate, it is a growing district. So very frequently what you'll find in fast-growing districts, your Gretnas, your Elkhorns, your Benningtons, your Papillion La Vistas, that they have a very small number of option enrollment students because we're trying to build buildings to, first and foremost, meet the capacity of our resident population, so it would be very rare for us to accept option enrollment students at high school, for example. We typically have a few spots available at our early grades in elementary, but it would be very, very unusual to allow students in at either the middle school or high school.

**DAY:** OK, thank you.

**WALZ:** Thank you. Other questions from the committee? Senator Linehan.

**LINEHAN:** Thank you, Chairwoman Walz. And thank you for being here, Dr. Rikli. What are the parameters around who decides the capacity? That's one of the complaints I've heard, like who decides what the capacity is and--

**ANDY RIKLI:** Yeah, thank you for the question, Senator Linehan, and it's important for both option and open enrollment school districts. Particularly, under open enrollment, we're required to set capacity instruments, is what they were called, and then we actually submitted them to the learning community building by building. So for example, we have 21 buildings, and for each building we would say, this is what our capacity is for each of those buildings. Different districts use different approaches, but very frequently that the two big factors that school districts most frequently look at when establishing that, those criteria, they look at the number of classrooms available and then they look at the amount of raw square footage. And again, there are some differences from district to district and even the age of the building and the size of the classrooms in terms of how they determine that. But very frequently, once those capacities have been established, and then you roll over the number of resident students that you have in that particular building, that determines then if there's any slack or any extra capacity. In our district, for example, our sweet spot for an elementary building is 450 students. So what we do each spring is we look at rolling up numbers and the number of incoming kindergartners. Do we think we'll hit that number of 450? If so, if we're at that 450 or above, we say that building is closed for open enrollment. But if we do have a little bit of slack, particularly at a specific grade

level, we'll say, we'll allow X number of spots at this building at that grade level, and then that's what drives our decision making.

**LINEHAN:** So you said-- also said something about free and reduced-lunch families receiving transportation, but I thought we gave-- did away with transportation.

**ANDY RIKLI:** So another really good question. So under open enrollment under the learning community, if you added to the diversity of the building, that is a full-pay student into a high-poverty building, that full-pay student actually would qualify and vice versa. If it was a free and reduced lunch student coming into a less poverty-dense building, they would receive transportation. Option enrollment treats it a little bit different. They basically say, if you qualify for free, not reduced but free, we'll either provide your transportation or we'll reimburse you for it as long as you're keeping track of your mileage.

**LINEHAN:** So that's true now if it's free--

**ANDY RIKLI:** Under option--

**LINEHAN:** --if it's free lunch.

**ANDY RIKLI:** Correct. Correct. So if-- under option currently today, if a student qualifies for free lunch and is coming into Papillion La Vista Community Schools, we either provide the transportation or we cut-- cut checks, typically twice a year, to reimburse that family for the cost of the transportation.

**LINEHAN:** So when-- who decides-- let's say you have ten-- ten-- in one building, let's say you have five slots in the fifth grade. Who decides who those five kids are?

**ANDY RIKLI:** Yeah. Thank you, Senator. Each district does it a little bit differently, in my opinion. What typically happens is if you have more applications than you have space available, they do some type of randomized lottery. When I was at Westside, for example, we would load the kids in, not by name, we would assign them just a random number. We'd put them in a randomized spreadsheet and run a function where it just randomly pulled however many slots you had available. Whoever was chosen was selected and allowed in, and then the remainder that weren't selected randomly, unfortunately, weren't able to make it in.

**LINEHAN:** So is that the way every school system does it?

**ANDY RIKLI:** I can't speak for that, Senator. I-- I suspect most are.

**LINEHAN:** So there are no rules-- are there any rules around how you do it?

**ANDY RIKLI:** None that I'm aware of. I suspect maybe some of the testifiers coming in behind me, Senator, can speak to that. My guess is, in my experience and conversations with other superintendents, some type of a randomized lottery is very common.

**LINEHAN:** But there's no rule [INAUDIBLE]

**ANDY RIKLI:** Not-- not that I'm aware of.

**WALZ:** OK, thank you very much.

**ANDY RIKLI:** You bet. Thank you for the question.

**WALZ:** Other questions? Senator Linehan asked mine, so I don't have any others.

**ANDY RIKLI:** I appreciate that, Senator Walz. And thank you for allowing me to speak. It means a lot.

**WALZ:** Thank you so much for being here.

**ANDY RIKLI:** Have a-- have a good afternoon.

**WALZ:** You too. Our next testifier is Jack Moles from NRCSA.

**JACK MOLES:** Good afternoon, Senator Walz and members of the Education Committee. My name is Jack Moles; that's J-a-c-k M-o-l-e-s, I'm the executive director of the Nebraska Rural Community Schools Association, also known as NRCSA. I wish to thank Senator Walz for the invitation to provide input today. And I also want to thank Nicole Barrett for helping me and finding, OK, where is the scope of where you want to go with this? And so between us, what we came up with was the idea that I would-- I would survey-- provide some survey questions to our members and then bring back the results to you, so that-- that's what I've done. Sent out the surveys to 197 members, superintendents. I received 111 responses, so about a 56 percent return rate, and so I'll just kind of go through the questions that Nicole and I had-- had presented to the members. First was, do your-- did your school board set capacities to accept option enrollment students for the current year? And 51 out of the 111 said yes, so about 45-46 percent, somewhere in there, said that they had set some sort of limitations. And what capacities were set? And this was all

over the board. I had all-- all sorts of numbers, so I kind of tried to narrow it down to see what-- what I was looking at. And basically they did so on grade levels. The capacities set for grade sizes ranged from 18 to 100, and basically that was based really on the size of the school. A very small school might set 18; a-- a larger NRCSA school might set 100 for a grade level. Average capacity was 35.8 for kindergarten through 6th, 44.5 for 7 through 12. And as Dr. Rikli said, it really was based on, actually, I found, three things. He talked about capacities due to the size of the individual classrooms and also the sheer number of classrooms available, but also cited by NRCSA members were the-- the capacities due to the number of teachers per grade level. Some districts did set special education capacities. Most commonly cited were two things, either a 15-student caseload per teacher, and the other was that if an application for a student with needs would-- that would require the district to hire another staff member, they would normally disallow that application. One-- one that I did want to point out, one set a maximum of eight in its behavioral program and had a be-- behavioral program that probably looked to me like it was a magnet for districts in the area to pull kids in. If your district publicizes its capacity limits, how and when does it do so? First of all, the-- the limits were set either through board policy or through a board resolution. And of course, both those require a board action. Most of them said that either policy or the resolution was-- was reviewed and set annually, anywhere from January all the way even into June, some of them had said. But most of us seemed to be talking about the spring, kind of an April, May, March time frame. Most common methods of that publication, they were varied on that also: board of education meeting minutes published in the local paper, on the school's Web site, articles in the-- in the local newspaper about the board of education meeting where the action was taken, the district's annual report, and then articles placed in the local newspaper about the limitations specifically. Typically, does your school have a net positive or negative number enrolled students? Sixty-four of the respondents said they were net positive; 41 were net negative; and 6 were net neutral. So not considering the funding of option students, what aspects of the current option enrollment policy are working well? And one of the things we point out was don't-- don't take funding into consideration. They did a really nice job with that, by the way. They didn't even mention the funding part of it, so they talked about the other-- the things that were going well. Most common was that it does give parents the greater-- greater school choice for their kids. Also identified some other things here, for example, Fresh Start, access to programs or classes that kids might not otherwise have, convenience for families based on where their parents

worked, those types of things. There were also some cited that were benefits to the school district. For example, a smaller school-- or smaller schools that got more kids in, that did help them, helped them to grow their programs and their offerings. Schools could easily-- more easily project their enrollments and staffing needs. And then it talked about-- one of the things we asked was, again, not considering funding-- I'm out of time there. Do you want me to-- what do you want me to do there?

**WALZ:** Yeah. Yeah, I'd-- I'd like you to finish.

**JACK MOLES:** OK? Again, not considering funding, what aspects of the policy could be improved upon? The greatest number of responses were they would like schools to have a-- have a better handle on being-- well, being able to have the ability to say no if a student had really bad discipline issues, attendance issues, academic issues. Those-- that was the thing that was pointed out the most. Other things that could be improved upon, the limited number of options available to a student could be increased. Some parents, one of the things that I have heard of going on, I'd never had it happen to me, but-- when I was a superintendent, but some parents have opted their kids out of the SPED program where their-- their kids were in order to be able to get into the school if the school-- into the option school if the school had capped their SPED program already. Recruiting of option kids by other schools was seen as a negative by some. Needed-- need for better coordination and clarification of dates, including both what are, you know, run the-- the option enrollment program but also coordinating with the NSAA for eligibility dates. Some talked about the high proportion of negative academic or behavioral issues, the desire to opt into the district, so those are a few of the negative things or things that could be improved upon. And how does your school district address students that want to option in on a part-time basis? And every superintendent said they haven't had that come up yet, but several of them did say they do allow that for homeschooled kids from within the district. They allow them to come in, and they assume they would probably handle that the same way with an option student that had that request. But they don't have anything in policy or anything to do that. A few did say that their districts don't offer or don't allow for part-time enrollment with their resident kids, so they probably wouldn't do it with option kids too. And then one-- one thing that I added that Nicole and I had not talked about, but I just said, asked the superintendents, OK, in your opinion, what's the magic number of how many times a kid ought to be able to option, and gave them options of one two, three, four, five and then unlimited, and 64

percent, 71 out of the 111, said one was the magic number to them. But 27 said-- 27 percent said two. And then the next most popular was unlimited, which six of them said there should be unlimited. So I can answer-- try to answer any questions you have.

**WALZ:** Thank you, Jack. Questions from the committee? I did have one. I can't find it. Oh, Senator Linehan, sorry.

**LINEHAN:** So there is-- it's been brought to my attention, I think the person who was going to testify is not going to be here today, but kids are in a different school district or a private school and they want to take a class at Lincoln Public Schools. And it seems like if they're in the Lincoln Public Schools system, that's OK. But if they're in the Waverly system, then Lincoln says no. I-- I'm not-- I'm not sure this is true. It's hearsay. But for an example, let's say, is that a legislative fix we need to do? Because it seems to me if we would-- we're treating those kids different than-- than we are option kids. So if I'm a child in LPS and I want to go to Waverly, I get funding from state. If I'm in Waverly and I want to go to Lincoln, they're funded by the state. So why couldn't we figure out some way to--

**JACK MOLES:** Yeah. And I didn't come across that issue.

**LINEHAN:** --unscramble that?

**JACK MOLES:** Yeah, I-- I don't have an answer for you, I guess.

**LINEHAN:** OK.

**JACK MOLES:** I didn't come across that in what I was getting from the superintendents.

**LINEHAN:** Right. But you do lay out here pretty clearly that when it comes to the special ed kids, there's a resistance--

**JACK MOLES:** There--

**LINEHAN:** --unless it's like a speech where they've already got a speech pathologist. But, I mean, some people would call it discriminatory, I mean.

**JACK MOLES:** Right, right. And I-- yeah, I've heard that, and you and I have talked about that before. You know, I-- there was an overwhelming number of the superintendents said they had that, but some of them did and I wanted to bring them up to show-- share them with you.

**LINEHAN:** All right. Thank you.

**JACK MOLES:** You're welcome. And by the way, I used the 15-- the 15 number was cited in there of 15 student caseload for special ed and that actually, I think it's still in, but at one time the Department of Ed had it. It wasn't a-- a requirement, but it was kind of a suggested maximum number of caseload for--

**LINEHAN:** Well, that seems like a--

**JACK MOLES:** Yeah.

**LINEHAN:** --pretty significant caseload.

**JACK MOLES:** Yeah.

**LINEHAN:** And then the other one where you said the 35 students per class, that would mean two teachers have 18 kids.

**JACK MOLES:** Yes.

**LINEHAN:** So, yeah, I understand. I understand that. Thank you.

**JACK MOLES:** Welcome.

**WALZ:** Any other questions? I see none. Thanks so much for coming today.

**JACK MOLES:** Thank you.

**WALZ:** It was-- that was the question [INAUDIBLE]. Our next testifier is Lauren Vargas from Education Rights Counsel.

**LAUREN MICEK VARGAS:** Members of the committee, my name is Lauren Micek Vargas, spelled L-a-u-r-e-n M-i-c-e-k V-a-r-g-a-s. It's long, I apologize. I'm here on behalf of Education Rights Counsel, where I serve as an executive director, and I'm also an attorney practicing in education law. Education Rights Counsel works to remove legal barriers to educational equity across the state of Nebraska. Nebraska's open enrollment statute is one such barrier when it comes to open enrollment for students with disabilities. Nebraska's current option enrollment law, on its face, permits a school board to adopt a resolution that says we have no availability for students with disabilities. The district does not have to provide any supporting information and doesn't have to pass that new resolution every year. Once at any time in the past will suffice. The district doesn't have to justify the availability or lack thereof with any statistics or

facts. The district doesn't have to announce what availability, quote unquote, means, and the district doesn't have to show it has a lack of capacity to serve. The net result of Nebraska's language is that most districts have set their capacity to take in option students with disabilities at a zero. Districts have gone so far as to refuse to accept students who are not receiving special education services if they have a disability under the grounds that they could be called to serve the students at any point in the future. A review of all contested open enrollment cases since 1998 concerning special education capacity, excuse me, reveals that every single case upheld in the school district's right to deny enrollment of a student. The answer to any family who seeks to enroll a child is often, sorry, our special education program is full. Schools are expressly permitted to accept members of a family via option who don't have disabilities and simply can reject a family member who does, even if that family is in the same school district. Even worse, while a factual determination as to capacity is subject to challenge, the school board decision has the presumption of validity and reasonableness, and it is up to families to prove that the decision is invalid. Yet districts don't have to maintain or provide any data that would reveal the capacity situation. Thus, the situation has obviously become problematic. In the most recent case concerning a denial of enrollment, 1919, the State Board of Education actually found that the school-- school district had not established that its special education pro-- program was at or over capacity, and the district did not set the specific capacity of its special education program as required by Nebraska statute and did not adopt a resolution declaring its program was at capacity as a requirement by Nebraska statute. However, they still had to affirm the denial of option of enrollment. Nebraska does not align with other states that have open option enrollment laws. For example, Arizona law requires annual excess capacity determinations, and applications from applicants with special needs are to be sent to the district's director of student services to make a determination about whether the school has capacity and resources to serve the student. When an Arizona district website and letters to parents regarding open enrollment district flatly declared that students with disabilities were not eligible for open enrollment because their special education programs, excuse me, were at capacity, the Office of Civil Rights determined this to be discrimination on the basis of disability. In another case, the OCR, or Office of Civil Rights, found that a district that capped the enrollment of special education students at 10 percent of the total population of each grade level was discriminatory. As in the earlier case, the OCR found a violation of Section 501 because the district failed to individually consider whether it had the resources or capacity to provide the services

required by an individual student's IEP. Wisconsin also has an open enrollment program, and it does permit a district to deny a student option if it lacks the services or space necessary to meet a child's special education needs. The Wisconsin law was reviewed by the Seventh Circuit, and it was upheld because under Wisconsin law, the decision has to be based on actual attributes of an individual's disability. Wisconsin's data shows that over 60 percent of students who applied for option enrollment with disabilities were actually accepted. Nebraska differs from Wisconsin because we don't require looking at the specific needs of students applying and making decisions on their actual capacity to meet the needs of individual students. We do not require annual staff-to-student ratios, notice of students in classrooms, and we actually permit caps based solely on disability status, not on an actual individual need. Nebraska's law, thus, is discriminatory. There may be cases in Nebraska where districts cannot meet a child's need, but we cannot continue to permit districts to generalize about its children with disabilities. Prior to making option enrollment decisions, districts should annually-- excuse me, Madam Chair, I realize that I am out of time. Would you like me to continue?

**WALZ:** You just have a little bit more?

**LAUREN MICEK VARGAS:** Just a little bit more. Sorry. Districts should annually look at where they have capacity, school by school, grade by grade, and then make individual decisions based on the student's individual circumstances in light of those annual capacity decisions. Education Rights Counsel proposes amending 79-238 to require annual adoption of specific capacity standards for option students, not on the basis of disability. Districts should publish and report the capacity of classrooms, buildings and grade levels in light of that enrollment. Prior to October 15 of each school year, districts should declare what grade levels, programs, classes will be unavailable to the next school year due to the lack of capacity. We propose that the district then make an individual determination to their ability to appropriately serve the student based on the student's needs. We urge you for the consideration of changing this bill. Thank you so much.

**WALZ:** Thank you. Questions from the committee? Senator Day.

**DAY:** Thank you, Chairwoman Walz. And thank you, Ms. Vargas, for being here today.

**LAUREN MICEK VARGAS:** Thank you so much for having us.

**DAY:** It's nice to see you. So this is obviously very troubling. So help me understand. In terms of option enrollment districts, there's-- there's no guidelines on how individual districts will determine if they have to accept a special education student or not. They-- they can-- they can say we're at capacity. They're-- they don't have to verify any of that, and so they can essentially reject that student based on the fact that they would need supports because of an IEP. But then if the student is at a private school and they need services provided that that school cannot provide, they would go to the public school system to receive services. Is that-- am I understanding the situation correctly or--

**LAUREN MICEK VARGAS:** And I don't want to misquote you--

**DAY:** OK.

**LAUREN MICEK VARGAS:** --but I'm going to try to answer your question.

**DAY:** OK.

**LAUREN MICEK VARGAS:** In regards to public school students, and I should state that Education Rights Counsel really focuses on public school. But in regards to those students, what happens is that if they are seeking open enrollment or, excuse me, option to switch over, the school does not have to provide that information. They can base that capacity on their own metrics, and it doesn't have to be given an explicit reason why that child was denied. In fact, we've had students who come from the exact same family where their siblings, I think I mentioned that in my testimony, their siblings have been accepted. But the one child with the disability has not been accepted, and there's been no reason offered. In regards to a private school student, that is guided by a different set of laws.

**DAY:** OK.

**LAUREN MICEK VARGAS:** And I can provide that information to you at another time, if that works for you.

**DAY:** Yeah, that would be great. I'm just trying to sort of unravel some of the issues of, you know, where special ed students are going and where they would like to go and where, who ends up paying to provide services to the student and-- and all of those types of things, so.

**LAUREN MICEK VARGAS:** I can only speak to my personal--

**DAY:** OK.

**LAUREN MICEK VARGAS:** --experience with students who are in private schools who have disabilities. Normally, it is the home school that then provides that service. But if they are seeking to then option out of their home school to provide the special education service, that's the information I would need to give to you.

**DAY:** OK. OK, thank you.

**LAUREN MICEK VARGAS:** No problem.

**WALZ:** Senator Linehan.

**LINEHAN:** Thank you, Chairwoman Walz. So just a follow-up on Senator Day's question. I think I know the answer, but just to get it on the record. So if a child lives in a school district and needs special ed services, by federal law, they have to be provided those services. Regardless of whether they're in that home school or a private school or home schooled, that child by federal law is to get the services if they're in the district.

**LAUREN MICEK VARGAS:** That is correct. It's just the level of services that then could be provided, so the amount of hours may differ or those accommodations may differ. But, yes, if a private school student has a special-- is special education, they should be provided those services.

**LINEHAN:** Right, because it's a federal law.

**LAUREN MICEK VARGAS:** Correct.

**LINEHAN:** Thank you.

**WALZ:** Other questions? Senator Murman.

**MURMAN:** Thank you, Chairwoman Walz. The-- I don't know, my mind just went blank. Sorry, just forgot what I was going to ask. You can come back to me. I'll probably think of it.

**WALZ:** Long week. Yeah.

**MURMAN:** Well, I-- I know what I was going to ask. If a school calls their-- says that their special ed system is full, they only have to say that once? They don't have to-- I mean, once, forever, if I understood your testimony correctly?

**LAUREN MICEK VARGAS:** The school board has to just designate a resolution or a policy that with students with disabilities they are at capacity, and they only have to do that once. In terms of the law, in terms of appealing it, that is all that the State Board of Education will consider. And as long as it's been decided or has been provided as a resolution at one time in the past, then it will be upheld. And in our circumstances, we have many, many families calling us with this particular issue and we oftentimes say, we can't represent you because it's not worth the appeal, because it will be upheld based off of how the law is currently written.

**MURMAN:** So those, the school board could say their-- their special ed program is full one time and it lasts for decades or in perpetuity, actually?

**LAUREN MICEK VARGAS:** Correct.

**MURMAN:** OK, yeah, that doesn't sound fair at all. And then another follow-up question, if I could. In some of these other states that you cited that option enrollment for disability students is allowed, the school district that receives the special ed student, are they reimbursed somehow from the state or from the district that the school, that the student optioned out of? Because, as you know, special ed students are typically more expensive than non-special ed students, and some can be extremely expensive, of course. So how is that handled?

**LAUREN MICEK VARGAS:** I will try to answer your question generally, and then for more specifics, I can provide the committee more specifics about exactly how that's handled, in particular, especially, with the learning community, because it's different-- it's different based off of how money is siphoned off. But generally what happens is that when a student has special education, they have a certain dollar amount that goes along with them to their particular school.

**MURMAN:** OK.

**LAUREN MICEK VARGAS:** As I mentioned, though, with the learning community and the metro area, that is different. And I will have to get you the specifics of that.

**MURMAN:** OK, well, in some of the other states that you cited, how is that dollar amount, is it reimbursed from the state typically or from the school district that the special ed student optioned out of?

**LAUREN MICEK VARGAS:** My understanding in Wisconsin, based off of that Seventh Circuit case, is that the school district reimbursed the option school district based off of what that finances were.

**MURMAN:** OK, thank you.

**LAUREN MICEK VARGAS:** No problem, thank you.

**WALZ:** Any other questions from the committee? I see none. Thank you so much. Good to see you.

**LAUREN MICEK VARGAS:** Thank you so much for your time.

**WALZ:** Our next testifier is Jay Bellar from the NSAA.

**JAY BELLAR:** Thank you, Senator Walz, for the opportunity to be here today. My name is Jay Bellar, J-a-y B-e-l-l-a-r. I'm the executive director of the Nebraska School Activities Association. We serve 304 member schools: public, private, parochial, with over 100,000 participants, so quite proud of that. And, yeah, quite honestly, students move quite frequently from school to school. The reasons are many. The NSAA strives to, number one, provide opportunity for all kids. When we allow these moves, it usually generates opportunity, which we consider to be good. Number two, we try to create an even playing field for those involved in our NSAA activities. When we allow this moves, sometimes that creates hardship among schools. So we have to use this and balance the option enrollment is one time. In our school, we mirror that with what we allow. We allow one transfer. And so when a-- I should say, too, that the NSAA is a 9-12 organization, so we govern 9, 10, 11 and 12th grade. So when they start as freshmen, they can choose their school. So you can live in the Papillion district, if you want to go to Bellevue or you want to go to Omaha, and they'll let that happen, we let that happen. So as a freshman, you get to choose. Any time after that, if you don't put your name on what we call our May 1 transfer list, then you're ineligible for 90 school days. So actually, a kid could start at a school system their freshman year. And as a sophomore, if they deemed the other school to be a better fit for them, whatever their reasons are, long as they put their name on that May 1 transfer, that student, start of the school year that next year, they're eligible to participate at all the varsity level. If they don't, then they can go to that school, of course; we can't stop them from doing that, but they can only play in junior varsity activities, so. And part of that is we say they have to be continuously enrolled in 20 credit hours per semester at the school. The school represents interscholastic competition. Exempt are home schools from authorized Rule 13: Schools

must be continuously enrolled in a minimum of 10 credit hours of instruction per semester. And that goes back to what we talked about last year. 2.6.6 in our constitution talks about dual enrollment. So a student enrolled in two member high schools, which they can, at the same time is eligible only at the high school located in the school district where his or her domicile is located. 2.6.6.1 says, if a member high schools are located-- if both member high schools are located in his or her home district, the student is eligible at the member high school where she or he is continuously enrolled at 20 credit hours. 2.6.6.2: If they're continuously enrolled at 20 credit hours in each of the member high school, then they must make a choice. And once they make that choice, that's where their eligibility is, because a lot of times we understand that somebody in a school might take that one class in that other where that-- that they don't offer. So that's-- that's more than OK for them to do. We-- we go back, getting back to our transfer list, an exception to our NSAA, if-- if they choose to go to a different school after they've used their option, so as a freshman, anywhere you want to go, sometime in the next three years, you have one more time to use that May 1 or that option enrollment that you can use. And of course, remember, anytime their parents move and move into your district, eligibility starts right away. So if you're with your parent, we usually get into the case in the NSAA perspective of I want to live with grandparents because this happened or I want to live with somebody else because this happened, and then we have to check our rules to see what they say about that-- that-- that move. But the main one says the NSA member school in which the Nebraska school transfers must notify the NSAA of transfer by entering the student's name on the NSAA May 1 list. Once they put their name on that list, they're required to go to that school for eligibility purposes. If they-- say they put their name on the list as soon as they do the option work in-- in March. They have until May 1 if they want to change their mind and say, you know what, take my name off that list because I decided I wanted to stay with my friends, they're-- they're more than willing. That's OK. But once they go by that May 1 list, then they're hooked to that other school for eligibility. And so we-- we said we've-- we've had some trouble with that. We call it our portal, just like you hear from the NCAA. In 2015, we had 929 kids transfer; 2016, 749, 744; and then this last year, we're down to 578, and we attribute that to our list. And I-- I should have made a copy for everybody. It's our May 1 transfer list. Now mom and dad have to sign the piece of paper saying that we're going to tell both schools. So if I'm leaving one school, you're going to know; and if I'm coming to another school, they're going to know also. We found this caused a lot of heartache for-- for everybody involved. So I see I'm out of

time, so I'll answer any questions that you may have. Thank you for the opportunity.

**WALZ:** Yeah, thanks. Questions from the committee? Can you leave that paper and we'll--

**JAY BELLAR:** I can leave anything that you need. This one here? Yep.

**WALZ:** We will make copies for the committee members.

**JAY BELLAR:** OK.

**MURMAN:** I've got a question.

**WALZ:** Senator Murman.

**MURMAN:** Thank you, Senator Walz. What control do you have over homeschool students? How often can they transfer or [INAUDIBLE]

**JAY BELLAR:** Transfer students-- or, excuse me, homeschool students are only eligible-- well, first of all, I should say, as a freshman, they're like anybody else, they can choose what-- what school they want to go to. Ninety-five percent of that time, they choose the district in which their parents live in. So other than their freshman year, if they're sophomore, junior or senior, they're required to go to the school district in which their parents live.

**MURMAN:** And what-- do-- do you have any control over how they're-- whether or not they're eligible to participate in the school district?

**JAY BELLAR:** No, they have to be a member of the NDE, and I can't-- I don't know the wording for sure, but the-- the parents have to, of course, or whoever their teacher is grades those kids, and their eligibility is dictated to-- by their parent or that teacher to that school and they decide who's eligible or not. We do decide to make sure that they're-- we ask the schools to make sure that they're in the ten credit hours or two classes enrolled at that school. Now some schools allow them to-- if they're doing that remote, they count that. Some do not. So that's up to the school district in which they attend.

**MURMAN:** OK, thank you. So it's up to the school district and the parents then?

**JAY BELLAR:** Correct.

**MURMAN:** OK. Thank you.

**WALZ:** Senator Linehan.

**LINEHAN:** Thank you, Chairwoman Walz. Did you just say that homeschool kids don't have the May 1 option that the kids in school do?

**JAY BELLAR:** They do not because they're not a member of the Nebraska School Activities Association.

**LINEHAN:** OK.

**JAY BELLAR:** That is for our member schools, from one Nebraska school to another Nebraska school.

**LINEHAN:** OK.

**WALZ:** Any other questions? I don't see any. Thank you so much for coming. I'm glad you did.

**JAY BELLAR:** Thank you.

**WALZ:** Thanks. Our next testifier is Jeremy Ekeler. Jeremy is--

**LINEHAN:** He can't be here.

**WALZ:** --not able to be here. Yeah, he's not able to be here. He had a flight that canceled. But his testimony, you'll find, committee members, are-- are in the books. So we will go to Brian Halstead with the NDE.

**BRIAN HALSTEAD:** Good afternoon, Senator Walz, members of the Education Committee. For the record, my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. I just had a couple points I wanted to make this afternoon. Number one, the enrollment option program, its purpose has remained the same since 1989, when the Legislature enacted it. Its purpose is to allow parents to decide what public school district their child can attend and be enrolled in. It is a public school district choice program only. That's how it was designed, that's the purpose the Legislature established, and that is how it is operated. Number two, it has fundamentally remained the same throughout that entire time. Many of the requirements stated in statute have been amended because of changes in the structure of the school districts in the state or the possibilities of why kids move or parents move around to enable them to continue to have an option under the program. So in the sense, in 1989, there were over 800 school

districts in the state of Nebraska and they were organized under elementary-only, K-12, or high school-only school districts. So in the sense of the laws were tweaked because kids might have used enrollment option when they were a first grader to enroll in a elementary-only school district even though they lived in a K-12 school district, when they completed the grades in the elementary-only school district, they got another option to pick either the high school district where they reside or another high school district. Since that time, the Legislature has changed the entire structure. All of K-12 education today is under a single board of education and each school district of the state K-12. So some of the language that's in this statute predates having just a single K-12 school district where all children reside. Number two, the fundamental premise that has been present from the beginning of the state of Nebraska is, where the child resides, they get to enroll free of charge in the public school district. The enrollment option program created a, no, you can pick another public school district where you do not reside in order to attend, and it's largely operated that way since. The other thing I would focus on and point out to you, the role of the Department of Education is just two things. We were required to prescribe a form that school districts had to use when-- and parents had to use when they wanted to participate in the enrollment option program. The only other duty of the department is actually with the State Board of Education. Any parent who is told no by a school district can appeal under the Administrative Procedures Act, and that parent is the petitioner in that case. Under the Administrative Procedures Act, the petitioners are required to carry the burden of proving they qualify and meet the requirements for which they should be admitted into the enrollment option program. That sometimes has turned out to be a parent taking on a school district, administrators and lawyers all by themselves, which sometimes is, how does a parent prove the district is at capacity or is not at capacity? What's their ability to even know how they did that? So in that way, the-- the structure of how the Legislature wrote the appeals in many ways largely benefits the school districts themselves, not the parents using the program. So you may want to fundamentally rethink how that appeal process. The state board only reviews the statute and either says the school district did or did not comply with the law. They do not have the-- an ability to weigh factors, information and make an independent decision about what they think should happen. It's a mere application of the statutes enacted by the Legislature and the facts presented by the parent, which I think several of the prior ones pointed out the unfairness of that. The act does specifically say that school districts cannot focus on whether a child has-- is in special education, yet the Legislature

then wrote language about but schools can determine the capacity of classes, grades and programs, for which you've now heard "program" includes special education. So inherently, even though you say it's not to be done by statute, you've authorized it to be done. And finally, since I see my light is turned red, I would mention part-time enrollment is an entirely different statute in Nebraska and is not part of enrollment option, and parents and others confuse that concept. Right now, there has never been a statute that governs how a parent can enroll their child in a private denominational or parochial school. That's up to the parent and that school as to what's required. So in that regard, there are requirements that are needed for a parent who chooses to have their child enrolled in an exempt school to have that exempt school recognized by the department as being a school for statutory purposes and for purposes of the compulsory attendance law. So I will stop there. I will try to answer any questions you might have about enrollment option.

**WALZ:** Thank you. Questions? Senator Linehan.

**LINEHAN:** Thank you very much for being here, Mr. Halstead. OK, you said the State Board developed the form, right?

**BRIAN HALSTEAD:** No, the State Department was required to prescribe the form to be used, which it did in the early, whenever the act-- 1990, there was a form created. It has been adopt-- adapted based on changes and tweaks in the statute. Yes.

**LINEHAN:** OK, but so the Department of Ed, not the board, I'm sorry--

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** --so Department of Ed. And isn't one of the first questions on the form, does this child have an IEP?

**BRIAN HALSTEAD:** There are numerous questions and you are correct. There are questions that deal with--

**LINEHAN:** It's like halfway down, first question.

**BRIAN HALSTEAD:** Yeah. Yeah, there's a box: Does the student receive special education services, yes or no?

**LINEHAN:** Yes. OK, so why do you suppose the Department of Ed had that question on there?

**BRIAN HALSTEAD:** Because school districts needed to know that to know the services they were going to be able to provide to the child so

that they could make a determination as to whether they had staff who could provide that service to that child or whether they didn't have capacity right now in their district because they don't offer that type of program to a special education child. That-- that's why it's there.

**LINEHAN:** So, I apprec-- I--

**BRIAN HALSTEAD:** Inherently, reading this, I look at that and go, well, you say it shouldn't be based on special education, yet one of the questions right out of the box--

**LINEHAN:** Yes.

**BRIAN HALSTEAD:** --asks that question.

**LINEHAN:** Yes, I--

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** --have known that for a couple of years now, so--

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** --so good for the history lesson.

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** But you keep saying this is what's in statute, but it's in--

**BRIAN HALSTEAD:** It is.

**LINEHAN:** --it's within our ability to change that, right?

**BRIAN HALSTEAD:** Absolutely, Senator. That's--

**LINEHAN:** Yes.

**BRIAN HALSTEAD:** I think the whole purpose of this study is for you to look at the statute your predecessors in this body established to see whether that language still meets the needs of parents, students and school districts. More than happy to work with you on updating this language to make it better for parents, students and school districts.

**LINEHAN:** Thank you.

**WALZ:** Any other questions? Thank you very much for being here.

**BRIAN HALSTEAD:** You're welcome. And just for the staff and the committee to understand, I did provide to the research analyst the individual numbers for school districts and broken out by the student demographics of those students in all of the school districts who are participating in the enrollment option program.

**WALZ:** Thank you.

**BRIAN HALSTEAD:** So staff has that both for the '19-20 and the '20-21 school year. In that regard, just under 24,000 students in both school years were using enrollment option to attend a public school district that was not their resident district.

**LINEHAN:** It's 24,000? That's, what, 8 percent of the kids? Well--

**BRIAN HALSTEAD:** That's probably close. I should turn to Mr.--

**LINEHAN:** Well, because the option enrollment, we don't have option enrollment for preschoolers, do we?

**BRIAN HALSTEAD:** No, it's K-12 only, so--

**LINEHAN:** OK, so-- and there's like--

**BRIAN HALSTEAD:** --310,000 K-12, so 24,000 of that would get you your percentage.

**LINEHAN:** And the 310 (thousand) includes parochial, doesn't it? Right?

**BRIAN HALSTEAD:** No, that's in the public school system only. Pub-- nonpublics--

**LINEHAN:** K-12? K-12?

**BRIAN HALSTEAD:** Yeah, I-- I-- and I-- by the way--

**LINEHAN:** Nonpublic is 38,000?

**BRIAN HALSTEAD:** Nonpublic has been between 35 (thousand) and 37,000 year to year. Didn't look at that. We can get you that data.

**LINEHAN:** No, no, that's fine.

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** We can find it. So it's-- it's not 10 percent, but close to 10 percent are opting?

\_\_\_\_\_ : Just under 8.

**BRIAN HALSTEAD:** Just under 8.

**LINEHAN:** Eight percent, OK.

**BRIAN HALSTEAD:** Good school finance guy who does math all the time has done that for us real quickly here.

**LINEHAN:** But you don't get that by looking at what we spend on option funding because it's offset because it's net option.

**BRIAN HALSTEAD:** That's how TEEOSA tries to fund it is net option funding. This is based on student enrollment information that we get every year from all school districts. By the way--

**LINEHAN:** I'm just admitting I've been wrong for two years.

**BRIAN HALSTEAD:** No.

**LINEHAN:** You should enjoy that.

**BRIAN HALSTEAD:** No, absolutely not, Senator. Absolutely not.

**LINEHAN:** 'Cause I thought it was more like 12,000, but now I see it's like 24,000.

**BRIAN HALSTEAD:** So in the sense of today is enrollment day, when enrollment in all public school districts is taken so we will know shortly after this how many students are enrolled in the public, the nonpublic, and we have applications for exempt schools, so that-- today is that magic day for all numbers.

**LINEHAN:** October 1.

**BRIAN HALSTEAD:** Yeah.

**LINEHAN:** Thank you very much. Appreciate it.

**WALZ:** Thank you, everybody, for attending. That ends our hearing on LR182 and ends our hearing for today.