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[LR314]

SENATOR SULLIVAN: Thank you. And this will end the hearing on LR334. (See also Exhibits 23-51.) We will move on to LR314, which has been introduced by Senator Kolowski. And I would ask that he would give some introductory remarks. [LR334]

SENATOR KOLOWSKI: Can I do it from here? [LR314]

SENATOR SULLIVAN: Yes. [LR314]

SENATOR KOLOWSKI: Good afternoon, Chairwoman Sullivan and members of the Education Committee. I'm Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31 in southwest Omaha. I introduced LR314 to examine the use of restraint and seclusion in Nebraska schools and determine what the Legislature can do to promote policies that promote safe, transparent, and accountable educational environments for all students and educators. Our office has had meetings over the summer with parents, teachers, disability rights advocates, social workers, and many more stakeholders to start a dialogue about what is currently happening in Nebraska in regards to restraint and seclusion, and how we can eliminate the use of these practices through alternative positive relationship-building models. Today you will hear from many of the parents and advocates in this area. We hope that this interim study will ignite a larger discussion about the need for smaller class sizes, mental health support in our communities, and more professional development time for our teachers. I look forward to the public hearing today on LR314 and our continued work to support Nebraska's youth. Thank you. [LR314]

SENATOR SULLIVAN: If you are not testifying, I would ask that you move out of the room quickly and stop your visiting so we can give our attention to the testifiers. As indicated, we have several people that have been invited to first of all give testimony. We'll start with Dr. Reece Peterson. [LR314]

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BRAD MEURRENS: Dr. Peterson will not be able to testify in person. I have his written testimony to submit to the committee for... [LR314]

SENATOR SULLIVAN: Okay. [LR314]

BRAD MEURRENS: ...for the record. (Exhibit 1) [LR314]

SENATOR SULLIVAN: (Exhibits 1, 2, and 3) Oh, excuse me. These are letters of...oh, excuse me, letters for the record: Dr. Reece Peterson, Trisha Kingsley (phonetic), and Michael Chittenden from The Arc of Nebraska. Excuse me. Now we'll start with the selected testifiers. Melinda Pearson. Sorry, Senator Kolowski. Welcome. [LR314]

MELINDA PEARSON: (Exhibit 4) Thank you. My name is Melinda Pearson, M-e-l-i-n-d-a P-e-a-r-s-o-n. [LR314]

SENATOR SULLIVAN: Sorry. Just a minute. Okay, Ms. Pearson, I think you can go ahead now. [LR314]

MELINDA PEARSON: Thank you. He's passing out a copy of my notes so you'll... [LR314]

SENATOR SULLIVAN: Okay. [LR314]

MELINDA PEARSON: ...have it all in front of what I'm saying. [LR314]

SENATOR SULLIVAN: Very good. [LR314]

MELINDA PEARSON: My name is Melinda Pearson. I'm a parent of a child with special needs who has been restrained too many times to count and secluded even more. I

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would like to share some of my son's story in hopes that this committee will find it necessary to recommend either laws or guidelines to: one, only use restraints or seclusion when there is a crisis situation, not for compliancy; two, all school staff is trained properly; and three, the notification of parents or legal guardians is mandatory and happens every time these practices occur. The first time I found my son in a seclusion room, he was in 2nd grade. He was in a little room--a previous custodial closet turned into a recovery room, without a window or a way to see him and to monitor him. Leaving him with a math worksheet and a pencil to work alone, he was expected to complete the assignment before he could come out. It was not clear exactly how long he had been in the room. Needless to say, I was not okay with this. Up to this point, I had been in communication daily with the challenges and struggles he was experiencing, and at no point was I told he was being placed in what was called the recovery room. For his remaining elementary years we helped shape the procedures at the school and perhaps even the district. Through my daily conversations with staff, the practices used over time did change: some improving; some helping him, as I'll note later; and some that need to be thrown out. During this time he endured numerous times daily where they used restraints to de-escalate him when angry. Often, he would have bruises on his arms where he was held in an attempt to get him to the ALE room, previously known as the recovery room. After the school was remodeled, there were two ALE rooms, now with windows, one in each resource room. In attempts to help my son, they decided to designate one of the rooms to be used only for him. Fourth grade was a particularly challenging year which led to what I would call permanent seclusion for my son. During the last quarter he was removed from the classroom and placed in an emptied-out small classroom with his one-on-one para. This room did have windows, but when staff realized he was standing at those windows screaming for someone to let him out, they immediately put tint on them so he could see out but passers by could not see in. The biggest mistake I made was allowing his 5th grade year to start off the way they insisted it would. Because he had ended the 4th grade out of the classroom, they felt it necessary for him to earn his way into the classroom for 5th grade, even though this was a new year. Thus, he was given a new office room tucked down the 1st grade

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hallway where he and his para would work secluded from his class and peers. He was absolutely crushed. I spent two days at school that first week--the first day trying to help calm him down and convince him it would be okay, even though I wasn't okay with it, and the second to see what exactly staff was doing. On the second day it was made quite clear I should not just arrive unannounced and plan to stay for the day. They didn't think it would benefit my son. He never did make it back into his classroom. He had very little actual teacher instruction throughout the year, almost all of his instruction coming through his para. He was even expected to eat lunch in this room, though they did invite a couple of classmates to join him after my insistence. He wasn't allowed to go to recess his entire 5th grade year. Middle school has been an entirely different experience. My son still has one-on-one support and we have yet to get him back into the classroom on a regular basis, in my opinion, because of the behaviors learned as a result of all the seclusion. However, he has only had to use the ALE room a few times, as middle school only uses it when a student is in crisis and unsafe. Shortly after his first few days at middle school he got in our car and said, Mom, I'm not the only bad kid. He has told me he figured out there really are some nice teachers too. My plea would be for the district and the state to continue to work for solutions to set our children up to thrive not just survive; that should it be deemed necessary, seclusion and restraint only be used in crisis situations. When advocating for my son over the years, I've always said if he needs to get it together then so be it. As soon as he can talk, he comes out. If he escalates again, he may have to go back, but that typically isn't the case. We must treat our children like human beings, not like animals who need to be caged up. Children should never be made or expected to complete school work or a task before they come out of a seclusion room. All staff must be trained in behavior support and conflict de-escalation. I can't tell you how many times, through my conversations with staff, often on a daily basis, the trouble or trigger was the result of a power struggle when the adult allowed emotions to enter in. My son's elementary school truly did go the extra mile, even holding weekly meetings to keep everyone on the same page to assist him. Yet over and over again, I could point to the trigger. Many times the entire situation could have been diverted had the adult emotions been kept in check. Perhaps training

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will prevent other children from experiencing what mine has. In closing I will share some of the good that has come out of those years. My son did learn some valuable de-escalation skills and improved his negotiation skills. We work daily on respect, consideration of another's point of view, and understanding you treat others the way you wish to be treated. He and I spent many nights working through the events of his day, so many times with him stating, Mom, I just want to be normal. Now when he is feeling out of control, he will leave the room and take three to five minutes to get it together. At home he goes to his room. At school he has two to three safe places he and his teachers have agreed on. He can express when he's feeling angry, frustrated, sad, and sometimes overwhelmed. We continue to see progress and I fully expect his high school years he will be able to independently attend classes and engage in what's going on around him without support, despite what happened in his elementary years. If these practices are not restricted to done away with completely and training not changed for our educators, many others will not even survive, potentially ending in tragedy, as we know many do not have people advocating for them. Thank you. [LR314]

SENATOR SULLIVAN: Thank you, Ms. Pearson. To some of us, this is sort of foreign territory. We're not acquainted with it. Can you tell me a little bit more about the team of educators that you worked with? Was special education involved? [LR314]

MELINDA PEARSON: Yes. [LR314]

SENATOR SULLIVAN: Did you have an IEP? [LR314]

MELINDA PEARSON: Yes. We are...I'm here, right here in Lincoln, so we're with the LPS district. We do...my son has been on an IEP since kindergarten. [LR314]

SENATOR SULLIVAN: Uh-huh. [LR314]

MELINDA PEARSON: We did have a team, even...they even brought in the district.

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CASA (phonetic) is what they refer to it. So I had people that were working regularly. In his 5th grade year, when it was so secluded, I asked to have the special education people from the district office come in, because I was concerned maybe we should move him to a different school. At that point they decided they'd do a functional behavior assessment and they felt that moving him would be a detriment to him, in spite...despite my saying he's secluded, he's by himself, you know, he's not getting any education, there's no teacher instruction. With this is a para who, you know, we're fortunate in having some longstanding paras who had been with the school district for a long time, so I feel like they had a good handle. But they didn't have a teacher's education.

[LR314]

SENATOR SULLIVAN: So where are you right now in terms of level of satisfaction?

[LR314]

MELINDA PEARSON: I feel that the middle school that we are at has been exceptional. They have a strong philosophy in the ALE rooms. They're the alternative learning environment, which they're now known as. I'm not sure why that's the name of them. But they only use them when a child or a student is being unsafe to himself, herself, staff, or someone else. It's a small room where they are strongly suggested, sometimes assisted, probably most of the time assisted into that room, to get it together and calm down. Because they're only using it during that...I mean that's...I haven't been able to come up with another acceptable method when someone is being unsafe, even though I've been working very closely with the school. The school's philosophy now that's he's at is every day is a new day, which has been very helpful. He doesn't have to go to school the next day and process if we've had a challenging time, which that would most of the time trigger him to have just as bad a day. Fifth grade, when they decided to put him in that little room, was a small little room, nothing on the walls. I mean it was a desk and him and the para. And lots of times they would have to close the door because he had been in the 1st grade hallway. And the saddest part for me in that situation is he had worked from kindergarten up to the 5th grade, establishing a relationship with the

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teacher he was intended to have, and yet they did not give him the chance to see if he could have turned it around and been who I know he can be. Now what we're seeing, to come back full circle to answer your question, I think he's learned behaviors. He's highly intelligent, gifted, and a strong negotiator, which some would call a manipulator. And he has figured out that he really doesn't want to be in a class. So because he's gotten this in 4th and 5th grade, we're having challenges getting him back into the classroom where he'll sit through a class. He did call me this afternoon at noon and say, Mom, I made it to 30 minutes of science, so that was...that's a victory. We're on the right path. [LR314]

SENATOR SULLIVAN: Okay. Thank you. Senator Kolowski. [LR314]

SENATOR KOLOWSKI: Thank you. If this is inappropriate, please tell me. But are there medications involved also on a regular basis with the school nurse or whoever? [LR314]

MELINDA PEARSON: Thank you for asking. [LR314]

SENATOR KOLOWSKI: Please. [LR314]

MELINDA PEARSON: That was, I feel in my opinion, was part of the biggest problems in 4th and 5th grade because we did try medication. It was not right for my son. He is no longer on, he's been...he's completely off of everything since 5th grade. I feel like I was kind of pushed in that direction to try something because we were struggling so much. I believe that's where a lot of the aggressiveness came from in him trying to have to deal with things. Now he's not on anything and he's...we don't see these situations at home. He's compliant...as compliant as a 12-, 13-year-old boy would be, in my mind. (Laugh) [LR314]

SENATOR KOLOWSKI: As a former high school principal, I had to deal with lots of the range of things. I didn't mean to probe on that question. [LR314]

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MELINDA PEARSON: No, no, no, that I appreciate,... [LR314]

SENATOR KOLOWSKI: Just needed clarified. [LR314]

MELINDA PEARSON: ...because I think that, you know, there was obviously...there were things and, you know, there were times when he was unsafe. But to isolate him like that, I just don't feel like children should be isolated. I mean to be made to work, you know, that was some...he really...and what I didn't...I left out a little bit of it for time. He really...oh, sorry, I just lost my train of thought. I'm sorry, I lost it. [LR314]

SENATOR SULLIVAN: What involvement did the principal have? [LR314]

MELINDA PEARSON: He was involved. The coordinator was very strongly opinionated. She had a background in special ed. She came from special ed into the coordinator position so was very confident and adamant about this is the way that it was going to happen. You know, I have respect for her. The principal, he was more of an, I don't know, what do you think, kind of. He's very kind but wasn't necessarily take charge and this isn't okay. [LR314]

SENATOR SULLIVAN: Okay. Thank you. Any other questions? Thank you for your testimony. [LR314]

MELINDA PEARSON: Thank you. [LR314]

SENATOR SULLIVAN: Leanne Whetstone. Welcome. [LR314]

LEANNE WHETSTONE: (Exhibit 5) Hi. Good afternoon. Dear Education Committee members, my name is Leanne Whetstone, and that's spelled L-e-a-n-n-e W-h-e-t-s-t-o-n-e. I am here as the parent of a 17-year-old son with autism. I appreciate

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the opportunity to speak to you about this difficult subject of restraint and seclusion. Today I'm sharing our family experience when our son was enrolled at a public school district in central Nebraska. During the 2013-14 school year my son was physically restrained several times while a freshman in high school. My husband witnessed our son being physically restrained on one occasion. The physical restraint consisted of a prone restraint, by placing my son on the floor face down on his stomach with two school personnel holding him down. One staff person sat on his lower torso and the other staff held his arms down while my son struggled to get out. One of the school staff was physically much larger than my son. Restraints such as this happened four to five times during the month of September 2013. The restraints were performed in a seclusion room in the basement of the high school. This room was approximately 4 feet by 7 feet and was poorly ventilated, which meant it was very hot in late August and September. The room at one time appeared to have been a closet and it also housed the bell that rang between classes. The restraints were done because of noncompliance. My son had a difficult time with talking during class time. This constant chatter is part of his autism disability. My son also had another student he wanted to see, and the school did not allow this. So he would try and find her during times like pep rallies and fire drills. Second, I would like to share that not only was my son restrained in this room but he was also secluded. My son would start each day in this closet, turned seclusion room, with the bell sounding, and be asked to work on different academic tasks. He was also taken to this room if he was not able to be quiet in class. Most times he did not know what he needed to do to get out of this room. My husband observed my son in this room one entire day. During this seclusion, rest room breaks were not offered. There was little room to move around, so my son paced back and forth, similar to a caged animal. Through all this, the school did not communicate to us they were physically restraining my son or that they were placing him in the seclusion room on a daily basis. The school suspended my son on three occasions due to his aggressive, noncompliant behavior. However, they never shared that they were restraining him. I found out about the restraints when I noticed bruising on my son's arms. When I asked him, he told me that they took him down on his stomach and sat on him. Eventually, the

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beginning of that school year he started to refuse to go to school. Communication with parents is critical. We must know when restraint has been used so that better positive behavioral supports can be in place to reduce and eliminate the archaic method with those...of dealing with those with individuals who have disabilities. Prone restraint should never be allowed. This method has killed many students and injured others. Positional asphyxia death can occur. The school personnel who performed these restraints were not doing this to help my son de-escalate. In fact, they were angry with my son and were restraining him as a form of punishment. The school indicated that the staff was trained in the Crisis Prevention Intervention method of restraint. However, as parents, we had no proof of this. CPI teaches de-escalation and presents physical restraint only be used as a last resort. And I'm going to conclude here. I know we're running out of time. Today my son is currently enrolled at Omaha Westside High School. Due to the fear of sending our son to an unsafe situation at school, we felt as a family we had no other options. We uprooted our family and moved halfway across the state and enrolled our son in a school...I'm sorry, I'm getting emotional--in a school which has an in-depth policy for restraint and seclusion. At Westside, a positive behavioral support plan was recommended by Munroe-Meyer Institute and we implemented that plan. My son is currently attending school full-time and has only had one incidence of aggression to school staff or other students. This ordeal has been very difficult for our entire family. We were very traumatized by this physical punishment and even now he still talks about it. So I appreciate you giving me the opportunity to share my story. And I open it up to if you have any questions for me. Thank you. [LR314]

SENATOR SULLIVAN: Thank you, Ms. Whetstone. I know this is not easy for you,... [LR314]

LEANNE WHETSTONE: It's not. [LR314]

SENATOR SULLIVAN: ...but you did a very good job, so thank you. Getting back to the original situation, you indicated that your son has autism. [LR314]

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LEANNE WHETSTONE: Yes. [LR314]

SENATOR SULLIVAN: And so in that original school district, did you feel that through special education support your son was getting help treating or dealing with the autism or was it... [LR314]

LEANNE WHETSTONE: No. No. We never felt like the school did what they could have done for our son. In other words, we really stress positive behavioral supports for him and a reinforcement system, and it was very difficult for the school to implement that. And there's a couple of reasons why. Number one, I felt like they didn't want to; and number two, they didn't have the resources or the training to do that. At one point in time when my son was a 7th grader, he became aggressive, and so the middle school said he can no longer go to school; you can take him home and bring him back at 4:00 in the afternoon and we'll give him one hour of school services. We objected to this and they did find another school for him to go to where he was totally by himself. He was in a classroom by himself. They hired a substitute teacher to teach him and that teacher had a degree in physical education, not special education. And so we were constantly trying to teach the teacher on how to use positive behavioral supports and de-escalation. And I just...we just felt like they just didn't want to deal with it. It was too...it took too much time. They didn't have the resources, they didn't have the training. As far as the restraining that happened at the high school, that was being implemented by the assistant principal and another teacher. And the minute he didn't comply, they called in the assistant principal and there was no de-escalation attempted. It was take him to that room and restrain him. [LR314]

SENATOR SULLIVAN: So did you ever have an individual education plan? [LR314]

LEANNE WHETSTONE: Yeah, we...oh yeah, we had an IEP and we met many times and advocated for our son. We asked the school to bring in specialists who worked with

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applied behavioral analysis, which focuses on positive behavioral reinforcement systems, and they would do that. And then the next year it would be a whole new set of teachers with my son and there was no follow-through on, okay, this is what's worked, we need to continue to do this. It was like a whole new set of teachers and we had to start all over at the beginning of every school year. So it was very frustrating. [LR314]

SENATOR SULLIVAN: And so you literally have moved your family and now things are going better. [LR314]

LEANNE WHETSTONE: Things are going a lot better. And I will say this about restraining, that the more my son was restrained, the more combative and aggressive he became. If he would have been given his space, would he have been upset? Yeah, maybe he would have been yelling or something, but he wouldn't have been trying to hit someone if they would have backed off. But they had him by both arms and then they took him to that room and, you know, he didn't want to be in that room. He wanted to be around other students. He wanted to have a normal school experience, so. [LR314]

SENATOR SULLIVAN: Okay. Thank you. Senator Kolowski. [LR314]

SENATOR KOLOWSKI: Thank you, ma'am. Did he...I wanted to...the former school district he was in, did the educational service unit have any specialty people that might have been able to help or... [LR314]

LEANNE WHETSTONE: They did. [LR314]

SENATOR KOLOWSKI: ...was that far away or... [LR314]

LEANNE WHETSTONE: Yeah. No, it was not far away. It was right there in the same location. [LR314]

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SENATOR KOLOWSKI: Okay. [LR314]

LEANNE WHETSTONE: And we called them in, in the 7th grade when they asked us to take him home and not let him go to school. I was going to have to quit my job because I would have to stay home and take care of my son. And we called in the ESU and they did a behavioral analysis and made recommendations to the school, which the school said they were doing those recommendations, but it didn't help. And my son's aggression continued so they just said he can no longer go to school here. And we said, well, you still have to educate him and we don't think an hour a day is enough. So at one point in time, yeah, we did utilize the ESU. [LR314]

SENATOR KOLOWSKI: Thank you. Thank you. [LR314]

SENATOR SULLIVAN: Any other questions? Thank you so much for your testimony. [LR314]

LEANNE WHETSTONE: Thank you. [LR314]

SENATOR SULLIVAN: We'll now hear from Dani (phonetic) Ohlman. [LR314]

BRAD MEURRENS: Dani (phonetic) could not make it to the hearing. I have her testimony. [LR314]

SENATOR SULLIVAN: So you will submit that into the record? [LR314]

BRAD MEURRENS: (Exhibit 6) Yes. Yes. [LR314]

SENATOR SULLIVAN: Okay. All right. Very good. Mike Tufte. Welcome. [LR314]

MICHAEL TUFTE: Hi. Thanks for having me. You guys look a little beat, long day.

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Thanks for having us. Appreciate it. Mike Tufte, M-i-k-e T-u-f-t-e. I am here representing PTI Nebraska. That stands for the Parent Training and Information Center. I'm neutral on this position but I thought it imperative that I pass along some facts. We're a parent advocacy center. We are staffed entirely by people, parents, who have a child with a disability, and our board is 50 percent parents who have a child with a disability. We're funded by State Department of Ed and federal Department of Ed grants entirely. So I'm not here representing either side of the issue; just want to pass along some facts. Over the last three years we've had over...almost 600 calls to our office on behavior discipline and restraint/seclusion questions. So parents basically call our parents who have been through the process before. They all have parents that have...or they all have children that have been through the entire educational process and know the ins and outs of Rule 51, Rule 52, you know, IEPs, IAPs, how do you do this, how do you do that? If you've got a medical issue, how do you work with the nurse in your school district to make sure they can go? So they can answer just about any questions and it's from an advocacy point of view. Nearly 50 of those nearly 600 calls that came in dealt with restraint/seclusion. You see, there's a couple of parents that came today, but on average we get about one call a day across the state, we're a statewide organization, of folks asking questions about. And what I've done here is...I'll pass this along to the clerk there, but I've listed about 50 questions, the most common questions we get from parents. So you can kind of go through these. I'll just read a couple of them. I can't go through all 50 of course. But: Are the schools allowed to put my child in a room all day by themselves? Also, we get questions from teachers. We're nonbiased, so we answer questions from principals, teachers that have questions as well. So: As a teacher, I'm worried about putting a child alone in a room but I'm told this is what I should do. What should I do? As a paraprofessional, I've witnessed students being held down for outbursts in class. What are the laws on that? It makes me feel uncomfortable when I don't know what to do. Can I request documentation from the school every time a restraint is used on my child? So we have a lot of these questions that come in every day and we don't, for restraint/seclusion, we don't really know all the answers. If you look at Rule 51, Nebraska law, it doesn't list...it doesn't say restraint or seclusion in the

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law at all. So we don't have a lot of backup. There's federal guidelines, of course, and we refer back to those. The federal Department of Ed has some general guidelines and that's all we can refer to at this point. They were last updated in 2010 and when parents call in we...our only recourse is to refer back to that. We don't have a lot of answers for them on that restraint/seclusion. [LR314]

SENATOR SULLIVAN: All right. Thank you, Mr. Tufte. So you're saying that in terms of Nebraska laws with respect to these topics, we don't have very much on the books? [LR314]

MICHAEL TUFTE: Right. [LR314]

SENATOR SULLIVAN: And what, if anything, does Rule 51 include? [LR314]

MICHAEL TUFTE: Well, it's general special education law. I mean the entire... [LR314]

SENATOR SULLIVAN: Oh, okay. Okay. [LR314]

MICHAEL TUFTE: ...realm of special education in Nebraska. [LR314]

SENATOR SULLIVAN: Uh-huh. [LR314]

MICHAEL TUFTE: You know, it's a big book but it doesn't have anything on which to... [LR314]

SENATOR SULLIVAN: It has nothing with respect to restraint and seclusion? [LR314]

MICHAEL TUFTE: Well, it has some...the word "restraint" and the word "seclusion" is not in there, no. [LR314]

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SENATOR SULLIVAN: Is what? [LR314]

MICHAEL TUFTE: The word "restraint" and "seclusion" is not in there. [LR314]

SENATOR SULLIVAN: Oh, it's not. [LR314]

MICHAEL TUFTE: Right. [LR314]

SENATOR SULLIVAN: Okay. And you're an advocacy group? [LR314]

MICHAEL TUFTE: Yeah, we're a nonprofit. We're a 501(c)(3). [LR314]

SENATOR SULLIVAN: Are you based here in Lincoln? [LR314]

MICHAEL TUFTE: We're based in Omaha but we're a statewide organization so we take calls from parents statewide that have questions. Most of our calls will come in on questions on the IEP and the process, the IFSP, the IAP process and how does that work, because it's pretty confusing when they first start. But like I said, we get quite a few calls on behavior discipline, restraint, seclusion. [LR314]

SENATOR SULLIVAN: Have those calls been increasing over the years? [LR314]

MICHAEL TUFTE: Yeah. I've got figures from 2012, '13, '14, and '15 here--I'll pass those along to you--but generally stay pretty steady actually. [LR314]

SENATOR SULLIVAN: And the federal guidelines are more specific with respect to these topics. [LR314]

MICHAEL TUFTE: Well, they're not even that specific. They're just general guidelines. They're not rules. They're not regulations. They're not law. They do provide kind of a

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general guideline for states to follow when they come...when they...and school districts to follow when they're coming up with a plan for their district, but it's not...yeah, that's not even a law as well. [LR314]

SENATOR SULLIVAN: Okay. Any other questions? All right. Thank you very much for that insight. Brad Meurrens. Is that...I'm not sure I'm pronouncing that right. [LR314]

BRAD MEURRENS: That's very close. [LR314]

SENATOR SULLIVAN: Close enough? [LR314]

BRAD MEURRENS: Close enough. [LR314]

SENATOR SULLIVAN: Okay. (Laugh) [LR314]

BRAD MEURRENS: No one ever says it or spells it correctly, so you're in good company. [LR314]

SENATOR SULLIVAN: Can you hand your green sheet to the clerk. [LR314]

BRAD MEURRENS: Oh, sure. [LR314]

SENATOR SULLIVAN: Thank you. [LR314]

BRAD MEURRENS: There's my testimony and... [LR314]

SENATOR SULLIVAN: Did you want those distributed? [LR314]

BRAD MEURRENS: (Exhibit 7) Yes. Yeah. Here is Dani (phonetic) Ohlman's testimony (Exhibit 6), and then Dr. Peterson's testimony (Exhibit 1) is contained within the folder.

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[LR314]

SENATOR SULLIVAN: Okay. All right. [LR314]

BRAD MEURRENS: Because they were not able to make the hearing. [LR314]

SENATOR SULLIVAN: Okay. Very good. We'll sure those get to the committee. Okay. [LR314]

BRAD MEURRENS: Good afternoon, Senator Sullivan and members of the Education Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist for Disability Rights Nebraska, the designated protection and advocacy organization for Nebraska. First off, I want to thank Senator Kolowski for introducing this resolution and the Education Committee in general for giving it time this afternoon. LR314 is important because it begins a necessary discussion about the use of restraints and seclusion in schools, a risky and dangerous practice for all our students, especially those with disabilities. The impact of these techniques is not limited to the student who is restrained or secluded. Restraint and/or seclusion can pose a safety risk to school faculty and staff, as well as negatively impacting other students who witness the restraint and seclusion. The use of restraint and seclusion in schools is a complex issue that to be successful in reducing the use of these techniques will require an open, robust, and ongoing dialogue among a wide variety of stakeholders. The use of seclusion/restraint has garnered much national attention over the past few years. Several national reports have been published documenting the practice of restraint and seclusion used in schools and the resulting injuries to students and staff. A few of these reports have been included in my folder handout. Disability Rights Nebraska conducted a literature review and produced a research report entitled "At Risk With Only Guidance for Protection," which is also included in my handouts, and it highlights the risks posed by these techniques, Nebraska policy, and key areas which should be addressed in order to reduce the use of these techniques. I'd like to now give

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you an overview of what we found. One, restraints and seclusion are dangerous. The Governmental Accountability Office reports that restraint and seclusion can be dangerous to individuals in a treatment setting because restraining them can involve physical struggling, pressure on the chest, or other interruptions in breathing, and that children are subjected to restraint and seclusion at higher rates than adults and also are at greater risk of injury. The Governmental Accountability Office investigation also found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children in the past two decades. Other examples of restraint and seclusion use have been documented by the National Disability Rights network. Their 2009 report, "School is Not Supposed to Hurt," documents not only incidences where students subjected to restraint and/or seclusion were physically injured, traumatized, or died as a consequence but also some of these techniques that are used on them, including students strapped down to their chairs, even wheelchairs; students pinned on the floor by several adults; students grabbed and dragged into rooms; students held in arm locks; students handcuffed; students placed in coffinlike boxes and cells; and students locked in closets. Seclusion and restraint use is not limited to emergency situations and is often used without parental consent or notification. The Governmental Accountability Office reported that children are restrained as a disciplinary measure even when the student's behavior appeared not to be aggressive. The GAO also continues that students were restrained without prior parental consent or they were restrained or secluded with explicit parental instructions not to use restraint and seclusion and, thus, were ignored. Three, restraints and seclusion are disproportionately used on students with disabilities. The GAO report continues that most of the hundreds of allegations that they identified related to children with disabilities and 90 percent of the closed cases involved children with disabilities or a history of troubled, quote unquote, behavior. The Department of Education, the U.S. Department of Education reports a disproportionate use of restraints on children with disabilities. While students with disabilities represented only 12 percent of students in their study, they represented nearly 70 percent of students who were physically restrained in school. Now Nebraska has a patchwork policy. There is a requirement that

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school districts have a policy on restraint and seclusion, but the rub is that that's as far as it goes. There's no prescription about what those policies should contain and what they should look like. There is a guidance document that is produced by the department which gives an example or two examples of suggested language, and it gives some suggestions about what might be considered or might be included in such a policy, but there's no enforceable, accountable requirement or standardization around what those policies look like. So what we have as a result is a nonuniform, nonstandardized, piecemeal approach school district by school district by school district which basically sets up a situation where your child's safety is wholly dependent upon where that child goes to school. And so that's the problem that we're bringing up to you today, is that we think that there should be some sort of legislative or statutory action. What that looks like is, you know, yet to be determined. We would be encouraged to have that discussion. We'd be happy to do that. But we think that there needs to be some level of standardization or uniformity in these policies across the state. And I will stop there for time, but I have a few more...there's a lot more data and a lot more research within my testimony you have in front of you. So I'd be happy to answer any questions that the committee may have. [LR314]

SENATOR SULLIVAN: Thank you, Mr. Meurrens. So the department, at the very best, it's just very broad guidelines. [LR314]

BRAD MEURRENS: Yes. Basically, it just says that you've got to have a policy. [LR314]

SENATOR SULLIVAN: You have to have a policy. It doesn't even go so far as to say or has guidelines on what should be included in that. [LR314]

BRAD MEURRENS: The way I read it is that the guidance document, there's the requirement that the school districts have the policy, but there is no...there's only guidance and suggestions about what those policies should look like or what should be included in those policies. You're right. [LR314]

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SENATOR SULLIVAN: Okay. Does it include anything about parental notification and consent? [LR314]

BRAD MEURRENS: As I recall, there is a section in the guidance document that talks about parental notification. But as you can see in here, it's not necessarily either followed or it's not included within the policies. And you'll note that there are some sample policies included in my handout from a variety of different schools and you'll notice that some schools will have a seven- to ten-page bullet point, sub-bullet, sub-bullet point policies, very detailed, explains things like who's eligible, who's able to do these techniques, what are the standards for getting the child out of the seclusion room or stopping the restraint. And you'll find others just have a broad paragraph that is very generic and very vague about some of the ins and outs and the details about how these policies would be enforced, how they would be conducted, and what the procedures would be. So it runs the whole gamut. [LR314]

SENATOR SULLIVAN: And we probably don't have any...maybe we have, obviously, some anecdotal information of the results of some of this, but we don't really have a picture of what has happened across the state. [LR314]

BRAD MEURRENS: That is a good point. One of the things that is a major piece of the literature and is one issue that we would be supportive of is having some level of data collection and reporting requirements. Because if you look at, for example, the Office of Civil Rights within the Department of Education, the federal department, their database, they do collect some data across the country on the numbers of seclusions and restraints, the number of seclusions and/or restraints done to children under IDEA, child that are not under IDEA. So they have a database. And I looked, when I looked at this database, I think it says current up to, I think, as of 2012. The number of zeros, the zero reports from the schools in Nebraska is astounding. If the spreadsheet that I pulled down with all just the Nebraska schools is like 11 pages long at like 8-point font, and

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there are so many...there are so many zeros I can't count them all, as if there are...there's nothing happening. And I think something along the lines of...I think that that database reports something along the lines of maybe 1,700 incidences across the state in the last three, in those three years that they look at. But you'll notice, if you look at the data and at the chart, it's zeros across the board for a whole host of schools across the state, so. [LR314]

SENATOR SULLIVAN: But it's because they aren't required to report. [LR314]

BRAD MEURRENS: Well, that raises a couple of different questions. I mean it raises the question of why are there a bunch of zeros? Well, is that because there are no restraints and seclusions being done in...from 2009 or '10 to 2012, which is the span of the database report? Or does it show that there's a lack of reporting and data collected about incidences of restraints and seclusion? I think it's probably the latter more than the former. [LR314]

SENATOR SULLIVAN: Uh-huh. Okay. Questions? Senator Groene. [LR314]

SENATOR GROENE: There's two sides to every story. I mean how many bruises are there on school employees? I mean some of these young men are pretty good size. I have a personal experience of this with somebody close to me who is involved in this situation, and she has bruises all the time because is told to just be passive. [LR314]

BRAD MEURRENS: Uh-huh. Uh-huh. [LR314]

SENATOR GROENE: And this young individual hurts people. [LR314]

BRAD MEURRENS: Uh-huh. [LR314]

SENATOR GROENE: Goes in the lunchroom and starts throwing food... [LR314]

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BRAD MEURRENS: Right. [LR314]

SENATOR GROENE: ...and plates. [LR314]

BRAD MEURRENS: Uh-huh. [LR314]

SENATOR GROENE: Where is the responsibility of the school to protect the other students and the staff? I mean... [LR314]

BRAD MEURRENS: Uh-huh. [LR314]

SENATOR GROENE: ...you're not saying we just give up and we just throw up our hands and the class is disrupted until the individual calms down, are you? Or is there just a better way that somebody needs to be attentive to this individual when they do isolate them? [LR314]

BRAD MEURRENS: Well, I think that there are better ways and different alternatives to do to prevent these incidences from occurring. In the discussions that I've had with advocates, parents, and people in the educational arena, they're saying, you know, prevention is key. And de-escalation is important. But I think you're right. There will be instances where children, youth, students might be in situations like you describe, and that happens, but our point is that rather than using these techniques as an instant reaction, that these techniques should be used only as a means of last resort. When there are no other alternatives that can be used or utilized to de-escalate and to build a relationship with that student then, you know, it is what it is. But the problem is, first of all, that these practices are not being relegated to a last resort. In fact, actually the data and the research and the anecdotes that I've heard indicate that it might be the first reaction. Secondly is, as I said it in the testimony, these techniques present a risk not just to the student being restrained but also to the staff itself, themselves, and to the

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students and the families that are involved in that child's life. So you're right, there is a risk, but the risk is not just to the student. The risk is also to the staff and the faculty that are either doing the restraint or secluding or to be retraumatized by even witnessing the use of restraints or having to see a large individual take down a smaller child. And the third point that I'd make is that these techniques are not reserved to just kids who are 6'4", 250 pounds. These techniques are also being used on elementary students and children and students that are not overly large. And so, yeah, you're right, there are two sides to every story and I don't think that we can say, well, you know, just throw it away and do nothing about it. But the problem is that these techniques are not being relegated to the intent that they were developed, and that is to be used as truly a last resort. [LR314]

SENATOR SULLIVAN: Senator Kolowski. [LR314]

SENATOR KOLOWSKI: Thank you, ma'am. Brad, the majority of larger high schools have security officers, either county sheriffs or state...or police from the city. Are there any recorded incidents that they're involved with some of these things that they have to write up that somehow make it to a record somewhere... [LR314]

BRAD MEURRENS: Well,... [LR314]

SENATOR KOLOWSKI: ...with, you know, not having much of a trail at all to follow? [LR314]

BRAD MEURRENS: Right. Well, from what I've heard from parents and other advocates is that the school resource officers are involved in a lot of these restraints and seclusions and these techniques. Now whether or not those individuals, by their office, are required or do report these incidences, what I've heard is that the school resource offices don't have to report these instances. That I'd have to go back and confirm, but that's what I've been hearing from parents and educators and the advocates that I've

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talked to about this issue. [LR314]

SENATOR KOLOWSKI: Okay. [LR314]

BRAD MEURRENS: But, yes, the resource officers are involved in a lot of these issues and the question remains what is the requirement for those individuals to report that? Is once that officer is involved, does it now become a criminal justice matter or is it still an educational matter? And then what are the responsibilities in those two spheres of influence on resource officers to do that reporting and the data collection? [LR314]

SENATOR KOLOWSKI: Yeah. Thank you. [LR314]

SENATOR SULLIVAN: Do you have any idea, when you bring in security officers or even law enforcement, it probably brings to my mind, at least, that they have had some training in dealing with eruptions like this. But I would guess that...do educators have any sort of training or educational background to know how to handle interventions like this? [LR314]

BRAD MEURRENS: Well, in my discussions with other folks in this arena, there are trainings on these techniques, either how to implement them, how to do them. And those trainings are provided to some educators. I don't know the extent and the scope of how many of the school staff and faculty at a school would receive that training. But one of the things...and I'm glad you mentioned that because one of the things that was brought up in several discussions with both educators, teachers and advocates and parents says that the level of training needs to be...is one of the key variables in this equation. And that there needs to be an increase or an increase in the intensity of the training and to provide a deeper level of training on de-escalation techniques and alternatives to the use of force. So there are some training provided. I don't exactly have, off the top of my head, the scope of that training or what would be involved, but that is one of the key areas and that has been, you know, told to me that that's one area

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that needs to be beefed up. [LR314]

SENATOR SULLIVAN: Senator Baker. [LR314]

SENATOR BAKER: Thank you. Are you familiar with Mandt training? [LR314]

BRAD MEURRENS: Somewhat. [LR314]

SENATOR BAKER: All right. And do you know, do you consider that to be suitable training for teachers? [LR314]

BRAD MEURRENS: You know, I'm not as familiar with Mandt as I should be to be able to answer that question. I do know some folks that have much more Mandt training experience than I do. I'd be happy to, you know, to put you into contact with those folks if you wanted to... [LR314]

SENATOR BAKER: No, I'm familiar with it. [LR314]

BRAD MEURRENS: Okay. [LR314]

SENATOR BAKER: I'm a retired school superintendent. [LR314]

BRAD MEURRENS: Right. [LR314]

SENATOR BAKER: We trained our staff, anyone who was going to be around those students. And it's, you know, as previously indicated, there's no easy solution to some of these things sometimes. There was an elementary student who had the habit of kicking away, and we had to have...paid two aides to contain one child without, you know, going to the extremes of taking him down and put him into a cage. I mean that's the flip side of it. It costs a lot of money. [LR314]

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BRAD MEURRENS: Yeah. Well, and the other...and then the flip side is, you know, as some of the parents mentioned before me, is if the child...if...the restraints can also...the use of these techniques can also be more. It can exacerbate the underlying problems too. So you're right, Senator Baker, there are no easy answers to this question. I think if it were an easy answer, we would have already had it by now. [LR314]

SENATOR BAKER: That's right. [LR314]

BRAD MEURRENS: And I think, and like I said, I think that this...in order to get to those noneasy answers, I think, like I said, it's going to take an ongoing, robust, and involved dialogue between a whole host of different stakeholders to get at something that's workable and, you know, to reduce these uses of these techniques. [LR314]

SENATOR SULLIVAN: Any other questions for Brad? Thank you for your testimony. [LR314]

BRAD MEURRENS: Thank you. Here's a copy of the testimony if you wanted it. [LR314]

SENATOR SULLIVAN: Very good. Those are all the testifiers that were asked to present. Now we're open to anyone else. [LR314]

DEB ANDREWS: (Exhibit 8) My name is Deb Andrews, D-e-b A-n-d-r-e-w-s. Restraint and solitary confinement have no place in school. Parents would be criminally charged for engaging in those same practices. In our public schools, students are many times confined to a seat but not mentally engaged. Problems result from that. The child is then held responsible for school failure by being drugged or locked up. Targeting children's behavior results in system expansion. Your handout is a visual depiction of a child's decent into hell at Westside Schools, and the child's recovery at Council Bluffs' public schools. At half the cost, Council Bluffs focused on mastery of subject content

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knowledge and continuous progress, which allowed him to be mentally engaged during the school day. Just seven years after his transfer to Council Bluffs at age 15, my son presented the results of his research to the Nebraska Academy of Sciences annual meeting, "Routes to Spiropyrans with Electron Donating and Withdrawing Substituents." He couldn't even drive. You can see at the first page his hand...it's about the first day of school, his handwriting was fine. But within weeks, October 2, 1992--this has been going on for a long time--you can see the anxiety and the frustration and his behavior was deteriorating quickly. The next page as well, you can't...it's not even legible. He was headed to "the box." At Westside Schools that's what they called their seclusion room. With his recovery, I was so shocked at what a difference it made just when his curriculum was adjusted--took care of all the problems. I became very active. I became a strong advocate for those students left behind and locked up. My advocacy prompted a threatening letter, which I've included those two pages. I received this via certified mail warning me to cease and desist. I did not comply. The final page of your handout is the front page of a column I wrote about a 12-year-old autistic boy that was confined 100 times in five months in Lincoln Public Schools. It was a 5- by 7-foot room that was...he couldn't get out from the inside. It was locked from the outside. The parents had an IEP, however, they were not told about the seclusion room. The only reason the parents found out was when the 12-year-old defecated on himself inside the seclusion room and the parents were called to bring him a new set of clothing. Prompts my appearance here today. I'm glad this is seeing the light of day. It's been decades in coming. And once again, I urge you to ask or legislate or do something to improve curriculum in schools for children. Thank you. [LR314]

SENATOR SULLIVAN: Thank you. Any questions? Senator Kolowski. [LR314]

SENATOR KOLOWSKI: Ms. Andrews, this is 1992, 1998 you're talking about? [LR314]

DEB ANDREWS: Yes. Yes. [LR314]

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SENATOR KOLOWSKI: So we have a lot of years here between. [LR314]

DEB ANDREWS: Yes. [LR314]

SENATOR KOLOWSKI: Just to make some clarity, I think the Westside superintendent was with us earlier today and had talked about some things that they do very successfully in Westside right now. So I wouldn't want that to reflect on where Westside is today compared to what you went through quite a few years ago. [LR314]

DEB ANDREWS: I'm hoping my advocacy made a difference there. I was very vocal. [LR314]

SENATOR KOLOWSKI: Thank you. [LR314]

DEB ANDREWS: Thank you. [LR314]

SENATOR SULLIVAN: Thank you for your testimony. [LR314]

LAURA McCORMICK: Hello. I'll be brief. I wasn't sure if I was going to get to speak. [LR314]

SENATOR SULLIVAN: Your green...okay. [LR314]

LAURA McCORMICK: My name is Laura McCormick. [LR314]

SENATOR SULLIVAN: Your green sheet. [LR314]

LAURA McCORMICK: Sorry. [LR314]

SENATOR SULLIVAN: Thank you. [LR314]

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LAURA McCORMICK: Here's the form. I think I failed the rules. [LR314]

SENATOR SULLIVAN: That's fine. You're fine. [LR314]

LAURA McCORMICK: Okay. Do you need me to spell it? [LR314]

SENATOR SULLIVAN: Yes. [LR314]

LAURA McCORMICK: L-a-u-r-a M-c-C-o-r-m-i-c-k. I am a lay advocate observing juvenile court primarily in Douglas County and I'm very interested to hear the stories of the parents. But one piece of the puzzle that I think we're missing is what happens to kids when they enter foster care and if they cross over into the juvenile justice system. So I'm hoping I can just share a few facts, and if you'd like more information I'm happy to share it later. So my primary concern is related to the use of seclusion, isolation, and restraint with populations of kids in the foster care and juvenile justice systems. One chronic problem I observe is related to kids being moved from foster placement to foster placement. Oftentimes they are initially coming into foster care relatively normal children. And as they have lots of traumatic experiences which then result in movement of school, placement from alternative school to alternative school, which then can result in placement in an, let's say, out-of-state residential treatment facility. And the young man that I am speaking about is 13 years old. He left Nebraska in January. It is September and he is still in a facility in Michigan and the cost per year to us is \$50,000 a year for this care. But I digress. Children have described to me being confined to very small rooms where they will scream, cry, defecate, urinate, beat their heads against the wall until blood, feces are in a room. I've seen the room--concrete floors, concrete walls. The children also describe physical injury and restraint. They're left with marks on their bodies. The problem with foster kids and kids in the system is there is no parent that may be available to advocate for the child. One young man was at a school called Alpha School, which I do not know if you're familiar with that school. It's run by ENSHA. His

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guardian received a phone call asking if the child could stay at school till 10:00 p.m. The philosophy was that you will do your work until your work is complete. The space that the child was confined to was a very small space with a chair like this and...extremely small space. The child's grandmother was not informed about this restraint. The techniques that are used at these alternative schools as children move from alternative placement to alternative placement, then eventually result in suspension or expulsion. And kids, in my opinion, are set up to fail and I don't think we have adequate resources for this particular population of children. And when they do not succeed, they become the "Nikko Jenkins" of our community. That's my opinion. In addition to speaking with families and children impacted by restraint and seclusion, I have also toured Alpha School, OPS ILP, Clarinda Academy, and Brook Valley. Brook Valley is a wonderful facility. And during the tours, which I encourage you to do, I asked that they confine me in some of these rooms. I asked how some of the restraint techniques would work because I wanted to personally see what would happen and how it compared to what children were recounting to me. The last thing I will ask is what happens when Nebraska kids go out of state. Clarinda Academy is a place where we don't have a lot of Nebraska kids right now but we have at various points. I don't know what happens when we send a Nebraska child to a different state. Do the laws and rules in that state apply? I would presume that is the case but I don't know the answer. In terms of training, when I did go on the Brook Valley tour, they did a marvelous job and explained all the training that they go through and I thought that was very interesting and I would encourage you to reach out to them. The last thing I will say is school resource officers. You mentioned that. Particularly in Omaha, I cannot speak to all parts of the state, but most especially in Omaha we have a very serious disproportionate minority contact problem. There are any number of organizations that are focused on that and school resource officers and the policing of school is resulting in disproportionate minority contact. I agree with you that this is a difficult problem. I'm against violence directed toward teachers and other students. I think children need to learn. But we have to come up with solutions for some of these children and I do not agree confining children to rooms and treating them like animals. I'm vehemently opposed to it. So if you have any other questions. [LR314]

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SENATOR SULLIVAN: Thank you very much for your testimony. Just to clarify, you referred to Alpha School and Brook Valley. Are those alternative schools or what exactly are they? [LR314]

LAURA McCORMICK: They are. So let me briefly describe what happened to this young man. This young man who was removed at eight, placed into foster care, could not stop crying and was administered literally a bag of psychotropic medicines. And chemical restraint is a whole nother topic because that is a form of restraint. This young man had, I don't know, 20 placements. He started out a relatively normal young man and as this happened to him he became a special needs child who had an IEP. He initially then was transitioning into the school called ILP, which is run by OPS. It's down in north Omaha. As he would continue to have problems with aggression and behavior, I would say trauma in part by all that had happened to him, he would get suspended. And it got to the point where he was unplaceable. I mean he's very difficult to take care of. And then that resulted in a transition to the school called Alpha School. Alpha School is a very interesting school. It's down by the old Casio's. It's a very old building but the staff there are very nice. And I'm not intending to disparage anyone who is working hard to help youth. That said, this is a school where we...it's run by ENSHA, and so Douglas County and several of the other surrounding counties, including counties in Iowa, send kids there. So you will find children from all over and many of these children...it's sort of the end of the line, so to speak. And once you get suspended from Alpha, as this young man that I'm talking to you about, he then had to appear before a judge in Douglas County and that was the point at which he was told he would be boarding a plane and going to Michigan. And that is where he has been ever since. And this is a young man that had never been on a plane in his life. I can only imagine what he was thinking when he was delivered to the airport. His family has had very little contact with him. Again, a very difficult, complicated court case. And I am in not in any way pointing fingers. I would say I believe strongly Nebraska kids need to be taken care of in Nebraska and we need to have oversight over what is happening to these children. All children

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deserve an education and a chance, and I'm not certain that that is happening with this unique population. And I think there needs to be special attention paid to that group. [LR314]

SENATOR SULLIVAN: Thank you. Any other questions? Thank you very much. Anyone else? [LR314]

BRIAN HALSTEAD: Good afternoon, Senator Sullivan, 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 just decided to come up to put into the record some basic information about what the State Board of Education and the Department of Education have done on this topic. Back in about 2010 at the federal level, and I don't have the GAO reports, but there were studies being done and Congress held hearings to deal with this. And they heard horrific stories from across our country of terrible situations that existed. Thankfully, none of them that were presented came from Nebraska. But we decided at the department we needed to put something into regulations to address the issue of seclusion and restraint. So what we decided to do was in Rule 10, the accreditation rule that applies to all public school districts and any private denominational and parochial schools that want to be accredited, a requirement that they have policies on seclusion and restraint as a starting point, because there really was nothing in Nebraska law on that topic. It is one of the items that when we do accreditation visits, the accreditation team will ask and check and have conversations about the school district, its policies, procedures, training, and all of those issues. But that's about where we got. That regulation went into effect in July of 2012. So since the '12-13 school year all public school districts and all private denominational and parochial schools that are accredited are required to have policies on this subject in that regard. So I'll stop. Been a long day. I'll answer any questions you might have about the subject, but I just wanted to make it clear as to what the department and the State Board had done on this subject several years ago. [LR314]

SENATOR SULLIVAN: So it's just simply that they have a policy. There are no

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recommendations or guidelines as to what should be included in that policy. [LR314]

BRIAN HALSTEAD: We do not have a model policy that we put out to school districts. We have provided information through our special education offices of things school districts should be thinking about if they're putting together their policies and procedures. We have...and there are the guidelines that the U.S. Department of Education has put out on the subject, so we try to provide information as best we can about good practices, what you should be concerned about, when you go to write the policy make sure you're covering these types of topics. I think that's generally what we've done. But, no, we have not adopted a model policy or said you shall adopt this policy. [LR314]

SENATOR SULLIVAN: And then there's no mechanism for reporting from school districts on when they have incidences of restraint and seclusion. [LR314]

BRIAN HALSTEAD: There is no requirement they report to the Nebraska Department of Education on incidences of reports of seclusions and all of that. I have seen a few school district policies where there is mandatory reporting to the superintendent's office on any instances where any type of physical contact, restraint, and everything goes on. So there is always still the same situation. You know, some of the parents, what I heard, well, there's still the reporting requirement if child abuse/neglect has occurred. That's still in place. There are other support mechanisms. I do not know, of the parents and the people who testified, whether any of them have been in contact with our special education office regarding the concerns of the school districts or the personnel regarding the particular situations. If they haven't, I certainly would encourage them and we would certainly be willing to work with them on that. If they did and they didn't get a satisfactory response, I'm sorry to hear about that. I'd like to know about it. There are other means and mechanisms. I know the advocacy group that was here before that we provide some funding to, they have in fact filed either special ed complaints, they've even filed ethics complaints against educators, because there are some ethical

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standards that teachers and administrators have to uphold to keep their certificate. So there are other processes in place. They're not all written out of here is the law on how you go about doing that, but there are some other support systems. So I figured I'd just kind of give you some background of where the department is on that. It's good to listen to what we hear because this is a learning experience for all of us. [LR314]

SENATOR SULLIVAN: Sure. Uh-huh. Okay. Senator Schnoor, did you have a question? [LR314]

SENATOR SCHNOOR: Brian, you said so the schools have to have a policy in place. There's no model policy that they have to have. I would venture to say like NASB, they probably have some type of model policy but, you know, they're not...they don't have to use that. But do you see any, in the state as a whole, do you see any, I'll say, systemic problem of what we're talking about? I mean obviously there's going to be isolated instances. We all know that. And even the best policy and the best rules and regulations aren't going to stop those problems from happening, maybe minimize them, those isolated instances. But I guess my simple question is, do you see a major problem within the education system currently? [LR314]

BRIAN HALSTEAD: Well, you know, I don't know that I can answer that because I haven't visited 245 school districts, I haven't talked to everybody in every school, I haven't talked to all of these parents. Obviously, anytime there are parents who are concerned about how their child is being handled, treated, followed through, that is a concern. As to whether it's systemic and it's everywhere in the state of Nebraska, I mean you've heard from a couple parents here today, one from central Nebraska, and you've dealt with the issues of our rural communities' lack of resources, training, all that. You heard a parent from Lincoln Public Schools, a parent who is now in Westside. So you can see that there are, as you're well aware, varying, different differences just in our communities and our schools. I am well aware that legal counsel for school districts have model policies because they're having to address the legal issues that come up

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from this as to the...how well they're put together and everything. And I think there has been an attempt by everybody to try to deal with the situation. I can't tell you that there is a systemic problem but there are still ongoing instances that are problematic. And, you know, it's an ongoing discussion. You know, Senator Groene mentioned he knows a teacher who's...yeah, it's not just the children. It's not just the particular child whose behavior and the maybe lack of well-thought response by adults to it sometimes. There are the other children in the classroom or in the school building. Let me tell you, heard from parents who were complaining about how their child is getting beat up by another child and all that. And you understand the dynamics that are going on. And if there were a simple solution to all of this, I am sure every one of the parents who you heard from would give it to you. And you know it...parents send the best kids they have to school every day and you try to do the best you can every day. School district officials have a duty to take reasonable steps to protect the health and safety of everyone at that school building, and sometimes that is a difficult balancing act to deal with in certain circumstances or for brief periods of time. I was at least somewhat comforted by the parents, although the trauma and the issues they've dealt with at the moment they seem to be far better off than they were, but I'm still saddened by the fact they had the journey they had to take. And I suspect the same feeling is yours. And you know, at the same...I don't believe any have been to the State Board or to the department to ask us to flesh out anything more in this regard. It's always a possibility. We were participating in this with staff, having discussions so that it was all there. I think it's a great opportunity to bring to light some issues as to where we go next. We need to continue the conversation. I don't think it's necessarily rampant problems, but at the same time it's not an issue you can ignore. [LR314]

SENATOR SCHNOOR: Okay. Thank you. [LR314]

SENATOR SULLIVAN: Senator Groene. [LR314]

SENATOR GROENE: We've heard instances, as Senator Schnoor said, the exception

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to the rule. But I'm assuming this policy is done because it actually works in a lot of instances. Child loses control, put in a room, calms down, joins the class. I'm assuming that's the outcome most times or else fully educated, professional educators wouldn't do this. I mean, and I find it...I don't like to hear that, but I know of three school districts where they would never leave a child alone. They have a para one on one that's, if they might be in a room, that para is with them. I guess what I'm saying is nobody has found a better answer. Sometimes isolation, they calm down, join the class. Is that not true?
[LR314]

BRIAN HALSTEAD: I am certain that there are certain circumstances where the child, not having other disruptions, it is a help to the child. But as you've heard from some of the parents here, that may be the wrong strategy for the particular child in the particular situation they're in. And you know, I don't... [LR314]

SENATOR GROENE: I just want to make it clear that... [LR314]

BRIAN HALSTEAD: Yeah. [LR314]

SENATOR GROENE: ...we're not...there's a reason it's done. It's the best practices right now. And maybe it can be made better for these types of instances. I'm assuming that's what...I would think they'd do best practices. [LR314]

BRIAN HALSTEAD: I would certainly hope that every day every person is doing their best practices, but, unfortunately, in my life I get to hear about stories of, whoa, that was not a best practice. And you get to hear about, well, that wasn't a very well-thought-out best practice. And I got it. You know, the universal constant is always at play. To err is human. We can provide all the education, all the training, all the simulations, all of that and then: What were you thinking? We trained you but you still didn't... I mean it happens. We are human. We make mistakes and... [LR314]

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SENATOR GROENE: You lose it once in a while. [LR314]

BRIAN HALSTEAD: And I don't think any of the people here are thinking that we have evil Nebraska educators and school board members are out to do harm, but trying to grasp everything and trying to do the right thing at the right moment may sometimes bypass us at that. And I think the whole point maybe of this hearing was just to continue the conversation in this and to see what maybe can be advanced, whether you feel there's legislation, whether there's things these people, through the department, want to work with us on. Those are always possibilities in that regard. Like I said, in 2011 and '12 we thought let's put in the accreditation rule, not special ed because this is not a special ed issue, although many of the students are receiving services. This is about all children being safe and secure. You should not restrain a nonspecial ed student unless it's a last step recourse. So that's why we put it in Rule 10. You aren't going to find it in Rule 51 because specifically it's not just for special ed. It's for all kids. [LR314]

SENATOR SULLIVAN: Sure. [LR314]

SENATOR GROENE: Thank you. [LR314]

SENATOR SULLIVAN: Any other questions? Thank you, Brian. [LR314]

BRIAN HALSTEAD: You're welcome. [LR314]

AMBER PARKER: Good evening. And you must be very patient people to be in the seats you are. My name is Amber Parker, A-m-b-e-r, last name Parker, P-a-r-k-e-r. I'm here to offer on LR314 to being a proponent. The young man's story of which you had heard from Ms. McCormick a few minutes back really resonated in my heart. When I heard about this I thought, how could these things be going on and these precious people, whether we're born in certain special needs or behavioral issues, who had been through abusive situations and didn't know how to handle the trauma of such cases.

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What I want to address with the young man, there's a lot, but one is the chemical restraint. It greatly was concerning to me to know that he wasn't able to take within the medications that he had from the state of Nebraska and what he knew his body would be used to, and here not only flying him, first, you know, time on an airplane, but within this medication. And Ms. McCormick would have more information on this, but he had went through a lot. And I just think of the other people in that situation and the chemical restraint. And I don't believe that anyone who spoke here is out to harm anyone, but it is important that when we do see a need for a resolution, that we're diligent people to come before and discuss it. And I would just ask that you would look at one of those areas and that's really what I would like to talk on, the chemical restraint, because that can affect the whole behavioral issue in itself. And the whole goal is to get them healthy, to the best of the ability of their choosing, and that medicine can really come in handy. And if there's something that we don't have that states that from...coming from Nebraska or them going out of state, that could really cause problems, and then it seems that the communication lines for them to get back on the medicines they have or they're on a generic versus whatever medication, for example, it is can really create difficulties for them and a lot of discomfort. And that's why I'm here to speak today. [LR314]

SENATOR SULLIVAN: Thank you. Any questions for Ms. Parker? Thank you very much. [LR314]

AMBER PARKER: Thank you. [LR314]

SENATOR SULLIVAN: Anyone else wishing to testify on LR314? (See also Exhibit 9.) If not, this closes this interim study, and thank you all for being here. [LR314]