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February 7, 2017

To: Chairman Groene and Members of the Education Committee

From: Juliet Summers, Policy Coordinator for Child Welfare and Juvenile Justice

Re: LB 595 – A bill to provide for the use of physical force or physical restraint or removal from class in response to student behavior

Children need to feel welcome, safe, and supported in school to achieve educational success and all the positive life outcomes that go with it. Voices for Children in Nebraska opposes LB 595, because it is at odds with best practices for improving classroom culture and keeping students engaged in education, and is likely to lead to increases in the disproportionality of educational attainment outcomes for students with disabilities and students of color.

We are concerned that the bill's broad language gives unchecked discretion to teachers to use physical force or restraint against students, or to choose to remove children from the learning environment, a de facto form of suspension. Children are already all too often pushed out of the school system through suspensions, expulsions, and even referrals to the court system. The cumulative sum of these practices, often referred to as the "school to prison pipeline" has been shown to have a negative impact on students, schools, and academic achievement. To the individual student who is removed, research shows a direct line between suspension, further suspension and expulsion, decreased likelihood of educational attainment, and increased likelihood of court involvement.¹ If a student misses too much school in Nebraska, he or she can be charged in the juvenile court and face consequences as severe as removal from the home. As for the larger classroom, the claim that removing "problem students" improves the educational environment has been debunked. Studies show the opposite: schools with a higher reliance on school exclusion as a form of discipline actually score lower on academic achievement tests, even when controlling for socioeconomic and demographic factors.²

We also believe that in granting broad discretion for removal based on "unruly" or "disruptive" behavior, children with disabilities and children of color are most likely to be unfairly removed without recourse. The data shows that these student populations are already disproportionately likely to be pushed out of the classroom through exclusionary policies. According to data from the federal Office of Civil Rights, students with disabilities served by IDEA were more than twice as likely to

¹ Skiba et al. *Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force 63*. 2006.

² Boccanfuso, C. and Kuhfeld. M. *Multiple Responses, Promising Results: Evidence-Based, Nonpunitive Alternatives to Zero Tolerance* (Publication #2011-09). Washington, DC: Child Trends. 2011. Available online: http://www.childtrends.org/wp-content/uploads/2011/03/Child_Trends-2011_03_01_RB_AltToZeroTolerance.pdf

receive one or more out-of-school suspensions as students without disabilities.³ Meanwhile, 6% of all K-12 students in America received one or more out-of-school suspensions in the 2013-2014 school year, but that percentage was 18% for black boys; 10% for black girls; 5% for white boys; and 2% for white girls.⁴

The reason for these disparities is not that children of certain populations act out – or deserve punishment – more than others. Rather, research has shown that children of color are more likely than their white peers to receive punishment or be removed for discretionary perceptions of behavior. For instance, in a study of the reasons middle school students were sent to the principal’s office, white students were more often referred for vandalism, smoking, endangerment, obscene language, and drugs and alcohol: categorical and easily identifiable violations. In contrast, black students were more often sent to the office for loitering, disrespect, excessive noise, threats, and a catch-all category called “conduct interference”: all types of behavior that are defined at least in part through the eye of the beholder.⁵ By allowing removal on the basis of vague concepts like “unruly” or “disruptive” behavior, LB 595 could increase the disproportionalities we are already seeing.

In 2014, the U.S. Department of Education released a resource guide⁶ for improving school climate and discipline with three guiding principles: create positive school climate, set clear, appropriate, and consistent expectations and consequences, and focus on equity and continuous improvement. Among the recommendations is that schools and districts should ensure that policies and expectations are fair and clear, by offering written discipline policies detailing offense categories and basing disciplinary penalties on specific and objective criteria. Another recommendation is that school discipline policies provide strong due process protections to all students before imposing serious disciplinary consequences. Schools are exposed to federal civil rights litigation if the administration of student discipline is discriminatory, and the DOE recommends training all school staff in applying discipline policies fairly and equitably. LB 595 is at odds with all these recommendations.

For all the foregoing reasons, Voices for Children respectfully urges the Committee not to advance LB 595. Thank you for your time and consideration.

³ U.S. Department of Education, Office for Civil Rights. *2013-2014 Civil Rights Data Collection: A First Look*. Revised October 28, 2016. Available online at <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>

⁴ *Id.*

⁵ Skiba, R. J., Peterson, R. L., & Williams, T. *Office referrals and suspension: Disciplinary intervention in middle schools*. *Education and Treatment of Children*, 20(3), 295-315. 1997.

⁶ U.S. Department of Education. *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*. January 2014. Available online: <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>