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The Legislative Purposes and Intent of the Common Levy in Nebraska's Learning Community

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The Legislative Purposes and Intent of the Common Levy
in Nebraska's Learning Community

by

Matthew L. Blomstedt

A DISSERTATION

Presented to the Faculty of
The Graduate College at the University of Nebraska
In Partial Fulfillment of Requirements
For the Degree of Doctor of Philosophy

Major: Educational Studies
(Educational Leadership and Higher Education)

Under the Supervision of Professor Marilyn Grady

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The Legislative Purposes and Intent of the Common Levy
in Nebraska's Learning Community

Matthew L. Blomstedt, Ph.D.

University of Nebraska, 2013

Adviser: Marilyn Grady

The purpose of this historical study was to establish the purposes and intent of the common levy in Nebraska's learning community. The development of this unique regional educational structure consisting of eleven school districts in the Omaha, Nebraska metropolitan area is central to the study. The research detailed the context of the decisions made by the Nebraska Legislature to establish and implement the learning community law from 2005 and 2012. Specifically, the study focused on the establishment of a regional tax base, the common levy, as a response to boundary and finance instability that persisted in the Omaha area.

The research relied on written news accounts and legislative records. The findings include implications for researchers, educational leaders, and policy makers who seek to address complex finance and urban growth dynamics that impact educational structures. Although the policy history does not seek to judge the effectiveness of the learning community or common levy, it is intended to contribute to future evaluation of such policies.

DEDICATION

I dedicate this work in memory of my friend, Ron Raikes.

Ron,

You taught me to set high standards for public policy and for myself. You proved sincerity, honesty, courage, and integrity are paramount to leadership. Your legacy is a high bar for policy discourse. I hope this contributes to that legacy in some, small way.

Now, you also taught me that I was too “polite” and too “flowery” when writing letters on your behalf. You preferred brevity and pointed out that greetings and salutations like “dear” and “thank you” are less important. Ron, I get the last word in this case... Thank you.

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I also want to thank my current committee and in particular Dr. Barbara LaCost who shares in a common misfortune with me, a love of the study of school finance policy. I thank Dr. Dixie Sanger and Dr. John Mackiel for their willingness to serve in this capacity in my program "dusk." I must also thank my former committee members, Dr. Larry Dlugosh, Dr. Don Uerling, and Dr. Jim Walter. You brought me in to the program and patiently guided me through even though family and career led me down indirect paths. I thank all of the other faculty and staff over the years in the educational administration program including Dr. Miles Bryant and Dr. Jody Isernhagen. I also thank the late Dr. John Lammel as it was a privilege to be part of his "brain trust" while working with Dr. Uerling and Dr. Dlugosh. I also appreciate the staff in the program and I offer an additional special thank you to Cindy Deryke who always made time to chat about family and reminded me of the importance of parenthood.

I thank my friends and colleagues over the years. I thank Dr. Mike Dulaney who found a way to encourage me since we took that first class together and provided the occasional reminder that I needed to "focus." I also thank my many school administrator friends who have watched and guided my unusual career path that has always kept me focused on improving education across the whole state. In particular, I thank Dallas Watkins for his suggestion that I "stay around" Nebraska Rural Community Schools Association and eventually serve as the director. I thank the late Senator Ron Raikes for giving me an opportunity to work for him directly. I thank Tammy Barry, Diane Johnson, and Kris Valentin for two unique years of work together in the Education Committee office and their ongoing friendship. That has been my privilege.

I thank the Educational Service Unit administrators who hired me for my current role and for their general encouragement of me in educational leadership. In particular, I thank Marge Beatty and Dr. Dennis Pool who provided leadership for the Educational Service Unit Coordinating Council and helped me see through the challenges of balancing work and life's challenges while I completed this research effort.

Thank you to my family and friends that I have neglected... I hope to be back in those circles with you soon. I thank my parents, Dennis and Frances for their constant belief in me and in-laws Don and Sandra Ohlman for being a support system for Angela while I chase school and work responsibilities.

I thank Angela, the love of my life, for putting up with me through this entire program, this career path that chose me, and for being an ideal wife and mother to our kids. Now to thank my favorite excuses that led me so far astray... Emily, Megan, Katelynn, Claire, and Erik - You did a good job of leaving me alone when I needed it and a great job of offering hugs and kisses when I thought I was too busy. **THANK YOU!!**

CHAPTER 1

Introduction

Context of the Problem

Like many urban areas across the nation, the Omaha metropolitan area struggles with a mix of urban and suburban growth patterns that leave it susceptible to a number of challenges. Local government services, including education, are highly reliant on local tax bases and are challenged by ever changing socio-economic realities that impact cities, counties, school districts, and a host of other local agencies. Within Omaha, a “perfect storm” of sorts was brewing for decades around the educational system.

By 2005, Omaha Public Schools and several surrounding districts reflected “traditional” suburban growth in the outlying areas of cities such as Omaha. The growth pattern was neither particularly unique nor unusual in regard to the impact of school district integration, suburban development, and school finance in a modern metropolitan area. The history of court-ordered busing, the claim of an unconstitutional funding system, and a little understood provision of law that suggested school districts in Nebraska were able to grow with their city boundaries all were layers in a debate that would soon erupt in Omaha.

This lesser known provision of law would provide the catalyst for actions by the Omaha Public School district in an attempt to claim territory from its neighboring school districts through its “one city, one school district” plan. The effort ignited a chain of responses and events that led to the formation of the “Learning Community” and the power for that “Learning Community” to invoke a “common levy” against the property

tax base of eleven school districts in the two-county Omaha metropolitan area. The story is still being told.

The Learning Community was formed and modified during the course of three consecutive sessions of the Nebraska Legislature and implemented during a period of time beginning with the election of a governing body in 2008. Central to the creation of the Learning Community was the development of a common levy that shared the tax base of eleven schools in a fashion and at a scale that was and is unique in the country. As might be expected, there were many detractors to this new entity and to the common levy. However, upon surviving a state constitutional challenge with a favorable Nebraska Supreme Court decision in February, 2012, the Learning Community and the common levy remain.

Statement of the Problem

Because of the complex and political nature of the creation and implementation of the Learning Community common levy, as well as the ongoing discord over the implementation of the statute and the repercussions in affected school districts, policy makers at state and local levels are left to wonder if the common levy is accomplishing its purposes. This is compounded by the fact that in the years since the Omaha area erupted, many new decision makers have arrived on the scene with some sense of the history but without a clear understanding of the specific reasons for why the common levy is part of a complex policy solution to an equally complex array of problems presented in 2005.

Purpose of the Study

The purpose of this study is to isolate and identify the specific purposes and intent of the common levy in the Learning Community so as to provide a basis for future research and evaluation of the effectiveness of the common levy.

Research Questions

The primary research question is, “What are the Legislative purposes and intent of the common levy as implemented in the Learning Community?” Additionally, what evidence exists to discern the purposes and intent as captured by newspaper accounts and legislative records of the time? What issues led to shaping the common levy in the Learning Community? And, what if any, specific outcomes were expected from the common levy?

Sources and Method

The research effort proposed included collecting, reviewing, reading, and distilling primary sources including newspaper accounts, legislative documents, and transcripts from hearings and legislative debate for the period of time up to and including the development of the Learning Community and isolating the intent and purposes of the common levy. Anthony Brundage pointed out that there are many forms of primary sources and many that were intended to be made public. He wrote, “in many cases they were designed to influence public opinion. This is certainly the case with newspapers, whose editorial policies must usually be taken into account.”¹ His assertion was

¹ Anthony Brundage, *Going to the Sources: A Guide to Historical Research and Writing*, Second ed. (Wheeling, Illinois 60090-6000: Harlan Davidson, Inc, 1997), 96.

especially applicable to this study given the nature of the development of the Omaha Learning Community. Both legislative debate and policy making are inherently about “influencing” opinion. As such there is a need for the researcher, as Brundage recommended to “...assemble as many such accounts as they can, treating each of them critically, sorting out obvious biases and errors, and fashioning as accurate a reconstruction as possible.”² Thus among the strategies to studying the history of a policy issue and providing such a reconstruction, it is necessary to both gather multiple accounts and understand the sources and their motivations.

Brundage encouraged researchers to consider history a “dynamic” process yet to understand “[t]here are rigorous procedures to be observed in the framing of historical questions, in the selection and interpretation of sources, and in the presentations of one’s findings.”³ Paul Pierson, in a 2005 article, also suggested that policy development is a similar dynamic process but researchers are prone to study policy as “a moment of choice” or ultimately narrow a particular focus on the policy decision. Pierson suggested that “[f]ocusing on the dramatic moments of policy choice blinds us to two broad aspects of policy development: what happens before the moment of choice and what happens after.”⁴ This admonition is appropriate to the research task at hand, where it is certainly possible to study the specific intent at a specific time. Such was the narrow task of the

² Ibid.

³ Ibid.

⁴ Paul Pierson, “The Study of Policy Development,” *Journal of Policy History* 17, no. 1 (01, 2005), 34.

Nebraska Supreme Court when it studied the Learning Community common levy upon a state constitutional question. Although appropriate for a narrow judicial review, Pierson suggested to researchers that policy development be viewed as “an unfolding historical process” and that the “...moment of choice is framed by prior and later events and processes...”⁵ The identified sources for this research seek to capture the events leading up to and following the adoption of the Learning Community common levy in Nebraska.

Brundage suggested it is necessary to remain objective and “[make] a determined effort to be genuinely impartial in selecting, analyzing, and presenting evidence.”⁶ This method focuses on selecting primary sources including newspaper accounts and legislative records to provide a basis for analysis from known primary sources. In this particular case, secondary sources were scarce, especially those with a specific focus on the development of the common levy. Additionally, legislative intent relies heavily on those who contributed to the public record through their interviews or comments made in hearings or floor debate. This research did not rely upon interviews or personal accounts.

Limitations

The limitations of this study are similar to all such historical studies where most information is collected from official records or accounts including newspaper accounts. This limits sources to those that were on the record in a hearing or during debate as well as those published at the time. In this particular case, some of the discourse by the

⁵ Ibid.

⁶ Anthony Brundage, *Going to the Sources: A Guide to Historical Research and Writing*, Second ed. (Wheeling, Illinois 60090-6000: Harlan Davidson, Inc, 1997), 96.

Nebraska Legislature was not part of the official record. Namely, the Education Committee executive sessions were not recorded except that the presence of media was allowed. Therefore, although not official record, newspaper accounts helped fill in some of the void. Again, newspaper accounts are inherently limited for a variety of reasons including editorial choice, misunderstanding, nuance, or simply absence from important deliberations. The same is true for legislative record as not all of the discourse is public and therefore the historical intent is pieced together from various accounts that may not fully reflect situations at the time.

Delimitations

The study was delimited primarily in the scope of identifying legislative purpose and intent with regard to the common levy in the Learning Community. Data for the study include published newspaper accounts and published legislative records from May, 2005 through the decision by the Nebraska Supreme Court released February, 2012. The major portion of the legislative record in the creation of the Learning Community common levy was between January, 2006 and April, 2008, during the course of three consecutive legislative sessions. However, additional changes and modifications were examined for the legislative sessions held in 2009, 2010, and 2011.

Significance

Policy implications. A clear articulation of the purposes and intent of the common levy in the Learning Community may help guide future policy conversations so as to provide a foundation for future decision making at the state and local level.

Research implications. Similarly, future research determining the effectiveness of the common levy would be benefited by having a solid understanding of the intent and

purpose of the policy. Additionally, such future research can help establish the transferability of such a policy in other places based on the context established in this paper. Ideally, this effort will serve to encourage future research to evaluate the success or failure of the common levy in Nebraska.

Researcher Bias

I have had professional experiences in policy research and implementation. I currently serve as the Executive Director of the Nebraska Educational Service Unit Coordinating Council and previously served as the research analyst for the Education Committee of the Nebraska Legislature including for a period of time from late 2006 through 2008. I also served as the executive director of a rural schools group from 2002 through 2006. These three professional roles introduced some bias that I recognize. First, I did work closely with many of the individuals important to the history. This provided me with a unique understanding and perspective that can help detail the history and potentially, introduce research bias. I acknowledge that potential and sought to design a study that would maximize the use of written records and accounts and minimize the introduction of personal bias.

Conclusion

The specific development of the common levy in the Learning Community is of particular research interest at this time as the policy has been fully implemented and has thus far withstood political and legal challenges. This study did not seek to judge its success or failure but, instead to sort through the history of how and why it developed and ultimately, outlined the legislative purposes and intent. The following chapters were organized in sequential history starting with the first mention of “one city, one school” in

the *Omaha World-Herald* in May of 2005 and concluded with the Nebraska Supreme Court's declaration in February of 2012 that the common levy was "constitutional" in Nebraska. The nearly seven years of history was organized year-by-year with the majority of the historical context set between 2005 and 2008. I began with a brief historical outline and to further establish the context and scope of the study.

CHAPTER 2

Summary, Time Line, and Context

“Border Wars” & “One City, One School”

Nebraska has a long history of school district boundary disputes that date to the early days of the state. Although there is a long and “storied” history of reorganization, annexation, school district creation, growth and decline; the most dramatic of the school district boundary disputes seemed to brew in Metropolitan Omaha for decades. Among the earliest legislative directives was that “each incorporated city of the metropolitan class in the State of Nebraska shall constitute one Class V school district.”⁷

2005: The Advent of “One City, One School” in Omaha

The Nebraska Legislature conducts its business by alternating short (60 days) and long (90 days) sessions. In 2005 the Nebraska Legislature adjourned in early June with the normalcy of most “long sessions.” In 2005, Senator Ron Raikes as Education Committee Chairman had taken up the mandatory reorganization of the State’s Class I, elementary-only districts. The emotionally charged and controversial effort, Legislative Bill 126 survived a gubernatorial veto in the final days of the legislative session on June 3rd.⁸ However, even as the dust was still settling on the close of the Legislative session,

⁷ Harold W. Andersen, "Legislation's 'Technical Revision' Spurred Clash of School Districts," *Omaha World-Herald (NE)*, 2005b.

⁸ Martha Stoddard, "Fight for Class I Schools Not Over - Backers of Elementary-Only Districts Launch Petition Drive Against Merger Law - How They Voted," *Omaha World-Herald (NE)*, 2005a.

the normal “catch your breath” calm was about to be broken by the Omaha Public School district’s “one city, one school” plan.

On June 7, 2005 the *Omaha World-Herald* headline read “*OPS plan like 'war' to Millard -- Ralston, Elkhorn officials also taken aback by claim -- Millard Schools within Omaha city limits.*”⁹ The Omaha Public Schools announced its plan to claim all the territory within the city of Omaha as part of its one city, one school district plan while claiming the existing state statute entitled it to territory within Millard, Ralston and Elkhorn. Not surprisingly, the remainder of 2005 was highlighted by legal and political posturing leading up to the 2006 Legislative Session.

2006: The Legislature Responds to “One City, One School”

The efforts of the 2006 Legislature to address the one city, one school district plan eventually led to the introduction, evolution, and eventual passage of LB 1024 to form the Learning Community, implement a regional tax base and common levy, and split Omaha Public Schools into three districts. After several attempts to address concerns of the various metropolitan interests, Senator Raikes sponsored another controversial bill to resolve the Omaha boundary issue. As the *World-Herald* reported at the time, “In the long run, the law as written will split the Omaha Public Schools into three districts and join all Douglas and Sarpy County school districts within a new learning community to share resources and promote integration. In the short run, it may set off a new round of

⁹ Paul Goodsell and Bob Glissmann, "OPS Plan Like 'War' to Millard - Ralston, Elkhorn Officials also Taken Aback by Claim - Millard Schools within Omaha City Limits," *Omaha World-Herald (NE)*, 2005e.

negotiations that could change some of the law's key provisions.”¹⁰ The *World-Herald* was correct as efforts during the interim and negotiations through a variety of Omaha interests persisted throughout the remainder of 2006 and established a basis for further legislative consideration.

2007: The Legislature revisits the Learning Community law

Although there were a variety of details addressed in a bill introduced by Senator Raikes that became the vehicle for modifications, the most controversial was “restoring” Omaha Public School district as a single district within the Learning Community. The bill, LB 641 eventually passed the legislature and was signed into law on May 24, 2007. The bill modified provisions from LB 1024 in the prior session including restoring OPS as a single district, modifying the governance, and establishing the common levy for the two-county learning community.¹¹ Although the bill resolved many of the widely publicized concerns, other details were gradually sorted out during the course of the next months leading up to 2008.

2008: Legislative Bills 1154 and 988 address Learning Community and School Finance

Senator Raikes introduced LB 1154 to address and modify elements of the Learning Community but most substantial in the 2008 session was the effort to reform the state’s school finance formula through LB 988. 2008 was quiet in terms of the

¹⁰ Martha Stoddard, "School Law Just First Step - New Talks on the Boundary Dispute could Alter Key Provisions - Omaha Schools Roll Call - Sizing Up School Bill," *Omaha World-Herald (NE)*, 2006j.

¹¹ Michaela Saunders and Jeffrey Robb, "Omaha Metro Area Learning Community - New Law, New Challenges? - End of Two Schools Suits Won't Signal an End to Concerns," *Omaha World-Herald (NE)*, 2007h.

controversial nature of the prior sessions. The combined changes in the Learning Community and in the school finance formula were publically linked to the Omaha Public Schools announcement to drop their school funding lawsuit. On April 3, 2008 the Legislature approved and the Governor signed LB 988. “Within 20 minutes of the bill signing, the four districts in the Nebraska Schools Trust dismissed their state aid lawsuit.”¹²

2009: Minor adjustments to the distribution of the Common Levy in LB 392

The 2009 Legislative Session marked a substantial transition as Senator Raikes, Senator Chambers and several others came to the end of their legislative careers. With term limits in place, new leadership was elected that included Senator Greg Adams assuming the chairmanship of the Education Committee. Senator Adams introduced LB 391 to adjust the process for distribution of the common levy proceeds in the Learning Community. Eventually those provisions were adopted in LB 392. The new committee chair was also faced with LB 387, a bill proposing to repeal the common levy which was introduced by Senator Tim Gay. The education committee, however rejected that option and instead adopted the more procedural changes in LB 392.

The new year also marked the formal seating of the Learning Community Coordinating Council that was elected in November, 2008. By the fall of 2009, the Learning Community would levy a tax for the first time. The levy rate would be imposed against the 2009 value base and would be set to be collected in 2010.

¹² Jeffrey Robb, "Schools' Suit Ends in a Blink - the 5-Year Battle is Over 20 Minutes After a New State Aid System was Signed into Law. - How We Got Here," *Omaha World-Herald (NE)*, 2008ac.

2010: LB 1070 Proposes Minor Changes

For the second year, minor changes were proposed and adopted addressing the Learning Community. Provisions relevant to the common levy were limited to reporting and operational procedures. LB 1070 also modified levy provisions for the Learning Community to allow for some operating costs for elementary learning center services.

Also, in 2010, the first legal challenge to the Learning Community's ability to levy a tax was filed in Sarpy County.¹³ The suit claimed that the Learning Community tax was unconstitutional under the Nebraska Constitution due to the prohibition of levying a property tax for a state purpose. The first challenge was dismissed for a procedural timing issue and a second was filed late in 2010.¹⁴

2011: Quiet Legislative Year

Although a few legislative bills addressing the Learning Community were introduced, none addressed the common levy and only a single bill surfaced on the floor to address a tangential issue impacting focus or magnet schools. The most substantial issue and point of focus had shifted to statewide school finance again and those changes were largely contained in LB 235 introduced by Senator Adams. The main thrust of this finance bill was to reduce state expenditures on school aid due to the continuing concerns about the economy.

¹³ Joe Dejka, "Suit Filed Challenging Learning Community Levies," *Omaha World-Herald (NE)*, 2010n.

¹⁴ Joe Dejka, "Learning Community Opponents File Suit Again," *Omaha World-Herald (NE)*, 2011i.

2012: Common Levy Held Constitutional

Although the Legislature was certainly aware of the impending decision of the Supreme Court as the oral arguments in front of the Court were publicized,¹⁵ the Legislature only prepared tentative legislative bills anticipating a ruling. In the event the Court found the common levy unconstitutional, it was uncertain how the Legislature might respond. However, on February 3, 2012, the Court ruled that the common levy was indeed, constitutional.¹⁶

Other Context Detailed in the Following Chapters

This brief review captured a few key points in the development and modification of the Learning Community, the details of the events that led to the development and the rationale for developing the Learning Community common levy. In the following chapters the details of the common levy history are presented beginning in May of 2005.

¹⁵ Joe Dejka, "Only in the World-Herald - Next Move on Tax Levy is Up to High Court - Judges show Interest in the Words of the Late Ron Raikes, Architect of the Learning Community," *Omaha World-Herald (NE)*, 2011n.

¹⁶ Joe Dejka, "Learning Community Levy is Upheld - Nebraska High Court Rejects Argument the Tax System has a State, Not Local, Purpose," *Omaha World-Herald (NE)*, 2012c.

CHAPTER 3

2005: The Advent of “One City, One School” in Omaha

May, 2005

The *Omaha World-Herald* used the phrase “One City, One School” in an article on May 7, 2005 to reference a boundary dispute between two Sarpy County school districts just south of the City of Omaha. Bellevue and Papillion-LaVista school districts were the center of attention in a state legislative proposal introduced by a Bellevue state senator. “Basically, as the City of Bellevue annexed, Bellevue schools could seize that land under State Senator Abbie Cornett's plan. The district could even go back and seize older neighborhoods.”¹⁷ The article detailed a boundary dispute between the two districts that had existed for years, even decades. “This isn't the districts' first border war,” the *World-Herald* article noted. “In 1983, after Papillion-La Vista sued Bellevue over boundary lines, the districts agreed to change the boundaries, letting Bellevue expand. Under the agreement, Papillion-La Vista was allowed to retain its schools in Bellevue and was guaranteed there would be no future land squabbles. ‘This agreement is binding forever,’ Papillion-La Vista Assistant Superintendent Stan Wilcox said in 1983.” At that time according to the *World-Herald*, the districts agreed not to seek legislation to alter the agreement.¹⁸ A search of the *Omaha World-Herald* archives pointed out that the last time the paper had used the phrase “One City, One School” was in 1983.

¹⁷ Shannon Henson, "Bellevue Eyeing Papio-LV - An Amendment to Redraw Sarpy School Boundaries Stirs Up Border Discussions. - Bellevue Outreach," *Omaha World-Herald (NE)*, 2005b.

¹⁸ Ibid.

The headline on October 7, 1983 was “*2 School Districts Make No Promise on Busing*” after the disputes over recent annexation and school district boundary lines. Bellevue school district was claiming that its district boundaries should grow with the city and thereby setting claim to territory and students thought to belong to Papillion – LaVista public schools. The article reported that negotiations between the two districts had been futile and that the state ordered a moratorium on all school annexations until August, 1984 to let the two districts try to work out the problem. One apparent proponent of the Papillion-LaVista position was quoted in the article. “One man complained that Bellevue hadn't succeeded in getting Omaha School District land to the northeast, ‘so they're coming down here to get us. That one - city, one - school thing doesn't hold water. Omaha has three school districts.’”¹⁹ The 1983 article said “He was referring to unsuccessful discussions in January, when the Bellevue schools sought to take over Omaha schools also annexed by the City of Bellevue. The City of Omaha encompasses all or part of four school districts, Omaha, District 66, Ralston and Millard.”²⁰

By 2005, the tensions between Bellevue and Papillion-LaVista were reignited. An article described Senator Cornett’s motivations to propose changes to the state law as “without the urging of Bellevue schools” and instead as a result of a meeting between state senators and superintendents where “it was apparent to those at the meeting that no

¹⁹ James Ivey, "2 School Districts make no Promise on Busing," *Omaha World-Herald (NE)*, 1983.

²⁰ Ibid.

agreement would be reached.”²¹ However, the article foreshadowed the larger dispute to come. “Millard Public Schools are watching the legislation because 20 percent of their district is sandwiched between Gretna and La Vista and could potentially be snatched. Millard schools' land in La Vista is largely industrial, [Steve]Coleman [Papillion-La Vista assistant superintendent for business services] said. Gretna would not yet be large enough to go after Millard students.” The article said that “Coleman questioned why the amendment doesn't try to get Omaha Public Schools out of Bellevue if the goal is one city, one district. OPS has five schools in Bellevue.” Cathy Williams, the Bellevue spokesperson was referenced in the article to say “that would be a ‘whole different ballgame’ because any change could open the door to rearranging district boundaries in Douglas County.”²²

June, 2005

A month later, Cathy Williams words seemed prophetic as on June 7, 2005 the *Omaha World-Herald* headline read “*OPS plan like 'war' to Millard - Ralston, Elkhorn officials also taken aback by claim - Millard Schools within Omaha city limits*”.²³ The prior evening, the Omaha School Board had invoked “one city, one school” as a plan and served notice that they intended to claim all territory within the Omaha city limits. “The Omaha school board, on a 12-0 vote, passed a resolution that stakes a claim to the 21

²¹ Shannon Henson, "Bellevue Eyeing Papio-LV - An Amendment to Redraw Sarpy School Boundaries Stirs Up Border Discussions. - Bellevue Outreach," *Omaha World-Herald (NE)*, 2005b.

²² Ibid.

²³ Bob Glissmann, "*OPS Plan Like 'War' to Millard - Ralston, Elkhorn Officials also Taken Aback by Claim - Millard Schools within Omaha City Limits*," *Omaha World-Herald (NE)*, 2005.

Millard and four Ralston schools inside Omaha's city limits. The board also said Elkhorn school district land inside Omaha: which currently contains no schools: is rightly OPS's. In addition, OPS officials said that if the City of Omaha's annexation of Elkhorn goes through, Elkhorn schools should become part of the Omaha school district. The resolution itself changed nothing in terms of how schools are governed in the metropolitan area. It stated that changes must be made to maps showing school district boundaries, property valuations and state school aid of the Omaha, Millard, Ralston and Elkhorn school districts. Naturally, the reaction was widespread from school district officials from Millard, Ralston, and Elkhorn.”²⁴ Also the *World-Herald* pointed out Westside Community Schools, which is wholly part of the city of Omaha, was reported to be unaffected by the proposal due to state law's protection of the district.²⁵ The article also started to gather state leadership reactions as well as the stated purposes of the OPS plan according to OPS officials. “[OPS Superintendent John] Mackiel said several developments around the state prompted officials to consider their options: The recent discussions about the City of Omaha annexing the City of Elkhorn; a boundary dispute between the Bellevue and the Papillion-La Vista school districts; the Legislature's decision to consolidate rural school districts, [and]; a legislative attempt, which ultimately was killed, to land lock the Grand Island Public Schools.”²⁶

²⁴ Paul Goodsell and Bob Glissmann, "Targeted Districts Will Fight Claim," *Omaha World-Herald (NE)*, 2005f.

²⁵ Bob Glissmann, "OPS Plan Like 'War' to Millard - Ralston, Elkhorn Officials also Taken Aback by Claim - Millard Schools within Omaha City Limits," *Omaha World-Herald (NE)*, 2005.

²⁶ Ibid.

OPS attorney Pederson emphasized the OPS commitment to the resolution as he described the request to Douglas County and state officials to adjust the boundaries and records in order to ensure that “the proper property-tax receipts come to the Omaha Public schools” and he added that the “district is prepared to fight any lawsuits that may arise.”²⁷

The article also highlighted the historical nature of the OPS resolution. “The applicable laws have been on the books for years, Mackiel and others said, but OPS officials didn't look closely at them and how they could affect the district until the Elkhorn annexation issue arose this year. The matter could have been addressed in 1971, when the City of Millard was annexed, Mackiel said. ‘We're not going to venture a guess as to why previous administrations, why when annexation did occur, that officials didn't implement the law,’ he said. ‘But what we do know is that the silence of the past isn't going to be modeled now.’”²⁸

Mackiel was quoted in a later article saying, "Multiple school districts in Omaha land lock the Omaha Public Schools, they stratify our community, they create inequity, and they compromise the opportunity for a genuine sense of community." ²⁹

First Responses From State Level Leaders

The *World-Herald* reported that “State Education Commissioner Doug Christensen said the day following [the OPS board resolution], it’s too soon to say

²⁷ Ibid.

²⁸ Ibid.

²⁹ Bob Glissmann, "Targeted Districts Will Fight Claim," *Omaha World-Herald (NE)*, 2005.

whether Omaha's proposal can: or should: become reality. 'I don't think this is an easy slam dunk on any side,' he said. Christensen said his department's lawyers are sorting through the legal issues. In addition, he said, policy-makers need to consider what would be best outcome for students."³⁰ According to the *World Herald*, Christensen thought that if the Omaha Public Schools takes over students, school buildings and taxable real estate from its suburban neighbors would strengthen the state's largest district. OPS would have new resources to help serve its students, who include some of Nebraska's neediest youths. "On the other hand," Christensen said, "the move could be disruptive for thousands of suburban youths. And taking away resources would undermine the ability of the Millard and Ralston districts to serve their remaining students. You have to think through the domino effects," he was reported to say. But he also was reported to acknowledge the ramifications of doing nothing which would leave Omaha landlocked with "big challenges and limited resources."³¹

Senator Ron Raikes, Chairman of the Legislature's Education Committee also was cited in the article saying he would have to review state statutes and determine what procedures to follow. "It would seem to me, just on its face, pretty disruptive [...] That change would make those (districts) in the metro area more unequal rather than more nearly equal."³²

³⁰ Bob Glissmann, "OPS Plan Like 'War' to Millard - Ralston, Elkhorn Officials also Taken Aback by Claim - Millard Schools within Omaha City Limits," *Omaha World-Herald (NE)*, 2005.

³¹ Ibid.

³² Ibid.

A Paul Goodsell article suggested, “OPS base[d] its claim on an 1891 law that, it says, allows the Omaha school district to expand along with the City of Omaha's growth. A 1947 law exempted Westside Community Schools, but OPS says other districts are fair game.”³³

June 8, 2005: The World-Herald connects school finance litigation to the OPS plan

The boundary issues impact and are impacted by a number of histories and policies of intra-district disputes over territory, students, and funding. The *World-Herald* reported that “The Omaha Public Schools’ move to acquire other school districts’ land: and the property taxes that go along with it: amounts to a second front in a battle the district is waging against perceived inequities in education funding.”³⁴ The Omaha Public schools had filed a lawsuit challenging the state’s school finance system in 2003. The article reported, “The state aid formula is inequitable, district officials say, because it fails to provide all students with an equal opportunity to get the education guaranteed by the state's constitution. In particular, they say, the formula does not provide enough extra funding to help students with special needs because of disadvantaged backgrounds.”³⁵ Although the Omaha Public Schools attorney, Dave Pedersen described the plan and funding suit as “separate” in the article, he did concede that “They are related” and that

³³ Paul Goodsell, "OPS Waited Years to Play its Hand - The District Looked at Expansion in the Past but Never Saw a Reason 'to Stir it Up' Until Now," *Omaha World-Herald (NE)*, 2005.

³⁴ Bob Glissmann, "For OPS, a New Front in Funds Fight - The District is Already in Court Battling Perceived Inequities in Education Funding. - School Leaders Weigh In," *Omaha World-Herald (NE)*, 2005a.

³⁵ Ibid.

“...the board sees that both of them are critically important to the future well-being of the city of Omaha.”³⁶ The article went on to describe that Pedersen and other OPS officials were concerned the organization of school districts in the Omaha area allowed various populations to be or become isolated. Pederson was quoted in the article while addressing the board in the June 4, 2005 meeting as saying, “The underlying policy behind this is that one school community gives everyone in the city a stake in the education of all of the city's children [...] Educational unity is important because it helps ensure equitable opportunity for each child and helps to provide the resources to properly educate all children.” He continued, “Racial, social and economic isolation means members of the same metropolitan community don't know each other. If we don't know each other, we don't trust each other, and we don't work for the common good of the entire community. These times demand that we all work together for the common good.”³⁷

The actions of Omaha Public Schools elicited a strong response from neighboring district leaders. Millard Superintendent Keith Lutz said the Omaha Public Schools had ‘pretty well declared war.’ The paper reported that he went on to say, “Just because they say the law is clear doesn't make it so,” Lutz said. “We're not going to roll over.”³⁸ “We had no inkling of this,” said Elkhorn Superintendent Roger Breed. “This is totally counter

³⁶ Ibid.

³⁷ Ibid.

³⁸ Bob Glissmann, "Targeted Districts Will Fight Claim," *Omaha World-Herald (NE)*, 2005.

to what we understood to be boundaries that the Omaha Public Schools and Elkhorn had resolved over 30 years ago.”³⁹

The paper suggested that Ralston and Elkhorn officials also would resist the “One City, One School” effort and that would lead to a “showdown in the courts or the Nebraska Legislature.”⁴⁰

Omaha Public Schools attorney Dave Pedersen made clear in the articles that OPS was prepared to continue the plan in the face of other challenges as well as continue the state funding litigation. “It doesn't change the fact that Nebraska ranks 49th in all the states in terms of the state's share of public K-12 education,” he said according to the *World-Herald*. “One of the things we think it would do is it would increase the property valuation per child within the Omaha Public Schools.”⁴¹

OPS Requests State and Local Officials Implement “One City, One School.”

Superintendent Mackiel was made a written request to various officials to implement the Omaha plan on June 6, 2005. However, on June 9th the *World-Herald* reported that Douglas County officials rejected the Omaha plan. The clerk, assessor and treasurer rejected the Omaha Public Schools' request to redraw school district boundaries and shift property tax revenue to OPS. The turn-around time for the denial was relatively

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

quick and that day the paper reported that the OPS attorneys were discussing options including the possibility of litigation.⁴²

Omaha Public Schools also inquired with state officials to implement the board resolution and plan. The *World-Herald* reported that Omaha Public Schools asked the Commissioner of Education and the State Property Tax Administrator to recognize changes in boundaries, spending authority, and state aid.⁴³

Local county officials did not believe they had the authority or responsibility to act. “On Wednesday [June 6, 2005], Douglas County officials rejected the Omaha district's request to redraw school district boundaries and shift property tax revenue to OPS as part of the district's plan.”⁴⁴ However, as the article pointed out, the county and school district attorneys agreed to talk.

The affected school districts were seeking legal counsel of their own. Elkhorn Superintendent Roger Breed said, “We've visited with our legal representatives and tried to discern the law in this situation,” and the *World-Herald* reported similar positions in Millard and Ralston.⁴⁵

State officials either expressed that they did not have the authority to act or that they would have to further explore the request. Catherine Lang, the state property tax

⁴² Bob Glissmann and Kristin Zagurski, "OPS Weighs its Next Step - Lawsuit among Options After Douglas County Officials Reject Requests - Sticky Situation," *Omaha World-Herald (NE)*, 2005.

⁴³ Ibid.

⁴⁴ Michaela Saunders and Bob Glissmann, "School District, County Plan Talks," *Omaha World-Herald (NE)*, 2005d.

⁴⁵ Ibid.

administrator at the time explained that ... “her role is an administrative one and that the jurisdiction of a tax district is set in Douglas County by the county clerk, while the county assessor determines valuations.” Commissioner of Education Doug Christensen said he would confer with the Nebraska Attorney General's Office before taking action. He was quoted as needing to know “the legal basis for doing what [OPS leaders are] asking us to do. And do we [the Department of Education and State Board of Education] have the authority to do that?”⁴⁶ Within less than a week’s time most of state and local officials had established a position or were working to develop an opinion.

Those were not the only opinions being reported or discussed in the newspaper accounts. Suburban school district residents expressed concerns and anger at the annexation effort and issues surrounding school choice, housing development patterns, and school quality were discussed. One article published on Friday, June 10, 2005 described the sentiment. “For many suburban parents, the OPS expansion plan goes beyond hitting close to home: it smacks right into people's homes and their family's interests. That's a large part of why OPS's one city, one school district proposal is drawing a heated response.”⁴⁷

⁴⁶ Kristin Zagurski, *OPS Weighs its Next Step - Lawsuit among Options After Douglas County Officials Reject Requests - Sticky Situation*, 01B

⁴⁷ Jeffrey Robb, "OPS's Plan Upsets Plans of Parents - The Omaha District's Takeover Effort has Barged into the Living Rooms of Families Who Chose to Live Out West for the Schools," *Omaha World-Herald (NE)*, 2005j.

Report of “technical revision” as the spark

Harold Anderson the retired publisher and occasional columnist for the *Omaha World-Herald* reported that a “technical revision” spurred the boundary controversy. Anderson apparently interviewed Senator Ron Raikes, chairman of the Legislature’s Education Committee about the proposal to strike the 1890s law that bolstered the “one city, one school district” law.

Senator Raikes was reported to say, “We had heard from various people that the one city, one school district statute gives us some concern. We don't really understand it; we don't know why it is there, and at any rate it hasn't been used for 25 or 30 years.”⁴⁸ Anderson reported that among those requesting the law to be reviewed was Millard Public Schools although they did not specifically ask for it to be included in the annual “housekeeping” clean-up bill. Anderson also inquired as to whether Senator Raikes would now remove the controversial provision from his bill and quoted Senator Raikes as saying “Absolutely...That’s not the place for it.”⁴⁹

Anderson described his discussions in the interview with Senator Raikes that started to set a course for his later comments in the future weeks and months. Anderson reported, “During my conversation with Sen. Raikes, I said that, in my opinion, ‘school children and community resources are poorly matched in the Omaha metropolitan area,’ having in mind that 60 percent of the schoolchildren attending the Omaha district's

⁴⁸ Harold Andersen, “Legislation's 'Technical Revision' Spurred Clash of School Districts,” *Omaha World-Herald (NE)*, 2005.

⁴⁹ Ibid.

schools come from low-income family environments: certainly a picture totally incompatible with the demographics of the entire city of Omaha. 'I don't disagree with that at all,' Sen. Raikes replied. 'Whenever you say 'We need all the people and all the property to support all the kids,' I don't disagree with that. In fact, quite the opposite.' Sen. Raikes noted that the Lincoln area he represents faces some of the same problems as the Omaha school district. Raikes said he has been 'adamantly opposed' to changing the law so that the school district boundaries would not move with a city's boundaries."⁵⁰

OPS Waited Years to "Play its Hand"

Paul Goodsell, writing for the World-Herald on June 14, 2005 reported that "for more than three decades, Omaha Public Schools officials have known about a state law they think allows them to take over suburban schools. They understood that it let them claim land and school buildings from other districts, once those areas were annexed by the City of Omaha. And they recognized that doing so would be controversial."⁵¹

Goodsell wrote of his interviews of and comments from the former Omaha Superintendents Owen Knutzen and Norbert Schuerman as well as former Millard Superintendent Don Stroh. Goodsell reported that OPS could have expanded its boundaries in 1971, when the City of Omaha annexed the smaller suburban city of Millard. At that point, Omaha schools could have taken over part of the Millard schools, and more areas could have been claimed following other city annexations. "We looked at

⁵⁰ Ibid.

⁵¹ Paul Goodsell, "OPS Waited Years to Play its Hand - The District Looked at Expansion in the Past but Never Saw a Reason 'to Stir it Up' Until Now," *Omaha World-Herald (NE)*, 2005.

it,” recalled former Omaha Superintendent Owen Knutzen. “But we were not out to take over viable high school districts. There was no reason to stir it up.”⁵²

Goodsell was able to detail some of the history around the boundary issue that included discussions of metro-wide consolidation by an Omaha senator. “In 1973, then-State Sen. David Stahmer of Omaha proposed legislation to merge the Omaha, Millard, Ralston and Westside school districts. The suburban schools were firmly opposed, and Knutzen was cool. Eventually, the proposal died.”⁵³

The article also noted that there were supporters of a wide-spread consolidation within the Omaha Public Schools after the legislative merger proposal failed to gain traction. “[T]he idea of consolidating metro-area schools remained alive inside OPS offices, where staff members periodically brainstormed about ways to reorganize districts from Bellevue to Fort Calhoun, Omaha to Elkhorn, into two or three mega-districts.” The article continued, “‘The discussions centered around how we could improve educational opportunities, and the ethnic balance that would occur as a result of it,’ said former Superintendent Norbert Schuerman, who joined the Omaha district in 1974 and ran it from 1984 through 1997. Those informal ideas were occasionally shared with OPS board members, he said. But the concept never went far because ‘politically, it would just not have sold,’ Schuerman said. ‘You need some buy-in from both sides.’”⁵⁴

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

Goodsell reported that mandatory busing was in effect in OPS by 1976 and that the perspective of Don Stroh, who served as Millard's superintendent from 1955 to 1989, was that the Westside exemption applied to Millard.⁵⁵ Goodsell also reported that David Pedersen believed that the politics had changed in the state and that Omaha school officials have always been mindful that the Legislature has the final say.

The article recited 2005 legislative and political happenings to bolster Pedersen's perspective including legislation that forced the consolidation of elementary-only districts and failed legislation to limit the ability of Grand Island Public Schools to expand its boundaries with the city. Goodsell went on to quoted David Pedersen, "I think the Legislature has just said, 'We think we need a more efficient structure of school governance in Nebraska: one that makes more sense.' I don't think there is a better moment to raise this issue."⁵⁶

Mid June Through July, 2005: Sorting Out Positions and Shaping the Debate

In the weeks after the Omaha Public Schools June 6th board meeting where they invoked "one city, one school" plans, the progress toward solutions were not detailed in the newspaper. Much of the *World-Herald* coverage contained dialog between and among school leaders and citizen reactions. Often these were restatements of previous arguments articulated in the paper from every side of the public debate which were the

⁵⁵ Ibid.

⁵⁶ Ibid.

subject of several articles.⁵⁷ By mid to late June, most agreed that the fate of the one city, one school resolution would play out in the hand of the Legislature.⁵⁸

By the end of June, Omaha attorneys were conceding that the plan would not be implemented for the coming school year. “OPS attorneys David Pedersen and Elizabeth Eynon-Kokrda said that given the opposition to OPS's plan from the other school districts and the time that has gone by since the board's vote, it would be unrealistic to think that a transition could take place by the start of school in August.”⁵⁹ Eynon-Kokrda was quoted as saying, “Even if tomorrow, the county said, 'Yes, this is our responsibility' and commence the chain of events to implement the transition that transition still would take time. It's doubtful it would be effective at the beginning of the fall.”⁶⁰

⁵⁷ Michaela Saunders Bob Glissmann, "OPS, Millard Boards Get an Earful," *Omaha World-Herald (NE)*, 2005c.; Shannon Henson, "OPS-Bellevue Issues Surface," *Omaha World-Herald (NE)*, 2005c.; Bob Glissmann, *Targeted Districts Will Fight Claim*, 01A; Michaela Saunders Bob Glissmann, "One Goal: Doing Best for our Kids - School Takeover Plan Draws shows of Force in OPS, Millard," *Omaha World-Herald (NE)*, 2005a.; Julie A. Johnson, "Adopting OPS Plan would be a Mistake," *Omaha World-Herald (NE)*, 2005.

⁵⁸ Leslie Reed, "A Showdown is Likely in the Courts Or the Legislature - the Move could Affect Millard, Ralston, Elkhorn - Urban-Rural Splits Next Battleground in Reorganization - OPS Border War Not Unique," *Omaha World-Herald (NE)*, 2005b.; Martha Stoddard, "Larger School Debate Awaits - The Legislature Battled Over Small Schools this Year; it Likely Will be the OPS Takeover Next Year," *Omaha World-Herald (NE)*, 2005b.

⁵⁹ Bob Glissmann Martha Stoddard, "Special Session on OPS Takeover Seems Unlikely," *Omaha World-Herald (NE)*, 2005.

⁶⁰ Ibid.

July, 2005:

Nonetheless, the OPS attorneys and leadership were still asking state and county officials to revisit their respective decisions. Omaha Public Schools officials prepared to ask Douglas County and state officials to reconsider their positions on OPS's one city, one school district plan according to a July 2, 2005 *World-Herald* article. The article reported, "The officials have declined to enforce OPS's requests related to the matter. The letters to county and state officials were 'of one piece,' OPS attorney David Pedersen said. 'Had the county clerk said, 'I'm redrawing the (school district) boundaries accordingly' and the county assessor changed the tax rolls and the treasurer said, 'I'm distributing the money accordingly,' then the role would be for the various state officials to adjust the books.'”⁶¹

The rejections of the plan did not deter OPS and its leadership. In the same July 2nd article that year “Mackiel said he would contact the other superintendents to begin a conversation about the consolidation of the area's schools. Creating one city, one school district ‘is something that would take significant dialogue, significant discussion,’ Mackiel said. ‘Toward that end, we are anxious to begin the discussion and dialogue.’”⁶²

July 9, 2005: “Pow-Wow” article

A week later (July 9, 2005) the *World-Herald* reported that Superintendent Mackiel sent letters to the surrounding district superintendents. “In letters delivered

⁶¹ Bob Glissmann, "OPS Wants Officials to Rethink Refusals - County and State Officials have Declined to Carried Out the District's Requests Related to its Takeover Plan," *Omaha World-Herald (NE)*, 2005b.

⁶² Ibid.

Friday[July 8, 2005], the Omaha Public Schools superintendent invited his counterparts in Millard, Ralston and Elkhorn to discuss OPS's 'one city, one school district' plan that targets their districts.”⁶³

The tone of the article seemed to indicate that the OPS leadership was intent on moving forward with their plan. “In Mackiel's letter to the superintendents, he wrote that OPS intends to ensure that ‘the legal duties of county and state officials are promptly clarified. At the same time, we must begin the actual transition process.’ In his letter, Mackiel expanded on the district's reasons for taking action. ‘[E]very year as the city grows and OPS does not grow,’ Mackiel wrote, ‘the children of Omaha are further segregated . . . ‘Under the plan, he wrote, ‘. . . we would all have a stake in the educational outcomes of every child. As educators we know, perhaps more than others, that separate is not and cannot be, equal.’”⁶⁴ As the article pointed out, the stated reasons for the OPS plan now included references to “segregation” and shared responsibilities for educational outcomes.

By July 11, 2005 the *World-Herald* reported that the surrounding suburban districts formed a coalition to fight the OPS plan. The coalition superintendents from Millard, Elkhorn, Westside, and Ralston were only beginning to frame their opposition but cited the perceived unpopularity of the plan. Additionally, it was apparent that emotions were running high as the City of Omaha was also in a fight to annex the city of

⁶³ Michaela Saunders and Bob Glissmann, "OPS Chief Calls for Powwow on District Expansion - Mackiel Wants to Meet with Millard, Ralston and Elkhorn Superintendents about His "One City, One School District" Aims," *Omaha World-Herald (NE)*, 2005b.

⁶⁴ Ibid.

Elkhorn which would naturally impact the Elkhorn school district. The coalition was reported to have hired legal, lobbying, and public relations firms to prepare to fight the effort.⁶⁵

Although the suburban coalition was organizing, one of the surrounding schools announced it would support the OPS plan. The *World-Herald* printed a revised version of the story that included other developments on July 11, 2005. The article reported, “The coalition was one of several developments Monday, including a decision by Bellevue officials to side with Omaha. Both Bellevue Public Schools and the Bellevue City Council unanimously voted Monday to support the goal of ‘one city, one school district.’”⁶⁶

The revised article identified another new theme of “competition and choice” and highlighted the ongoing OPS concerns with resources. “Having more than one school district in the community ‘allows for healthy competition and choice,’ said Westside Community Schools Superintendent Ken Bird.” And the Omaha Superintendent retorted according to the newspaper account, “John Mackiel wondered what ‘healthy competition’ his fellow superintendents were referring to. The only thing Omaha-area school districts are competing for is a dwindling pool of financial resources: and that's not good for students in any district, he said.”⁶⁷

⁶⁵ Judith Nygren, "OPS Facing a United Front - Four Surrounding School Districts Form a Coalition - Douglas County Education Opinion Poll," *Omaha World-Herald (NE)*, 2005a.

⁶⁶ Ibid.

⁶⁷ Ibid.

The article also reported the rationale for Westside to join the coalition in opposition to OPS when Westside was apparently protected by state statute passed in 1947 and was not a target of the OPS plan. “But Bird said Monday that his district joined the coalition because OPS administrators repeatedly have made comments that he said question Westside's continued existence.”⁶⁸

July 13, 2005: A call to collaborate

A July 13, 2005 article reported about then Commissioner of Education, Doug Christensen and then head of the Nebraska Association of School Boards, John Bonaiuto called for collaboration and possible mediation in the metro area. But within the same article, further implications were being discussed as Bellevue and Omaha were making plans to implement the exchange of territory between their two districts and the spill-over of the “one city” plan being implemented south of the Douglas County boundary in Bellevue and Papillion-LaVista. Although the OPS plan did not officially impact the Sarpy County side of the metropolitan area, the endorsement and adoption of the “one-city” plan in Bellevue ensured that old “border wars” between the Sarpy County cities would persist.⁶⁹

The article indicated that the spillover effect had alerted other schools potentially impacted by the OPS and Bellevue plans. Saunders and Robb, in the same July 13th article, demonstrated this as “[o]ther school districts want their Educational Service Units

⁶⁸ Ibid.

⁶⁹ Jeffrey Robb and Michaela Saunders, "Officials: Schools Need to Cooperate - State Leaders Call Districts Distracted - Mediation Suggested," *Omaha World-Herald (NE)*, 2005a.

to join the fray. School boards for Douglas County West, Gretna and Bennington, along with Elkhorn and Ralston, on Monday unanimously supported a resolution allowing ESU No. 3 to oppose OPS's move either through litigation or lobbying. The ESU says it would lose twenty-one percent of its property-tax base if OPS is successful. That, the ESU says, would mean reduced tax revenues and a hit to its services, which include joint staff training and traveling programs for schools, such as a portable planetarium.”⁷⁰

Similar to comments made by coalition superintendents, the newly impacted districts were beginning to express concerns about “choice.” “Annette Eyman, spokeswoman for the Papillion-La Vista Public Schools, said the district, along with such schools as Millard, Ralston and Elkhorn, wants to maintain a choice for parents in picking the schools they want their children to attend. ‘If all this happens, what we've done is taken away parent choice,’ she said.”⁷¹

July 15, 2005: “Lawyer up”

The *World-Herald* also began to key-in on the costs associated with the fight from all sides. A July 15, 2005 article began to estimate costs for all parties. Although the article highlighted the costs it also articulated a couple of the themes as education leaders cited their rationale and motives to engage. Westside was concerned with “maintaining its independence” according to the article and Millard Superintendent Keith Lutz articulated a concern with the tax base of the remains of a Millard school district under the OPS plan. “Right now it's an all-or-nothing proposition,” said Lutz, whose district

⁷⁰ Ibid.

⁷¹ Ibid.

would be left with 11 schools and a smaller tax base to support them. “We’re going to do whatever it takes.”⁷²

The article reported that Omaha had previously spent \$1.9 million on its two-year-old legal challenge of the state's funding formula and that the prospect of success would result in an increase in state aid that would offset its legal expenses. “It also expects to be reimbursed through private donations, [OPS spokesperson Luanne] Nelson said. OPS also might be able to tap private money to cover any annexation expenses it might incur, she said. Whatever the costs, said OPS school board member Barb Dutiel, it will be money well spent. ‘This is do-or-die for OPS,’ she said, referring to OPS's concern that it will become a landlocked inner-city district with a stagnant tax base.”⁷³

In a Michaela Saunders article published on Sunday, July 24, 2005, the Douglas County Attorney articulated his offices rationale for rejecting the “one city, one school” plan and suggested that the plan did not fit the intent of the Nebraska Legislature in a letter delivered to the OPS attorneys. The letter reaffirmed the county attorney’s position that the county clerk does not have the authority to redraw the district's boundaries to include portions of the Millard, Ralston and Elkhorn districts. “In rejecting OPS's request that county officials start implementing the plan, Dornan said Friday that the Legislature

⁷² Judith Nygren, "School Battle may Become Costly," *Omaha World-Herald (NE)*, 2005c.

⁷³ Ibid.

had at least contemplated the coexistence of the Omaha district and districts like Millard and Ralston within Omaha's city limits.”⁷⁴

The article outlined the contents of the letter and the rationale of the county in rejecting the OPS plan. “In the context of other school laws, Dornan wrote, he considers that law to mean that no more than one Class V school district may exist in a city of the metropolitan class[...] To support that interpretation, Dornan cited a 1953 statute that outlines the process of electing the school board of a Class III district when ‘more than 75 percent of the geographical area of a Class III school district lies within a city of the metropolitan class.’ Millard and Ralston are Class III school districts.”⁷⁵

July 29, 2005: Governor Heineman calls for a meeting

In a July 29, 2005 article written by Paul Goodsell and Michaela Saunders, the *World-Herald* reported that Nebraska Governor Heineman was calling for a “peaceful solution” to Omaha area discord. “‘If this continues and emotions are running high, we're going to have irreconcilable wounds,’ Heineman said in an interview. ‘Right now, we've got a high level of anger and distrust between all of the districts. We've got to get that calmed down.’”⁷⁶

⁷⁴ Michaela Saunders, "Douglas County Attorney Calls OPS Argument Flawed," *Omaha World-Herald (NE)*, 2005b.

⁷⁵ Ibid.

⁷⁶ Michaela Saunders and Paul Goodsell, "Seek a Peaceful Solution, Heineman Tells Schools," *Omaha World-Herald (NE)*, 2005.

The paper also reported, “Heineman repeated his call from earlier this week for the Omaha Public Schools to drop its ‘hostile takeover’ of schools and land in the Millard, Ralston and Elkhorn districts.”⁷⁷

The July 29th article pointed out that Heineman had continued to suggest meetings but called on the OPS officials to rescind their resolution. Heineman was also reported to connect the Omaha issue to the recent legislatively mandated consolidation of Nebraska’s elementary-only school districts. He was quoted to say “voluntary school consolidation has the opportunity to unite communities . . . mandatory, forced consolidation almost always divides communities. I don't think that's best for our children.”⁷⁸

OPS leadership remained resolute in their effort and insistent on their perceived right to expand the boundaries of the district to match those of the city. Again, comparisons to other school districts in Nebraska that were able to grow with city boundaries were pointed out by Mackiel and the OPS board president Sandra Jensen. Additionally, the OPS leadership challenged the Governor. “He appears to support keeping a structure in place that will segregate a city, socially and economically and racially,” Jensen was reported to say.⁷⁹

In that same article, the first public comments from Omaha city leadership were reported. “Omaha Mayor Mike Fahey said he was reviewing the OPS proposal. ‘We’ll have to figure out what’s in the best interest of the city,’ Fahey said. ‘We’re for improving

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

education for all the kids in the school systems.’ Fahey acknowledged that he has backed annexations and governmental mergers in the past, but he said leaders need to consider all the ramifications.”⁸⁰

Community Conversations... Omaha Together, One Community (OTOC)

The last weekend in July, 2005 an Omaha coalition sought to spur community conversations by reframing the issue. In their view the question was “How can Omahans best address the racial and socioeconomic segregation that exists in the city’s school districts?” The article articulated specific references to racial segregation.⁸¹

“Mackiel said conversations among the school districts need to occur for the benefit of children in the Omaha area 30 years from now. He drew connections between the current path of racial and economic segregation in the city and the 1954 Supreme Court ruling *Brown v. Board of Education*, which declared that separate is not, and cannot be, equal.” The article continued, “Superintendents of the suburban school districts, and many residents of those districts, have said they resent implications of racism. The suburban superintendents have said they would be open to discussions related to socioeconomic and other differences if OPS rescinds its resolution and the threat that is attached.”⁸²

⁸⁰ Ibid.

⁸¹ Michaela Saunders, "Group: OPS Plan is Chance to Talk - while Waiting to Take a Position, a Religious Coalition Wants to Tackle Racial and Socioeconomic Segregation in Area Districts," *Omaha World-Herald (NE)*, 2005c.

⁸² Ibid.

August, 2005:

The *World-Herald* reported on August 2, 2005 that OPS was not backing down from their “takeover” and that suburban districts were not going to give in either. Also, the paper reported that “[...]superintendents from five metro-area school districts got together for the first time at a meeting called by Gov. Dave Heineman to talk about OPS's ‘one city, one school district’ proposal. Heineman met with Millard Superintendent Keith Lutz, OPS Superintendent John Mackiel, Ralston Superintendent Virginia Moon, Elkhorn Superintendent Roger Breed and Westside Superintendent Ken Bird for an hour and 15 minutes.”⁸³

Report of First Meeting, August 2, 2005

In a separate article, the same day, some of the details of the first meeting were reported. Although the article acknowledged the cordial nature of the meeting, it hinted that the tensions would continue to run high. However, this article was significant for the hint of things yet to come. After a meeting on August 1st, then congressman and candidate for governor, Tom Osborne, after a speech to local teachers in Papillion was quoted to say that school districts should “amicably” resolve the issue. According to the article, when “asked for an example, he said, ‘There may be a way to have a common tax base and still have individual autonomy of schools.’”⁸⁴

⁸³ Leslie Reed and Michaela Saunders, "OPS Says Lawsuit to be Last Resort - No Backing Down from Takeover - Millard: No Deal," *Omaha World-Herald (NE)*, 2005c.

⁸⁴ Leslie Reed, "Area School Leaders Meet - Heineman Gathers Omaha, Millard, Ralston, Elkhorn and Westside Superintendents to Discuss OPS's "One City, One School District" Plan," *Omaha World-Herald (NE)*, 2005a.

The article described more of what Osborne hinted at and first described Sen. Raikes initial thoughts on a solution to the metro-area dispute. “State Sen. Ron Raikes of Lincoln, chairman of the Legislature's Education Committee, has met with most of the metro-area superintendents within the past two to three weeks. He said he hopes to craft a solution that addresses OPS' financial concerns, maintains autonomy for the suburban districts and amounts to sound statewide policy. He said he is considering proposing a *common tax levy* for the entire metropolitan area. A ‘super board’ would make financing decisions for the area, while individual school boards would remain in place to oversee curriculum, staff and teachers in each school district.”⁸⁵

Raikes Plan Centers around Common Levy

Jeff Robb of the Omaha World-Herald detailed more on Sen. Raikes’ plan in an article published the day after the first official meeting of the policymakers and metro area Superintendents. The paper reported, “Lawmaker working on school solution - Metro districts would split money – ‘Super board’ included” and central to that solution was a new way to structure the finances of the embattled school districts.”⁸⁶ The paper reported that Raikes suggested a new educational structure to include a ‘super board’ to oversee financing decisions for a given area, perhaps Douglas and Sarpy Counties. With that structure the area would have a common tax base and common tax levy to share revenue across the metro area. In addition to the regional tax base, school boundaries

⁸⁵ Ibid.

⁸⁶ Jeffrey Robb, "Lawmaker Working on School Solution - Metro Districts would Split Money - 'Super Board' Included," *Omaha World-Herald (NE)*, 2005h.

would remain fixed and school districts would continue to exist. Districts would have individual school boards would remain in place to oversee curriculum, staff and teachers in each district. According to Robb, “Raikes said both sides of the dispute in Omaha have legitimate issues worth discussing. ‘This does provide an opportunity to address those issues,’ he said, ‘and move state policy in a direction that it should go.’”⁸⁷

The Robb article also pointed out the balancing act proposed, “For OPS, the idea has the potential to offer tax benefits from suburban development now outside its boundaries. But it wouldn't gain control of other districts' schools now inside the Omaha city limits, something OPS' own proposal [aimed] to do. Conversely, the Millard, Ralston, Elkhorn and Westside districts would maintain [their] autonomy. But they could lose resources if revenue is diverted to OPS.”⁸⁸

According to the same article, “Luanne Nelson, an OPS spokeswoman, said the district appreciates Raikes' effort to address finances. But she said his concept would address just ‘one dimension of our issue’ and still would maintain fragmented school districts. Still, she said, OPS officials want to hear more about the proposal. OPS attorney Elizabeth Eynon-Kokrda said, ‘The main intent of the board is an integrated and unified school system. There are several ways to do that.’”⁸⁹

Some of the other schools responded to the proposed plan. “Elkhorn Superintendent Roger Breed said he didn't have enough details to judge Raikes' ideas.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

But, he said, ‘it is certainly worthy of continued discussion.’ Ralston Superintendent Virginia Moon and Westside Superintendent Ken Bird agreed that the idea merits discussion but said other concepts should be on the table. Bird said the status quo should be up for discussion, as OPS' one city, one school district plan is now. Ken Bird also suggested the possibility of creating more, smaller school districts.”⁹⁰

An editorial authored by Harold Anderson in the *Omaha World-Herald* on August 4, 2005 identified some key points that supported Omaha Public Schools concerns. Anderson noted “the facts, which explain why Omaha school district leaders want the residents of the entire city to share in serving the best interests of all the city's students, including the disadvantaged youngsters who are concentrated primarily in the Omaha public schools.”⁹¹ He described concerns with the enrollment and population shifts to the west. “In 1971, the Omaha school district served 64,000 students. Today, the total is approximately 46,500. Explanation: ‘People moved west,’ said OPS Superintendent John Mackiel. (Some of the westward movement was described at the time as ‘white flight’ to escape mandatory school busing from the Omaha district. The busing program ended some years ago.)”⁹²

Anderson stated that “OPS officials say that socioeconomic problems reflected in OPS' enrollment are problems properly of concern to all residents of the city, who share

⁹⁰ Ibid.

⁹¹ Harold W. Andersen, "Key Facts Strengthen OPS' Case for Expanded City School District," *Omaha World-Herald (NE)*, 2005a.

⁹² Ibid.

the benefits of Omaha's economic, cultural and recreational resources without sharing in the problems associated with educating all of the children within the city.”⁹³

August, 2005: Elkhorn Annexation Ruling Favors the City of Omaha

As the city of Omaha sought to expand its boundaries and prevent itself from being landlocked in any westward expansion, it won an August, 2005 initial effort to make good on the annexation of Elkhorn. “With today's annexation ruling in the City of Omaha's favor, a city that grew out from the Missouri River is in line to take a historic leap west. By taking in the City of Elkhorn, Omaha city limits would touch the Elkhorn River: some 220 blocks from where Omaha first took root 151 years ago. But the ruling, if upheld on appeal, will mean more than changes to the geography of Omaha and the physical layout people envision when they think of the city.”⁹⁴

The annexation also would eventually add Elkhorn to the roster of once-independent cities brought into Omaha's fold. Elkhorn's destiny now is perhaps more as a neighborhood, along the lines of the annexed towns of Millard, Dundee, Florence, Benson and South Omaha according to the Jeff Robb article. According to the *World-Herald*, the ruling was reported not to immediately expand the Omaha city limits to encompass Elkhorn because of a legal appeal.

The annexation would have a major impact on Elkhorn's schools as it would be coupled with the Omaha Public Schools push to take educational control of any land within the Omaha city limits. OPS already wanted to take over some land within the

⁹³ Ibid.

⁹⁴ Jeffrey Robb, "Far-Reaching Changes Loom," *Omaha World-Herald (NE)*, 2005e.

Elkhorn school district. If the city annexation took effect, all but two Elkhorn elementary schools and a middle school would have been subject to the separate takeover plan. OPS used the decision to push its separate case for one city, one school district. After Omaha voted to annex Elkhorn, OPS began its efforts for a unified school district within the Omaha city limits.⁹⁵

The paper reported quotes from districts' respective leaders. "Superintendent John Mackiel said today in a statement: 'Just as the facts and the law support the City of Omaha's position, the facts and the law support the Omaha Public Schools position.' Roger Breed, superintendent of the Elkhorn Public Schools, said the decision could lead to the dismantling of the school district if OPS is successful. 'It would not end the Elkhorn Public Schools,' he said, 'but would certainly set the district back.'"⁹⁶

The context for the city was similar to that of the Omaha Public Schools. Omaha moved to annex Elkhorn because it did not want its westward growth cut off. "With Elkhorn incorporated into Omaha, a town quickly approaching 10,000 people: the point at which it could remain an independent city forever: would go away. No other city in western Douglas County is anywhere close to the 10,000 mark, leaving Omaha to grow wherever it wants in the county. Douglas County District Judge Gerald Moran, in today's opinion, said that is significant. He wrote that Elkhorn's own annexation proposals would

⁹⁵ Ibid.

⁹⁶ Ibid.

have led ‘to devastating consequences for the future not only of the City of Omaha, but for this entire region.’”⁹⁷

The following day (August 20, 2005), the *World-Herald* added to the Elkhorn annexation story. “The stakes increased dramatically Friday for the Elkhorn school district as it tries to fend off a proposed expansion by the Omaha Public Schools. It's an entirely separate battle from the annexation fight between the City of Omaha and the City of Elkhorn. But Friday's court ruling gives the Elkhorn parents and school officials much more to worry about.”⁹⁸

According to the paper, “Here is why: The Omaha school district is staking claim to all school territory (with the exception of District 66) that's inside the Omaha city limits. If Friday's ruling in favor of the City of Omaha's annexation is upheld: and if OPS succeeds in its expansion battle: the Elkhorn school system would lose six school buildings, its district headquarters, thousands of students and millions of dollars in property value.”⁹⁹

As had been reported before, the boundary dispute was already expected to play out in the next legislative session and possibly within the courts. Even before the Omaha city annexation of Elkhorn, the *World-Herald* reported that the Elkhorn school district already had a “significant stake” in the OPS battle. According to the paper, “[Elkhorn]

⁹⁷ Ibid.

⁹⁸ Jeffrey Robb, "Elkhorn Schools Ponder Future - Omaha's Big Legal Win Boosts Anxiety in the District, which is Targeted by OPS," *Omaha World-Herald (NE)*, 2005d.

⁹⁹ Ibid.

has 15 percent of its tax base, or \$345 million in property valuation, within the Omaha city limits. The land is home to 160 students, although no school buildings. But if the OPS effort was successful and the City of Omaha prevailed in the annexation battle, the Elkhorn school district would be left with a small portion of their district intact. And even that remaining portion would eventually be subject to future annexation.”¹⁰⁰

The August 20, 2005 article reported some of the citizen concerns. “As Elkhorn residents smarted over the annexation ruling, they worried Friday about their schools and their kids' education. Ellie Holcombe said she moved to Elkhorn when her children were young because of the school district. She said she doesn't like the prospect of future generations missing out on the education provided by Elkhorn schools. The Elkhorn school district is the community's biggest draw, said Dennis Hawks, owner of the Elkhorn Ace Hardware Store. ‘Having Elkhorn annexed by Omaha would be bad enough,’ Hawks said. ‘But losing Elkhorn's school district to Omaha would be even worse.’”¹⁰¹

August 22, 2005: Raikes’ “Metro Wide System” Reported

“The chairman of the Legislature's Education Committee continued floating his proposal Monday [August 22, 2005] for a compromise in Omaha's ‘one city, one school district’ dispute.”¹⁰² Raikes reportedly met with about two dozen lobbyists from school districts including Omaha, Millard, Ralston and Elkhorn, along with the Nebraska

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Jeffrey Robb, "Raikes Talks about His Plan for OPS," *Omaha World-Herald (NE)*, 2005k.

Association of School Boards and the Nebraska State Education Association teachers union according to the paper.

The paper noted that Raikes proposed a new “metro wide system” to help govern schools along with local school boards. “He said he hopes the districts involved will prioritize what they want the most in a resolution to the dispute. Under his proposal the districts would remain separate and distinct but would be connected through a shared tax base.”¹⁰³

The *World-Herald* attributed some additional thoughts to Sen. Raikes. “While OPS has raised some important issues, Raikes said he doesn't see how its proposal would solve some of the district's problems. OPS, Raikes said, would keep all the students in challenging demographics and might not gain financially. In addition, he said, it would achieve the ‘nonsensical’ outcome of the largest district getting considerably larger with smaller districts getting even smaller. ‘I'm at a loss to see how their proposal is really effective at addressing those issues,’ he said.”¹⁰⁴

OPS lobbyist John Lindsay reportedly said Raikes “did a nice job raising issues of concern to the district. But Lindsay said OPS remained concerned that dividing school districts in the city divides the community. And a larger district, he said, would not necessarily be bad.”¹⁰⁵

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

The article also noted, “Raikes said his proposal wouldn't rule out the possibility of changes to school district boundaries. The new school authority could handle smaller boundary issues between districts, Raikes said. In the future, he said, the new board also might look at a larger shift of boundary lines. But Raikes said that might not happen for 10 years. He said, ‘You cannot move too quickly on those types of things.’”¹⁰⁶

The Opinion Pages Start to Capture Community Sentiment

In an op-ed article published by the *World-Herald* on August 23rd, Ben Thompson, a Millard resident wrote about how the proposed OPS takeover would diminish a “recently revived sense of community in southwest Omaha. The article discussed how Millard had been preserved as a unique community under the structure of a Millard school district. The concern expressed in the article suggested that this strong sense of community was threatened by the proposal. He wrote, “Piecemeal dismantling of any school district is bad public policy. In the case of Millard Public Schools, however, the unification proposal is also a direct threat to a sense of community that has never been stronger since the town of Millard was annexed.” And he went on to advocate that “Indeed, the Millard community's answer to the ‘one city, one school district’ policy could very well be the legislative undoing of Millard's annexation and the restoration of Millard as a separately constituted city. That would be an extreme response, but that's what community is all about: a group of people looking out for each other.”¹⁰⁷

¹⁰⁶ Ibid.

¹⁰⁷ Ben Thompson, "OPS Push Threatens Millard Community," *Omaha World-Herald (NE)*, 2005.

Although undoing the city annexation was not ever seriously considered, the dialog about a definition of “community” would come into play in the eventual title of a “Learning Community” where the intent would seem to be the legislative push to have a “group of districts” engaged in the mutual concerns of a broader educational community.

August 23, 2005: Second meeting of Metro Area Superintendents

A second meeting of metro area superintendents was held on August 23, 2005. The *World-Herald* reported the next day that Governor Dave Heineman had stopped trying to broker a settlement among the five school districts fighting turf wars in Omaha. Heineman and then Speaker of the Legislature Kermit Brashear led a discussion Tuesday [August 23, 2005] with the superintendent of the Omaha Public Schools and superintendents from Millard, Ralston, Elkhorn and Westside. Instead, Heineman and Brashear said that they would meet with individual school districts and talk with state lawmakers in hopes of coming to a legislative solution. Heineman and Brashear both said the discussions and legislative debate next session would occur no matter what might happen in the courts on the issue. Brashear said courts can interpret and enforce the laws but the Legislature has the prerogative to make decisions on the issue. “Education and the statutes that govern it are the province of the Legislature,” Brashear said.¹⁰⁸

Millard Superintendent Keith Lutz emphasized that the meeting did not include talk of OPS's plan or district boundaries. He said his district will participate in the legislative process, as the others have agreed to do. He said he was comfortable with how

¹⁰⁸ Jeffrey Robb and Michaela Saunders, "Omaha Fight may Land in Lincoln - The Governor and a State Senator Say the Legislature should Resolve the School Districts' Boundary Dispute," *Omaha World-Herald (NE)*, 2005b.

Brashear described the legislative process: reaching common ground and then debating in the public arena.¹⁰⁹

The *World-Herald* suggested “The Governor and Legislature stepping in takes the issue beyond where OPS initially hoped to settle the matter.”¹¹⁰ OPS argued that the Legislature's intent already was clear by virtue of an 1891 law and senators' refusal last session to consider rescinding that law. Omaha Superintendent John Mackiel said he is comfortable with the Legislature taking up the issue. He said OPS is willing to participate in a discussion on issues related to ‘one city, one school district.’ But Mackiel said OPS will work hard to protect that principle. He said it would be inappropriate for the Legislature to change that law once OPS asked that it be implemented. “We believe that would be ill-advised,” Mackiel said.¹¹¹

Brashear, whose legislative district includes both the Millard and Omaha school districts, drew several comparisons to Legislative Bill 126. That bill to dismantle elementary-only school districts was passed over Heineman's veto in the 2005 Legislative session. It took several years for that issue to be settled. “I think we all would like to come to a (quick) solution,” Brashear said. “But we have to deal with the reality of the process.”¹¹²

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

Key Lawmakers Say They'll Take on OPS Boundary Dispute

The clear indication was that the Legislature would have to weigh in to the issue but it was less clear exactly how the issue would be addressed. “The next four months are key to deciding if the ‘one city, one school district’ dispute can be resolved in the next legislative session,” the chairman of the Legislature's Education Committee said August 24, 2005 according to a Jeff Robb and Michaela Saunders article. Senator Raikes said the Legislature faced a major task in settling the conflict between the Omaha Public Schools and three suburban school districts subject to an OPS expansion. Raikes said he believed the issue could be resolved, at least in part, in a single session. But productive negotiations leading up to the session, he said, would be important. “A resolution is likely to involve a huge amount of change,” Raikes said.¹¹³

The *World-Herald* reported on August 24, 2005, “Sen. Ernie Chambers, who represents north Omaha, has come out in support of the OPS position and says he will defend the law OPS cites as granting it authority to expand. Senator Rich Pahls, a former Millard principal who represents the Millard area, has said he will protect the suburban districts and look at repealing the law OPS cites. Raikes has been forming his own compromise. His idea involves creating a metrowide education authority to help govern schools. Current school districts and school boards would remain, but all districts would

¹¹³ Michaela Saunders and Jeffrey Robb, "School Battle Heads to Lincoln - Key Lawmakers Say they'll Take on OPS Boundary Dispute," *Omaha World-Herald (NE)*, 2005.

share the same tax base. Heineman and Brashear declined to comment on Raikes' proposal.”¹¹⁴

Omaha Superintendent John Mackiel said the debate in the coming session should not be complicated. OPS had maintained that there were a series of events that demonstrated that the legislature had already decided not to generally support the one city, one school concept. Mackiel and OPS cited the Legislature’s inaction on the repeal of the 1891 law as well as their inaction relative to the effort to limit other city schools ability to move their boundaries with the expansion of the city. They also consistently cited the merger of the elementary districts across the state. “Mackiel said OPS will work hard to protect the ‘one city, one school district’ principle. He said it would be inappropriate for the Legislature to change that law once OPS asked that it be implemented. Said Mackiel, ‘The vision of the Legislature has been in place for decades. . . . It is good policy.’ As the debate shifted to the Legislature, Mackiel wouldn't rule out the possibility of OPS filing a lawsuit. But he said OPS was first committed to a thorough dialogue on the issue.”¹¹⁵

The Other ‘One City, One School’ Conversation

The *World-Herald* reported in late August, “For years, the Bellevue school district has had something extra to worry about when it weighed whether to expand its boundaries.” It seems that Bellevue had to balance requirements of federal impact aid available and their school district boundary expansions. Concerns about serving too

¹¹⁴ Ibid.

¹¹⁵ Ibid.

many civilian children were important as it considered what areas of the city to attempt to include in the district boundaries. “Growth from subdivisions popping up around the suburb added more property to the tax rolls, but it also added more civilian children. And more civilian students could be a threat to the millions of dollars in federal aid that Bellevue gets for educating children whose parents work at Offutt Air Force Base. For that reason, the district refused to educate those in a proposed housing development in late 2003. Within five years, Bellevue school administrators believe that the district could lose a large portion of the aid it receives for educating military children because it now has too many civilian children.”¹¹⁶

The article reported that Federal impact aid makes up more than 22 percent of the Bellevue district's \$77 million budget. The potential loss helps explain why the district, which has been cautious in adding new neighborhoods in the past, was now making a play to take over large swaths of neighboring school districts.¹¹⁷ “Will it be important to stabilize our tax base? Yes,” said Cathy Williams, the spokeswoman for Bellevue Public Schools. At the Bellevue district's current tax levy, those additional areas would generate about \$10.8 million in school property taxes.¹¹⁸

The *World-Herald* also reported, “Federal impact aid should bring in \$12 million for Bellevue this year. The money is given because the district can't collect property taxes

¹¹⁶ Shannon Henson, "Bellevue Aim: Widen Tax Base - the City's Schools are Seeking Ways to Endure a Possible Loss of Aid," *Omaha World-Herald (NE)*, 2005a.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

on military bases or housing. In lieu of those taxes, the district will get \$4 million next year from the federal government because at least 3 percent of its students are military children. Bellevue also is one of 18 districts in the country that is considered a heavily impacted district because at least 35 percent of its students are military children. The designation brings the district an additional \$8 million, which is what is now at risk. In 1970, military children made up 75 percent of students in Bellevue schools. Next year, the district projects that 41 percent of its students will have active duty military parents: down from 43 percent in 2001.”¹¹⁹

The Role of Buildings in the Debate

As the 2005-06 school year was starting, Elkhorn and Ralston were both celebrating new facilities and the *World-Herald* began to report on the “excitement” of new facilities in the beginning of the year with discussions of the context of the OPS annexation plans noted. New facility openings were cause for celebration. “Nearly 300 children from kindergarten through fifth grade started at Fire Ridge, 19660 Farnam St., today. District-wide, Elkhorn welcomed 4,000 students back to school. ‘It’s an exciting day,’ said Superintendent Roger Breed. Officials weren’t concentrated on Omaha’s proposed annexation of Elkhorn or on the Omaha school district’s ‘one city, one school district’ plan.”¹²⁰

¹¹⁹ Ibid.

¹²⁰ Veronica Stickney, "At New School in Elkhorn, it's all about Kids," *Omaha World-Herald (NE)*, 2005a.

Community sentiment about the OPS plan were undertones as the school year kicked off across the metro area. An Elkhorn parent's comments were reported, "She loves Elkhorn schools, she said, and wants Omaha to stay away. But the threat of annexation didn't steal any of today's back-to-school excitement. 'This is about the kids today,' Mattes said. Omaha's proposal 'is in the background somewhere, but it's not on the tips of our tongues.'¹²¹

Ralston residents celebrated a renovated high school building (August 28, 2005) and emphasized its meaning for the future of their public school district. "'Today is a day to celebrate . . . with the knowledge that it will be Ralston Public Schools forever,' Susan Haas Tiehen said during a ribbon-cutting ceremony. Haas is a former president of the Ralston school board. Her statement was greeted with applause from the parents and alumni who had gathered at the school, at 90th Street and Park Drive, for an open house."¹²²

A group of parents reportedly used the event as an opportunity to collect signatures in support of Ralston contrary to the "one city, one school district" plan. "Krista Buechler said the group had collected well over 3,000 signatures since Friday. Gov. Dave Heineman, who attended the dedication with his wife, Sally Ganem, praised the facility. 'This is an investment in the future of your community,' Heineman said."¹²³

Impact on Other Surrounding Districts

¹²¹ Ibid.

¹²² Marion Rhodes, "Ralston Hails High School Renovation," *Omaha World-Herald (NE)*, 2005.

¹²³ Ibid.

Although details were still being sorted out, neighboring districts within Douglas County were considering options including Bennington and Douglas County West. Although both districts were outside of the current Omaha plan, the eventual possibility of annexation led to considering options. Bennington joined a coalition representing the Westside, Ralston, Elkhorn and Millard school districts. Bennington “joined the ranks” of school districts with paid lobbyists to oppose the possibility of losing land to the Omaha Public Schools. “The entire Bennington school district currently remains outside the Omaha city limits, but 90 percent of the district lies within portions of Douglas County that could one day be annexed by Omaha, said Bennington Superintendent Terry Haack. ‘We felt we needed to take a proactive role now rather than defend ourselves after the fact,’ school board member Bill Pulte said.”¹²⁴ Additionally, the paper reported that the Douglas County West Community Schools board discussed joining a consortium to retain a lobbyist. At this point in September of 2005, each school district board meeting seemed to garner discussion about lining up political options.

Governor Says School Boundaries Top Issue for the Upcoming Legislative Session

Nebraska Governor Heineman, speaking to a community meeting of more than 200 parents, students and Millard educational leaders at Millard West High School, said he thought the suburban districts and the Omaha Public Schools could find common ground. But Heineman was reported to say choice in school districts is good for the educational system. He also said he has difficulty understanding why OPS needs to change school boundaries and become a larger district to achieve its goals. “I don't see

¹²⁴ Chris Olson, "Another District Enters OPS Fray," *Omaha World-Herald (NE)*, 2005.

how becoming bigger is necessarily better for children, for parents, for school districts,” he said.¹²⁵

“OPS says it needs wider school boundaries and a broader tax base to bring equitable funding to a district high in minority and impoverished students. A school district that matches the city limits, it says, will unify the community behind the schools. Superintendent John Mackiel has said that OPS is simply following state law in asking for ‘one city, one school district’ and that the next legislative session is a chance for senators to affirm that policy.”¹²⁶

In the same *World-Herald* article, the Governor weighed in on some of the issues. “Heineman said OPS has challenges that need to be addressed, considering the demographics of its students. Changing the state aid formula is one possibility, he said. Some concerns could be addressed through the option enrollment law, he said. Addressing transportation problems, he said, might make it easier for inner-city students to attend school in the suburbs or vice versa. The governor also questioned part of a proposal by State Sen. Ron Raikes of Lincoln, the Education Committee chairman, to create a metro-wide ‘super board’ to help govern finances. Heineman said that would create another layer of bureaucracy.”¹²⁷ The Governor had publically come out in

¹²⁵ Jeffrey Robb, "Governor: School Boundaries Top Issue for 2006 Session," *Omaha World-Herald (NE)*, 2005g.

¹²⁶ Ibid.

¹²⁷ Ibid.

support of suburban school interests and was often publically questioning Senator Raikes' proposal.

Open Meetings Law Questions

There were concerns raised about the protocols and procedures leading up to the “one city, one school” plan. “School officials maintain they are properly using exceptions built into the two statutes that keep certain sensitive information away from the public,” the *World-Herald* reported on September 18th. “I recognize that some of the public felt that this was a surprise,” said Sandra Jensen, president of the school board. “Is it possible we could have articulated it better? Perhaps.”¹²⁸

Prior to June 6th 2005, board members discussed aspects of the takeover plan in three private meetings. The meetings, executive sessions of the Omaha school board, were March 7, March 21 and June 1. It was there that Superintendent John Mackiel and David Pedersen, the school district's lead attorney, told board members about an 1891 statute that they contend allows them to take over certain suburban schools. Mackiel said the “one city, one school district” proposal grew out of talks among school administrators about the City of Omaha's attempt to annex Elkhorn. Mackiel asked the district's lawyers to research how that could affect OPS and the attorneys shared the research with the board.¹²⁹ Regardless of the open meeting requirements, it was obvious the level of concern for the future of school districts in the greater Omaha community was

¹²⁸ Bob Glissmann, "Secrecy was Legal, OPS Says - Although the "One City, One School District" Plan Hit Many by Surprise, Officials Say their Early Discussions Followed Open Meetings Law," *Omaha World-Herald (NE)*, 2005c.

¹²⁹ Ibid.

heightened. Public interest in the impact of the OPS plan and the response from affected school district leaders was prominent.

Late September, 2005: Public Forum Held by Two Superintendents

The *World-Herald* reported that the “one-city, one-school” issue had started to look like a political campaign including a scheduled forum with Superintendent Mackiel from OPS and Superintendent Lutz from Millard. “The school boundary discussion already has generated yard signs, bumper stickers, a petition, fundraisers and fliers.”¹³⁰

During the forum which was reported to be the first combined public appearance of the two superintendents, “Mackiel explained why OPS believes the proposal is in the best educational interest of all children in Omaha. [...] ‘We’re at a crossroads in Omaha,’ Mackiel said. He said the school systems in Detroit, St. Louis and Denver struggle because they have become predominantly poor, suggesting that Omaha would follow the same course if something is not done. ‘We can do better in Omaha,’ he said. ‘We can defy the destiny of every other large city school (system).’”¹³¹

Lutz was reported to counter that “‘bigger is not better’ and that adding children to the Omaha district’s west would not change the concentrated poverty in the east. ‘They have no solution to social justice,’ Lutz said, adding that affordable housing throughout

¹³⁰ Jeffrey Robb, "Forum to Feature 2 Superintendents," *Omaha World-Herald (NE)*, 2005f.

¹³¹ Michaela Saunders, "Omaha, Millard School District Leaders Face Off - Superintendents John Mackiel and Keith Lutz Explain their Districts' Stances on Omaha Public Schools' Proposal to Absorb 25 Schools from Three Districts. - See the Discussion," *Omaha World-Herald (NE)*, 2005e.

the city, job availability, access to health insurance and public transportation all need to be addressed for change to really occur.”¹³²

The paper reported various issues and concerns raised by the attendees including high school athletics and before- and after-school child care. The community disruption was apparent in some of the questions and issues. For instance, a real estate agent said she felt it was important to hear the superintendents because the issue is affecting her profession. While she is able to tell clients moving to the metro area that all of the school districts are good, she said many people have been concerned about how the boundary dispute will affect them. “I tell them, ‘Get online and find out as much information as you can.’” She added that one family specifically sought a home that would be in Millard even if OPS was successful. “This is creating a nebulous situation in my profession,” she said.¹³³

Community level concerns included parents and students who were uncertain about what the impact of the recent events would be. One mother, who had a daughter in ninth grade at Omaha Burke, said she wanted “the facts” on the issue because she wanted to understand what it means for future generations of students in the city. “There are remnants of segregation issues here,” she said. “What does all of this mean for me as a parent? As a business owner?”¹³⁴ The concerns being raised by community members

¹³² Ibid.

¹³³ Michaela Saunders, "Omaha, Millard School District Leaders Face Off - Superintendents John Mackiel and Keith Lutz Explain their Districts' Stances on Omaha Public Schools' Proposal to Absorb 25 Schools from Three Districts. - See the Discussion," *Omaha World-Herald (NE)*, 2005f.

¹³⁴ Ibid.

were often published in the paper and likely indicative of the community concerns across Omaha.

School Buildings and the Laws Dealing with Annexation of Schools

By the end of September, 2005, the question of facilities opened a new chapter in the debate. Questions about the legal ramifications dealing with school buildings in annexations was addressed by the Nebraska Legislature in recent legislative sessions but it became apparent that there was less certainty about how those provisions of law might impact the issue in Omaha. The issue of how school buildings would be handled after a school district expansion was being studied by the Nebraska Department of Education. “State Sen. Ron Raikes of Lincoln, the architect of a new law addressing school buildings, said it applies at least to smaller school districts that expand with their city limits. He said the law is worded broadly enough to raise the question of whether it also applies to expansions by Omaha or Lincoln. ‘Even if it didn’t directly apply,’ Raikes said, ‘the new law sets a sound policy for any expanding school district.’”¹³⁵

Education officials and opponents of the OPS plan were reported to be reviewing a provision in Legislative Bill 126, which passed in the most recent session to consolidated Class I, elementary-only districts. That section read: “If, within the boundaries of the annexed territory, there exists a school building, facilities, or land owned by any class of school district, the school building, facilities, or land shall remain

¹³⁵ Jeffrey Robb, "OPS may Win Fight but Not School Buildings - does it Or Doesn't it Apply?" *Omaha World-Herald (NE)*, 2005i.

a part of the school district owning the school building, facilities, or land prior to the annexation.”¹³⁶

According to a *World-Herald* report, Raikes said the policy was put in place so that districts that built and financed schools do not simply hand them over after annexation. The law protected Grand Island Northwest from losing its high school to Grand Island Public Schools, even though the Grand Island city limits and school boundaries surround the Northwest facility. “‘As part of an annexation,’ Raikes said, ‘that seems like maybe reaching too far.’ The provision is in a section dealing with Class 3 school districts, which include districts such as Grand Island or Gretna. That could limit its application. But Raikes said it could be interpreted to apply in Omaha. ‘I think it does bring it into question,’ he said.”¹³⁷

According to the *World-Herald*, Pedersen, the OPS attorney, disagreed. He said Omaha was not governed by the section of the statute involved. “It doesn't affect this question at all,” he said. “It's simply a misreading of the law on their part.”¹³⁸ The issue of facilities ownership or transfer would have a substantial impact on the proposed plan and the ability of OPS to carry out the proposed takeover.

“Millard, for instance, argued that it would face overcrowding because it would still have half its students but lose two-thirds of its buildings. Instead, it could have half its students and all its buildings. The district then would be wide open to taking students

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

from other districts through option enrollment. In fact, the very students shifted to OPS could go back to school right where they were before.”¹³⁹

Ralston Superintendent Virginia Moon addressed the uncertainty about buildings as well. She said, “That would be a huge problem, I would think, for the district that annexes the land, because they don't have any place for students to go.”¹⁴⁰ The *World-Herald* article postulated, “If that happened, the suburban districts could lease or sell the buildings to OPS. To foot the bill for buying the schools, Omaha might have to come up with money approaching its historic \$254 million bond issue.”¹⁴¹

Senator Ron Raikes was reported to say the new law might impede the Omaha Public Schools efforts to take over buildings and also their ability to provide educational environments for students that would reside in the Omaha city limits. However, OPS officials continued to disagree with that assertion.¹⁴² Regardless, the building issue would play a major role in the discussion of the “one city, one school” debate and eventual learning community policy.

Late September, 2005: Districts Gear Up For a Political Fight

The *World-Herald* reported on the efforts of districts to prepare and posture for the political fight in the Legislature. “The Ralston school board zeroed in Monday night on the January 4th start of the legislative session. ‘We've already started thinking about...

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

those things we could support and those we couldn't,' Superintendent Virginia Moon told the board. 'We do that every year. But this one we're going to have to be on our toes all the way through.'”¹⁴³

Although the Ralston board was concerned with action related to the Omaha Public Schools' annexation proposal, board President Linda Richards said, “They'll spend a lot of time looking at a multitude of issues. This will not be the only issue.”¹⁴⁴ Ralston had been projected to lose four schools if Omaha was successful. Richards, a former legislative staff member, reportedly gave an overview of the legislative process.¹⁴⁵ Doug Lewis, an assistant superintendent who also worked as a lobbyist for the district also reported on legislative happenings and recommended that the board be attentive. “We will be engaged,” Richards said. “As board members we will be called upon to testify and to be a resource.”¹⁴⁶

October, 2005: The Local Ramifications Become Clearer

The community debate continued into the fall and the ramifications of a successful “one city, one school” effort as proposed was certain to be complex. The *World-Herald* printed an article on Sunday October 2, 2005 titled, “*Districts could face 'a globbed-up mess' if OPS wins - What if Omaha completes its 'one city, one school district' plan?*” The paper reported, “On one side, suburban school leaders say the OPS

¹⁴³ Michaela Saunders, "Ralston Prepares for Legislature," *Omaha World-Herald (NE)*, 2005i.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

plan would ‘dismantle’ their districts, leaving a ‘wreckage’ behind. On the other, OPS promises a ‘smooth’ transition, one ‘without any disruption.’ The truth is this: The suburban districts would face significant, if not unprecedented, challenges should OPS pull off its plan. In the short term, the districts’ enrollment and attendance plans would be shaken up. School boards would be stripped of experience. Long term, the questions also are difficult. If Omaha school boundaries continue expanding as the City of Omaha grows, suburban parents and students would face annual uncertainty over whether they would wind up in OPS. Over time, the Millard and Elkhorn tax base, schools and students would be slowly taken away.”¹⁴⁷

John Bonaiuto, executive director of the Nebraska Association of School Boards, was reported to say that the [suburban] districts ultimately would be forced into a merger. “Those are the discussions that are happening in small districts across our state,” he said. “At what point do we say we can't do justice to what we are charged to be doing?”¹⁴⁸ Bonaiuto, was referring to the debate on rural school mergers and the likelihood that districts affected by the annexation would be left to question their sustainability.

Omaha Superintendent John Mackiel acknowledged the potential for problems resulting from the proposed change. But he said OPS had recent experience handling a large transition by carrying 30 buildings, their students and staff through a \$254 million

¹⁴⁷ Jeffrey Robb, "Districts could Face 'a Globbed-Up Mess' if OPS Wins - What if Omaha Completes its "One City, One School District" Plan?" *Omaha World-Herald (NE)*, 2005b.

¹⁴⁸ Ibid.

slate of construction projects.¹⁴⁹ Mackiel said any transition issues could be worked out through discussion and cooperation between OPS and the three other districts. He also was reported to add a new “twist” saying that any issues could be resolved by merging the districts entirely into OPS. “No child, no community should be negatively impacted,” he said, “as a result of what is intended to be very positive.”¹⁵⁰

Despite months of debate over the OPS proposal, major questions continued to be unanswered. The implementation of the plan would require teachers would transfer to OPS or perhaps even have to apply for jobs. The suburban districts would be forced to reduce staff and make dramatic changes. Staffing questions remained and the uncertainty of the situation for districts was rampant.¹⁵¹

The *World-Herald* asked “But will the school buildings transfer at all? The districts and some state educational leaders question the OPS position that the buildings become OPS property. How that issue resolves would determine the whole enrollment picture.”¹⁵² The uncertainty about who would “own” the buildings and the possibility of a district having students without sufficient buildings was a significant issue. This sparked several “what if” conversations and raised significant policy and practical questions about the resolution of any annexation plans.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

The *World-Herald* suggested, “If the suburban districts keep the buildings, Omaha would gain about 13,000 students but no new space to accommodate them. The suburban districts would have extra space to offer to OPS or to use themselves, perhaps even to take back students through option enrollment that they lost to Omaha. If the buildings go to OPS, which Omaha argues should happen, Millard and Elkhorn would be over capacity, with Millard left to find space for 3,800 students.”¹⁵³

School Board Members Impacted in the Annexation Plan

The possibility of the annexation would have impacted the make-up of local school district boards. If the boundaries shifted, board members would likely find themselves in a new school district and ineligible to continue to serve their “home” district. The *World-Herald* noted, “Among the three suburban districts, nine school board members live in areas OPS would take over. Millard stands to lose four of six members. If OPS expands over the City of Elkhorn's territory because of Omaha annexation, the Elkhorn school board would lose three of six members. If the boundaries change all at once, the Millard and Elkhorn boards couldn't function.”¹⁵⁴

To suburban school leaders, the potential problems and unanswered questions demonstrated that what Omaha wanted was not what state law intended. “It's really a globbed-up mess,” Millard Superintendent Keith Lutz said.¹⁵⁵ But Mackiel said state law already permits communication between the districts to arrive at a plan. To deal with

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

enrollment issues, for instance, students in the remaining districts could attend schools switched to OPS, he said. Mackiel said, “I’m confident the tools are in place. What is simply required are the individuals charged with carrying that process out coming together.”¹⁵⁶

The *World-Herald* continued to detail building, finance, governance, and practical concerns with the implementation of the “one city, one school” plan as proposed by OPS. John Mackiel had already offered that all of the districts could simply merge together to resolve the concerns about future growth and uncertainty. However, “Lutz said people are unlikely to buy into the idea of a mega-school district. Around the country, he said, most districts that large have big problems. But Lutz acknowledges that Millard would face an uncertain future. He told a recent forum, ‘It would be like a painful death from a slow cancer.’”¹⁵⁷

Community Questions

Concerns about mandatory busing started to surface similar to such plans formerly in place in OPS. In early October, 2005, the community was beginning to ask whether forced busing would be part of the plan. The Omaha Public Schools said definitively that no child would be forced to ride a bus to a school several miles from home in a citywide school district.¹⁵⁸ “Under OPS’s ‘one city, one school district’ plan,

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Michaela Saunders, “No Forced Busing Planned, OPS Says,” *Omaha World-Herald (NE)*, 2005d.

students, no matter where they live in the district, would be able to attend their neighborhood school or pick from as many as seven other schools including those with magnet programs, OPS officials said. The only children riding a bus would do so voluntarily.”¹⁵⁹

“We don't have a busing plan anymore,” said board member Fritz Stanek, with some frustration in his voice according to the *World-Herald* article.¹⁶⁰ Stanek explained that mandatory busing in the district ended in 1999. That federally mandated desegregation plan was replaced by a voluntary integration plan, which established geographic attendance zones that students can choose within.¹⁶¹

OPS attorney Elizabeth Eynon-Kokrda said the voluntary integration plan is working, increasing diversity in schools across the district. She told the board that she was confident the plan would work just as well if the Omaha district expanded to include parts of the Millard, Ralston and Elkhorn districts. She also recognized that it will take time, but said that “once people get more comfortable with it, they do take advantage of those choices.”¹⁶² OPS board member Penny Sophir said one additional benefit of the voluntary integration plan was that transportation was provided. Sophir said that eliminates challenges faced by some families, including work schedules and the cost of a

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

vehicle.¹⁶³

OPS Forwards Abusive Letters and E-mails to Police

Omaha Public Schools officials were reported to be receiving threatening letters. One such letter was reported to be forwarded to police. The letter containing violent and racist language was sent to Superintendent John Mackiel. The anonymous letter arrived at OPS administrative headquarters Wednesday, October 5th, 2005 and was reported as the “most recent and most extreme” of several letters and e-mails that school district officials had received and forwarded to police since Omaha announced its plan in June¹⁶⁴

The school district did not submit the most recent letter or the others as crimes, but wanted police to be aware of them, OPS officials reported. Police were monitoring the escalating situation and increasingly divisive issue. “Police had posted an officer at the OPS administration building in June after hostile telephone calls and e-mails to school district officials. According to the October 6, 2005 police statement, Chief (Thomas) Warren reviewed (in June) some of the correspondence that OPS had been receiving, which expressed opposition to the plan and contained some vague threats. At that point, it was determined that the correspondence didn't rise to a level of concern that there was an imminent threat.”¹⁶⁵ The level of public angst and concern was evident in

¹⁶³ Ibid.

¹⁶⁴ Chris Burbach, "OPS Forwards Abusive Letters, E-Mails to Police," *Omaha World-Herald (NE)*, 2005c.

¹⁶⁵ Ibid.

the somewhat desperate animosity expressed in hostile messages and public rancor at the time.

October 18, 2005: OPS and Millard Stake Political Ground

The *World-Herald* reported that with a new legislative session coming in January, both the Millard and Omaha Public Schools boards staked out their legislative agendas during their October Board meetings; OPS in favor of expanding its boundaries into the suburbs and the Millard Public Schools in favor of its continued independence. OPS directed its lobbyists to oppose repeal of the statutes that it contended would authorize one school district within the Omaha city limits. The OPS lead attorney, David Pedersen, told the board in October that ‘if nothing changes in this session, the Legislature will have reasserted the validity of ‘one city, one school district.’ He also said two actions in the last session including one to prevent the Grand Island Public Schools from being landlocked and another to eliminate the statute that OPS cited in its citywide school district effort were contradictory and this session would be key in interpreting legislative intent. “What we are seeking is clarity by the Legislature,” Pedersen said.¹⁶⁶

Millard officially took a position against consolidation of metro area school districts since 2003. During their October 17, 2005 board meeting the Millard board approved a position that any legislation on the issue should ‘clarify and support’ the right of districts neighboring OPS to remain independent. In addition, the board said districts should lose that independence only after approval from the school boards and residents in

¹⁶⁶ Michaela Saunders and Jeffrey Robb, "Two districts set legislative plans - The OPS and Millard boards solidify their positions in their boundary dispute," *Omaha World-Herald (NE)* 2005, p. 02.

each affected district. Angelo Passarelli, the director of administrative affairs for Millard, said the district was developing its legislative strategy for the session. “We don't know what their strategy is going to be,” Passarelli said. “We have to be prepared for just about anything.”¹⁶⁷ The *World-Herald* reported, “The legislative debate is expected to involve a gamut of proposals, from supporting an OPS expansion to preserving the Millard, Ralston and Elkhorn districts. State Sen. Ron Raikes of Lincoln, the Education Committee chairman, plans to introduce a compromise plan to maintain the suburban districts but address some of OPS's concerns.”¹⁶⁸

The Community Discourse Begins to Turn to “Race”

Although it had been an undertone of the community conversations in Omaha, the public discourse increasingly became overtly about race and racial separation between OPS and suburban districts. “Residents and supporters of the city's suburban districts should attend three remaining public forums on Omaha Public Schools' ‘one city, one school district’ plan so a conversation on real issues can begin, an OPS supporter said Tuesday. Ben Gray, co-chairman of the district's African American Achievement Council, spoke to a group of about 50 people gathered at Lewis and Clark Middle School in central Omaha for the first of four forums district supporters are hosting.”¹⁶⁹

¹⁶⁷ Michaela Saunders and Jeffrey Robb, “Two Districts Set Legislative Plans - the OPS and Millard Boards Solidify their Positions in their Boundary Dispute,” *Omaha World-Herald (NE)*, 2005b.

¹⁶⁸ Ibid.

¹⁶⁹ Michaela Saunders, “Spotlight on Race at Forum on OPS Plan,” *Omaha World-Herald (NE)*, 2005j.

“This is almost surely about race and class. And about white privilege,” Gray was reported to say to the gathering and was reported to receive applause in response. Gray reportedly gave a short history of federal programs that he linked to the state of race relations in America, and in Omaha. Gray introduced Superintendent John Mackiel to speak to the group and also provided some details of the events leading up to the “one city, one school” board proposal. Gray was reported to say that the issues are difficult to discuss. “I don't think anybody's ready for the kind of conversation I want to have,” he said. “But we're going to have it anyway.”¹⁷⁰

Community Forum at the End of October, 2005

Community input and awareness were high across the district. The questions asked at an October 27, 2005 forum “proved that the crowd was already well-schooled on the ‘one city, one school district’ issue. How will new textbooks be paid for? What will happen to special programs and teaching strategies in place in the other districts? Don't existing laws provide alternatives?” “Regardless of your position, you care enough to be here,” Omaha Public Schools Superintendent John Mackiel said to the roughly 80 people reported to be gathered at Burke High School in the western part of the district, and only a few blocks from the Millard district line.¹⁷¹

The audience, including school district staff from across the city, was reported to have “a clear stance on the issue before the forum began.” The paper reported that some

¹⁷⁰ Ibid.

¹⁷¹ Michaela Saunders, "Prepared Audience Turns Out for OPS Forum - People on all Sides of the Debate Ask District Officials about the Takeover Plan," *Omaha World-Herald (NE)*, 2005h.

were trying to keep an open mind. “One such 76 year-old grandfather who lived in the OPS district and had grandchildren in parochial schools, said it's important that Omaha's schools don't become like those in Kansas City, which he described as performing poorly. Interestingly, until the forum, this gentleman said he had not heard of race as a large factor in the local issue. This particular forum was sponsored in part by the district's African-American Achievement Council. Its co-chairman, Ben Gray, told the crowd how ‘race, class and white privilege’ are part of what created OPS's current position.”¹⁷²

The Michaela Saunders article also pointed to a specific parent who was concerned about the debate turning to race. This parent, who had two children attending Burke, said he supported a citywide school system, but was offended at the claim that race was the root of the problem. “I take great offense to somebody calling this a racial issue,” said Tim McDermott, a former president of an OPS parent group. “It's about economics and opportunity.”¹⁷³ The paper reported “McDermott, whose adopted oldest son is black, said ‘the district should be embarrassed’ that race is being used to market the issue. ‘Segregation in this town is [a] geographical fact, and the school district cannot change that.’”¹⁷⁴

The *World-Herald* began to point to “racial divide” as a focal point of the debate. On Sunday, October 30th, the paper highlighted two schools in OPS that they suggested represented a “stark” picture of a racial divide in metropolitan schools that was reported

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

to be “at the heart of the controversy” over the “one city, one school district” effort. The paper reported, “It is undeniable, and it is as plain as black and white. Fifty years after *Brown v. Board of Education*, three decades after the federal government forced OPS to stop segregating its schools, metropolitan Omaha schools remain segregated. They are more segregated, in some ways, than they were 10 years ago.”¹⁷⁵

According to the *World-Herald*, like in many American cities, Omaha's schools have grown more segregated, both within the main urban district and between the main urban district and the suburbs. “OPS Superintendent John Mackiel sees the trend as a major problem for his district, and said that is one of the main reasons it needs to take over suburban schools, property and students. He proposes to fix the problem with more voluntary integration.”¹⁷⁶ The suburban districts were reported to be working on their own plans which would rely on voluntary decisions by parents. But according to the article, “the facts show that voluntary integration leaves thousands of black, white and brown children in segregated schools.”¹⁷⁷

The Advent of the Suburban Alternative Plan

As reported on in the 2005 Halloween edition of the *World-Herald*, suburban Omaha school superintendents were working on a plan to preserve their district boundaries but enroll a bigger share of the community's low-income and minority

¹⁷⁵ Chris Burbach, "Metro Schools Still Split by Racial Divide - But OPS Officials Say their Voluntary Measures are Working. - School by School in OPS - Douglas, Sarpy Districts - in OPS Elementary Schools. ." *Omaha World-Herald (NE)*, 2005b.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

students. It will be their alternative to the “one city, one school district” proposal from the Omaha Public Schools. The OPS plan would move large sections of the Millard, Ralston and Elkhorn districts into OPS. The alternative would build on the state’s option enrollment law, which allows Nebraska students to attend other school districts.¹⁷⁸ Parts of the plan were reported to have been mentioned favorably by Governor Heineman and by Senator Raikes. However, neither Heineman nor Raikes had endorsed the plan according to the World-Herald.¹⁷⁹

Suburban school officials said there was no need to dismantle the school district structure of the metropolitan area. “Option is part of the solution,” said Ken Bird, superintendent of Westside Community Schools, which have joined the targeted districts in opposing OPS. “The existing law allows movement.”¹⁸⁰ The state’s option enrollment law, passed in 1989, allowed any Nebraska student to attend school in any district as long as there is space and the student can get to school.

The suburban superintendents reportedly traveled to other cities to see how urban and suburban school districts work together on integration. The paper reported that in Minnesota, the state pays for low-income children to take buses from their neighborhoods in Minneapolis to ten suburbs and participation is voluntary. Similar programs were explored in Milwaukee, Hartford, Connecticut and other urban districts around the

¹⁷⁸ Michaela Saunders, "Suburbs Get in Integration Mix - Districts See Option Enrollment as Alternative to OPS Plan - Lunch Subsidies," *Omaha World-Herald (NE)*, 2005k.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

country.¹⁸¹ Mackiel of OPS generally dismissed those approaches suggesting they only intensify problems for the children left in inner-city schools. A one-way movement of students, from OPS to the suburbs, amounts to abandoning the urban district. “Those are all artificial efforts, and they ultimately allow avoidance of the real issues,” Mackiel said.¹⁸²

The *World-Herald* suggested “option enrollment is available only on paper to many low-income Omaha families that might be served by the suburban districts’ proposals. State law says families that qualify for free school meals are to be compensated for transporting students more than three miles from home across district lines. But the state has not funded that over the past three years.”¹⁸³ Westside was reported to have been reimbursing for student transportation costs even without state support while Ralston and Millard were not. However, the existing option enrollment and transportation funding provisions became a focal point for the suburban integration plans.

Heineman, who supports the suburban districts against OPS, said transportation funding “ought to be on the table.” He reportedly said he has had “very broad discussions” with the suburban superintendents and state senators about option enrollment. While helping with transportation would give low-income families that

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

option, the suburban districts say recruitment would ensure that families know they have options. The word could be spread by community groups or through mailings.¹⁸⁴

Bird, the Westside superintendent, said he would seek a district commitment to “opt in” more low-income students, increasing the portion from 19% to 30% in the next few years. Three out of four Westside option students live in the Omaha district. “We’re going to do this on our own,” Bird said. Moon said any effective plan would have to include the Elkhorn district, which does not have room for option students, as well as the western schools in the Millard district, which also are too full to accept extra children.¹⁸⁵

Another proposed way to foster integration was to build new schools that are shared by multiple districts. Similar to OPS magnet schools, such interdistrict schools could customize curriculum to attract students from across the metropolitan area. Raikes said interdistrict schools could “greatly enhance the educational opportunities available to metro area students.”¹⁸⁶

Mackiel said that under the OPS plan, all children would have the choice of existing magnet programs based on the current OPS student assignment plan. He said those options would be expanded when the district expanded. Students would receive transportation to those schools. Interdistrict schools would only create another layer of bureaucracy and financial burden according to Mackiel.¹⁸⁷

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

Although the suburban superintendents acknowledged that their ideas amount to a short-term solution, long-term solutions they suggested were not even school-based. Changes in housing patterns were needed to integrate neighborhoods, which in turn would change the makeup of neighborhood-based schools. “Once a neighborhood forms and you have neighborhood schools,” Raikes said, “the student population is determined by the population who live around that school.”¹⁸⁸

November, 2005

Sarpy County District Judge William Zastera issued a temporary injunction against the Bellevue district in the fall of 2005 after an ongoing dispute over boundaries. The Judge ruled to enforce a prohibition against the Bellevue district from “actively engaging” in activities to overturn or change a 1983 agreement establishing the districts’ boundaries.¹⁸⁹ The ruling did not prohibit the Legislature from taking up the issue. Senator Raikes was cited in an account to say he hoped any legislative solution would address the one city, one school district issue for the entire metropolitan area, including Bellevue and Papillion.¹⁹⁰

World-Herald Highlights the National Context of Racial Separation

The *Omaha World-Herald* highlighted the Omaha issue in terms of racial separation in an article published on November 1, 2005. “A half-century after a

¹⁸⁸ Ibid.

¹⁸⁹ Shannon Henson, "Ruling is a Blow to Bellevue - an Injunction Prevents the School District from Lobbying the Legislature in its Boundary Dispute with Papillion-La Vista," *Omaha World-Herald (NE)*, 2005d.

¹⁹⁰ Ibid.

landmark victory for civil rights and against segregated schools, racial separation is slipping back into classrooms across the country,” the article claimed.¹⁹¹ The “busing” era which had dominated the method backed by the courts to address racial segregation across the country, including in Omaha, was moving to a “choice” driven approach to integration. “For a generation of students in Omaha and other large cities, the U.S. Supreme Court's *Brown v. Board of Education* decision meant classrooms of color, if not a daily bus ride across town. But today, courts and school districts have stepped back from *Brown* in favor of broader choice for parents as to where children attend school. Omaha joins big city districts in the trend, stressing parental choice and struggling with integration. Across the country, the trend raises questions about how much value school leaders place on desegregation.”¹⁹² “If you leave people to their own devices, then things can turn out badly,” said Richard Kahlenberg, who studied integration issues for the Century Foundation, a public policy research group. “Integration is something you have to work hard to achieve. It's not going to happen automatically.”¹⁹³ The *World-Herald* reported that “Today, one trend, at play in Omaha, is toward neighborhood schools, which tend to create homogeneous classrooms if the neighborhoods aren't integrated. Magnet schools, which Omaha also uses, are widely employed by school districts, but aren't always a lure to white, middle-class families.”

¹⁹¹ Jeffrey Robb, "Dreams Fading for Integration - Schools Haven't Figured Out how to Stop Racial Segregation from Returning. - By the Numbers - Desegregation Rulings," *Omaha World-Herald (NE)*, 2005c.

¹⁹² Ibid.

¹⁹³ Ibid.

The article continued, “Another trend in integration is more about breaking up concentrations of poverty than racial divisions. Some districts, including Omaha, have turned to socioeconomic integration: assigning students according to family income: to change the makeup of their schools and address low test scores in the inner city.”¹⁹⁴

Omaha did not necessarily think it had made considerable progress and admitted concerns even with their own efforts. “Omaha Superintendent John Mackiel acknowledges shortcomings in his own district's level of integration, six years after it ended forced racial busing in favor of parental choice. In OPS, one of every four black elementary school students last school year attended schools with 90 percent minority enrollment. Ten years ago, when forced busing was in effect, no black OPS elementary students were in such segregated schools.”¹⁹⁵

Jonathan Kozol, an author who was scheduled to speak to groups in Omaha on the first Friday of November, 2005 said segregation had returned to the United States’ public schools “with a dramatic sweep and vengeance,” according to the *World-Herald*. In the last 15 years, Kozol said, the *Brown* decision has been dismantled. “We have to rebuild the entire movement, the political movement, the national will to resurrect the dream that's been ripped apart,” said Kozol, author of the then recently released “The Shame of the Nation: The Restoration of Apartheid Schooling in America.”¹⁹⁶

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

The *World-Herald* article reported that although the *Brown* decision came down in 1954, the first court-ordered busing plan did not come down until 1971. By the 1990s, courts said school districts had addressed past discrimination and allowed them to halt busing. That was reported as a welcome change to many parents and communities, who disagreed with kids being transported across town to achieve racial balance. Because it was stated in the *World-Herald*, it was at least implicitly true in the Omaha experience. In many communities, busing led to white flight from cities and to strife, even violence according to the report.¹⁹⁷

“Today, legal uncertainty surrounds the use of race in student assignment plans. Since that ruling, three federal appeals courts have decided that school districts could consider race as one part of their student assignment plans. The issue might end up being decided at the Supreme Court. ‘It’s unresolved right now,’ said Gary Orfield, director of Harvard’s Civil Rights Project. In general, today’s student assignment plans focus on broader parental choice of children’s schools.”¹⁹⁸ The newspaper accounts of the time were suggesting that the motives behind the OPS move were in this broader national context.

The news accounts suggested Omaha reflected the national issue of segregation among school districts in a single metropolitan area. “In the busing era, the Supreme Court kept desegregation plans within main city districts in all but a few cases. But some districts, such as Minneapolis, now operate voluntary interdistrict transfer programs,

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

similar to a formalized application of Nebraska's option enrollment law. The coalition of suburban districts fighting OPS says a transfer program is the solution to the dispute.”¹⁹⁹

Prominent national figures on race and integration weighed in on Omaha at least through the *World-Herald* accounts. Author Jonathon Kozol, said he believed merging urban and suburban districts is the best option, which a court ordered with Louisville and Jefferson County. Gary Orfield, of the Harvard Civil Rights Project, warned that the more districts rely on voluntary participation, the more “skillfully” they need to recruit students and create better, more attractive programs. He suggested absent programs that incentivized such voluntary movement, busing and other measures might be necessary. “If you don’t do anything about this problem, you’re just betting on something that has never worked,” Orfield reportedly said.²⁰⁰

On Friday, November 4, 2005 further attention was cast on the undertones and overt concerns about racial segregation in Omaha. Author Jonathan Kozol addressed two separate groups during the course of the day as part of his tour promoting his book, “The Shame of the Nation, The Restoration of Apartheid Schooling in America.”²⁰¹ Kozol said, artificially created school district boundaries impede racial integration. The author was invited to speak as part of the OPS effort and said he has “witnessed the final stage of segregation” in districts across the country, where white children are rarely seen

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Chris Burbach, Michaela Saunders, and Jeffrey Robb, "Author: Seize the Chance to Prevent Resegregation," *Omaha World-Herald (NE)*, 2005.

in inner-city schools. “You have a wonderful opportunity to make sure that never happens here in Omaha,” he said. He was reported to “express amazement” that cities such as Dallas, Indianapolis and Omaha have multiple school districts.²⁰²

Responding to the Omaha suburban school plan for transfer programs between districts would be a solution to Omaha's school dispute. “Those kinds of programs are better than none,” Kozol reportedly said, but he added, transfer programs are “inherently fragile, subject to the whims of legislators and public opinion.” Kozol suggested the only “guaranteed solution” was to tear down district boundaries within a metropolitan area.²⁰³

Kozol cited Louisville and Jefferson County, Kentucky where a court merged the city and suburban school districts which were reported to have sustained integration after leaving court control. “Omaha, like Louisville, can be ‘a light of hope unto other cities in this nation,’ Kozol said. But continuing on the current path, he said, ‘dooms a central city district to being a place of last resort.’ [He added], ‘It may not come for a while, but if that's the road you go [...] school conditions like those in New York, California, Illinois and Michigan are the end result. In New York, he said, seven of every eight black children attend a segregated school.’”²⁰⁴

The Role of Public Opinion

The newspaper accounts started to identify efforts to sway public opinion by both OPS and the suburban districts. Even minor details were “news” items including

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

coverage of various meetings, debates, and public opinion polls used as an effort to get word out about the “one city, one school district” plan. Additionally, the reports of polls were “testing the water” on various proposed solutions or elements of plans yet to surface and public meetings that were designed with a message in mind. The *World-Herald* reported that the suburban districts released a poll that suggested alternatives to the OPS plan were preferable to the community at large. Among the issues was the possible place for interdistrict transfer programs allowing students... especially poverty students from OPS to transfer to suburban districts. The suburban districts bolstered their proposed efforts by citing representatives from the Minneapolis area to highlight their voluntary socio-economic integration effort.²⁰⁵

Millard Superintendent Keith Lutz pointed to the suburban coalition's poll results indicating support for option enrollment. “We're just glad the community is agreeing with our stance that we're on the right path,” he said.²⁰⁶ Sandra Jensen, president of the Omaha school board, said the wording of some poll questions was “skewed.” She suggested the community couldn’t solve the issue based on a “popularity contest.” “They can continue to buy their polls, but numbers don't put a face on the children we serve,” she said.²⁰⁷

²⁰⁵ Jeffrey Robb and Michaela Saunders, “New Salvo Fired in Fight Over Schools – OPS Foes Wield Poll, Minneapolis Opinions – Opinions of OPS Plan,” *Omaha World-Herald* (NE), 2005b.

²⁰⁶ Ibid.

²⁰⁷ Jeffrey Robb and Michaela Saunders, “Counterproposal to OPS Jelling - Opinions of OPS Plan,” *Omaha World-Herald* (NE), 2005a.

Officials from the Millard, Ralston, Elkhorn and Westside districts also hosted two school officials from suburban Minneapolis who talked about their metro area's interdistrict transfer program. Ten suburban districts accept students from the Minneapolis Public Schools.²⁰⁸ The Omaha suburban districts suggested Nebraska's option enrollment law could be tweaked to increase the number of low-income OPS students attending school in the suburban districts. The suburban districts released poll results on the day that school officials met with Minnesota school officials. One Minnesota superintendent said in an interview that he did not come to Omaha to “sell” Minneapolis’ transfer program. Another Minnesota official said what is good for the core city of Minneapolis is good for the metro area, so the suburban communities work to ensure that the city remains healthy.²⁰⁹

November 9, 2005: Nebraska Department of Education Weighs In

The Nebraska Department of Education stepped into the Omaha schools dispute on Wednesday, November 9th offering a “just-the-facts” approach to the heated issue by issuing a paper that included scenarios including state aid, tax base, enrollment and demographics. According to the November 9, 2005, *World-Herald* article, “The conclusions break no new ground on the issues surrounding the Omaha Public Schools’

²⁰⁸ Jeffrey Robb and Michaela Saunders, “New Salvo Fired in Fight Over Schools – OPS Foes Wield Poll, Minneapolis Opinions – Opinions of OPS Plan,” *Omaha World-Herald (NE)*, 2005b.

²⁰⁹ Ibid.

push for expanded territory. The department said the 31-page report was meant to provide facts for the ongoing debate.”²¹⁰

The *World-Herald* also noted that since the dispute flared in June, the department, State Board of Education and Education Commissioner Doug Christensen have said little about the debate and taken no sides.²¹¹ According to the *World-Herald*, the Department of Education report “offered one indisputable conclusion: OPS stands to grow in tax base, state aid and students. If OPS were to shift boundaries to match today's Omaha city limits, the district would go from 46,549 to 63,110 students, based on last school year's enrollment. [The scenario considers] OPS taking in Westside, [which is] something not proposed now, and dropping its territory in Sarpy County. Under that scenario, the OPS property valuation would grow 49 percent to \$23.3 billion. The report also concludes that OPS's annual state aid could grow to \$158.6 million, assuming Westside in and Bellevue out.”²¹²

The *World-Herald* offered some criticisms of the NDE report. “While the total state aid grows, the report doesn't consider the per-student allocation for OPS. When that is done, the per pupil aid for OPS would drop from \$2,930 to \$2,513.”²¹³ It added, “The report doesn't fully detail the revenue gains from an expanded property tax base. Nor does it consider the prospect of a wider OPS expansion into Elkhorn if the City of

²¹⁰ Jeffrey Robb, "State Offers Facts on School Issue," *Omaha World-Herald (NE)*, 2005l.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

Omaha's annexation of the community goes through. In October, *The World-Herald* analyzed the numbers further and concluded that OPS probably would lose funding per student, when both state and local revenue are included.”²¹⁴

Dennis Pool, Omaha's assistant superintendent of general administration, said the report reflected “a more even financial support system” that OPS would gain from its “one city, one school district” plan. “This is to support the educational structure of our city, to make sure all kids have the opportunity for a quality education across the districts,” said Pool, who was reportedly pleased the Education Department did the analysis.²¹⁵

The *World-Herald* reported “[in] Millard, officials saw shortcomings in the report. John Crawford, executive director of planning and evaluation, said the bottom line conclusion that total OPS state aid dollars would rise is an obvious one and doesn't recognize the drop in state aid per student. ‘Of course your dollars are going to go up,’ he said. ‘They can't help but go up.’”²¹⁶

Funding Raises Up as Another Substantial Issue

As had been the case throughout the fall of 2005, opportunities for community input for both OPS and suburban districts were hosted by community groups. On November 8, 2005 “[m]ore than 100 Omaha-area residents gathered at First United Methodist Church at 70th and Cass Streets, where officials from both sides of the school

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

debate sat at the same table publicly for the first time in five months” in an event hosted by the League of Women Voters of Greater Omaha.²¹⁷ An article reported that school officials were in agreement that there was an opportunity amid the rancor of the boundary dispute. OPS Superintendent John Mackiel was quoted to say that the city was at a crossroads and presented with an opportunity to “change its destiny” and Ralston Superintendent Virginia Moon was quoted to say, “We have an opportunity to do some things that we wouldn't have if we weren't talking about it. For that, we have to thank OPS, I think... We shouldn't squander this opportunity to present a unified front for the students in our metro area to the Legislature.”²¹⁸

At the same meeting, issues of school finance were raised including the sources of those funds. Omaha had received “generous” support from private sources and other districts benefited from federal impact aid. That was highlighted in the context of the *World-Herald* article the next day. Additionally, the issue of “consolidation” was also a topic at the meeting. Kay Wise, president of the League of Women Voters, was quoted, “Consolidation has been on the agenda, that I know of, for 50 years,” and that it was unlikely to go away as a statewide issue.²¹⁹

November, 2005: Opposing Superintendents Air Their Thoughts

²¹⁷ Michaela Saunders, "Costs Per Student a Forum Flash Point - OPS and Suburban Administrators Discuss their Differences, as do Bellevue and Papillion-La Vista Officials," *Omaha World-Herald (NE)*, 2005a.

²¹⁸ Ibid.

²¹⁹ Ibid.

In back-to-back days, the *World-Herald* published opinion pieces authored by John Mackiel on November 9, 2005 and a separate opinion piece authored by Virginia Moon, Roger Breed, Ken Bird, and Keith Lutz on November 10, 2005.

Mackiel focused on the importance of integration and even remarked that even on the presumption that the “broken state funding system [was to be] repaired by the Legislature and that financial equity [was to be] achieved in OPS. [...If] the one city, one school district laws are not implemented, school districts in Omaha still would be segregated. And should the law be changed, locking educational separation into place, that not only would be harmful but also would constitute de jure segregation, an act taken by government to keep different races apart.”²²⁰

The coalition superintendents argued that there are other ways to accomplish integration other than the creation of an even larger Omaha Public Schools district. “A large district under the single name of Omaha Public Schools would simply create the illusion of integration while maintaining the current situation of segregation. If it isn't working now, why would it work on a larger scale?” they asked.²²¹ The coalition superintendents described other areas of the country that have tried to tackle the complex urban/suburban issues of equity and integration suggesting voluntary student integration plans. They added, “[i]t is quite common to have multiple school districts within a metro area. It is important to note that other cities are not looking to create even larger systems

²²⁰ John Mackiel, "Unified, Integrated School System would Bring Educational Equality," *Omaha World-Herald (NE)*, 2005.

²²¹ Keith Lutz, Ken Bird, Roger Breed and Virginia Moon, "Takeover of Districts Needn't be Solution," *Omaha World-Herald (NE)*, 2005.

as the solution to their problems. In fact, just the opposite is happening. The largest school districts are being divided into more manageable units.”²²²

Other Threats of Litigation Posed

Already engaged with a legal challenge addressing Nebraska’s school finance system, Omaha Public Schools seemed to be building a case for litigation on racial discrimination. The *World-Herald* reported in a Sunday November 13, 2005 article, “In its effort to expand into the suburbs, the Omaha school district is building the basis for a potential lawsuit alleging it is the victim of intentional discrimination by the State of Nebraska. If lawmakers in the coming session do not back the Omaha Public Schools and the district’s plan to expand into suburban districts, OPS leaders say that would constitute government-imposed segregation.”²²³ The article continued to say that “OPS Superintendent John Mackiel told The *World-Herald* that the district would consider filing a discrimination lawsuit.”²²⁴

In the same article the *World-Herald* reported, “State Sen. Ron Raikes of Lincoln, chairman of the Education Committee, said the Legislature can develop a solution that strays from the OPS plan and is not discriminatory. He said he doubts that the OPS plan accomplishes Omaha’s stated goals, because the district would maintain the same number of high-needs students and the total number of school districts wouldn’t change. Still,

²²² Ibid.

²²³ Jeffrey Robb, "Card Up OPS's Sleeve: Discrimination Lawsuit," *Omaha World-Herald (NE)*, 2005a.

²²⁴ Ibid.

Raikes said, the suburban districts need to accept substantial changes, although he envisions preserving district boundaries for the time being. ‘It seems to me that there is not one solution,’ he said.”²²⁵

Senator Raikes’ effort to craft a legislative solution generally was viewed by the metro area schools as the first step. The Millard Public Schools, in a statement to the *World-Herald*, said “The Nebraska Legislature should adopt the model it believes would best serve the educational interests of Nebraska's children and not be swayed by personal attacks and labels of racism by OPS and its superintendent.”²²⁶

Although Omaha Public Schools was engaging in public discussions of litigation, Mackiel said his attention and hopes were focused on the Legislature and that it was “better for the OPS board to take this position prior to the legislative session.” However, according to the *World-Herald*, Mackiel added “If lawmakers act against OPS, he said, the district would need to ask why it was treated differently.”²²⁷

November 14, 2005 Raikes speaks with Omaha Together One Community

Senator Raikes attended and spoke at meeting of the Omaha Together One Community (OTOC) organization where the group shared criteria they thought would guide a “workable solution” to the boundary issue. OTOC announced that it would not support any legislation that would pre-empt the public discussion on these issues, such as striking “one city, one school district” statutes or limiting growth of any school district

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

unless the proposed legislation sufficiently addressed the OTOC criteria. The criteria, according to the *World-Herald*, included school funding; state aid and property taxes; teacher training and qualified staff; summer school; pre-kindergarten and all-day kindergarten; and increasing integration at all schools.²²⁸

The paper reported that “[Senator Raikes] told the group that ‘together’ is a critical word ...in how we solve educational problems not only in the Omaha area, but throughout the state. He said a common financial base, a governance structure that ensures collaboration among the current metro-area districts and a specified timeline to establish when changes will occur, all will be required in a workable solution.”²²⁹

Omaha Mayor Fahey Engages

Omaha Mayor Mike Fahey announced, on November 17th, 2005, that he would seek to open discussions among the metro area superintendents. Fahey's move was reported to come after a Sunday *World-Herald* report that OPS would consider filing a discrimination lawsuit if the Legislature did not go along with the OPS expansion plan.²³⁰ The paper reported, “Paul Landow, Fahey's chief of staff, said Fahey is concerned about the uproar he has seen around the community, from both sides of the issue, and the inability of the sides so far to reach any middle ground. Fahey said that the

²²⁸ Michaela Saunders, "OTOC Comes Up with 12 Criteria for School Unity," *Omaha World-Herald (NE)*, 2005g.

²²⁹ Ibid.

²³⁰ Michaela Saunders Jeffrey Robb and, "Separate Meetings Planned on Schools - Fahey's Initiative to Help Resolve the Dispute Starts Slowly, but the Mayor Hopes to Eventually Bring both Sides to the Same Table. - Last Presentation," *Omaha World-Herald (NE)*, 2005a.

issue has become divisive and that he doesn't like seeing people polarized to 'the detriment of the good things happening in our city.'”²³¹

November 17, 2005 - Raikes Outlines a Plan at NASB Conference

On November 17th, during the annual Nebraska Association of School Boards conference held in Omaha, Senator Raikes outlined his two-county plan to address the boundary and resource-sharing proposal. The *World-Herald* reported, “The chairman of the Legislature's Education Committee certainly got the attention of school officials in Douglas and Sarpy Counties with his proposal to shake up their districts.”²³² Senator Raikes provided details of a proposal he had been studying since June to help resolve boundary issues in metro Omaha including a long standing dispute between Bellevue and Papillion-La Vista. Raikes reportedly said all parties in the boundary controversies need to be willing to give up something significant. At that time, the proposal envisioned the need to eventually adjust boundaries and address a variety of student movement issues but “well before the 11 districts would be reconfigured, they would share financial resources for school operations and building construction and improvements. A new board would oversee finances across the two-county area.”²³³

The *World-Herald* reported that “[u]nder his plan, Raikes said, area schools would become more diverse and would be funded more equitably, as OPS is demanding.

²³¹ Ibid.

²³² Jeffrey Robb and Michaela Saunders, "Raikes Plan Iffy, School Leaders Say - Omaha-Area Officials See Uncertainties but Say the Legislator's Resource-Sharing Proposal Needs More Discussion. - Raikes' Proposal," *Omaha World-Herald (NE)*, 2005c.

²³³ Ibid.

The suburban districts would get the 10-year boundary freeze and control over their own curriculum. All, he said, would benefit from the ability to tax for building improvements without voter approval. ‘There needs to be an incentive for the districts to go together,’ he said. Creating a common financial base for the metro area is in the best interest of residents and of the state, Raikes said. ‘You need that,[...] if everybody in the metro area is going to pay for the education of every child in the metro.’”²³⁴

The details of Sen. Raikes’ plan were more aggressive than had previously been outlined and the paper reported that school officials thought it was “iffy.” The article noted, “For districts already locked in the dispute, the plan represents a sharp change from the status quo and from other plans currently on the table. And it brings in districts that thus far have stayed out of the heated debate, such as Gretna and Douglas County West.”²³⁵

November 18, 2005: Education Committee reviews Raikes Plan in the Interim

The day following his public presentation of his plan, “State Sen. Ron Raikes of Lincoln got an “encouraging response” from legislative colleagues to his ideas for resolving the Omaha area school districts’ boundary battles. Members of the Education Committee held their first formal discussion of the situation during an executive session.”²³⁶ Although they took no formal votes, those present reportedly urged Raikes,

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Jeffrey Robb and Martha Stoddard, "Raikes' School Plan Wins a Nod - Education Committee Members Urge Him to Hone His Suggested Shake-Up of Districts in Douglas and Sarpy Counties. - Raikes' Proposal - Enrollments," *Omaha World-Herald (NE)*, 2005b.

as the committee chairman, to continue developing his proposal for a common funding system, a metro wide Education Equity Council and eventual redrawing of all school district boundaries in Douglas and Sarpy Counties. In the November 18, 2005 Education Committee meeting, Senator Gwen Howard of Omaha was reported to question whether lawmakers would be willing to tackle such a difficult problem during the upcoming short, 60-day legislative session. But Raikes was reported to counter that the Legislature could not avoid getting involved in school district organization issues. “The sum and substance of this is that for the Legislature to duck this one and take a pass is irresponsible,” he said according to the *World-Herald* reporters who were allowed to sit through executive session deliberations not otherwise open to the public.²³⁷

November 28, 2005: 1970s Historical Context Surfaces Again

Although it might have seemed like “old” news, the *Omaha World-Herald* took some time to reflect on the historical context of the school boundary issue in Omaha. OPS had opportunities to claim territory in the suburban districts and chose to forgo those opportunities over the decades. The *World-Herald* reported the historical context of the national desegregation issues. Omaha Public Schools was subject to a desegregation plan that included court-ordered busing. The *World-Herald's* efforts to interview former OPS board members, administrators and other suburban interests painted a public picture that was very similar to the 2005 circumstances.²³⁸

²³⁷ Ibid.

²³⁸ Chris Burbach, "'70s Echo in OPS Fight - District Weighed Takeover of Suburban Schools - On Annexation and Integration," *Omaha World-Herald (NE)*, 2005a.

When Millard was annexed in 1971 by Omaha, in similar fashion to the 2005 efforts to annex Elkhorn, the Omaha Public Schools did not choose to exercise its apparent right to claim the territory. It was discussed and even had advocates; but, the realities of racial tensions across the country influenced the discussions at the time. “Not trying to annex Millard, former OPS Superintendent Schuerman said, could be attributed to ‘a lack of foresight, a lack of sensitivity to the future demographics.’”²³⁹

At the very least, the public discourse on the history of the issue would have been known to Senator Raikes and members of the Education committee and even to future legislators. For instance, Brenda Council, who was a one-time Omaha Public Schools board member and would eventually be elected to the Legislature in 2008 to replace long-time Senator Ernie Chambers, was quoted in the November 28, 2005 article. “Brenda Council said she didn't even know about the law, despite serving on the Omaha school board from 1982 until being elected to the Omaha City Council in 1993. Nobody brought it up, she said. ‘Had I known about it, I would have used it,’ Council said.”²⁴⁰

Elkhorn School District Prepares for Growing Enrollment

Similar to Millard of the 1970s, Elkhorn was experiencing rapid growth. Also it was in the sights of the City of Omaha for annexation. However, Elkhorn’s annexation was clearly in the “one city, one school” context. Annexation by Omaha would trigger the ability of OPS to claim portions of the Elkhorn district. Elkhorn’s growth was also impacting the district as it made building plans to address school capacity needs indicated

²³⁹ Ibid.

²⁴⁰ Ibid.

in a November 30, 2005 report. Elkhorn Superintendent Roger Breed indicated that the “one city, one school” proposal would not deter the district and board from considering a bond issue to address facility needs identified in the report.²⁴¹

December, 2005

School districts on both sides of the “one city, one school” issue attempted to bolster their positions with national examples of similar situations. The Omaha Public Schools tapped the school superintendent from Chattanooga, Tennessee to discuss a county-wide merger implemented in 1997 and to discuss those experiences. “Many wouldn't make a connection between Omaha and Chattanooga, Tenn. [...] The two cities have the same goal in mind, said [Sandra] Jensen, president of the Omaha school board: giving equal educational opportunities to all children. Chattanooga had two school districts: one city and one suburban: but merged them in 1997.”²⁴² The article quoted Jensen to say, “We have a lot in common,[...]For us, this is a social justice issue.”²⁴³ The article also pointed out several differences between Omaha and Chattanooga. For instance, under Tennessee law, counties, not school districts, are ultimately responsible for providing public education. Additionally, Keith Lutz from Millard summed up

²⁴¹ Veronica Stickney, "Elkhorn Prepares for Growing Enrollment - the District Says Adding Four Schools to Handle the Continued Influx of Students could Cost \$90 Million," *Omaha World-Herald (NE)*, 2005b.

²⁴² Veronica Stickney, "A Merger Success Story - A Chattanooga, Tenn., Educator Tells OPS that the Move Worked for His District," *Omaha World-Herald (NE)*, 2005c.

²⁴³ Ibid.

another difference. According to the article, Lutz said, “Chattanooga residents voted on the issue [...]while OPS is pushing a ‘hostile takeover.’”²⁴⁴

December 19, 2005: OPS Unveils its Transition Proposal

As the fall semester was wrapping up and the upcoming Legislative effort was becoming clearer, OPS publicized its transition plans that assumed “one city, one school district” would prevail. A report was shared with the OPS board and administration that described how newly acquired schools would be used. As was to be expected, suburban school leaders were offended by the presumptuous plan. “[Millard Superintendent]Lutz said the plan reflects arrogance from OPS and ‘smokescreen rhetoric.’”²⁴⁵ If nothing else, the release of the plan demonstrated that little progress had been made between the two sides after six months of discussions and debate.

World-Herald Editorial Board Calls for “Legislative Restraint”

The *Omaha-World Herald* editorial writers provided another public analysis as they digested the happenings in Omaha and called for “legislative restraint” in the hopes that a community-level solution would surface. They suggested that “clinging to status quo” was “fading” as an option and posed the question on December 21, 2005 “...in a spirit of seasonal optimism: Might the agreement on the need for a ‘solution’ be the first tiny step toward a consensus on the nature of the problem and, in turn, the acceptance of

²⁴⁴ Ibid.

²⁴⁵ Jeffrey Robb and Michaela Saunders, "OPS Unveils Transition Proposal - Suburban Magnet Schools among Plans for Takeover - Proposed Zone Changes - Transition Plan," *Omaha World-Herald (NE)*, 2005b.

responsibility, by the entire community, for the education of all the community's children?"²⁴⁶

Only ten days later, on December 31st, the *World-Herald* printed an article that led with “Just as the Omaha community can't agree on how to solve its schools dispute, no consensus has formed among Nebraska lawmakers for addressing one of this session's biggest issues.” The article described “[t]he idea of creating a common funding system for Omaha area school districts appears to be picking up steam. But that idea has yet to gather the support to pass, according to a *World-Herald* survey of state senators.” The paper reported that 17 legislators were supportive of the common funding system which Senator Pam Brown of Omaha suggested provided “middle ground” and Kearney Senator Joel Johnson indicated he was unsure, “but (we) cannot have wealthy schools and poor schools.”²⁴⁷

²⁴⁶ "Yes, a Solution Needed - Clinging to Status Quo Fades as Option in Discussion of OPS Initiative," *Omaha World-Herald (NE)*, 2005.

²⁴⁷ Jeffrey Robb and Martha Stoddard, "Nebraska Legislators Differ on 'One City, One School District' - One City, One School District," *Omaha World-Herald (NE)*, 2005a.

CHAPTER 4

2006 – The Legislature Responds to “One City, One School”

January, 2006

A *World-Herald* article published on January 1, 2006 highlighted the likely “big battles” to ensue for the upcoming year. Among those were “Elkhorn’s last stand” as the annexation by Omaha was likely to be decided by the Nebraska Supreme Court; the one city, one school district issue, and the repercussions of the prior legislative session forced consolidation of Nebraska’s Class I (elementary only) districts.²⁴⁸ All three issues loomed large on the eventual discussions for the 2006 Legislature. As the *World-Herald* editorial page pointed out, “The Legislature finds its calendar crammed with a heavy agenda that includes additional divisive or complex issues,” and it would be reliant on “coalition-building efforts by diplomacy-savvy senators...”²⁴⁹

Early January, 2006 was marked by posturing and public relations efforts by OPS and groups supporting or opposing the “one city” efforts. OPS was reported to be paying for a timely traveling exhibit on the historic *Brown v Board of Education* segregation case at the downtown Durham Western Heritage museum.²⁵⁰ The *World-Herald* also reported on a new advertising campaign that began airing the first week of January, 2006.

²⁴⁸ Henry J. Cordes, "Big Battles Sure to make Headlines in New Year - The Governor's Race and School Controversies are Certain to Stay in the Spotlight," *Omaha World-Herald (NE)*, 2006a.

²⁴⁹ "Little Time, Big Duties - Nebraska Legislature Will have a Busy Agenda this Year," *Omaha World-Herald (NE)*, 2006c.

²⁵⁰ Michaela Saunders, "OPS Pays for Students to Learn about 'Brown'," *Omaha World-Herald (NE)*, 2006p.

The radio and television spots focused on points that the Omaha district and its supporters have said make a citywide school district necessary. The campaign pointed out differences in resources and opportunities for affluent and poor children, calling them “unacceptable double standards.” The ads also asserted that the city's schools have become increasingly racially segregated “counter to the law.”²⁵¹ Other efforts to sway public opinion included public rallies²⁵² and even an episode at a high school basketball game where cheerleaders from OPS wore t-shirts in support of one-city, one school.²⁵³

Mayor Mike Fahey delivered his annual “state of the city” address to a group at the University of Nebraska at Omaha on January 11th, 2006. Although the speech was directed at city issues, he was asked what he planned to do to help address education issues in the city. Fahey indicated he did not take sides on the one city, one school proposal and also said he did not have authority over school systems. He suggested that the Legislature is “grappling” with the issue and added, “I don’t think there is one easy answer to this question.”²⁵⁴ The Mayor also addressed the Elkhorn annexation, but apparently did not connect that to the ‘one city, one school’ issue. “Fahey said he expects

²⁵¹ Michaela Saunders, "Ad Campaign Backs Citywide School Plan - Commercials Say the OPS 'One City, One District' Proposal is the Right Thing to Do," *Omaha World-Herald (NE)*, 2006b.

²⁵² Michaela Saunders, "Rally Celebrates OPS's Diversity," *Omaha World-Herald (NE)*, 2006r.; Michaela Saunders, "Rally Will Support '1 City, 1 District' - 'what's at Stake?' Rally," *Omaha World-Herald (NE)*, 2006s.

²⁵³ Elizabeth Ahlin, "'I Love OPS' T-Shirts Raise Cries of Foul Play at Game," *Omaha World-Herald (NE)*, 2006.

²⁵⁴ Tom Shaw Joseph Morton and, "State of the City - Downtown Dreams - Fahey's Big Plans would Need Dollars - Highlights from Fahey's Address," *Omaha World-Herald (NE)*, 2006.

the courts this year to uphold Omaha's annexation of Elkhorn. He said his administration is working on a seamless transition and promised that Elkhorn residents will receive excellent services.”²⁵⁵

The Nebraska Legislative session kicked off on January 6, 2006. Legislative proposals from key state senators started to shape the possible policy effort to address the Omaha educational boundary issues. Senator Raikes, chair of the Education Committee, introduced what would become a mainline bill, Legislative Bill 1024. Additionally, Sen. Koplin from Gretna, a retired school superintendent, introduced LB 1017 on behalf of a coalition of suburban school districts. Koplin’s proposal contained ideas identified by the coalition superintendents as alternatives to one city, one school district. Senator Abbie Cornett from Bellevue introduced LB 998 that would have “nullified” the 1983 boundary agreement between Bellevue and Papillion-La Vista schools.²⁵⁶

Raikes’ LB 1024 included the first formal mention of a “learning community.” It was described as a new form of educational service unit. As proposed, districts within the learning community would share a general fund property tax levy of up to \$1 per \$100 of valuation, and a common capital construction levy of 20 cents per \$100.²⁵⁷

Raikes, who correctly anticipated additional proposals at the time, suggested that he wanted the Education Committee to sort through the options and develop a single plan

²⁵⁵ Ibid.

²⁵⁶ Leslie Reed, "Bills Tackle School Boundaries - The Legislature's Education Committee Will be Challenged to Craft a Single Plan," *Omaha World-Herald (NE)*, 2006a.

²⁵⁷ Ibid.

for consideration by the full Legislature. “I’m determined to make significant progress on the issue this year,” he said. “Will we solve it 100 percent and make everybody happy? No.”²⁵⁸

Kopplin, too, said that he wanted to resolve the conflict as quickly as possible but that it would be difficult for the Legislature to reach consensus. Kopplin's bill was co-sponsored by Senators Pam Brown, Rich Pahls and Jim Jensen, all of Omaha. Dwite Pedersen of Elkhorn and Elaine Stuhr of Bradshaw also co-sponsored the measure. The bill emphasized “economic integration” as well as racial integration among metropolitan school districts. It allowed suburban school districts to continue to hold territory within Omaha city limits.²⁵⁹ Kopplin’s bill also addressed additional school resources by allowing school districts 2 cents per \$100 of property valuation to develop cooperative projects to improve their educational offerings.²⁶⁰

Sen. Cornett's Bellevue-La Vista measure (LB 998) would let Class 3 school districts extend their boundaries to match the zoning jurisdiction of the city in which they are based. It also proposed to withdraw legal recognition of boundary agreements between districts.²⁶¹

A public “town hall” meeting was held in Omaha on January 12, 2006. The “standing-room” only crowd of more than 850 listened to an eight-member panel that

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

included Senator Raikes, suburban and Omaha schools. Several issues surfaced including questions on differences in school district funds and the state's equalization aid formula.²⁶²

The *World-Herald* examined more of the history dealing with school district boundaries in a Sunday January 15, 2006 article. It detailed areas of Ralston and the Westside Community Schools creation dating to the late 1940s and into the 1950s and forward into the 1970s.²⁶³ The complex history included reasons that the Westside district was not part of the initial one city, one school district plan proposed by OPS even though a second article published that same Sunday suggested that Westside may be in the OPS "sights" at some point.²⁶⁴

January 18, 2006: The Role of the Bellevue, Papillion-La Vista Boundary Fight

The *World-Herald* reported that the Bellevue and Papillion-La Vista fight "is similar in many ways" to the Omaha Public Schools' "one city, one school district" dispute. Bellevue sought to expand its school district boundaries to match those of the city and take over two Papillion-La Vista elementary schools. "Bellevue schools spokeswoman Cathy Williams said putting all city schools into one district would create

²⁶² Michaela Saunders, "'One city' forum pits diversity vs. parental choice - Town hall meeting," *Omaha World-Herald (NE)* 2006, p. 01. (Saunders 2006n, 01)

²⁶³ Paul Goodsell, "One City, One School District - OPS and Second Thoughts - In One Case, the School District Rejected an Area it Now Covets - then and Now.." *Omaha World-Herald (NE)*, 2006c.

²⁶⁴ Paul Goodsell, "Westside Story: District Not in Sights: Yet," *Omaha World-Herald (NE)*, 2006e.

educational equality and eliminate a confusing system that has three school districts functioning within the city of Bellevue. Omaha Public Schools is the third.”²⁶⁵

Similar to OPS, the move would stabilize the Bellevue district’s tax base as it was projected to lose a significant amount of federal aid as students from military families were replaced by children from civilian families. Bellevue and Papillion-La Vista, like the efforts in the larger Omaha dispute, sought to garner community support for their respective positions.²⁶⁶ A community forum held on January 18, 2006, which was organized by the Quail Creek Homeowners Association, was intended to allow each side to present its positions on the boundary issue. The forum turned hostile against the Bellevue school leaders as the issue was discussed.²⁶⁷ This reflected a similarity to the larger metro area conversation.

Redfield and Brashear Proposals Round out the Proposed Legislative Options

By January 19, 2006 two additional bills were introduced to address the metro area schools issues. Sen. Pam Redfield from Ralston introduced a bill (LB 1167) that would have established a single school district for each high school and its associated elementary and middle schools. Sen. Brashear, speaker of the Legislature introduced LB

²⁶⁵ Karen Sloan, "The Other School Squabble - Bellevue, Papio-La Vista Boundary Battle Deepens," *Omaha World-Herald (NE)*, 2006b.

²⁶⁶ Ibid.

²⁶⁷ Karen Sloan, "Bellevue Schools Chief Hears Papio-LV Hostility," *Omaha World-Herald (NE)*, 2006a.

1262 which would have created an “academy of excellence” which at the time the bill was introduced was not defined.²⁶⁸

On January 18, 2006 the recently created Latino Academic Achievement Council organized efforts to promote “one city, one school” to educate Hispanic and other parents about the plan. “Many parents don't understand it. They don't even know about it,” said Rebecca Valdez, council chairwoman. “We have a huge job to do.” This marked an ongoing effort to support the original OPS plan without a direct mention of the efforts at the legislative level.²⁶⁹

World-Herald Details Hartford and Minneapolis as Comparable to Omaha Issues

On January 23rd and January 25th, the *World-Herald* published a detailed analysis of voluntary integration efforts in Hartford, Connecticut and Minneapolis, Minnesota. Both cities were faced with similar concerns about urban and suburban education challenges. Additionally, both cities were cited as models for urban/suburban plans for voluntary integration by the suburban Omaha coalition superintendents. In an effort to inform the public about these options, both articles highlighted some successes and apparent failures of each. In each case, the successes were modest especially in light of the scale of the issues in both cities.²⁷⁰

²⁶⁸ Veronica Stickney, "Boundary Disputes Addressed in 5 Bills," *Omaha World-Herald (NE)*, 2006a.

²⁶⁹ Cindy Gonzalez, "Latino Group Gets Behind OPS Effort," *Omaha World-Herald (NE)*, 2006a.

²⁷⁰ Henry J. Cordes, "Omaha Sizes Up a Bold Plan - Hartford, Conn., has Created 18 Magnet Schools, but Extreme Segregation Persists. - Why Hartford?" *Omaha World-Herald (NE)*, 2006d.; Henry J. Cordes, "Not a Remedy but a really Potent Symbol - Minneapolis' Integration Plan Depends on a Spirit of Cooperation. - Why Minneapolis," *Omaha World-Herald (NE)*, 2006c.

January 25, 2006: A Call for Cooperation and Collaboration

In an op-ed article published only a few days before the first legislative hearings on bills, a group of Omaha African American Leaders articulated a broad view of the solution stating that “We will support any school district configuration, existing law or new legislation that has as a guiding principle the positive reduction or elimination of the educational equity gap experienced by the disadvantaged and people of color.” They added that “We do not support legislation that pre-empts public discussion on any proposal.”²⁷¹

The article cited four criteria to evaluate proposals that were focused on the stated goal and not on strict basis of any particular plan. The four criteria were “(1) Continuation of a shared and diverse governance and management structure. (2) Funding of public education proportional to need. (3) Establishment and prioritization of policies to achieve equity. (4) Promotion of positive diversity in class and race relations.”²⁷² The article also seemed to embrace the larger city community and necessity to embrace meaningful efforts to accomplish unity. They concluded, “ultimately, the people’s ability to come together as a city will determine if the plan is to succeed.”²⁷³

²⁷¹ Fred Conley, Dick Davis and Carole Woods Harris, "Let's Cooperate, Close Education Equity Gap," *Omaha World-Herald (NE)*, 2006.

²⁷² Ibid.

²⁷³ Ibid.

Role of Option Enrollment in the Debate

Nebraska's option enrollment laws allow students to choose to attend other public school districts given certain conditions exist. The suburban school superintendents and Senator Koplin (Gretna) and Senator Pahls (Millard) supported using option enrollment as part of the solution to socioeconomic integration plans. "OPS says option enrollment contributes to segregation of low-income and minority students. A *World-Herald* analysis has shown that most students who option out of OPS are white and do not receive subsidized school meals."²⁷⁴

"Just days before debate [was to] begin at the Legislature on alternatives to OPS's expansion plan, the Millard, Ralston and Westside districts called parents together to discuss the issue. The crowd at Millard North High School's gymnasium was one of the largest to date at an event related to Omaha's school boundary dispute."²⁷⁵ Superintendents and Senator Koplin and Senator Pahls addressed the group. Reports of community discussions and concerns were regularly published by the *World-Herald* during the active deliberation of options by the Legislature.

Community Divided: Stress at All Levels

A Michaela Saunders' article published on Saturday, January 28, 2006 was reminiscent of a civil war as it was potentially pitting friends against one another and taking a toll on community collaboration, school leader collaboration, and even teacher

²⁷⁴ Michaela Saunders, "A Clamor for Answers on OPS - Parents Pack a Meeting on the Future of the Option Enrollment Program," *Omaha World-Herald (NE)*, 2006i.

²⁷⁵ Ibid.

and student morale. Long standing school initiatives were being weakened by the discord. One retired school counselor labeled the situation “sad.”²⁷⁶

Finally to the Legislature

The *World-Herald's* Jeff Robb wrote, “After months of rhetoric, [the] issue goes to senators” in an article published Sunday, January 29th the day before the much anticipated Education Committee hearings in Lincoln. “First came the bold move of the Omaha Public Schools’ attempt to expand into three neighboring districts, followed quickly by the shock. Then came the rhetoric and the demands, followed by the slogans and campaign tactics, a coalition and an alliance. Then came the accusations and the sniping, followed by the hard feelings and the soured relationships.”²⁷⁷ The article continued, “It has been a loud eight months since OPS and four suburban districts engaged in the fight over Omaha's educational future. But for all that has transpired, little has actually been accomplished as each side became entrenched in opposition to the other's views.”²⁷⁸

The January 29th article cited Doug Christensen, Nebraska's education commissioner, saying the fighting had gone way beyond what he expected, spiraling down to a “level of shrillness and bitterness.” He said the “accusatory tone” from both

²⁷⁶ Michaela Saunders, "As 'One City' Fight Divides Schools, Many Feel Strain," *Omaha World-Herald (NE)*, 2006c.

²⁷⁷ Jeffrey Robb, "OPS Battle to New Arena - After Months of Rhetoric, Issue Goes to Senators - the Hearing at a Glance - Who's on the Panel - the Bills," *Omaha World-Herald (NE)*, 2006j.

²⁷⁸ Ibid.

sides had prevented a community discussion about the issues. “There is no common ground: there is none,” he said. “Where's the higher ground?”²⁷⁹

In contrast, the same article pointed to State Senator Ron Raikes of Lincoln, chairman of the Education Committee, stating he believed he had seen a degree of common ground emerge among Omaha area school officials. He said he was hopeful the Legislature could find a solution. “We’re now at a point where we have the opportunity, at least, to move forward,” he said. “That's got to be, I hope, the Education Committee and the Legislature's focus.”²⁸⁰

The *World-Herald* reported the make-up of the Education Committee. Members provided a summary of their perspectives on the Omaha dispute, school consolidation, and boundary expansion. The paper reported the following about the eight members of the Committee: “Sen. Gail Kopplin of Gretna: Favors repealing the laws cited by OPS. He introduced the suburban schools' alternative to the OPS plan; Sen. Vickie McDonald of St. Paul: Favors repealing the laws cited by OPS. She also opposes consolidation of Nebraska's elementary-only districts; Sen. Ed Schrock of Elm Creek: Undecided on the Omaha dispute. He is a co-sponsor of a bill that would change the ‘one city, one school district’ laws of smaller districts, such as Grand Island; Sen. Elaine Stuhr of Bradshaw: Favors repealing the laws cited by OPS. She is a co-sponsor of Kopplin’s bill; Sen. Ron Raikes of Lincoln, committee chairman: Questions the Omaha Public Schools’ expansion plan but says both sides need to do more to compromise. He is offering his

²⁷⁹ Ibid.

²⁸⁰ Ibid.

own alternative, which would take away the legal language cited by OPS as the ‘one city, one school district’ laws; Sen. Dennis Byars of Beatrice, vice chairman: Favors repealing the laws cited by OPS; Sen. Patrick Bourne of Omaha: Favors protecting the laws cited by OPS; Sen. Gwen Howard of Omaha: Favors protecting the laws cited by OPS.”²⁸¹

The *World-Herald* also summarized the four bills that were introduced as alternatives to the Omaha Public Schools' “one city, one school district” plan that were scheduled to be heard on January 30th. The paper reported,

LB 1017 The Suburban Plan. The bill, introduced on behalf of the Millard, Ralston, Elkhorn and Westside school districts, creates a new funding stream for districts working together to promote integration. It would preserve current district boundaries and offer free transportation to more students using the state's option enrollment law. It is sponsored by six senators, including five from the metro area.

LB 1024 The Raikes Plan. Under the proposal by State Sen. Ron Raikes of Lincoln, chairman of the Education Committee, Douglas and Sarpy County districts would merge into a "learning community." Current boundaries would remain for now but would be redrawn by 2013, perhaps into four or five reshaped school systems. The new educational authority would involve shared governance and shared revenue.

LB 1167 The Redfield Plan. State Sen. Pam Redfield of Omaha, who represents the Ralston area, would break up the Omaha area into small districts-separate systems for each high school and its feeder middle and grade schools.

LB 1262 The Brashear Plan. State Sen. Kermit Brashear, speaker of the Legislature, isn't saying yet what his plan is.

²⁸¹ Ibid.

It's not outlined in the bill. But his concept involves creating an interdistrict "academy of excellence."²⁸²

Additionally, the paper summarized the bills that were, at least tangentially, related to the issue that were to be heard by the Education Committee on January 31, 2006.

LB 998 The Bellevue Bill. The bill from State Sens. Don Preister and Abbie Cornett of Bellevue would do two things. One, it would prevent medium-size school districts, such as Papillion-La Vista, from extending their boundaries beyond the zoning areas of the cities where they are based. Two, it would nullify a disputed boundary agreement between the Bellevue and Papillion-La Vista districts, in Bellevue's favor.

LB 1050 Countywide Districts. State Sen. Roger Wehrbein of Plattsmouth, who also represents portions of Sarpy County, wants to study countywide school districts.

LB 1243 Other Cities. The bill would change the "one city, one school district" laws of medium-size school districts, such as Grand Island or Bellevue. Those districts wouldn't have the prerogative to grow when city limits expand, but instead would take their case to an arbitrator. It is sponsored by nine senators.²⁸³

January 30, 2006: The Education Committee Hearings

The first four bills were officially heard on January 30th. Senator Raikes, as committee chair, opened the hearing and announced that the procedure would vary "a little bit" from normal practice. Each of the bills was introduced in succession and the testifiers were allowed to testify on all or part of the bills indicating support or opposition

²⁸² Ibid.

²⁸³ Ibid.

to each bill as they saw fit. Senator Redfield introduced her bill, followed by Senator Kopplin, Senator Raikes, and Speaker Brashear who each introduced their respective bills. Although all of the bills addressed the Omaha issue in their own way, Senator Raikes was the only one to detail a common levy.

Senator Raikes introduced LB 1024 which was centered around “a new form of ESU” titled a “learning community.” The Senator detailed the interdistrict governance, the continuation of most of the autonomy and authority of school districts, the residency of students in the whole learning community which would allow students to “attend any school” and the new region would share a common operating levy. “There would be a common operating levy within the LC (Learning Community) eliminating the need for option funding or other cross district compensation for mobility,” said Raikes. He also detailed part of the proposal that would not ultimately survive, but would have created a “common capital levy” to provide for existing bonds and capital construction which he suggested “would eliminate one major financial hurdle to boundary adjustments between districts.”²⁸⁴

Senator Raikes, in his introduction of the bill, stated, “A common operating levy is not new. We have unified systems in Nebraska and our LC voting procedure is borrowed from what we now do in ESU advisory councils.” He added, “A common capital levy is new in Nebraska, but we are one of only a few states that provide no authority or state funding for school buildings.” He also added, “This change offers the

²⁸⁴ Nebraska Legislature Education Committee, *January 30, 2006 Education Committee Hearing Transcript*, 99th Legislature, Second Session, 2006.

opportunity to enhance educational opportunity without disadvantaging students, parents, or taxpayers. What gains do we make? We achieve an opportunity for cooperation between school districts that is locally directed. The benefit of individual school districts and the variety of choices they offer students and parents is retained. The financial underpinnings of districts are made more equitable. Student mobility and opportunity is enhanced. The possibility of focus programs or campuses that serve the entire metro area is created.”²⁸⁵ Senator Raikes also spoke to the broader context when he added “We in Nebraska don’t want to go the route of some major cities in the U.S. where there is a clear demarcation in educational opportunity. There is no model of success in the U.S., as far as I know, that everyone points to.”²⁸⁶

Senator McDonald asked Senator Raikes if he had said that this was similar to unified districts and whether that was still allowed in Nebraska. She also asked “How would this be different than a Class VI? [a high school system which contained multiple elementary only, Class I districts]. Sen. Raikes replied, there are no [Class I districts] involved in this. It’s a combination of K-12 systems and also there is a common capital levy where everybody in the entire district helps pay for all the capital construction needs which would be a direct contrast with a Class VI system.”²⁸⁷

During the course of the hearing, testifiers from Omaha Public Schools, including John Mackiel and board president Sandra Jensen, expressed some support for the

²⁸⁵ Ibid., pp. 15-17.

²⁸⁶ Ibid., p.17.

²⁸⁷ Ibid., pp. 17-18.

common levy provisions of LB 1024. The only outright opposition to the common levy was expressed by Steve Baker who served as the assistant superintendent of Elkhorn at that time and would later become the superintendent. Baker expressed concerns with the common levy suggesting that it would be in the best interest of needs of students and taxpayers to make decisions at the local level. He made the case that a combination of events had essentially created a common levy and said “We all operate by the same rules of school finance. The levy limits and spending authorities are the same in Elkhorn as they are in other districts, including OPS.”²⁸⁸

The *World-Herald* also reported that OPS officials liked some of what Senator Raikes proposed. “At a hearing before the committee Monday[January 30, 2006], OPS Superintendent John Mackiel cited several strengths in Raikes' Legislative Bill 1024. Among those, he said, are a common property tax levy for all school districts in the metro area, a “super board” to make common decisions on that levy and on construction projects, and the elimination of option enrollment funding.”²⁸⁹ But Mackiel questioned whether LB 1024 would solve the problems of racial and economic segregation among the Omaha area school districts. He also worried that it could result in less state aid to OPS. “None of the bills before you does as much to prevent isolation and tax inequity as ‘one city, one school district’ does,” he said.²⁹⁰

²⁸⁸ Ibid., pp. 80-81.

²⁸⁹ Jeffrey Robb and Martha Stoddard, "Raikes' Plan Catches Eye of OPS - Superintendent Likes 'Super Board' Idea but Worries Segregation would Remain," *Omaha World-Herald (NE)*, 2006b.

²⁹⁰ Ibid.

Brashear's Middle Ground & Legal Opinion on Boundary Changes

State Senator Kermit Brashear, the Speaker of the Legislature who represented portions of Millard and Omaha public schools, proposed his own plan and suggested Omaha Public School district boundaries would not change in areas already annexed by the City of Omaha under his understanding of the law. However, he proposed that future annexations could change school boundaries. According to the Jeff Robb article, "He is attempting to form a middle ground between the polarized views of Omaha area school officials." Brashear's plan included developing an "academy of excellence" north of downtown Omaha for which students would compete to attend. The plan would have eventually allowed other similar schools to develop in the metro area.²⁹¹ Sen. Brashear also alluded to a regional governance structure as he outlined his plan during his testimony on January 30, 2006. He said, "It uses a governance structure, which is the merger of ESU 3 and 19, which is essentially the two ESUs, which are the Omaha public school district ESU and the suburban ESU. Combine them into one, you already have a governance structure." He continued, "It may need some adjustments, but you already have a governance structure that would allow you to administer what I have conceptualized."²⁹²

"In a legal opinion to be presented to the Education Committee, Brashear said OPS no longer has a right to change boundaries from years past. But in the future, he

²⁹¹ Jeffrey Robb, "Interdistrict Campus Proposed - Senators Tackle OPS Dispute as Brashear Seeks Middle Ground," *Omaha World-Herald (NE)*, 2006f.

²⁹² Clerk of the Nebraska Legislature, *January 30, 2006 Education Committee Hearing Transcript*

wrote, OPS has a right to grow into currently unincorporated parts of Millard, Ralston and Elkhorn. The change wouldn't be automatic, but OPS could seek a boundary change through the proper channels.”²⁹³

February, 2006

During the course of the “one city one school district” debate the role of the affected Educational Service Units came into play in a couple ways. First of all, ESU 3 in suburban Omaha took an official stance opposing the OPS plan as it would have also claimed territory impacting the boundaries of the ESU. OPS also served as ESU 19 and, by statute, the boundaries of ESU 19 and OPS are the same. “After the Omaha district initiated its expansion bid, the multidistrict ESU 3 took issue with its own potential loss of suburban tax base. Seventeen of the 18 member districts went on record against the Omaha district's move. Bellevue officials, who support OPS, then tried to secede.”²⁹⁴ Bellevue sought to leave the Educational Service Unit that served 18 metropolitan area districts and join ESU 19. On February 3, 2006, the State Board of Education, voted 7-1 to deny the formal request for the change. “As part of its justification, the board ruled that the Omaha ESU's boundaries must be identical to the OPS boundaries. The board said it had no statutory authority to approve Bellevue's request.”²⁹⁵ By this point in time, ESUs were also part of the proposal in Senator Raikes

²⁹³ Jeffrey Robb, "Interdistrict Campus Proposed - Senators Tackle OPS Dispute as Brashear Seeks Middle Ground," *Omaha World-Herald (NE)*, 2006.

²⁹⁴ Jeffrey Robb, "Board Denies Bellevue Request to Switch ESUs," *Omaha World-Herald (NE)*, 2006b.

²⁹⁵ Ibid.

LB 1024 as it was introduced. As proposed, the learning community would replace the two metro area ESUs.

Between hearings and Education Committee deliberations, the *Omaha World-Herald* continued to publish articles that were generally descriptive of issues and concerns in the community. On Sunday February 5, 2006, the paper published an article describing the term “equity” and providing its own analysis. The article stated, “Equity has become a polarizing rallying cry in the debate over the Omaha Public Schools' plan to take over suburban schools, because each side highlights one truth and all but ignores the other.”²⁹⁶ The article went on to describe how each side viewed the term somewhat differently. “One reason is that equity means different things to different people. Many view equity as a simple comparison of dollars. That could be equal levels for each district, or it could include extra money for districts, such as OPS, which have more needy children. OPS officials view it in terms of results.”²⁹⁷ The Omaha Public Schools still had an unresolved suit against the state and had given particular focus to state funding over the past couple years. The article cited Senator Raikes as saying that it was possible that OPS needed more money than it currently received but he expressed that he

²⁹⁶ Paul Goodsell, "Equity Still Sticking Point - but in the 'One School District' Battle, each Side Defines the Term Differently - Resources Per Student - Graduation Rates - Percentage in Low-Income Lunch Program - Needs-Based Funding - School Snapshots," *Omaha World-Herald (NE)*, 2006b.

²⁹⁷ Ibid.

was “not willing to define equitable funding as anything that Omaha officials think would improve student achievement.”²⁹⁸

The article went on to cite Senator Raikes as he questioned how the OPS annexation plan would provide extra money for educational programs in Omaha. “When it comes to school funding,” Raikes said, “it is not true that suburban districts control a rich pot of money that could be redistributed to low-income, inner-city neighborhoods.”²⁹⁹ The article pointed out, “Nebraska's school finance system is designed to even out disparities in the local tax base. That's the main reason why an OPS takeover of suburban schools would not yield a financial windfall.”³⁰⁰ Although some analysis suggested that OPS would actually lose total resources in the “one city, one school” plan, Omaha district officials said the net effect would be positive, because property taxes are a more reliable revenue stream than state aid.³⁰¹

Rapid growth, particularly in Elkhorn and Bennington, was an issue of concern for the school districts and for the communities impacted by the recent upheaval over school district boundaries and the proposals in front of the Legislature. During the January 30, 2006 hearing on the various proposals, Kim Faase who was the Elkhorn School Board President expressed some of this concern as they were currently trying to pass bond issues to build new facilities. “We are growing so fast and buildings take, on

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

the average, three years by the time you pass a bond issue and do the blue prints, let out the bids, and get it ready for kids.” He added, “I am just saying we are growing so fast that we do need some action, and I believe that this committee is the place to have this settled.”³⁰² Faase, when asked where the growth was coming from, answered that they were coming from all over the nation. “They are getting transferred in with ConAgra, they are being brought in by Gallup. And they can choose anywhere in the city to live and they can get to work in 25, 30 minutes, and they can live anywhere,” he said. In part he suggested the availability of open lots for new homes drove those decisions. Sen. Raikes, perhaps “tongue in cheek” apparently directing his comments to Senator Schrock said, “See, I was right in voting against those business tax incentives. They are overrunning the state here.”³⁰³

The level of concern in Bennington was also high as the superintendent was also reported to be planning community meetings and making additions to staff. During a regular meeting of the Bennington school board on Monday February 6, 2006, Superintendent Terry Haack was reported to say, “‘This is an issue that may require local community support sooner than later,’ Haack told the board, saying the district most likely will want volunteers to stage a protest at the Legislature in the next month.”³⁰⁴

³⁰² Clerk of the Nebraska Legislature, *January 30, 2006 Education Committee Hearing Transcript*, p. 41.

³⁰³ *Ibid.*, p. 41.

³⁰⁴ Chris Olson, "Bennington Eyes OPS Warily - the Superintendent Plans Meetings on Legislation Related to the "One District" Idea," *Omaha World-Herald (NE)*, 2006.

The Education Committee met in executive session on Tuesday February 7, 2006 according to a *World-Herald* report. Although such executive sessions are not open to the public they are generally open to members of the press. The February 8th article suggested that Senators “showed no interest” in the OPS idea for a single city-wide district but that they “generally agreed” that the proposals to encourage student movement as supported by suburban districts didn’t go far enough to resolve “educational disparities” in the area.³⁰⁵

The same article highlighted some of the internal discussion in the committee and reported that when Senator Vickie McDonald of St. Paul questioned how far the Legislature could get in resolving the dispute this year; Senator Raikes suggested they could “make adequate strides.” Senator Raikes also apparently outlined the need to act before veteran senators were forced out by term limits and so boundary issues could be resolved so certain districts could proceed with new buildings. “I think there's a lot of motivation on both sides to work on a solution,” he was reported to say in regard to the various school officials involved.³⁰⁶

While apparently discussing various options the article quoted Sen. Raikes as saying “I don't see that focus programs and magnet schools are an answer,[...] The first focus has to be that every elementary school in the entire area is a great school.” The article continued, “Some committee members said the solution should leave room for

³⁰⁵ Martha Stoddard, "Senators Seek OPS Solution - Lawmakers Look for Middle Ground and Express Doubts about the Polarized School-Boundary Plans," *Omaha World-Herald (NE)*, 2006n.

³⁰⁶ Ibid.

multiple districts. But they also agreed that those districts need to be forced or enticed into some greater level of cooperation.”³⁰⁷

According to the same Martha Stoddard article, “State Sen. Ed Schrock of Elm Creek said he thought a common property-tax levy would be reasonable. Some of the incentives used to encourage consolidation and cooperation among smaller school districts could serve as examples, said State Sen. Elaine Stuhr of Bradshaw.”³⁰⁸

About ten days later, it was clear that Senator Raikes’ LB 1024 would be the “vehicle” for any proposals addressing the metro area schools issue as the Education Committee officially prioritized LB 1024 which procedurally gives such bills priority in the scheduling of floor debate. “The Education Committee is a significant first step. What they do would clearly be the front-runner proposal,” said OPS lobbyist and former state senator, John Lindsay according to the *World- Herald*.³⁰⁹ Generally, committee priorities are elevated above personal priorities in which each senator may designate a single bill. In this case, Senator Pahls also prioritized LB 1262 which was introduced by then Speaker Brashear. “Pahls acknowledged that the Raikes bill probably would be the Education Committee’s vehicle for presenting a school reorganization plan to the full

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Leslie Reed and Jeffrey Robb, “2 School Measures Prioritized - Compromise could Still Play a Role in Boundary Dispute,” *Omaha World-Herald (NE)*, 2006a.

Legislature. He said prioritizing the Brashear bill keeps another option on the table and keeps the pressure on the Legislature to reach a solution this year.”³¹⁰

The article also provided this additional insight and context. “The Legislature also has the option of doing nothing. OPS offered no bill of its own under the assumption that current law supports its ‘one city, one school district’ effort. OPS officials hope inactivity by the Legislature translates into an endorsement of the district's plan.”³¹¹

At the end of February and into the early days of March, 2006, the issue of housing choice was publically discussed as among the issues and potential solutions for socio-economic integration. And although it was being raised in the context of the recent events, there was some suggestion that it had been on the suburban school superintendents’ radar for some time. Westside superintendent, Ken Bird said he first talked with Brad Ashford, director of the Omaha Housing Authority, about the possibility of placing low-income housing around one or more of the four or five Westside elementary schools surrounded by unoccupied green space owned by District 66 over a year before.³¹²

Roger Breed also weighed in on the issue and demonstrated that he had been involved in similar conversations in the past. “It's not clear, Breed said, that Omaha has the will to take serious steps toward evenly distributing poor residents. ‘As an individual

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Paul Goodsell and Cindy Gonzalez, "Low-Income Housing in District 66? - Superintendent Ken Bird Says using Land Near some of the District's Schools is an Alternative to OPS's Plan," *Omaha World-Herald (NE)*, 2006.

who has attempted to serve on this particular issue, I became frustrated with it,' said Breed, a former member of the Douglas County Housing Authority."³¹³

And although the *World-Herald* pointed to this as a solution it also quoted OPS board President Sandra Jensen summing up the housing issue. "[Jensen] said she commends efforts to spread affordable housing throughout the city. 'It's a step,' she said that may have long-term merits. 'But it still doesn't address the issues on the table today.'"³¹⁴

The suburban superintendents had an opportunity to meet and discuss the topic of housing on February 28, 2006. All of them expressed some interest in exploring how the Westside proposals for a "learning village" might be a model for the area to increase affordable housing options and begin to address socioeconomic integration.³¹⁵ Although not in attendance at those conversations, John Mackiel weighed in on the topic through the newspaper and agreed that housing is the "key reason" schools are not well-integrated. He added, "Residential exclusion is indeed bad for our city and unhealthy for our nation," but reportedly did not think the proposals would make a substantial difference in Omaha.³¹⁶

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Cindy Gonzalez, "Schools' Leaders Seek Dialogue on Low-Rent Housing - The Coalition Opposed to OPS's Plan Will Meet with Housing Agencies on using School Land as a Means Toward Integration," *Omaha World-Herald (NE)*, 2006b.

³¹⁶ Ibid.

Mid-March, 2006

By the middle of March, it was apparent Senator Raikes was relying on individual, private conversations to discuss and refine options for the Education Committee to consider. On March 16, 2006, the *World-Herald* reported that Raikes had removed the mandatory boundary realignment proposed in his original bill. He was reported to be circulating a plan that no longer forced those boundary changes that OPS had rejected, although boundaries could change if enough poor students were shifted among districts. “Raikes said changing boundaries makes sense. ‘It’s something I back away from grudgingly.’”³¹⁷ The paper reported that the plan still did not likely have the five votes necessary to advance from the committee although Senator Raikes was optimistic that something could advance before the end of that week. “Raikes said that if the committee can reach an agreement, the chances are enhanced that the full Legislature will reach a compromise before adjourning April 12. ‘I am also keeping an eye on the clock,’ he said.”³¹⁸

At that point OPS was still concerned the plan did not sufficiently address integration and other issues and Superintendent Mackiel suggested the proposal “falls short” of those goals of their own “one city, one school” plan. And, even though Raikes proposal was reported to include interdistrict schools, a “major part” of the suburban schools plan, Keith Lutz was “troubled by the proposal’s complexity” and expressed

³¹⁷ Michaela Saunders and Jeffrey Robb, “Revamped School Plan Doesn’t Sway Senators,” *Omaha World-Herald (NE)*, 2006j.

³¹⁸ Ibid.

concerns about “regulating the area’s common tax base.” Even so Lutz added, “But we’re running out of time. We need something to happen.”³¹⁹

The pressure was certainly mounting and even the *World-Herald* editorial pages were sensitive to the “fragile” nature of the Education Committee effort to bring a proposal forward. The *World-Herald* criticized Governor Heineman for participating in a “pep rally” “honoring Heineman ‘for standing up for our local schools.’” “By agreeing to hold that event, Gov. Dave Heineman and the school board members involved have shown an astonishing lack of judgment. They are brazenly injecting raw politics into a divisive community issue at the very time when the Omaha area needs to approach the issue with calmness and deliberation.”³²⁰

March 24, 2006: Education Committee Deadlocked

As March was drawing to an end, the pressure continued to build according to the *World-Herald* articles at the time. By March 24th it was becoming clear that time was running short with only 13 working days remaining in the Legislative session. The Education Committee had apparently been discussing versions of the plan but it was beginning to look like an absolute deadlock was possible. On one side OPS was apparently comfortable with no action while suburban districts were feeling the pressure for a resolution.

³¹⁹ Ibid.

³²⁰ "Harming, Not Helping - Heineman Pep Rally would Encourage Polarization Over Schools and Undercut Recent Progress," *Omaha World-Herald (NE)*, 2006b.

In part, the public comments of OPS officials suggested that an impasse was actually an endorsement of their plan. “Omaha Public Schools Superintendent John Mackiel, meanwhile, called lack of legislative action good news for the school district, which cites an 1891 law in seeking to take over parts of some suburban school districts. ‘Nonaction is an affirmation of current laws,’ he told OPS board members Wednesday [March 22, 2006].”³²¹ However, suburban interests rebuffed the idea that inaction was implicit support for the OPS efforts. “Ralston Superintendent Virginia Moon said legislative delay doesn't signify agreement with the OPS position. She said much is happening behind the scenes. ‘We're all wishing that some things would be going faster. But it's so complicated. It's certainly nerve-racking,’ Moon said.”³²²

Senator Raikes outlined the latest version of the proposal on March 24th. According to the *World-Herald* reporters, it had evolved over weeks of discussion with OPS, suburban districts and other education officials. Yet, the paper reported that Senator Raikes cautioned that there was not agreement on the plan as suburban districts remained concerned about district boundaries and finances while OPS wanted more to ensure integration.³²³

The next day, March 25th, the *World-Herald* reported, “[f]rustration erupted among some lawmakers after a Friday vote underscored the stalemate over how to

³²¹ Michaela Saunders and Martha Stoddard, "New Proposal Outlined in 'One City' Dispute - the Plan would Put School Districts into a "Learning Community."," *Omaha World-Herald (NE)*, 2006g.

³²² Ibid.

³²³ Ibid.

resolve the Omaha-area school dispute. 'I'm done,' said the Education Committee's chairman, State Sen. Ron Raikes of Lincoln, after his plan failed to get enough votes to go to the full Legislature. 'I don't know that I am given much direction in terms of what I can do at this point.'"³²⁴ Education Committee members voted 3-2 in favor of Raikes' school plan with two abstaining and one absent according to the article. A proposal needed 5 favorable votes to advance from the Committee. Even though the situation looked dire, there was apparently support to continue working both inside the committee and from others.³²⁵

"State Sen. Ed Schrock of Elm Creek, who sat out Friday's vote, said advancing something too soon would make the plan a target. He advised waiting until all sides commit to a compromise before sending something to the full Legislature. 'Things don't happen unless it's crunch time, and it's not crunch time,' Schrock said."³²⁶

Raikes was critical of both sides in the debate questioning the commitment of both the suburban school interests as well as expressing some dismay at the published comments of OPS officials that seemed to suggest they were content with no action. However, Mackiel was reported to say that if another proposal would guarantee tax equity and integration, OPS officials "stand ready to be party to that conversation." And

³²⁴ Jeffrey Robb and Martha Stoddard, "Schools Solution Effort Falts - A Plan Fails to Get the Five Votes Needed in Committee to Send it to the Full Legislature," *Omaha World-Herald (NE)*, 2006c.

³²⁵ Ibid.

³²⁶ Ibid.

“Millard Superintendent Keith Lutz said the issue is too large to ignore. ‘We still have time,’ he said. ‘I’m sure the (legislative) leadership will step up.’”³²⁷

Regardless of the positions, it seemed as if there were still key disagreements including resistance to the common levy. “While the coalition of suburban school districts has discussed Raikes’ idea of a common tax base, Lutz said the districts still oppose that.”³²⁸

Senator Pat Bourne of Omaha, who apparently voted to advance the Raikes plan was optimistic as he suggested the Committee would “regroup” and come back for another discussion. Senator Kopplin, who reportedly voted against the proposal, was reported to be “less confident” but hoped the committee could come up with a simplified plan or “end the session doing nothing.”³²⁹

By the next week the *World-Herald* reported that “For the first time, Gov. Dave Heineman said Monday that he is willing to consider common property tax levies and a common governing board as part of a solution for the Omaha-area school dispute. But any common levy and governing board must allow individual school districts to set their own budgets and operate as they see fit, he said.”³³⁰ This marked a departure with his stance that had been aligned with suburban opposition to the common levy. “Heineman said he isn’t ready to say whether he would sign or veto a bill with a common levy and

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Martha Stoddard, “Heineman Open to School Levy Idea - He Says “Everything’s on the Table” in Trying to Resolve the Omaha Dispute,” *Omaha World-Herald (NE)*, 2006c.

common board. He said he still has some concerns. He said he doesn't see why Sarpy County districts should be included. He also said any common property tax levy should be narrow enough to allow districts to maintain local control.”³³¹

March 29, 2006: Education Committee Advances LB 1024

By Wednesday March 29, 2006 the Education Committee had advanced a plan to the full legislative body on a 6-2 vote. Senators Raikes, Bourne, Schrock, Byars, McDonald and Stuhr voted to advance the proposal while Senators Howard and Kopplin were opposed. “Howard's district lies within the Omaha Public Schools district. Kopplin, a former Gretna school superintendent, has represented the suburban schools' viewpoint. Howard said the plan does not adequately address integration issues. Kopplin said it was too complicated and should not have included Sarpy County districts.”³³² Gretna is in Sarpy County.

OPS and Superintendent Mackiel remained critical of the effort as they did not believe it went far enough to address integration and continued to suggest that the Legislature could “uphold” the laws that were cited to support the “one city, one school” plan. However, Senator Raikes acknowledged that the issue remained under discussion and anticipated further discussion of language that would require the new learning community council to bear the same responsibility for ensuring social and economic

³³¹ Ibid.

³³² Jeffrey Robb and Martha Stoddard, "Panel Endorses School Plan - OPS Leader Says the Bill would Preserve 'Separate but Equal' System," *Omaha World-Herald (NE)*, 2006a.

integration of the learning community schools as do individual districts. Bourne indicated he would pursue just such an amendment.³³³

In the day following the advancement of LB 1024, school districts and officials were left to determine what financial and other impacts would result for the eleven school districts headquartered in Douglas and Sarpy counties. “The information is sketchy,” Gretna Superintendent Kevin Riley said. “I’ve seen so many different things from the beginning of this legislative session. We’re not sure how it’s going to affect us.”³³⁴

The legislative floor debate was expected to begin the following week and was anticipated to restructure the property tax base for Omaha area schools, change the statewide school aid formula and force local school districts to work together. The *World-Herald* reported, “In terms of finances, the indication is that the metropolitan area’s new educational structure would shift the tax burden within individual districts. As OPS reaped new benefits by sharing in the suburban tax base, it would lose state aid, according to financial scenarios laid out by the Nebraska Education Department and the office of State Sen. Ron Raikes. Conversely, a number of suburban districts sharing their tax base could gain state aid as they give up local revenue.”³³⁵

“Elkhorn Superintendent Roger Breed said his coalition of suburban districts is most concerned about the plan’s financial impact and believes it doesn’t adequately

³³³ Ibid.

³³⁴ Michaela Saunders and Jeffrey Robb, “School Plan would Alter Money Flow - Exactly how is the Question that 11 Districts are Examining as Legislative Debate Approaches,” *Omaha World-Herald (NE)*, 2006l.

³³⁵ Ibid.

support growing districts. Still, Breed said the districts can work with the plan. The Legislature, he said, will have time to tweak aspects of the plan before its implementation for the 2008-09 school year.”³³⁶

In addition to financial changes that could be attributed to the common levy, the Education Committee also advanced changes to state school finance provisions. Combined, the schools were left to sort out the likely impacts.

April, 2006

After LB 1024 advanced from the committee, the next step in the process was to schedule it for floor debate by the full legislature. The Nebraska legislative process is unique in its own right as the only unicameral legislature among the 50 state legislatures. Each bill receives a hearing and deliberation by the appropriate committee and then, if advanced to the full body, has to survive three rounds of consideration. The first of these is “General File,” and then followed by “Select File,” and “Final Reading.” Each stage of the debate requires an affirmative vote of the majority of the state senators to advance. Legislative bills advanced may also be amended during the first two stages of debate.

By April of 2006, the Legislature was facing a short time frame to wrap up the legislative session by the end of the 60 day session scheduled to end April 13. LB 1024 had advanced from the Education Committee on March 29 and was now scheduled for debate on General File on April 4th. As both Senator Raikes and Senator Bourne alluded to at the time, the substantial issue of integration was expected to be addressed through General File amendments during floor debate. The *World-Herald* reported on April 3rd

³³⁶ Ibid.

that “legal liability over integration in metro-area schools has become a sticking point: and possibly a deal-breaker: as the Omaha schools debate heads to the floor of the Legislature.”³³⁷ Omaha Public Schools had long suggested that integration and implications of the national case law on school district integration was among their objectives. The remaining suburban area districts had proposed voluntary integration ideas but were reluctant to “sharing a legal obligation” for integration. The *World-Herald* reported, “It's a question that strikes at the heart of long-standing legal precedent in U.S. school integration cases. It also raises questions of how much authority the proposed school district cooperative would truly have.”³³⁸

The April 3rd *World-Herald* article highlighted the integration issue suggesting it was one that the Education Committee had wrestled with in their deliberations. “In one Education Committee meeting last month, lawmakers adopted a committee amendment that the 11 Douglas and Sarpy County districts in the new learning community would share any other district's court ordered obligation to integrate.”³³⁹ However, that version of the bill did not advance and instead Senator Raikes and Senator Bourne seemed to agree to take that issue to the whole legislative body in the form of an amendment. “Sen. Ron Raikes of Lincoln, who [had] tried to broker a compromise, said he hopes to find a middle ground. But he recognizes that it will be tough. ‘The suburbs don't want to be

³³⁷ Paul Goodsell and Jeffrey Robb, "School Bill Hinges on Legal Duty - must all Metro-Area Districts Help Desegregate?" *Omaha World-Herald (NE)*, 2006n.

³³⁸ Ibid.

³³⁹ Ibid.

liable,' Raikes said. He said they are suspicious that OPS is trying to trap them into a situation in which they could be taken to court. 'There's such a reservoir of good feeling and trust among the districts,' Raikes said facetiously. 'They wouldn't put it past OPS to incite a lawsuit against itself if (OPS) thought it would create a liability against the suburban districts.'”³⁴⁰

Senator Raikes also characterized the Omaha Public Schools view that doubted whether the suburban districts were actually willing to provide educational opportunities to enhance integration for inner-city students. Raikes was reported to say, “OPS's position is: ‘Unless there's an absolute hammer, they (the suburban districts) won't do anything. All we'll get is happy talk and no results.’”³⁴¹

Anticipating the debate, the *World-Herald* reported the thoughts expressed by Westside Superintendent Ken Bird as he reported to the school board on April 3, 2005. Although he was reported to say that he “doesn’t love” LB 1024 he suggested it provided a “workable” resolution to the boundary issue. However he also suggested that amendments introduced by Senator Bourne and Senator Howard were “very problematic” and could “derail the whole process.”³⁴²

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Veronica Stickney, "Westside Chief Fears Amendments to School Bill - Ken Bird Says the Provisions, on Student Diversity and Administration, may Sink the Plan Aimed at Ending the Boundary War," *Omaha World-Herald (NE)*, 2006b.

Bird was reported to add, “Those amendments are going to leave us wondering, ‘Where were you when the page was blank?’ [...] It looks like an effort to undermine the valiant efforts to come to a consensus here.”³⁴³

A second article printed by the *World-Herald* on April 4th, the day of the first scheduled round of floor debate, reported that Senator Bourne’s amendment dealing with integration would be the first amendment considered on the proposal that advanced from the Education Committee. “Bourne's amendment would require every school building in the learning community to have a ‘racially and socioeconomically diverse population.’ The amendment does not define diversity. It also says that any resident of the learning community, or any district within the community, could go to court to enforce the integration requirement.”³⁴⁴ Raikes was reported to respond by indicating that Bourne's amendment went further than what had been discussed by the Committee earlier and also added his thoughts about the upcoming debate saying “I certainly hope it's constructively received[...] I think the integration issue certainly is going to need some significant discussion.”³⁴⁵

The *World-Herald* also caught some of Sen. Ernie Chambers thoughts before the much anticipated debate on the Omaha issue. “Chambers talked of ‘the monstrosity that came out of the Education Committee’ and promised that colleagues would hear plenty of

³⁴³ Ibid.

³⁴⁴ Martha Stoddard, "Schools Debate to Focus on Integration - an Amendment Calls for a "Diverse Population" in Every Building within the Proposed Metro-Area Learning Community," *Omaha World-Herald (NE)*, 2006m.

³⁴⁵ Ibid.

talk about hypocrisy when LB 1024 is debated. He said the committee plan does not get at the issue of providing quality education to black children, many of whom attend schools in his north Omaha district. ‘There should be quality education available in every school that is part of a school system,’ he said.”³⁴⁶

April 4, 2006: LB 1024 General File Debate

On April 4, 2006, the issue of LB 1024 and all it represented and contained was the focus of the debate of the full Legislature. Senator Raikes was recognized to open on the Education Committee priority bill. Senator Raikes detailed the general history of how this bill came to be and expressed “It’s my hope that we can come to a decision regarding our state policy on school district organization and make the needed statutory change. At this point, doing nothing serves neither the interest of the affected school districts nor the state.”³⁴⁷ Senator Raikes highlighted the boundary dispute and said, “The grounding for our one-city, one school district policy is that all of the citizens in a city should be called upon to support the public education of all the kids. We should not have separate school districts, for example, for the inner city and for the outer city.”³⁴⁸ However he detailed the recent history suggesting that this policy had been “employed effectively” in Lincoln and Grand Island. But he added, “It has not been employed by OPS though, until the current attempt, and there is a key element of the controversy.”³⁴⁹

³⁴⁶ Ibid.

³⁴⁷ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 12405.

³⁴⁸ Ibid., p. 12406.

³⁴⁹ Ibid., p. 12406.

Senator Raikes also acknowledged the reasoning for the Omaha Public Schools efforts to invoke the “one city, one school” laws as “primarily the concentration of high-needs students in OPS, as compared to suburban districts, and the trends toward greater disparity and funding inequities between metro area school districts.”³⁵⁰

Further describing the scenario and his concern with the ramifications of Omaha Public Schools plan if implemented, he stated the problem was that it would “...include the creation of remnant or surrounded school districts, as well as the possible creation of a mega-district.”³⁵¹ He also added that the uncertainty left a problem of “...getting voter approval for bonds for needed new buildings, given the possibility of the takeover of those buildings by another district.”³⁵²

Sen. Raikes also suggested that what was needed was “good state policy” and said that LB 1024 was a “middle course” that was “decisive, yet cautious.” He suggested that it was cautious in part “...because we stick with policy concepts that have worked well, the notion that all citizens should help support the public education of all the kids, a statewide finance formula, and respect for our fiscal limits. There are ways we could go wrong, which we avoid. We don’t simply and unilaterally free[ze] school district boundaries. We don’t attempt to buy off aggrieved districts, and we don’t permit the takeover of established schools.”³⁵³

³⁵⁰ Ibid., p. 12406

³⁵¹ Ibid., p. 12407.

³⁵² Ibid., p.12407.

³⁵³ Ibid., pp. 12407-12408

He continued, “We do provide for an organizational alternative that retains the formal commitment of all citizens in a metro area to the education of all kids in the metro area but also allows for multiple school districts, each efficiently sized and with significant autonomy.”³⁵⁴

Senator Raikes again described the proposed Learning Community as “a new form of ESU” that would provide “interdistrict governance” with an “emphasis” on member districts coming to agreement. He added, “All students would be considered residents of the learning community, enabling them to attend any school within the learning community that has capacity and transportation would be provided for any student who chooses a school outside his or her attendance area.” He also said, “There would be a common operating levy within a learning community, eliminating the need for option funding or other cross-district compensation for student mobility.”³⁵⁵

Senator Raikes continued to describe the bill as introduced and as proposed to be amended by the Committee. He posed the question asking what gains would be made in the adoption of the bill and answered, “We achieve an opportunity for cooperation between school districts that is locally directed. The benefit of individual school districts and the variety of choices they offer students and parents is retained. The financial underpinnings of districts are made more equitable. Student mobility and opportunity is

³⁵⁴ Ibid., p. 12408

³⁵⁵ Ibid., p. 12408.

enhanced, and the possibility of focus programs or campuses that serve the entire metro area is created.”³⁵⁶

Upon further describing the amendments, Senator Raikes pointed out that the original provisions included both a common operating levy and a common building or construction levy. The Committee discarded the capital construction levy. “That is out of this proposal. So the levies are common levy, a special building fund levy, and a learning community levy. [...] We changed the operating levy so that it’s actually a two-part levy. It has a common part to it, plus there’s a discretionary part available to each school district.”³⁵⁷

Senator Raikes who was also attentive to modifying and adjusting school finance also described the interaction of changes proposed in school finance. He added, “...there’s a significant section on school finance, and this was added in the committee amendment. [...] what we’re doing here is trying to direct more funding for students that are being served, high poverty students being served at the elementary level.”³⁵⁸ He also pointed to a key point about a provision of the Nebraska finance system which directed money to school districts based on student movement. “In the original proposal, green copy, we proposed to eliminate net option funding statewide. The committee amendment does not do that. Net option funding is effectively eliminated in the metro area simply by the design and financial arrangement in that learning community...”³⁵⁹ Senator Raikes

³⁵⁶ Ibid., p. 12409.

³⁵⁷ Ibid., p. 12410.

³⁵⁸ Ibid., p. 12411.

³⁵⁹ Ibid., p. 12411.

also pointed out that part of the internal discussions at the Education Committee level was to address the bigger issues of school finance as proposed in another of his bills. He stated near the conclusion of his opening comments, “Finally, LB 129, a bill which some of you know and are interested in, one that is a reformulation of the needs calculations, the state aid formula, was not in the original copy, was actually in an earlier version of the committee amendment but is back out. We’ve stuck to the basic [LB] 806 needs calculation because, quite frankly, it would have simply [added] more complication to something that probably doesn’t need more complication.”³⁶⁰

Upon the completion of his opening comments, he suggested that the negotiations had come a long way toward addressing the issues but recognized that “we haven’t completely resolved all the issues. And Senator Bourne is going to highlight probably the most significant issue that remains.”³⁶¹

Bourne Amendment on Integration

Senator Bourne then opened on his amendment (AM3005) to the committee proposal. As reported in the prior week, Bourne’s proposal was to raise the expectation and responsibility of integration. He pointed out “In every city around this country where the schools have failed or are failing, surrounding them are suburbs that are doing well. The net scenario is played out across this country, and we want to sit here and act like it’s an accident, when we know full well that it is not, that racism is alive and well, both in

³⁶⁰ Ibid., p. 12411.

³⁶¹ Ibid., p. 12412.

the Omaha community and in outstate Nebraska.”³⁶² Later in his opening, Bourne pointed to the reasons for his amendment. He said, “For purposes of remedial court action to achieve the integrative requirements of this section, the learning community shall be considered one school district. We are a community. We are one community, whether or not we call it the Omaha Public Schools, the Millard schools, the Ralston schools, we are all in this together.”³⁶³

Although the Bourne amendment would later fail, several senators weighed in with their thoughts about what the main proposal was intended to accomplish. For instance, Senator Adrian Smith from Gering added, “...I think that what we should be doing is working with LB 1024, working with Senator Raikes to try to arrive at something that is going to prevent litigation, is going to keep the community together, and ask the suburban districts, as I believe LB 1024 does, to be involved with the urban district in making sure that all children have the best opportunities for educational success.”³⁶⁴

Sen. Kopplin also weighed in even though he was opposed to some elements about LB 1024. He suggested that “There are things I like about the bill. School boundaries are kept intact. This is a must. It deals not only with OPS and Douglas County, it addresses the Papillion-LaVista and Bellevue discussions, it approaches the South Sarpy concerns of border...”³⁶⁵ However Sen. Kopplin also pointed out his

³⁶² Ibid., p. 12413.

³⁶³ Ibid., p. 12414.

³⁶⁴ Ibid., p. 12417.

³⁶⁵ Ibid., p. 12418.

concerns with the bill's complexity and he stated, "I'm concerned about the tax increase and the shifting of state aid and resources."³⁶⁶

Later in discussion of the Bourne amendment, Senator Pam Brown of Omaha, in response to earlier comments attributed to Ben Gray of Omaha's African-American Achievement Council, "What Ben Gray talked about was not just about race; he also talked about white suburban districts having more resources. Well, over the past 20-some years, we as a Legislature have done a great deal to address that, and LB 1024 does a great deal more. We have substantially added to the resources."³⁶⁷ She also added, "But what we're losing sight of are the advantages, the things that we have changed in the underlying bill, LB 1024, because not only are we as a Legislature, through our policies, making equity, but the sharing of the property tax amounts throughout the learning community make a significant difference on the funding side of things."³⁶⁸ The Bourne amendment ended up garnering only 9 votes in favor and failed to advance right before the body recessed for lunch on April 4, 2006.

Common and Building Fund Levies

The body would return in the afternoon to take up the next amendment (AM2687) proposed by Senator Howard. The Education Committee had advanced a proposal that would have granted the Learning Community and its school districts access to \$1.10 per \$100 of valuation while the rest of the school districts in the state were limited to \$1.05. Senator Howard's amendment proposed aligning those maximum amounts by dropping

³⁶⁶ Ibid., p. 12418.

³⁶⁷ Ibid., pp. 12439-12440.

³⁶⁸ Ibid., p. 12440.

the proposal to match. This amendment gave Senator Raikes an opportunity to describe the effort in more detail. He described, "...there's a common operating levy that consists of two parts, or an operating levy, I should say, that consists of two parts: a common part and a discretionary part. There's a part of the levy that's calculated—and that's the 110 percent of formula needs. That levy applies to every school district in the learning community, and to give you a rough example—we did some numbers on this using some past information—that amounted to about 97 cents operating levy for each of the school districts. Under the cap amounts that are in there now, that would give each school district, then, about 5 cents of levy authority that could be determined by the board on a discretionary basis. We started out at having that at one dollar, rather than a dollar two-and-a-half cents, and basically what we found as you move through this transition for the school districts, some of them end up, given the situation they've been in and the spending patterns they've develop, they end up being in a financial pinch for a couple years. So, we decided that it was best, probably, to allow that levy lid to go up to a dollar two-and-a-half, to make that transition more feasible for those schools.”³⁶⁹

Senator Raikes described the rationale for the proposed changes in how the “special building fund” was taken out from the operating levy cap and some general rationale for addressing fiscal capacity. While referencing the proposed treatment of the special building fund, he said, “I think it's an improvement in the financial structure, the financial policy for the state. We equalize the operating levy up to 95 cents or the minimum levy. The special building fund is not equalized, even though it's under that

³⁶⁹ Ibid., p. 12463.

levy cap. What that means is that a school district that has a lot of valuation per student—“wealthy” would be another term to describe it—can collect a lot of money for each cent it levies. A school district with very low valuation, not wealthy, could not collect very much money, [based on a] percent of valuation. So it ends up being dis-equalizing, in the sense that there’s a discrepancy between schools that ...districts that have a lot of valuation and those that don’t. What we did, then was allowed for the learning community as a whole to levy money, taking advantage of sort of the average valuation per student over the whole district, or a whole learning community, and then allocate that back to individual districts to supply this special building fund need.”³⁷⁰

Senator Raikes also described a provision that would have allowed the Learning Community levy funds for focus programs and magnet programs suggesting that “[it] would be, so to speak, indifferent to the valuation per student available in each district, but those monies could be used, then, to serve learning community needs to establish educational opportunities for students.”³⁷¹

After an amendment proposed by Senator Raikes that proposed an integration study as part of the effort, the Legislature moved on to other business. The *World-Herald* reported the next day that the early debate “[...] showed that lawmakers have much work left to do. And little time: one week to do it.”³⁷² The *World-Herald* was also reporting that the two sides may have even moved further from compromise as the Omaha Public

³⁷⁰ Ibid., p. 12463.

³⁷¹ Ibid., p. 12463-12464.

³⁷² Jeffrey Robb, "Schools Bill: Much to do, Little Time Left," *Omaha World-Herald (NE)*, 2006p.

Schools were hoping for a more aggressive integration effort as had been proposed in an amendment by Senator Bourne but the suburban schools considered that a “deal breaker.”³⁷³

April 6, 2006: General File Debate Continues on LB 1024

LB 1024 resurfaced on the April 6, 2006 Legislative agenda. Senator Raikes opened on an amendment to change the levy provisions in the Committee proposal in line with the concerns that had been raised by Senator Howard. Senator Raikes offered, “This amendment would reduce the maximum levy in the learning community to \$1.05, the same as it is in other parts of the state. It does so by dropping the levy cap, the operating cap from \$1.025 down to \$1.02; the special building fund levy is dropped from 5 cents down to 2 cents; and the learning community levy is from 2.5 cents to 1 cent so that the total operating levy cap within the learning community would be \$1.05.”³⁷⁴ The amendment would advance easily.

Controversial Chambers Amendment Divides Omaha Public School District

A defining moment in the heated debate came as Senator Chambers from Omaha introduced an amendment that would break Omaha Public Schools into three smaller districts and, in doing so, criticized Omaha Public Schools for its integration practices. Chambers while opening on his amendment said, “If this plan that I’m presenting here is adopted, you are going to have more than one school district in the city of Omaha. Those people who were worried about all of that other, which I call white folks’ mess don’t

³⁷³ Jeffrey Robb, “Little Progress on Schools - Integration Amendment Fails; Study Task Force Proposed - What's Next? - How they Voted,” *Omaha World-Herald (NE)*, 2006g.

³⁷⁴ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 12787.

have to worry about it. I am interested in the education of children in the school buildings where they attend. I'm not interested in segregation. I'm not interested in separation. I'm not interested in desegregation. I'm not interested in integration. I am interested in quality education. White people in various cities, including Omaha, have put in place what they call desegregation. The educational quality made available for our children has not improved. It has worsened. They have had in other cities not what is called desegregation, but what they call integration; and that in and of itself did not improve the quality of education for black and poor white children who, as white people would see it are stuck in a community where most of the children are black.”³⁷⁵

Although, OPS supporters had been couching many concerns in terms of race, Senator Chambers took the same concerns and couched possible solutions in a whole new light.

Senator Raikes, who clearly supported the policy proposed also sought to clarify his reasons. He suggested that two issues of “who controls the school in the local community” and “what do you do about diversification or integration of students with surrounding districts.” He stated, “This is a unique, maybe, opportunity to do something like this. We are talking here about the formation of a learning community which is a collaborative effort among school districts. There is common financing arrangement involved. It makes it possible that something like this could succeed financially.”³⁷⁶ He also pointed out that the idea was not new to the discussion as Senator Redfield introduced a similar concept for the whole learning community that would have created

³⁷⁵ Ibid., pp. 12794-12795.

³⁷⁶ Ibid., pp. 12796.

smaller school districts. Additionally, Senator Raikes' original bill called for the Omaha district to be restructured in the future so as not to have more than 25, 000 students. At the time it was about 45,000 in total enrollment. Later in the debate, Senator Raikes pointed out "[...]the original LB 1024 as it was introduced, in fact, proposed the breakup of OPS. It did it in a different fashion. It said that there could be no school district with more than 25,000 students. Now we changed that in a later version, but that was certainly an idea that was made available in the committee."³⁷⁷

When asked by Senator Howard about the applicability of LB 1024 in other parts of the state, Senator Raikes said, "And as you know, on the committee we've been very much interested in organizational changes that promote, require school districts to work together."³⁷⁸

The Chambers amendment was adopted with the support of Senator Raikes, Senator Redfield, and several others over objections, including those by Senator Bourne and Senator Howard. As April 6th was a Thursday and the last day before a three-day weekend, the bill continued to be debated for a brief period before moving to the time-certain final reading of other agenda items at 1:30 and ultimately adjourning for the weekend. However, in the closing minutes of that day's debate was an exchange that focused on common levy purposes and would eventually be an important and often cited exchange between Senator Howard and Senator Raikes. Senator Howard asked to

³⁷⁷ Ibid., pp. 12818-12819.

³⁷⁸ Ibid., p. 12817.

address Senator Raikes while formally addressing the Legislature and the exchange was as follows:³⁷⁹

SENATOR HOWARD: Thank you. As you know, you and I worked closely on the issue of the common levy and I'm very supportive of that. I think that's a way to address the needs of all children equally. But my question is the common levy, and I know that you understand this and really can help me better understand it, the common levy is used to equalize the resources among districts. Am I correct in that?

SENATOR RAIKES: Yes.

SENATOR HOWARD: My second part of this question then, would you see this issue, would you see this as...this equalization, this funding being used for a purpose for the state, a more general purpose regarding the students?

SENATOR RAIKES: I'm not sure I follow your question, Senator. Are you talking about the common levy within the learning community and its implications for statewide finance or policy?

SENATOR HOWARD: Well, my question really is...and I'm sorry if I'm vague. I'll have to try to phrase this better to be...to have some more clarity in it. But the levy will result, no matter what the levy is, that amount of money will come from property tax, is that correct? I mean the source of it, when you boil it right down.

SENATOR RAIKES: Right.

SENATOR HOWARD: So if we take that then and look at that money that's going to be used for educational purposes for all students, is this considered a state purpose, since education funds come from the state, it's governed...the educational program is governed by the decisions made by the legislative body for the state, and is the levy going to be used for a state purpose?

SENATOR RAIKES: No, the levy is to support the local school system.

SENATOR HOWARD: But isn't that the state? Aren't we ultimately responsible for that? And I know it's local in that many of the decisions are made locally and by the school boards, but ultimately isn't this the state that is responsible?

³⁷⁹ Ibid., p. 12852-12855.

SENATOR RAIKES: Well, it's a shared responsibility between the state and local districts, and the local property tax is the local share of the financing of the school districts.

SENATOR HOWARD: Okay. I think I have a better concept of this. So that the levy, the common levy would be divided by the committee, no longer being called a board, now called the committee, they would...

SENATOR RAIKES: It's a council.

SENATOR HOWARD: ...they would make the...

SENATOR RAIKES: Coordinating council.

SENATOR HOWARD: Thank you. Thanks. The council. We've changed that name a few times. But they would have the leverage to make the decision regarding the funding.

SENATOR RAIKES: They...that council has the authority to set the common levy up to a maximum...

SENATOR HOWARD: Would you envision that they would reach that maximum? How likely is that?

SENATOR RAIKES: I think it would be very much parallel to what is done now in local school districts. Many of them are at the maximum levy, but not all of them.

SENATOR HOWARD: And the maximum that we've established in this would be \$1.10.

SENATOR RAIKES: Well, with the amendment, the maximum would be \$1.05, if you include both the common...

SENATOR CUDABACK (presiding): One minute.

SENATOR RAIKES: ...or the special building fund and the learning community levy.

SENATOR HOWARD: Okay. Well, I appreciate the information. I think the common...the levy and the property tax issue and how this is utilized are really intrinsic to this whole proposal, this whole bill, and I hope that everyone has a clear understanding. I know it's taken me awhile to process how this would work and how it would equate out, as well as

the decision-making power with the 11-member council. So I appreciate your patience and I appreciate your explanation of this matter. Thank you.

SENATOR RAIKES: Okay. You're welcome.³⁸⁰

The Long Weekend After

The Legislature would return to continue the debate on Monday April 10, 2006 after a long weekend. Before the end of the day on Thursday, the *World-Herald* reported on the unprecedented measure. The paper pointed out, "Today's proposal isn't the first time Chambers has suggested that OPS be broken up. In 1999, Chambers suggested splitting up OPS and setting aside one district composed mostly of black students. His idea came just before OPS residents approved a \$254 million bond issue that meant the end of mandatory busing for integration and the institution of neighborhood schools."³⁸¹

The *World-Herald* reported, "Neither lawmakers nor lobbyists said they could predict whether the proposal will survive once lawmakers have a chance to stop, think and hear from constituents."³⁸² According to the paper, "Raikes said he had been talking with Chambers for several days but did not reach agreement with him until shortly before lawmakers began debate Thursday [April 6, 2006]. Raikes said the plan builds on the

³⁸⁰ Ibid., p. 12852-12855.

³⁸¹ Martha Stoddard, "Plan to Split OPS Advances - A Chambers-Raikes Proposal to Offer More Local Control would Transform OPS," *Omaha World-Herald (NE)*, 2006h.

³⁸² Leslie Reed Martha Stoddard and, "Greater Segregation Feared - A Surprise Proposal to Carve Up OPS Fuels Critics' Concerns - Chambers, Raikes Say More Control on the Local Level is their Goal - Lawmakers Will have the Weekend to Hear Constituent Feedback - if One Became Three," *Omaha World-Herald (NE)*, 2006e.

long-standing Nebraska policy of local control. 'I actually thought it was a very reasonable proposal, although not necessarily tame or noncontroversial,' he said."³⁸³

Although Senator Chambers said the goal of splitting up OPS would be to give more control at the local level, not to create exclusionary districts, critics were reported to call the proposal "state-supported segregation." When asked if OPS would file a lawsuit, OPS Lobbyist, John Lindsey was reported to say, "OPS would have to stand in line to sue, because so many others would be interested in filing suit."³⁸⁴

The *World-Herald* also reported, "Westside's Ken Bird, one of several suburban superintendents watching Thursday's debate, said he and the others hadn't decided how to respond. 'It startled all of us to see the amendment on there,' he said. 'We also were startled by the strength of the vote. It's a strong message to Omaha that we all need to talk.'"³⁸⁵

The weekend yielded many articles and many quotes of community and business leaders in opposition to the proposed OPS division.³⁸⁶ However, even in the face of

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ Martha Stoddard and Jeffrey Robb, "Latest Plan Segregates, Critics Say - Debate Resumes Monday on a Bill that has been Amended to Split OPS in Three Parts. - Roll Call," *Omaha World-Herald (NE)*, 2006b.; Maddie Fennell, Mark Hoeger and Gary Kaplan, "New School Proposal Ignores Integration," *Omaha World-Herald (NE)*, 2006.; Erin Grace, "Many Leaders Dismayed by Eleventh-Hour Proposal," *Omaha World-Herald (NE)*, 2006.; Jeffrey Robb, "Dividing OPS Bad for City, Mackiel Says - the Superintendent Warns that Courts Will Get Involved if the Legislature's Plan Passes," *Omaha World-Herald (NE)*, 2006d.; Martha Stoddard and Jeffrey Robb, "Latest Schools Proposal Criticized - New Segregation Or a Boost for Poor? - Up for Debate Monday - Roll Call," *Omaha World-Herald (NE)*, 2006c.; Martha Stoddard, "Heavy Hitters Decry Plan as Bad

staunch public opposition the legislators, who supported the bill, including the break-up, were resolute to proceed.

April 10, 2006: LB 1024 Debate Continues

On Monday, April 10, 2006, even after a long weekend, the LB 1024 debate wasn't scheduled until 4:00 P.M. that afternoon. The tension seemed to grow even during the course of the day according to a *World-Herald* account published on April 10th before the floor debate that day. "The hours before debate on LB 1024 resumed this afternoon were filled with intense negotiations in the hallways and offices of the State Capitol and emotional speeches in the legislative chamber. State Sen. Ernie Chambers of Omaha took personal privilege on the floor of the Legislature to respond to Saturday's criticism of his break-up proposal by top Omaha business leaders: including Warren Buffett, Walter Scott and David Sokol. 'I feel a responsibility to take issue with those men, identified as the high and mighty and the elite,' Chambers said. 'They used intemperate language, such as 'idiocy,' 'educational terrorism' and 'dangerous.' That can't be allowed to pass without comment. 'The 'phalanx' of old white men,' Chambers said, was notably absent from the debate when OPS dropped its integration plan in 1999. 'When these white men extolling diversity are not paragons of diversity themselves

for Business - OPS Split Hard to Derail - Even Opponents Say State Lawmakers seem Ready to Endorse it. - Suburban Petition Drive Next?" *Omaha World-Herald (NE)*, 2006b.; Jeffrey Robb, "Business Leaders Join Forces Against Split-Up," *Omaha World-Herald (NE)*, 2006c.; "Respect for Principle - Nebraska Legislature has Important Responsibilities this Week," *Omaha World-Herald (NE)*, 2006e.; Martha Stoddard, "OPS Split is a Hard Plan to Derail - Even Opponents Say State Senators seem Ready to Endorse It," *Omaha World-Herald (NE)*, 2006g.; Henry J. Cordes, "Sen. Chambers had Spent Years Preparing for this Big 'Gotcha!'," *Omaha World-Herald (NE)*, 2006e.

in their personal lives or their businesses, it was an exercise in hypocrisy,' he said, questioning whether any of the group sent their children to OPS.'"³⁸⁷

According to the same *World-Herald* account, "State Sen. Ron Raikes of Lincoln also criticized the statements from Omaha business leaders. He said the group did not apparently understand the proposal before lawmakers, in which the three new Omaha school districts would be part of a metro-wide learning community. Through the learning community, all Douglas and Sarpy County school districts would share financial resources and students would be free to attend any school, with transportation provided. 'If they had some facts or concerns, I'm willing to listen, or if they've got other ideas for how to resolve this,' Raikes said. 'I haven't heard them.'"³⁸⁸

Although the tension was apparently building and was both reported and implied in the *World-Herald* in articles published on April 10, 2006,³⁸⁹ the Legislature took up the issue in what had taken shape as a 'fish-bowl' environment. The first topic in the debate was a scheduled review of the controversial "Chambers-Raikes" amendment to break-up OPS.

³⁸⁷ Martha Stoddard, "Lawmaker Wants a Delay on Schools Issue," *Omaha World-Herald (NE)*, 2006d.

³⁸⁸ Ibid.

³⁸⁹ Ibid.; Martha Stoddard, "Bill to Split OPS in Cross Hairs - The Controversial Measure's Opponents are Ready to Attack at Today's Debate," *Omaha World-Herald (NE)*, 2006a.; Judith Nygren, "More than 150 Gather to Oppose Proposal to Carve Up OPS - Rally to Support Chambers' Plan," *Omaha World-Herald (NE)*, 2006.; Michaela Saunders and Judith Nygren, "Rally Protests Carving Up OPS - nearly 200 People Gather to Hear how to Try to Stop a Legislative Amendment," *Omaha World-Herald (NE)*, 2006.

In a seldom used provision of the legislative rules, Senator Cornett offered a motion to reconsider the vote taken on Senator Chambers amendment that was successful the prior Thursday. Senator Cornett, had been absent from the debate in the week before and expressed ‘shock’ that such a proposal would pass the body on such little debate and consideration.³⁹⁰ The body was then able to “rehash” the debate from the prior week and also cite the public reaction to the now controversial break-up of the Omaha Public Schools district.

Although points were made on many sides of the issue, Senator Raikes addressed the body on why he supported this amendment that included articulating the context of the Learning Community. After making points about the ability of a minority community to control their public schools, he posed the question, “Do we somehow say that if a minority community is in charge of their public schools that they’re all of a sudden going to become inappropriately motivated and not allow students from other communities to come into those schools, or students from their schools to go elsewhere? And all I would tell you, that this is ...the whole setting for this is the learning community. One of the main objectives of the learning community is to address the area...the issue of integration within the entire learning community, and OPS has made the point several times that, look, we can’t achieve integration with OPS itself. We need the whole learning community. This is the opportunity for the whole learning community to deal with that issue, and allow the school districts to be locally controlled, getting away from hiding the fact that we’ve got concentrations of racial groups in certain parts of the city so that we

³⁹⁰ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006, p. 12970.

actually recognize it. We keep track of it. We make every effort to see what we can to to move those...students”³⁹¹

He continued, “Every tool that is available to OPS, and more besides, in order to achieve integration is available to this learning community, every tool. School district boundaries really mean nothing, or mean much less in terms of the learning community. Students are free to move across those boundaries. They’re provided transportation and of course, you have the very important element of a common financial base, which is critical to the success of this sort of an operation.”³⁹² Sen. Raikes expressed that he was “dumfounded” that folks considered this “state sanctioned segregation” and added, “We’re recognizing the situation the way it is, and we’re trying to deal with it, and we’re trying to deal with it in a deliberate, systematic way that uses the best tools we know about.”³⁹³

As the debate continued others added thought and concerns about moving forward too quickly. Senator Raikes pointed out that most provisions of the bill would not take effect until after the legislature had a whole other session to deal with issues. Senator Pam Brown seemed to reiterate the importance of the context of the proposal as a whole. She stated that with or without the Raikes-Chambers amendment the Omaha community has fractures to deal with and added, “And I believe the underlying bill, the provisions of a common levy, of the ability to...for children to attend wherever they choose to in the metropolitan area with transportation, those provisions are the things that were the

³⁹¹ Ibid., pp. 12993-12994.

³⁹² Ibid. p. 12994.

³⁹³ Ibid. p. 12994.

context, for me, of adopting the Raikes-Chambers amendment in the first place. I feel like we have two options. We have the bill with the Raikes-Chambers amendment, or we abdicate our responsibility to deal with this issue. We will have no learning community, no common levy, no metro discussion about what the future is, no way for students to go from one place to another.”³⁹⁴

The measure looked as if it would have the votes to advance, Senator Raikes proposed a cloture motion which was intended to limit debate and speed up the process. However, that vote required a super majority of at least 33 votes. The vote only garnered 31 votes. Under normal circumstances, such a failed cloture motion would suggest the bill would not be passed.

April 11, 2006: Speaker Brashear Resurrects LB 1024

In an unusual legislative procedure, Speaker Brashear used the “Speakers’ major proposal” status to schedule continued debate on LB 1024. The combination of the high profile of the issue and the ability of the Speaker of the Legislature to schedule debate let the bill resurface the very next day and the body continued to debate Senator Cornett’s motion to reconsider. After some further debate through the early part of the day, Senator Raikes again proposed a cloture motion. In this second effort it was successful and the bill was advanced.³⁹⁵

However, because of the late date in the session, the Legislature would still have to advance the bill through Select File. Once the afternoon session reconvened, the Clerk

³⁹⁴ Ibid., p. 13001.

³⁹⁵ Ibid., p. 13122-13171.

of the Legislature reported that the Enrollment and Review Committee reported that LB 1024 and its companion appropriation bill were advanced. So roughly at 1:30 on April 11th, the Speaker of the Legislature, Senator Brashear, addressed the body to “[...] remind everyone that in order to meet the constitutional stipulation that no vote upon the final passage of any bill shall be taken until it has been on file for Final Reading and passage for at least one legislative day, that this is the day in the session in which every bill we amend or advance from Select File today must be reviewed and printed[...]prior to midnight...”³⁹⁶ This meant that sometime before the end of the afternoon or early evening, LB 1024 would have to advance a second time in the same day.

The *World-Herald* published an article mid-day outlining the happenings of the morning debate. The article reported on the day’s events to that point and made the point that “[t]he Nebraska Legislature won’t be finished with the Omaha-area school dispute, regardless of whether lawmakers pass a bill addressing the issue before their 2006 session ends Thursday.”³⁹⁷ The paper reported that there was “plenty of time” if the legislation passed for policy makers to revisit the effort in the next legislative session. “We have not ruled out anything, and we have not ruled in anything absolutely,” said State Senator Ron Raikes according to the article. “LB 1024 begins the discussion after the Legislature goes home.” The paper also said that Raikes argued that the bill “...needs to pass so the

³⁹⁶ Ibid. p. 13186.

³⁹⁷ Martha Stoddard, "School Battle Won't End Soon - Bill Leaves Plenty of Time to Revisit the Issue - Roll Call," *Omaha World-Herald (NE)*, 2006i.

emotions that have fractured the metropolitan area can cool enough for a communitywide consensus to emerge...” and that “LB 1024, if passed, would provide a stand-down.”³⁹⁸

There was considerable pressure to pass the bill in the current legislative session as suburban school districts were considering a petition drive to overturn the “one city one school” provisions of law that Omaha Public Schools had argued would and should be enforced if the legislature failed to act. At least at mid-day on April 11th, Legislative Bill 1024 looked as if it would come to a second-round vote before the end of the Legislature’s day.

Select File Debate on LB 1024

After taking up a few other issues, the Legislature did return to LB 1024 on Select File, the second round of debate in Nebraska’s legislative process. Speaker Brashear pulled Senators Raikes, Chambers, and Bourne to the front of the body to discuss the order of business and asked the body to stand at ease while sorting out the order of business.³⁹⁹ The first Select File amendment considered was a finance-related amendment (AM 3237) introduced by Sen. Lavon Heidemann who represented Legislative District 1 comprised of the mostly rural portion of the extreme southeastern part of the state. The Heidemann amendment provided for a finance stabilization factor that would have helped address concerns with school finance of declining enrollment schools. Senator Heidemann articulated his concerns about the finance situation for declining enrollment districts across the state and, although the legislature had been focused on the immediate

³⁹⁸ Ibid.

³⁹⁹ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 13314.

concerns of the Omaha metropolitan area, Senator Raikes had previously included school finance reforms in Education committee discussions of LB 1024.

Although Senator Heidemann would eventually pull the amendment from consideration, the concept was eventually adopted in another amendment to the bill. However, the debate on the concept was much more focused on the context of the politics, motives, and emotions of the mainline issue in front of the body. Senator David Landis from Lincoln stood up to support the Heideman amendment saying, “I think it brings some equity to the issue. That’s fine by me.”⁴⁰⁰ He also described the sides of the “chasm” suggesting that the two sides represented by the suburban interests and Omaha Public Schools remained clearly divided. He suggested that the debate thus far had not been able to find “agreement sufficient to move forward together,” and he added, “One thing that has emerged successfully out of the debate so far, and it’s encapsuled in LB 1024, is a recognition of a shared obligation or responsibility for the kids in the metropolitan area. That’s envisioned in the idea of the learning community. That idea itself is a step forward, that’s a good one.”⁴⁰¹ Senator Landis also recognized that the proposal in front of the group had not yet met the satisfaction of Omaha Public Schools. “And so far, we’ve not formulated a set of ideas that is better for the OPS than relying on the 1891 law and pursuing the lawsuit. The lawsuit is a better alternative from their perspective, I would guess, than what we’re talking about here. It’s better than LB 1024 with the Chambers amendment attached. It gets essentially to the learning community

⁴⁰⁰ Ibid., p. 13316.

⁴⁰¹ Ibid., p. 13316.

idea but it also gives them administrative control of those areas as well, which is exactly what the suburban districts can't live with."⁴⁰² Landis described what he viewed as the two clear divisions and the reasons that the proposal so far was still not satisfactory to the Omaha Public Schools especially with the possible break-up of OPS. However, he added, "[w]hat I acknowledge the value of the Chambers amendment to be is this. Inside the operation of OPS is the problem of what minority-dominated schools, their resources, their faculty, their curriculum, whatever it is has not solved the problem of the community and does not, at the moment, have the confidence of that community."⁴⁰³

Following Senator Landis, concerns were expressed by Senator Bourne that the Heidemann amendment was a political "payoff" of sorts. Emotions were running high as Senator Bourne took the microphone and chastised some of his colleagues. "Surprise, surprise, surprise. I knew this was all about money. First, I thought it was race. Now I realize what's really going on here. We, my row of colleagues have said through their cloture vote earlier today, you can buy us off. That's what they've done. You can shake your head. We had a cloture motion here last night that failed. I had heard some rumblings from some of my rural colleagues that there was an agreement that Senator Raikes was going to allow an amendment to increase funding for rural schools on Select File, and here it is."⁴⁰⁴ Speaker Brashear also took the microphone and raised concerns that this move was "too divisive" and suggested that "And in politics, perception is reality. And this started, this came to a point where, with no fault finding against anyone,

⁴⁰² Ibid., p. 13316.

⁴⁰³ Ibid., p. 13317.

⁴⁰⁴ Ibid., p. 13318.

it simply took a wrong turn for good motives and good reasons. And it is now perceived very badly.”⁴⁰⁵

Senator Raikes followed and expressed his support for the amendment and gave several reasons that had been discussed in surrounding rural school finance concerns. He said, “[i]t stabilizes the needs calculation which I think is a sound policy,” and later added, “[n]ow keep in mind also that in [1024], we’re addressing needs, needs calculation, and weightings for at-risk kids, poverty kids in the elementary level. That will be a statewide impact. There are many rural schools that serve those but, quite frankly, the biggest beneficiary of that change is probably urban schools. I think the rural schools are quite happy to go along with that. They see it as a need, they’re willing to participate. All they’re saying is we have a legitimate need here; we’d like to have this need addressed as well. I think that is entirely appropriate.”⁴⁰⁶

Senator Raikes also addressed the quick turn of legislative events. “Finally, Senator Brashear talked about this proposal and ‘knee-jerk’ and ‘quick.’ You know, a year ago in June, OPS proposed dismantling quite a few school districts in a very short amount of time. Now, I’m not necessarily suggesting that this be comparable or that that in any way had anything to do with the Chambers/Raikes amendment that dealt with OPS. But all I want you to do is to consider that that is not something that is completely out all by itself in this particular series of events.” Senator Raikes continued, “This has been a part of this whole discussion. Is this a knee-jerk reaction? Does OPS end up

⁴⁰⁵ Ibid., p. 13318.

⁴⁰⁶ Ibid., p. 13318.

divided into three districts tomorrow morning if this Legislature would advance this bill? Absolutely not. A final plan wouldn't be in place until December of 2007, almost a year and a half, more than a year and a half away. And there is ample opportunity in the meantime for all kinds of input, public and legislative, to address this issue and make whatever changes are needed. As a matter of fact, this whole bill is that way. There is nothing that happens quickly. All you do is move forward the point to begin the negotiations. We begin them, instead of with total boundary uncertainty, the boundaries are certain. We begin them with the notion that there is going to be a learning community formed and that school districts will, in fact, have to work together.”⁴⁰⁷

Senator Raikes was building a case for “action” over “inaction” on the proposal in front of the body. Earlier in the day, the *Omaha World-Herald* had published an article that suggested momentum was building toward a “time-out” on the issue. The paper reported that rather than end the Legislative session on a divisive note, some suggested to slow down the process, freeze school district boundaries and create a task force to address integration, finance and other issues. The article implied that Senator Gail Kopplin of Gretna, Senator Lowen Kruse of Omaha and Senator Mike Flood of Norfolk were supportive of a slowed-down process. The article reported “Kruse said his goal was to send both sides back to talks. ‘Let's think about this,’ he said. ‘Let's talk about it.

⁴⁰⁷ Ibid., p. 13322.

Let's reflect on it,”” and “State Sen. Mike Flood of Norfolk said rural Nebraska senators want ‘Omaha to find a solution that works.’... ‘Help us help you,’ he said.”⁴⁰⁸

However, another *World-Herald* article published on the same day suggested that Senator Raikes’ efforts to convince some to advance the bill were gaining traction. For instance the paper reported that Senator Kruse, who had been quoted as calling for time for talks, was now quoted to be supportive of advancing the bill to force both OPS and the suburban districts to the table. “State Sen. Lowen Kruse of Omaha said Monday night that he is now convinced that passing the bill would force both OPS and the suburban school districts to the negotiating table, yet still leave plenty of time to make changes before the new law would take full effect.”⁴⁰⁹

The paper also reported, “Gov. Dave Heineman's office issued a statement saying that the Republican governor wants to see lawmakers act this session on LB 1024, which the statement described as a ‘comprehensive bill to address educational opportunities and school district boundaries in metropolitan Omaha.’ ‘It is imperative that senators act on this bill by day 60,’ Heineman's statement said. ‘This issue must be dealt with by this Legislature at this time. Inaction is not an option.’”⁴¹⁰ The *World-Herald* also reported, “Sen. Ron Raikes of Lincoln, the Education Committee chairman, argued that LB 1024 needs to pass so the emotions that have fractured the Omaha metropolitan area can cool

⁴⁰⁸ Jeffrey Robb Martha Stoddard and, "Timeout Suggested on Schools - Freeze Proposed on District Boundary Shifts," *Omaha World-Herald (NE)*, 2006d.

⁴⁰⁹ Martha Stoddard, "Schools Bill Still Breathing - Speaker Schedules 1st and 2nd Votes Today," *Omaha World-Herald (NE)*, 2006l.

⁴¹⁰ Ibid.

enough for a communitywide solution to emerge. ‘LB 1024, if passed, would provide a stand-down,’ he said. ‘It gives us plenty of opportunity to revisit the provisions.’”⁴¹¹

Although it was clear that the debate had evolved since the controversial Chambers-Raikes breakup of Omaha Public Schools provision had shifted, the basic points of disagreement were essentially the same. The *World-Herald* reported, “Breakup supporters say the move would pass legal muster and needs to be viewed within the context of the larger, multidistrict learning community. Raikes defended the plan, saying the combination of smaller districts and a broader learning community would make it more likely to improve education and integration. ‘I think this arrangement makes it more likely we’ll get something done,’ he said. ‘Every tool that is available to OPS and more besides is available to the learning community.’”⁴¹²

Although the debate had continued on the floor of the Legislature, the *World-Herald* printed the response by OPS superintendent John Mackiel stating “he was pleased that the bill failed to advance Monday. He also said he is ‘willing and eager’ to talk: as long as everything is on the table, including OPS takeover of parts of the suburban districts. ‘OPS has stood ready to have the conversation, we’ve been present at every meeting,’ he said. ‘There’s not been any refusal at all to talk.’ He said other districts have said they would not negotiate as long as the OPS one city, one school district resolution

⁴¹¹ Ibid.

⁴¹² Ibid.

was alive. He said OPS needs to have the ability to assure that it will have an adequate tax base for quality education decades into the future.”⁴¹³

As the debate continued on the floor of the Legislature, it was clear that the suddenness of the OPS takeover plan from the prior year had led to some mistrust of Omaha. Even so, Senator Wehrbein suggested that “[...] the whole state, all of us, all 49 of us should try to solve it.”⁴¹⁴ However, he made clear that he was concerned that addressing all of the challenges and the divided interests needed “a big hammer, like a sledgehammer, to make some people listen.”⁴¹⁵ He later added, “But we’ve got to bring everybody to the board and I think, as Senator Raikes said, in his learning community situation is one way to do it. It looks like people will be forced [to sit down] together in Omaha and talk about it and come up with some solutions.”⁴¹⁶

Senator Matt Connealy who represented a generally rural district north of the Omaha metropolitan area and who was allied with Senator Bourne in opposition to the split-up of Omaha Public Schools spoke to the Heidemann amendment, “This is what we should have been talking about. I believe that this inequity with a flat and declining enrollment is a real problem that needs to be addressed in our aid formula. So I’m happy that we are talking about it.”⁴¹⁷ He added, “But this doesn’t make the bill right. Dividing up OPS I don’t believe is the right way to go for the state. Now I’m in support of fixing

⁴¹³ Ibid.

⁴¹⁴ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 13323.

⁴¹⁵ Ibid., p. 13323.

⁴¹⁶ Ibid., p. 13323.

⁴¹⁷ Ibid., p. 13324.

the formula. I'm in support of a lot of things in LB 1024. But I can't support an underlying bill that would chop up OPS just out of spite, and that's what I see here.”⁴¹⁸

Regardless of the motives or intentions of the Heidemann amendment, it continued to spark an emotional debate that included Senator Chambers, Senator Howard, Senator Synowiecki of Omaha, and others. Senator Mike Friend, while generally opposing the split-up of OPS, also added to the record describing the perceptions of the process and suggesting that the body had already decided to advance the bill. However, he acknowledged that the process started with tension and a lack of consensus. He noted “[t]he committee statement showed us at the very beginning of this whole process, Ron Raikes was alone. Senator Raikes was alone as a proponent for this bill. I don't see Millard joining him. I didn't see Ralston joining him; I didn't see Omaha joining him. I didn't see anybody joining him. Senator Raikes was alone.”⁴¹⁹ Senator Friend, who also served as the chair of the Urban Affairs Committee, saw that there was a need for a “hammer,” in similar fashion as Senator Wehrbein had mentioned before and Friend added “The hammer is Senator Chamber's amendment. What Senator Chambers' amendment has done, we all know this, whether it's real or just perception, it has changed the complexion and the goals of LB 1024. The goals of LB 1024, the way I read it, learning communities, funding equity, new creative ideas for governance,

⁴¹⁸ Ibid., p. 13324.

⁴¹⁹ Ibid., p. 13332.

potentially to deal with unique demographic concerns that the Omaha metropolitan area has.”⁴²⁰

During the course of the debate on the Heidemann amendment, it had garnered some rural support and general support to address declining enrollment although, taken as a separate issue, it was criticized as opportunistic by those who opposed the break-up of OPS as well as some that were generally supportive of Senator Raikes’ main efforts. Senator Nancy Thompson who represented the Papillion area noted that she was still undecided on the major points of the bill but had voted to support the Chambers-Raikes amendment and the ongoing debate. However, she was critical of the Heidemann amendment as she found it unfortunate that “[...] this is not one of those things that I think is appropriate [to add to a bill that’s discussing] learning communities in the Omaha area.”⁴²¹

Senator Raikes Takes Control of the Integration Issue

Perhaps as part of the bigger picture, Senator Heidemann withdrew AM3237 and Senator Raikes introduced a broader amendment (AM 3258) that would “raise the ante” on the debate. Senator Raikes took the floor to open on his amendment. He said, “This is our attempt, my attempt, to put this bill in the form which I would like it at this point. I think it’s the manner in which I would recommend to you that we go forward with it.” Senator Raikes’ self-correction switching from “our attempt” to “my attempt” was not insignificant as he was taking ownership and responsibility for the contents of the amendment plus was making clear that it was his personal recommendation for the

⁴²⁰ Ibid., p. 13332.

⁴²¹ Ibid., p. 13338.

direction the body take. If the debate had been any indication, the bill looked likely to advance with the Heidemann amendment; however, it seemed that Senator Raikes wanted to address other controversial integration issues and clarify the intent of the break-up of OPS in the short time remaining in the Legislative Session.

Senator Raikes made clear that Senator Heidemann's amendment was part of his amendment and also included language that strengthened the learning community powers on integration. Raikes described that schools within a learning community would be required to participate in an integration plan developed by the learning community and shared with the Legislature. Senator Raikes shared, "This says that once that happens, every school district within the learning community is required to participate in that plan and standards for participation are specified. It also says that in the event that a school district does not participate in the integration plan, then the learning community board is required to dissolve that school district and assign its parts to other school districts within the learning community. As I say, this idea is an enhancement aimed at the concerns expressed by OPS that integration was not adequately dealt with and, in particular, there were not sufficient teeth, so to speak, in this bill, in LB 1024, to ensure the participation by school districts."⁴²² Senator Raikes also noted the amendment included striking a phrase "community of interest" and other technical amendments. Senator Chambers also addressed this point and made clear that the divisions of OPS were not based on race but

⁴²² Ibid., p. 13342.

on other criteria for establishing future boundaries that were ostensibly established as attendance areas by OPS.⁴²³

Among the floor debate exchanges on the new Raikes' amendment, Senator Pam Brown mentioned that some of the rationale for LB 1024 "...was to bring everybody to the table, and there are parts of it that I know that the suburban schools had to swallow hard to accept."⁴²⁴ She later asked Senator Raikes if OPS had ever been willing to "come to the table" on LB 1024. Senator Raikes responded, "Senator, I'll try to give you a fair answer to that. I would tell you that I think that the formation of a learning community was in part an attractive feature to OPS. They were interested in sharing financial resources with other districts, but they did not have any support or they were not in support of the arrangement we proposed for voting on the learning community coordinating council... nor were they in support of any of the attempts we made to address integration issues."⁴²⁵

As time was ticking, some senators grew concerned about the process. Senator Beutler from Lincoln indicated that he was feeling "increasingly stressed" and was unclear about the process for the night. He asked Speaker Brashear what the order of events needed to be for the evening. Speaker Brashear responded, "I am advised and informed by those who have been working on this that the only amendment which they want is the amendment which is pending now to the bill and is before you, that that amendment incorporates concepts that Senator Raikes has talked about, what I would call

⁴²³ Ibid., p. 13342.

⁴²⁴ Ibid., p. 13343.

⁴²⁵ Ibid., p. 13344.

the learning community.” He continued, after some clarification about the contents of the amendment, “If this amendment is adopted we would have to do something in terms of cloture in order to advance the bill.”⁴²⁶

Sen. Beutler also asked about the provisions that might “hold harmless and anticipate a special session” which had been a consideration promoted by the Speaker to draw the session to a close and continue a discussion with the various parties, thereby deferring to a future opportunity to act. Speaker Brashear responded, “to be candid with you, sir, there doesn’t seem to...the Governor has questioned and disagreed with that approach and has made that known to the people and to the colleagues, at least in part. And I’ve not continued to pursue it because of Senator Raikes’, Senator Chambers’ wishes as it related to this situation and Governor Heineman’s push with regard to it.”⁴²⁷

Although the votes seemed to be aligning to advance the Raikes’ amendment and ultimately the bill, the legislative jockeying continued among the sides. The late time frame of the debate also suggested that a filibuster strategy to delay action would be a reasonable strategy by those who were opposed to the passage of the bill, however the special legislative rules and the Speaker’s apparent willingness to implement measures that would limit debate to ensure a vote for passage before the day ended seemed to all but guarantee the bill would advance. At one point Senator Thompson attempted to strike the Heidemann finance proposal from the package. Senator Elaine Stuhr from Bradshaw, a longtime member of the Education Committee, pointed out that Senator

⁴²⁶ Ibid., p. 13346.

⁴²⁷ Ibid., p. 13346.

Raikes had originally included finance provisions in LB 1024 but that "...there were a number of us that came to him and said, we want to narrow the focus. We had LB 129 which was the school finance bill and that we thought it was more appropriate if we addressed the funding possibly in that. There were a number of other issues that Senator Raikes took out. I mean, we compromised in what we put out of the committee. I wanted to make that known that this isn't really a new issue because we did...the original bill did include some funding issues.”⁴²⁸

As the evening was drawing closer to an end (roughly 9:30 or 10:00 PM) so was the end of debate drawing near on Senator Raikes' amendment, AM3258. The vote for passage was 30 in favor with 12 opposed. Immediately after that vote, Senator Raikes was recognized to move to suspend the rules to advance LB 1024 without further amendment, motion or debate. After some debate on the suspension of rules and the eventual vote on the advancement of the bill, LB 1024 passed with 32 in favor and 13 opposed.

The addition of the more aggressive integration role did not escape the attention of the *World-Herald* the next day. "The bill was amended so that it would force the dissolution of any district that failed to participate in an integration plan to be developed by a special task force of the learning community. Senator Pam Brown of Omaha said that provision wasn't especially popular among the suburban districts. Those districts resisted earlier efforts to make them legally responsible for achieving integration within the wider Omaha community. 'There are parts of it (the amendment) that the suburban

⁴²⁸ Ibid., p. 13357.

schools have to swallow hard to accept,' Brown said. Sen. Ron Raikes of Lincoln, the bill's original sponsor, urged the change in response to concerns raised by OPS officials about whether the suburban districts would take part in any integration plan.”⁴²⁹

The paper also noted that LB 1024 no longer required that students in the newly created Omaha districts share a “community of interest” but the three districts would still be drawn using current OPS high school attendance areas. “Despite the day's events, Sandra Jensen, president of the Omaha school board, still sounded a note of optimism. ‘There's still another day,’ she said”⁴³⁰ “After Tuesday night's vote, [Jensen said] she was amazed that, in 2006, such legislation: which she called the ‘Raikes - Chambers segregation bill’: could get support. She said the bill would take Omaha back to the days before the landmark *Brown v. Board of Education* decision against school segregation.”⁴³¹

The *World-Herald* also reported that some senators and observers were suggesting that the Legislature slow down. “But Raikes said delaying action would not help resolve the situation. He has been talking with representatives of all sides since OPS announced in June its plans to take over parts of the Millard, Ralston and Elkhorn school districts that lie within Omaha's city limits. ‘I think it's very important we change the

⁴²⁹ Martha Stoddard, "Suburbs Get Integration Duty - OPS Breakup Bill: Revised further: Advances," *Omaha World-Herald (NE)*, 2006p.

⁴³⁰ Ibid.

⁴³¹ Ibid.

starting point,' Raikes said. 'I don't think it's a good idea to go back where we were when we started.'"⁴³²

"The Nebraska Legislature risks putting Omaha-area school integration into the hands of a federal judge with its proposed solution to Omaha's school boundary dispute," according to national experts cited in an April 12, 2006 article published by the *World-Herald*.⁴³³ The experts included Gary Orfield, director of the Harvard Civil Rights Project, William L. Taylor, an attorney who had been involved in desegregation cases nationally, and Chinh Quang Le of the NAACP Legal Defense Fund who responded to the Legislature's proposed solution to the Omaha-area dispute. "It's race-conscious and it's deliberately segregating the schools," said Taylor. "I think there's plenty of precedent to say this is a dangerous and risky move by the state," said Gary Orfield.⁴³⁴

The *World-Herald* also reported that opponents of the breakup were not ready to give up even though the bill had already passed the most significant hurdles in the legislative process. "A lobbyist for OPS said the battle likely will have to continue outside the Nebraska Legislature, which appears poised to give final approval to the plan Thursday. 'I don't know of any votes that have changed, and I know what the vote count was last night,' OPS lobbyist John Lindsay said today. Lindsay commented barely 14 hours after Nebraska lawmakers voted 32-13 to give second-round approval to

⁴³² Ibid.

⁴³³ Henry J. Cordes, "Splitting OPS 'Won'T Fly,' Legal Experts Say - what does it all Mean?" *Omaha World-Herald (NE)*, 2006f.

⁴³⁴ Ibid.

Legislative Bill 1024. State Senator Pat Bourne of Omaha said he would not let the bill pass without one last legislative fight. ‘We got one more bite at the apple. We're not going to let up now,’ he said.”⁴³⁵

Governor Heineman indicated his general support for the bill and said according to the *World-Herald*, “(It) secures both boundaries and future cooperation. It gets the focus back where it belongs -- on the quality of education for Omaha's children,”⁴³⁶ However, not all of his comments suggested complete support. “The governor said he was uncertain whether a breakup of OPS is necessary. He also said he was not in favor of including Sarpy County districts in the solution or of creating a learning community bureaucracy.”⁴³⁷

April 13, 2006: Final Reading and Passage of LB 1024

On the 60th and final day of the Legislative Session, LB 1024 still had to pass the third and final round of debate in the Nebraska Legislative path to becoming a law. Speaker Brashear addressed the legislative body late in the morning on April 13, 2006 to explain his procedural ruling that he would require the bill to pass the threshold of 33 votes required in a cloture motion. The Speaker expected the remaining opponents of the bill would attempt to filibuster on the final day of the session.⁴³⁸ Although there were

⁴³⁵ Martha Stoddard, "OPS Bill's Foes Still Hold Hope - Gov. Dave Heineman Speaks in Support of the Measure but Questions the Need to Break Up the District. - Second Round - what does it all Mean?" *Omaha World-Herald (NE)*, 2006f.

⁴³⁶ Ibid.

⁴³⁷ Ibid.

⁴³⁸ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. pp. 13515-13516.

amendments intended to prolong the debate or effectively stop the enactment of the bill, there was at least some resignation that the bill would ultimately pass this final stage of debate. Senator Koplin introduced a motion to return the bill to Select File with the intent of studying other solutions while freezing boundaries. This motion would have killed the proposal. However, during his opening he suggested that he would prefer more time to work on the concepts and then said, “I think people have made up their minds. We can do the same thing that my amendment would do by trusting Senator Raikes in saying we have two years to work it out.” He then withdrew his motion.⁴³⁹ Senator Howard and Senator Bourne stated their concerns with the bill that were primarily focused on the break-up of Omaha Public Schools. Senator Chambers also argued that the break-up was both constitutional and appropriate. Other senators offered thoughts as last minute attempts to either stop the bill or justify its passage. Although most of the conversation at this point dealt with generalities or the break-up, Senator Pam Redfield reiterated rationale for the creation of the learning community and the break-up of OPS in the context of the whole policy change. She said, “I respect a great deal the colleagues that have spoken on the constitutionality of the issue, their concerns over the *Brown* decision and whether in fact we were creating some type of segregation. And I will tell you that not for a moment do I think that that is what is occurring in LB 1024. What we’re talking about is enlarging our district, our learning community throughout the metropolitan area. We’re incorporating even more districts into that. Are we creating stand-alone districts, truly autonomous, with their own levy and authority, independent of

⁴³⁹ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. pp. 13517-13518.

any other board? No, we're not. No, we're not. We're not creating separate districts; we're creating interrelated districts. They will share a levy, they will share a board, they will share the responsibility for an integration plan, and they will be a community service delivery of education in the metropolitan area.”⁴⁴⁰ She later added, “And I think LB 1024 is about the metropolitan area becoming one family of schools, one learning community, far larger than just one city, one school, but all of us together working to solve the problems. I hope none of you think that we are trying to go backwards, that we are trying to diminish the opportunity as far as students, the academic excellence that we provide for our students, the social integration of our students; because I think we're going the other direction. I think we're moving beyond our times.”⁴⁴¹

Senator Jensen, who represented part of Omaha including the Westside Community School District, expressed similar thoughts as Senator Redfield. He added, “This is the beginning of a new chapter in schools in Nebraska, certainly in the metropolitan area.”⁴⁴² He suggested that like Westside, multiple districts could exist within the learning community and suggested that competition and integration could be part of the model. “Some will have more than others, but we're all part of the same system. Our goal is to provide the best education for Nebraskans that we can.”⁴⁴³ Shortly thereafter, Senator Raikes was recognized to call for a motion to invoke cloture and the

⁴⁴⁰ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 13548.

⁴⁴¹ Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. pp. 13548-13549.

⁴⁴² Clerk of the Nebraska Legislature, *LB 1024 - Floor Transcripts*, 2006. p. 13550.

⁴⁴³ *Ibid.* p. 13550.

motion was successful with 35 affirmative votes. The bill was subsequently passed by the body on a 31 to 16 vote. Later that same day, the Governor signed the bill into law.

The Aftermath

The days and weeks after the passage of the landmark bill were filled with “post-mortem” type examinations of the issue and the questions that surface after major policy decisions. As the *World-Herald* reported the day after the passage of LB 1024, “In the long run, the law as written will split the Omaha Public Schools into three districts and join all Douglas and Sarpy County school districts within a new learning community to share resources and promote integration. In the short run, it may set off a new round of negotiations that could change some of the law's key provisions.”⁴⁴⁴ The governor and others started to weigh in on what the passage of LB 1024 meant. “At its core, LB 1024 is about protecting local control while enhancing the opportunities for cross-boundary cooperation,” Heineman said according to the *World-Herald*. He added, “The intent of it is to end all of this talk about boundaries and force everybody to sit down and talk about what really matters: ways to improve the education of Omaha's children.”⁴⁴⁵

OPS Superintendent John Mackiel was reported to encourage dialog about making changes starting and offered a formal invitation to area superintendents for discussions. Mackiel also said the learning community concept offered opportunity for movement, integration and program development. “We believe we can make good

⁴⁴⁴ Martha Stoddard, "School Law just First Step - New Talks on the Boundary Dispute could Alter Key Provisions - Omaha Schools Roll Call - Sizing Up School Bill," *Omaha World-Herald (NE)*, 2006k.

⁴⁴⁵ Ibid.

educational policy with pieces of the tools we've been given," he said. "We believe that can become a constitutional law that's good for young people."⁴⁴⁶

The *World-Herald* also reported that the suburban superintendents expressed tentative willingness to participate in talks with Omaha Public Schools officials. "“There's a lot in this bill that we don't like,’ said Ken Bird, superintendent of Westside Community Schools. But he said the bill gives time for problems to be worked out and brings everyone to the table to do so.”⁴⁴⁷

Omaha Public Schools had already suggested that litigation was likely while Senator Raikes was optimistic about possibilities presented for change. “I think the opportunities this presents are boundless,” Raikes said. Even Senator Chambers “[...] hinted that OPS officials could avoid the breakup mandated by LB 1024 by changing their ways.”⁴⁴⁸

Omaha Public Schools officials were reported to stand behind their actions that led to the controversial “one city, one school” move and the eventual legislative response. ““We agreed to do this,’ said the OPS board's vice president, Shirley Tyree, of the effort last year to absorb 25 schools, billions of dollars in tax base and more than 10,000 students from Millard, Ralston and Elkhorn. ‘I don't think there's one of us today that

⁴⁴⁶ Martha Stoddard, "School Law just First Step - New Talks on the Boundary Dispute could Alter Key Provisions - Omaha Schools Roll Call - Sizing Up School Bill," *Omaha World-Herald (NE)*, 2006.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

would say this is a mistake,' Tyree said. The OPS board's vote to expand was unanimous.”⁴⁴⁹

Omaha Public Schools also made clear that they were considering their legal options. “Mackiel said the passage and signing of the bill into law reaffirm the importance of the government's three branches. ‘We're certain the judicial branch will review this matter thoroughly,’ Mackiel said.”⁴⁵⁰ OPS Board President “Jensen said OPS never wanted to take the issue to court, and ‘we still hope we don't have to.’ But Jensen also said OPS will not give away the district's legal options. ‘We will do what needs to be done.’”⁴⁵¹

The *World-Herald* also published an article highlighting the role of State Senator Ron Raikes and his “knack” for deal-making. “While last week's vote in the Legislature does not end the policy debate, one thing is clear: A single legislator from Lincoln did what no other Nebraska leader has done. He hammered out a way to address one of the most divisive issues in Omaha history.”⁴⁵² Raikes argued that the new law does more to promote integration and fiscal equity than the effort OPS launched abruptly the prior

⁴⁴⁹ Jeffrey Robb and Michaela Saunders, "OPS Officials Don't Regret Opening a Pandora's Box," *Omaha World-Herald (NE)*, 2006.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

⁴⁵² Martha Stoddard and Paul Goodsell, "Raikes has a Knack for Forging Deals - The School Bill's Key Mover had Built Trust with His Knowledge of the Education System. - Sizing Up School Law," *Omaha World-Herald (NE)*, 2006.

June. The so-called ‘one city, one school district’ initiative called for the takeover of territory and schools from the Millard, Ralston and Elkhorn districts.⁴⁵³

The article also suggested that early after OPS sought to claim suburban territory “Raikes began to study the issue. Before long, he concluded that the concept of ‘one city, one school district’ was a wise policy. It makes sense to let any city's school district grow as the community expands, Raikes said. There should not be multiple ‘walled-off’ school districts within one community, he said. But Raikes also saw major problems since OPS hadn't tried to use the law for years. A takeover would be massive. And it would be difficult for the remaining parts of Millard, Ralston and Elkhorn to operate, especially if they were perpetually at risk of losing another slice of their territory as the city expanded. Moreover, as Raikes saw it, OPS had no convincing strategy to make its newly annexed schools more integrated. The district was shrinking its percentage of poor and minority children by adding suburban enrollment, but Raikes considered that a superficial and ‘cynical’ change. He decided the best approach was akin to two counties, one school district. He eventually dubbed it a ‘learning community.’ ‘Everybody in the metro area helps support all the kids in the metro area,’ he said.”⁴⁵⁴

The article cited several issues and twists that eventually led to the successful learning community proposal including the controversial split of OPS and the ongoing criticism. “Raikes is bothered by the criticism, which he says is misinformed. No state senator, he said, wants segregation. What critics ‘are saying is that the governance boundary is

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

segregation. What does that say in its rawest, meanest form?’ he asked. ‘It says that people in a community are not competent or well-intentioned enough to govern their own public school system, which is a terrible thing to say. And, in my view, a totally inaccurate thing to say.’ The bill, Raikes said, eliminates barriers to equity and integration. ‘People are ignoring the fact that those boundaries: the finance boundary and the student movement boundaries : are being taken down,’ Raikes said.”⁴⁵⁵

The *World-Herald* editorial page also weighed in after LB 1024 passed. “If Omaha is to continue to thrive, it must overcome this erratic civic environment. Introspection and reconnection among Omaha's leadership structures can produce a platform upon which the current school district woes can ultimately be corrected.”⁴⁵⁶ The editorial board called out Omaha leadership and policy makers alike. “A fateful moment at nearly the dawn of the crisis came when the state's chief executive stooped to blatant political opportunism by taking a position before a discussion, or even an understanding of the problem, could be developed. His action thus intensified the ill will between the two sides. This result was the very opposite of what a governor of all the state's residents should have done. The situation called for a governor who would stand beyond the anger and opportunism and facilitate a dialogue and solution as an impartial broker.”⁴⁵⁷ The paper was also critical of the Legislature. “The Legislature's actions

⁴⁵⁵ Ibid.

⁴⁵⁶ "The Need for 'One City' - Omaha Needs to Reconnect its Leadership Structures in the Wake of School Fight," *Omaha World-Herald (NE)*, 2006d.

⁴⁵⁷ Ibid.

affect some 100,000 children. Certainly effective leadership would have produced something other than flawed legislation that even its supporters said could be fixed later.”⁴⁵⁸

The editorial board also concluded that, “[relationships] need to be re-established and common visions reached. To achieve this goal, Omaha needs to re-link the leadership from city and county government, school boards, private businesses and relevant nonprofit organizations. In matters as broad as the effective schooling of 100,000 children, there must be a consensus. Unilateral initiation of conflict, tossed into a raw legislative arena without accountability for the damage, does not work.”⁴⁵⁹

The *World-Herald* continued to publically analyze the new law and assess the actors and issues that got them to that point in the first place. On Monday April 17, 2006, the paper published an article describing OPS Superintendent Mackiel as a “risk-taker” in a biographic sketch similar to the one they published about Raikes the prior day.

“Regardless of whether you agree with Mackiel's approach, some community leaders said, he deserves credit for getting Omaha and the state to focus on long-standing matters of financial equity and the racial and economic segregation between inner-city OPS and the suburbs. ‘You can argue with how he did it,’ said Connie Spellman, a former education official with the Greater Omaha Chamber of Commerce. ‘(But) they did need

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

to be addressed.””⁴⁶⁰ The article suggested Mackiel was not feeling apologetic or talking of regrets in the days following the passage of LB 1024. He rejected the notion that the “one city” plan had blown up in OPS’s face. “To not raise an issue that would have remained silent would have destined another large-city school (system) in this nation to the same fate of every other large city,” Mackiel said in the article. “What we now have before us is an opportunity to make sure that destiny does not become realized in Omaha.”⁴⁶¹

In less than a week after the passage of the bill, the Omaha area districts were almost grudgingly “shaking hands” and “making up” similar to two teams after a hard fought sporting event where the conclusion meant they were suddenly on the same team. The *World-Herald* reported that OPS had reached out to other districts almost immediately to ask for a meeting and the Millard, Westside, Ralston and Elkhorn superintendents started to provide leadership to pull together the remaining affected districts while their individual boards of education also were forced to reconsider their local interests.⁴⁶² With the new learning community law, it was inevitable that they come together, but less certain how that would transpire and whether that would be productive. Also, in the days following, there were a number of observers locally and

⁴⁶⁰ Henry J. Cordes, “Mackiel is OPS Risk-Taker - The Superintendent’s Drive to Expand into Omaha’s Suburbs is Called just One Example of His Passion for the Job,” *Omaha World-Herald (NE)*, 2006b.

⁴⁶¹ Ibid.

⁴⁶² Michaela Saunders, “4 Districts Ponder Response to OPS - they’re Working Together to Decide how to Answer the Request for a Meeting,” *Omaha World-Herald (NE)*, 2006a.

nationally weighing in. One *Omaha World-Herald* editorial printed on April 18, 2005 recognized that “outsiders” were watching, listening and judging the actions by the legislature and the ultimate response. In that review, they pointed to a variety of motives by the legislature. They suggested, “Lawmakers also wanted, among other things, to show respect to Senator Ron Raikes, chairman of the Education Committee, and his proposal for a ‘learning community’ structure to guide long-term policy.”⁴⁶³ On that same day, the *World-Herald* printed an opinion piece authored by Kent Pavelka, a local radio broadcaster best known for his broadcasts of Cornhusker football and other sports. Pavelka was also an Omaha Public Schools supporter who was critical of Chambers as being “unfair” to OPS. Pavelka also pointed out, “[an] interesting aspect of Legislative Bill 1024 is that the onus of integration is now on the ‘learning community’ rather than on Omaha Public Schools. Districts that opposed meaningful change designed to further integration now have ownership of that responsibility.”⁴⁶⁴

Also, as had been the case since the beginning, those concerned about the boundary “war” between Bellevue and Papillion-La Vista were concerning themselves with the meaning of the new law. “A judge wants the Bellevue and Papillion-La Vista school districts to explain why their boundary dispute isn't moot after the passage last week of a metro-area schools bill.”⁴⁶⁵ Sarpy County District Judge William Zastera set a

⁴⁶³ “As Others See Us - Outsiders' Reactions to Omaha's School Fight Ran Gamut from Shallow to Thoughtful,” *Omaha World-Herald (NE)*, 2006a.

⁴⁶⁴ Kent Pavelka, “Chambers Unfairly Punished OPS,” *Omaha World-Herald (NE)*, 2006.

⁴⁶⁵ Joe Dejka, “Sarpy Judge Sets a Hearing in Light of LB 1024,” *Omaha World-Herald (NE)*, 2006.

hearing for May 5 to review why a lawsuit filed by Papillion-La Vista to uphold a 1983 boundary agreement was not moot. “LB 1024 supersedes the 1983 boundary agreement,” a Bellevue attorney said. “We would expect it would probably void the contract.”⁴⁶⁶ Papillion-La Vista attorney, John Green cited the uncertainty of the learning community legislation as a rationale while the article cited Senator Raikes as saying the 1983 agreement would be “rendered ineffective” by the formation of the learning community.⁴⁶⁷

While the boundary dispute was still alive in Sarpy County, the *World-Herald* editorial page and even the Omaha Mayor were calling for more talks.⁴⁶⁸ At the same time, at least some of the districts were beginning those talks. “The Millard, Elkhorn and Westside school districts have agreed to meet with officials of Omaha Public Schools and the other districts that will make up the newly formed ‘learning community.’ The three suburban districts gave their agreement in a letter to Omaha Superintendent John Mackiel on Wednesday. Mackiel last week invited all the districts in Douglas and Sarpy Counties to a meeting in May.”⁴⁶⁹ The school leaders were also collectively summoned into meetings and a press conference at the Greater Omaha Chamber of Commerce where it

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ Harold W. Andersen, "It Would be Wise to Lower Voices, Work Toward a Schools Solution," *Omaha World-Herald (NE)*, 2006.; Michaela Saunders and Paul Goodsell, "School Leaders 'all Talking' - Fahey Relieved by Move to Resolve Dispute - What's Next? - LB 1024 at a Glance - Timeline - Superintendents' Statement," *Omaha World-Herald (NE)*, 2006.

⁴⁶⁹ Michaela Saunders, "Districts Agree to Meet - Millard, Elkhorn, Westside to Join OPS in Talks," *Omaha World-Herald (NE)*, 2006j.

was clear that part of the effort was to collectively work to restore Omaha's image. "We need to move quickly to work toward a mutually acceptable resolution for the sake of our community," the superintendents said in a joint statement issued at the press conference that included Chamber President David Brown, Mayor Fahey, and *World-Herald* publisher, John Gottschalk.⁴⁷⁰ "While the superintendents offered few details about their discussions, Fahey and Brown were optimistic that the talks could resolve a controversy that has divided the community for nearly a year and has begun to stain the city's image."⁴⁷¹ The national attention and criticism was a motivator for the press conference. "They weren't singing our praises in those reports," Fahey was reported to say. "They were saying, 'Omaha's got problems.' That's not good. We don't need that."⁴⁷²

The *World-Herald* reported, "It's clear that the passage of LB 1024 helped change the dynamic, just as state senators and Heineman said they hoped it would. 'That legislation presented a framework within which our metropolitan area can renew its commitment to educating all young people,' Gottschalk said."⁴⁷³ Millard Superintendent Keith Lutz was reported to say he envisions a community initiative involving issues such as housing, employment opportunities and health care. According to the paper, Lutz

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² Ibid.

⁴⁷³ Ibid.

added, “It is an opportunity to show we're not as divided as the national press would try to make us (look). We have common ground.”⁴⁷⁴

Although the remaining districts were not part of the press conference, it was clear that there would soon be an opportunity to collectively meet. However, Bellevue was already suggesting that they should not be part of the Learning Community restrictions on boundaries.

“Bellevue Superintendent John Deegan said he will attend the proposed meetings with the goal of getting all Sarpy County school districts removed from the learning community . ‘It's a great step in the right direction for all the districts to be meeting, but our priority is still getting Sarpy excluded from the law,’ Deegan said. ‘Our community is growing, and freezing the district's boundaries impedes our ability to grow along with it.’ Deegan also said the law could jeopardize Bellevue's federal aid that it receives because of its military population and would limit local control over schools. He said he anticipated widespread support of Bellevue's position from other Sarpy districts, though none have announced plans to fight the new law.”⁴⁷⁵

As the community digested the meaning of the new law, the *World-Herald* published stories and editorials that framed the issue. One guest editorial by Senator Pam Redfield reiterated data and research that she had used to support the passage of the new law on the floor of the legislature. She said the Legislature had expanded the concept to

⁴⁷⁴ Ibid.

⁴⁷⁵ Michaela Saunders and Karen Sloan, "Neighboring Districts Look to Next Step - The Outlying Members of the "Learning Community" are Glad to have a Voice on the Issue, but at Least One Wants Out. - What's Next - LB 1024 at a Glance - Timeline," *Omaha World-Herald (NE)*, 2006.

“one city, one learning community” and added that the concepts of local control and choice remained under the broader Douglas-Sarpy learning community. Redfield wrote, “All will share responsibility for providing a good-quality education to every student in the metro area. It is not artificial borders that determine the depth of our commitment to diversity. For those who argue that LB 1024 is a step backward, I would suggest that it is a step forward to shared responsibility in funding education in a larger metro area, to more accountability for taxpayer spending on high-need populations, to a more powerful voice for minorities and to more cooperation among school districts.”⁴⁷⁶ She added, “LB 1024 preserves choice among school districts, promoting competition and excellence. Cities that do not allow for school choice too often find that their systems deteriorate as citizens flee to outlying districts, utilize private schools or clamor for vouchers and charter schools.”⁴⁷⁷

The weeks that followed seemed to bring a “calming period” as the national reports started to wane and the headlines seemed to suggest that Omaha area school leadership was on a track to productive conversations. As local law professors and national experts weighed in on the constitutionality of the segregation it was clear that the complexity of the policy was bigger than simply the split up of OPS. Creighton Law Professor R. Collin Mangrum was reported to say, “You have to look at the intent of the

⁴⁷⁶ Pam Redfield, “Learning Community Will be Step Forward,” *Omaha World-Herald (NE)*, 2006.

⁴⁷⁷ Ibid.

entire legislation. Everything I've seen seems to suggest that they are working diligently to address an issue (integration) that a lot of cities won't touch because it's too hot.”⁴⁷⁸

The *World-Herald* also reported that Mangrum of Creighton University and Professor Don Uerling who taught law and educational administration at the University of Nebraska-Lincoln pointed out the law spreads the wealth among suburban and urban schools in Douglas and Sarpy Counties; expands the educational choices for minorities; increases the opportunity to integrate suburban schools, and; it raises the chances of greater local control.⁴⁷⁹

Gary Orfield, then director of the Harvard Civil Rights Project, said according to the *World-Herald* “[...]the overall law has merit in its commitment to a shared tax base and a shared duty to integrate. However, he said, civil rights attorneys would be ‘drooling’ to ask senators why they agreed to break up OPS along predominantly racial lines. ‘You can hear the question now,’ he said. ‘Senator, did you think it would be OK to segregate because a black senator proposed it?’”⁴⁸⁰

As the swirling forces seemed to promote increased collaboration, the *World-Herald* reported that “one city, one school” was fading and reported, “Raikes said the new era of cooperation has a lot to do with the OPS breakup provision. Omaha school officials have a strong incentive to work with other districts to get rid of the provision, he said, while national media attention is prompting local civic leaders to play a bigger

⁴⁷⁸ Todd Cooper, "Intent seen as Key in Schools Law," *Omaha World-Herald (NE)*, 2006.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid.

role. 'Without that (breakup) amendment, I think the whole dynamic changes,' he said. As discussions move forward, the threat of a lawsuit remains."⁴⁸¹ John C. White, spokesman for the national NAACP, said according to the *World-Herald*, the NAACP would be happy to see the issue resolved: "We would not enter into any litigation without fully examining what's going on."⁴⁸²

The tenuous calm was reflected as various school leaders seemed content to begin to let their guard down.⁴⁸³ By early May the superintendents began to talk in the context of LB 1024 and that provided a common platform for new collective conversation on the work-ability of the new law. There was also some public support for OPS to maintain its boundaries as a whole, single district.⁴⁸⁴ "Although OPS stands by the learning community concept, Mackiel said, it believes that many changes need to be made in order for the law to become 'workable.'"⁴⁸⁵ Mackiel was reported to tell the Omaha school board to "focus on LB 1024 without the (Chambers) amendment" as they prepared to commit to the new law. Mackiel suggested other priorities should include modifying the common levy to ensure that a minimum levy is required so as to actually have the desired

⁴⁸¹ Paul Goodsell and Jeffrey Robb, "'One City' Fading in School Debates - Gutting the 1891 Law," *Omaha World-Herald (NE)*, 2006m.

⁴⁸² Ibid.

⁴⁸³ Ibid.; Michaela Saunders, "Ralston Board Drops Resolution Against OPS," *Omaha World-Herald (NE)*, 2006t.

⁴⁸⁴ Michaela Saunders, "OPS Lists Problems with LB 1024 - the District Will Share its Five Areas of Concern at a Meeting of Superintendents," *Omaha World-Herald (NE)*, 2006o.

⁴⁸⁵ Ibid.

impact. He also proposed that policy makers consider increased funding for low-income students. Additionally, he suggested other possible modifications might include the structure of the new learning community governing body as well as the powers of the learning community to address integration across the metropolitan area.⁴⁸⁶

Other districts were also left to analyze the funding impacts and the paper reported, “[when] the law goes into effect, all 11 districts in the learning community will identify their own funding needs, Assistant Superintendent Al Inzerello said. What's different is that the learning community board will ultimately distribute all resources, he said. ‘If implemented the right way, it should really help to equalize,’ he said.”⁴⁸⁷

The *World-Herald* described some of the impact on Bennington. As the smallest school district in LB 1024's learning community, Bennington leaders discussed the probability that district residents' property taxes would increase under the new law. Bennington's current operating budget tax levy of 94 cents per \$100 of property valuation is among the lowest of the 11 districts in the Omaha metro area. That levy could be raised to as high as \$1.02 per \$100 of property valuation for districts under LB 1024, according to Bennington school officials. “Yet-to-be-determined state aid levels, based on the number of Bennington students in various categories, could help the district's budget, however, Superintendent Terry Haack said.”⁴⁸⁸

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid.

The *World-Herald* reported on May 4, 2006 that five of the metro-area superintendents met to “quietly address education issues” and began what was expected to be several months of increasing collaborative efforts to address the new learning community objectives. “A new spirit of cooperation among metro-area school districts continued to grow Wednesday with a meeting of school leaders that would have been unheard of just weeks ago. Superintendents from the Omaha Public Schools and four suburban districts met quietly to discuss the new learning community law that the Legislature has told them to work under. Until two weeks ago, the school leaders either refused to have such meetings or held talks that ended in futility. But after Wednesday's meeting, which took place at an undisclosed location for an undisclosed length of time, the superintendents said they would hold two more gatherings in the coming weeks. ‘We had very open and honest discussions,’ the five superintendents said in a joint statement, ‘and believe this was a good first step in once again working together as school districts in our community.’”⁴⁸⁹ The article pointed out that, although there were concerns with the new law, the superintendents were publically committed to working together. Additionally, it was reported that plans were in the works to call together all eleven school district superintendents from the new two-county learning community. The paper reported that “State Sen. Ron Raikes of Lincoln, the architect of the new law, is expected to play a part in that meeting,” and it was expected they would discuss some of the

⁴⁸⁹ Jeffrey Robb, "Omaha Metro Area Learning Community - New Law, New Challenges? - End of Two Schools Suits Won't Signal an End to Concerns," *Omaha World-Herald (NE)* 2006.

problems they foresaw with the new law.⁴⁹⁰

Relative Calm Broken by New Litigation

A legal team including the NAACP and Omaha's Kutak Rock law firm announced it would file a federal lawsuit on May 16, 2006 to challenge the break-up of the Omaha Public Schools district.⁴⁹¹ Local and national critics called the law passed by the Nebraska Legislature last month “state-sponsored segregation” and counter to the landmark *Brown v. Board of Education* decision. The *World-Herald* reported that the firms were preparing a lawsuit narrowly targeting the OPS breakup and not the broader law passed in April. Although OPS said it supported a legal challenge to the law, it was not directly responsible for the litigation. “We had anticipated some litigation from an outside organization,” Luanne Nelson, a spokeswoman for the Omaha district, said according to the paper. She added, “This could be the first of several lawsuits.”⁴⁹² The paper noted that the Omaha Public School district had lost a civil rights challenge in the 1970s “[...]when seven black parents and the U.S. Department of Justice successfully brought a school segregation suit against OPS. The courts followed the trend of the time, ordering mandatory desegregation busing within OPS. That busing continued until 1999,

⁴⁹⁰ Jeffrey Robb, "Omaha Metro Area Learning Community - New Law, New Challenges? - End of Two Schools Suits Won't Signal an End to Concerns," *Omaha World-Herald (NE)* 2006.

⁴⁹¹ Jeffrey Robb, "NAACP to File Suit Over OPS Breakup - The Kutak Rock Law Firm Announces the Effort to Fight the Split, which Critics Call State-Sponsored Segregation," *Omaha World-Herald (NE)*, 2006i.

⁴⁹² Ibid.

when the district shifted to neighborhood schools and a voluntary integration plan.”⁴⁹³

This most recent case would eventually be joined by parents in the Omaha Public Schools district.⁴⁹⁴

According to the same article Senator Raikes said he was puzzled by the development because conversations among metro area school districts have started since the law's passage and had been constructive. The latest of those joint meetings had just occurred that week and another was scheduled to take place about a month later.⁴⁹⁵

June 4, 2006: First Financial Analysis Published by World-Herald

The *World-Herald* continued to analyze other aspects of the new concept. “New school legislation could give the Omaha Public Schools an extra \$7 million a year, making it the biggest winner in the new metro-area learning community. ‘It's certainly a step in the right direction,’ said OPS administrator Dennis Pool, whose district was already suing the state to obtain additional funding. But the OPS gain would come at the expense of some other Omaha-area school districts. In particular, the Westside Community Schools would lose \$3.2 million a year.”⁴⁹⁶ The analysis showed that for most districts, the news was good or neutral. “Millard, for example, appears likely to

⁴⁹³ Ibid.

⁴⁹⁴ Jeffrey Robb, "UNO Professor Joins Plaintiffs in OPS Suit," *Omaha World-Herald (NE)*, 2006n.

⁴⁹⁵ Robb, *NAACP to File Suit Over OPS Breakup - the Kutak Rock Law Firm Announces the Effort to Fight the Split, which Critics Call State-Sponsored Segregation*, 01

⁴⁹⁶ Paul Goodsell, "OPS Financial Gains Come at Cost to Other Districts - LB 1024 Provides a Shared Property Tax Base and Alters the State School Aid Formula. - Winners and Losers," *Omaha World-Herald (NE)*, 2006d.

raise about the same total revenue under LB 1024. So will Papillion-La Vista. Bellevue, Elkhorn and Ralston will be slightly ahead. OPS and Bennington will do even better. And that doesn't include possible spending in those districts by the learning community itself, which might have up to \$3.7 million a year. But Westside, Gretna, South Sarpy and Douglas County West will see their potential revenues go down.”⁴⁹⁷

Raikes was reported to say the *World-Herald's* study demonstrated the new law was working the way it was intended where lower value districts would benefit from the shared tax base and other provisions that were added to the bill that would help fund low-income and English language learners. As the article put it, “[t]he new learning community will perform a limited Robin Hood role, shifting some resources between rich and poor districts. That builds on what the state aid system already does to even out differences in local tax bases. State aid also gives additional resources to districts with special needs such as poverty. Despite the changes, few districts will lose money.”⁴⁹⁸

“Our effort was to keep districts whole in regard to the status quo,” Raikes was reported to say but the loss for some Omaha area districts was a combination of common levy provisions and change in the option enrollment funding mechanism.⁴⁹⁹ “Raikes [also] said OPS would gain more financially from the new law than it would have under its attempt to take over suburban districts. He said the extra money for OPS shows that state

⁴⁹⁷ Paul Goodsell, "Any OPS Financial Gain Comes at Others' Expense - LB 1024 Shakes Up Schools Financing Via Property Taxes and State School Aid," *Omaha World-Herald (NE)*, 2006a.

⁴⁹⁸ Ibid.

⁴⁹⁹ Ibid.

senators didn't want to harm the district. 'If they were out to get OPS, they did it fairly incompetently,' he said. Raikes noted that Westside supported the bill, even after a last-minute amendment lowered the learning community's maximum tax rate and made the financial impact worse for the district. 'They've been interested in what's the greater good for the long run,' he said."⁵⁰⁰

According to the same article, "Westside Superintendent Bird said LB 1024 is in the best interest of the Omaha community, even though it needs some changes. The new law will bring more cooperation among districts and create additional opportunities for children: not to mention locking in the district's boundaries. 'The funding issue is a necessary evil,' he said."⁵⁰¹ However, it was clear that the districts would continue to analyze the impacts and propose changes to Senator Raikes and the Legislature.

The learning community superintendents met on June 16, 2006 and the *World-Herald* reported that Senator Raikes suggested that a "special session" of the legislature was unlikely. "I don't know of any momentum right now for that," he was reported to have said after joining a discussion about the law involving almost two dozen school officials from all 11 Douglas and Sarpy County districts.⁵⁰² This was the first and largest meeting of the Learning Community districts in preparations for the eventual formalization of the new governing body.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Michaela Saunders and Jeffrey Robb and, "Raikes: No Push for Special Session - Educators Discuss New School Law," *Omaha World-Herald (NE)*, 2006i.

The article reported that “Friday's meeting, which was held at Werner Enterprises' offices in Sarpy County, was closed to the public and reporters. But after the meeting, Raikes and Ralston Superintendent Virginia Moon, who acted as moderator, spoke generally about what was discussed. Among the topics were finances, the integration plan to be developed and movement of students within the two counties. The OPS breakup arose briefly. Moon said the questions involved ‘nuts and bolts’ kinds of issues.”⁵⁰³

The meeting which was to be the first of several was reported to be cordial and even though there were several recommendations for possible changes, Senator Raikes seemed to think that the next session of the Legislature would be the best time to address next steps rather than attempt a call for a special session. “There is time for all the adjustments,” Raikes said.⁵⁰⁴

Why Sarpy County?

Even before passage of the metropolitan-area school law in April, Bellevue Superintendent John Deegan made it clear that he thought Sarpy County districts should not be a part of the new learning community. As the superintendents of 11 Douglas and Sarpy County districts met to work through the law, Deegan did not waiver in his public stance. Although this “defiance” demonstrated by Deegan was not openly criticized by

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

the other superintendents, the *World-Herald* reported that they were “worried that [his] tactics could stall or even derail progress made in the last three months.”⁵⁰⁵

In a July 20, 2006 article the *World-Herald* stated, “Sarpy County was not part of the original school boundary dispute, which was sparked when the Omaha Public Schools launched the ‘one city, one school district’ push in June 2005 that targeted schools and land in three Douglas County districts.” It also said, “The four Sarpy districts were added to the learning community law because the bill’s author, State Sen. Ron Raikes, believed it was critical for all the metro area to have a stake in its success. Raikes said the learning community ‘works with Sarpy County in it and to some extent only if Sarpy County is in it.’”⁵⁰⁶ Also according to the *World-Herald* “Raikes, who crafted the 172-page law with his staff, could not recall sitting in a meeting with Deegan, but he said his impression is that the superintendent of Nebraska’s fourth-largest school district has concern for his district alone. ‘His interests are very narrow,’ Raikes said.”⁵⁰⁷

Among the key critical conversations was the ability of school districts and their superintendents to establish effective working relationships. Although Deegan was vocal, it was clear that his more vocal point of view was viewed as problematic. “My job is to represent this community,” Deegan said. “I’m not going along just to get along.” The ground rules for conversations were not written and the effort to establish trust

⁵⁰⁵ Michaela Saunders, “Bellevue Superintendent Remains Defiant Over Law,” *Omaha World-Herald (NE)*, 2006f.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

among the group seemed necessary. Responding to Deegan's calls to establish open meetings, Virginia Moon from Ralston suggested there are "pros and cons" as "a superintendent could 'hold court' and stop progress."⁵⁰⁸ The various schools seemed to recognize that at these early moments building a common sense of trust regardless of past experiences was necessary. "OPS spokeswoman Luanne Nelson said it was 'imperative' that the superintendents are able to trust one another as they navigate the new law and chart the course of the learning community. Despite past dealings that have left most of the districts feeling bruised, Papillion-La Vista Superintendent Harlan Metschke said that when it comes to the new body, 'hopefully, we're professional enough to look beyond that.'⁵⁰⁹

However, by mid-August a new lawsuit was filed that opened some old concerns about "one city, one school." It challenged, not only the OPS break-up, but the whole learning community concept. In part, the challenge was due to "stripping OPS" of its ability to integrate schools through existing magnet and transportation programs and it also challenged the governance structure of the learning community.⁵¹⁰

The lawsuit proposed two remedies for the court; "One is that the OPS breakup and the student transfer provision of the new law be declared unconstitutional and that a

⁵⁰⁸ Michaela Saunders, "Bellevue Superintendent Remains Defiant Over Law," *Omaha World-Herald (NE)*, 2006h.

⁵⁰⁹ Ibid.

⁵¹⁰ Michaela Saunders and Jeffrey Robb, "New Attack on Metro Schools Law - A Second Suit is Filed Over the OPS Split and the Douglas-Sarpy Learning Community. - What Lawsuit Seeks," *Omaha World-Herald (NE)*, 2006d.

court develop and impose a desegregation plan on the Omaha area school districts. The other would declare the whole law unconstitutional and implement ‘one city, one school district.’ That would bring into OPS 25 schools in the Millard and Ralston districts and land in the Elkhorn district, as OPS sought last year.”⁵¹¹

Even though the Omaha Public Schools continued to profess public support of the learning community concept, the new litigation would add stress to the already fragile relationship between the school districts. With the legal challenges and Bellevue’s open criticism of the new law, Senator Raikes suggested he was open to changes but was not seeing “failed concepts.” “I do believe there are good things in the law,” Raikes was reported to say. He added, “I guess I’ve become more convinced of that since the session. I don’t advertise it’s going to be easy or the eventual outcome will make everybody happy.”⁵¹²

The *World-Herald* also reported that even though OPS was not directly responsible for the litigation that had been filed in either of the two cases, the district “seemed to have all of the bases covered” as both suits covered the “full range of OPS interests.”⁵¹³ This allowed the district to balance the legal interests of the district plus a public commitment to the learning community. “Richard Shugrue, a Creighton University law professor, said OPS is employing a shrewd strategy and still being a good

⁵¹¹ Ibid.

⁵¹² Ibid.

⁵¹³ Jeffrey Robb, "Plaintiffs are Carrying OPS Legal Load - the District can "Mastermind" Challenges while Keeping its Distance, a Scholar Says," *Omaha World-Herald (NE)*, 2006l.

player. ‘OPS can stay out of it and still kind of mastermind the whole thing from a distance,’ Shugrue said.”⁵¹⁴

September 1, 2006: Official Start of the Learning Community

September 1, 2006 marked the official start of the new learning community in the Omaha metro area. Secretary of State John Gale, who was given the official responsibility for forming the new governmental body, said that he would proceed with certifying board members of the learning community coordinating council amid all of the other concerns and uncertainty.⁵¹⁵

Although the summer had generally resulted in conversations that seemed productive, the tension between the various players was still a story. Senator Raikes remained publically supportive of maintaining the OPS break-up even with the legal challenges pending. The *World-Herald* reported, “State Sen. Ron Raikes of Lincoln, the law's architect, said he has been pleased by superintendents’ discussions. Raikes said he still supports the breakup of OPS, although he would consider changes to the law if they would make better policy. ‘That is the law,’ he said of the breakup. ‘That's the statute. That is the direction we're headed.’”⁵¹⁶ But as Senator Raikes noted, the superintendents had focused in on areas that were viewed as progressive at least by some. Gretna’s Kevin

⁵¹⁴ Jeffrey Robb, "Plaintiffs are Carrying OPS Legal Load - the District can "Mastermind" Challenges while Keeping its Distance, a Scholar Says," *Omaha World-Herald (NE)*, 2006m.

⁵¹⁵ Michaela Saunders and Jeffrey Robb, "Planning Starts Today for Learning Community - Omaha-Area School Districts Begin Crafting a Way to Share Resources. - Council's Makeup - Timeline," *Omaha World-Herald (NE)*, 2006e.

⁵¹⁶ Ibid.

Riley was cited as considering recent discussions about integration “uplifting” and John Mackiel was complimentary of the efforts of area school leaders as he said, “The last three months, there has been authentic communication, a focus on community, a belief for the most part that the learning community concept offers hope for the educational future for the metropolitan communities.”⁵¹⁷

September 2006: Superintendent Relationships Strained with Second Lawsuit

Nonetheless, the days and weeks that followed demonstrated that cracks were forming as Mackiel and Omaha Public Schools started to articulate further concerns with operationalizing the learning community and as the litigation expanded its general scope.⁵¹⁸ In mid-September, the second of the lawsuits resulted in a motion for a temporary restraining order to prevent the learning community from being implemented. That motion was supported by Omaha Public Schools, although it wanted to keep the school district discussion open.⁵¹⁹

On September 19, 2006, a Douglas County District Court Judge issued a restraining order and addressed several points that he saw as flaws in LB 1024. Among these were concerns about the break-up of Omaha Public Schools and the proposed

⁵¹⁷ Ibid.

⁵¹⁸ Jeffrey Robb, "Mackiel Fearful of Harm to OPS," *Omaha World-Herald (NE)*, 2006h.; Jeffrey Robb, "6 School Districts Added to Lawsuit - The Learning Community and its Coordinating Council are Included in the Expanded Suit," *Omaha World-Herald (NE)*, 2006a.

⁵¹⁹ Ibid.

governance structure that was based on representation from each school district.⁵²⁰ By the end of the month, the *World-Herald* reported that the relationship among the school leaders was undermined by recent events. The suburban superintendents felt that recent actions by Omaha Public Schools were incongruent with efforts to work together as the litigation would potentially permit OPS to pursue its “one city, one school” plans.⁵²¹

Mackiel and Omaha Public Schools were reported to want to continue conversations but it was clear that the effort to work jointly had suffered a setback. At the same time Omaha Public Schools was juggling their options between litigation that would likely lean in their favor versus running the risk of being viewed as disingenuous. The *World-Herald* reported that in a letter from Mackiel to the other superintendents he said the idea of cooperation among school districts, as envisioned by Senator Raikes and the Education Committee, had great potential if properly crafted and that they can “unify” behind an “educationally sound and constitutional” proposal to be considered by the Legislature. He added that “the superintendents must set aside differences.”⁵²² However, as the paper reported during the next days, it seemed as if the conversation was doomed to failure as the extreme opinions and ongoing suspicions mounted.⁵²³

⁵²⁰ Michaela Saunders and Jeffrey Robb, "School Law is Dealt First Strike - Judge Sees Major Flaws in LB 1024 - on Hold - Two Issues," *Omaha World-Herald (NE)*, 2006k.

⁵²¹ Jeffrey Robb, "Relations with OPS Crumbling - Four Suburban School Superintendents Say they Need Proof they can Trust Mackiel," *Omaha World-Herald (NE)*, 2006o.

⁵²² Jeffrey Robb, "OPS's Plea to Suburbs: Keep Talking - but Mackiel Won't Rule Out 'One City, One School District'," *Omaha World-Herald (NE)*, 2006k.

⁵²³ Jeffrey Robb, "Extremes Cloud School Talks - Ending Debate on District Boundaries Urged," *Omaha World-Herald (NE)*, 2006e.; Veronica Stickney and Jeffrey Robb, "OPS Shift Doesn't

In early October, 2006, the new superintendent of the South Sarpy School District called on his peers to reopen conversation and outlined his thoughts about how the Learning Community could be focused to be a positive force for the metro region. He wrote in an article published on October 5, 2006, “As they maintain a political standoff, the Omaha metropolitan area educational leaders struggle between two positions: (1) a fight to keep long-standing school district boundaries solid and (2) a need to increase the educational achievement of all students but especially students of poverty. Both positions are about students, educational programs, quality and resources. Where can these two positions merge to become one plan for Douglas and Sarpy County schools? Legislative Bill 1024, although complicated and multifaceted, offers a unique guide to an exciting and possible plan.”⁵²⁴

After offering additional insights and expressing a positive view of the possibilities Chevalier concluded, “So where do these two positions meet? Shared programs and resources between many independent school districts seem to make sense. If LB 1024 is declared unconstitutional, the hope would be to have the Legislature bring back a bill supported by all metro Omaha school districts that would keep boundaries solid (including those of OPS), provide a mechanism to share resources within the metro area, require the development of shared programs within the metro area and increase the programming to raise the achievement of students in poverty. We have a chance to create

Mollify Suburbs - Area Districts Want 'One City' Off Table - 'We've Lost Ground'," *Omaha World-Herald (NE)*, 2006o.

⁵²⁴ Charles Chevalier, “Learning Community would Yield Positive,” *Omaha World-Herald (NE)*, 2006.

a real learning community, perhaps without the title, rules, bureaucracies and firestorm attached to LB 1024 but with all the positive outcomes.”⁵²⁵

The *World-Herald* also reported on October 7, 2006 that South Sarpy School District was “stepping forward” to attempt to reinvigorate conversations among metro area school superintendents in an admittedly “delicate time” as it seemed that constructive conversations were all but halted. Chevalier, in a self-effacing manner, suggested that even though he was the “new superintendent on the block” and not “politically astute” he “really wanted to move ahead.”⁵²⁶ Although it was not immediately apparent, efforts to keep conversations moving forward would prove to be important over the next weeks and months.

In addition to the talks during the fall of 2006 were the ongoing legal efforts on the two court cases. Most immediate was the challenge in the Douglas County district court that would prove the most impactful as the ruling to put the law on hold in September. During an early November hearing, state attorneys and other defenders of the learning community law asked the court to dismiss the case. The paper reported “The attorneys representing the state, Mark Laughlin and Mike Coyle, mentioned the state’s highest court several times during the hearing. ‘Until five of the seven justices of the Nebraska Supreme Court say (otherwise),’ Coyle said, the learning community law is

⁵²⁵ Ibid.

⁵²⁶ Ibid.

‘still the law of the land.’”⁵²⁷ Perhaps, most telling was that Omaha and Bellevue were reported to support the claims of the case while the other nine school districts sided with the state in defense of the law. At the very least, the public discussion between and among schools was hindered as had been reported by the *World-Herald* throughout the fall.

This divide was not “lost on” observers including Senator Raikes. As the Legislature’s Education Committee chair, Senator Raikes addressed attendees of the annual convention of the state’s school boards in Omaha. A year prior, Senator Raikes had proposed his plan to address the metropolitan boundary feud. In 2006, he addressed the group on several issues including the new learning community law. “I don’t think a court action stops the Legislature” he was reported to say as the *World-Herald* wrote that “court cases involving two major Nebraska school laws won’t deter the Legislature’s Education Committee from taking action...” in the upcoming session.⁵²⁸ Raikes was responding to both the learning community litigation and the possible legal challenges to the mandatory consolidation of the state’s Class I, elementary districts that had just been repealed by the state’s voters even though the reorganization had already taken place. “It’s all part of my effort to become Nebraska Bar Association’s Man of the

⁵²⁷ Michaela Saunders, "School Law Defenders Forward-Looking in Court," *Omaha World-Herald (NE)*, 2006u.

⁵²⁸ Michaela Saunders, "Education to Loom Large in Legislature - At a Gathering of Educators, State Sen. Ron Raikes Lists Likely Subjects for Debate," *Omaha World-Herald (NE)*, 2006l.

Year,” Raikes was reported to jokingly say about his two landmark efforts during the past two years.⁵²⁹

The *World-Herald* also reported that responding to “...the future of the metro area's learning community, Raikes said it will take more than ‘good intentions and happy talk’ to show him that the school districts are committed to working together. That would take ‘shared buildings, shared levies and shared governance,’ he said.”⁵³⁰

Although, there were few public reports of talks between metro area superintendents, the *World-Herald* published an article on November 20, 2006 that there were “quiet talks” apparently maintained by Mackiel and Bird and others and the paper reported that the superintendents met with the Governor, the Speaker of the Legislature, the Education Committee Chairman, and Senator Chambers. According to what was reported to be a two-hour meeting on Sunday November 19th, the paper indicated that the meeting “[...] was particularly geared at State Senators Ron Raikes of Lincoln and Chambers, two returning legislators who last session championed the breakup of OPS.”⁵³¹ The superintendents had previously briefed Heineman. Raikes was not yet convinced that the districts could productively work with one another based on his comments earlier in the week. Although, the paper reported that OPS Superintendent John Mackel and a small group of suburban superintendents were talking again and had

⁵²⁹ Ibid.

⁵³⁰ Ibid.

⁵³¹ Michaela Saunders and Jeffrey Robb, "Progress in Schools Dispute - Superintendents Fill in Governor on Quiet Talks - Timeline of Events - At the Table," *Omaha World-Herald (NE)*, 2006g.

been doing so for weeks. However, as of October, talks had fallen apart. “We have worked hard on this,” said Ken Bird, superintendent of the Westside Community Schools.⁵³²

According to the November 20th article, the superintendents wanted “feedback” from the state policy leaders but they were apparently told that they had not made enough progress toward a resolution. Even so, the *World-Herald* speculated that “[a] final compromise would probably do several key things: rescind the breakup of OPS, end talk of ‘one city, one school district,’ acknowledge a need for an integration plan for the whole metropolitan area, bolster funding for inner-city schools and seek to raise achievement of poor and minority students.”⁵³³

The Douglas County District Court case continued to unfold gradually when the Douglas County judge ruled that he couldn’t “create” a school district and the concept of “one city, one school” was effectively thrown out of the case right before Thanksgiving. Although both sides continued to work on legislative issues, the gradual court decisions informed what seemed to be both legally and politically possible.⁵³⁴

A week later, both Senator Raikes and Senator Chambers were expressing doubts about the metro area superintendents’ alternative to the learning community law. The *World-Herald* reported that the alternative would have the school districts voluntarily

⁵³² Michaela Saunders and Jeffrey Robb, "Progress in Schools Dispute - Superintendents Fill in Governor on Quiet Talks - Timeline of Events - At the Table," *Omaha World-Herald (NE)*, 2006h.

⁵³³ Ibid.

⁵³⁴ Michaela Saunders, "Judge Says He can't Order Creation of School District," *Omaha World-Herald (NE)*, 2006m.

work together on integration and target the achievement gap among students by requiring districts to account for the achievement of individual students and it reported there was at least some business community support for the effort. According to the *World-Herald*, “Harlan Metschke, superintendent of the Papillion-La Vista Public Schools, said the new proposal is on the right track because it is “largely voluntary” and does away with the common tax levy.”⁵³⁵

However, Senator Chambers was skeptical as he suggested Omaha Public Schools had “given in” on increasing school integration and bolstering school funding. The plan has “no teeth whatsoever,” said Chambers.⁵³⁶ Senator Raikes was equally critical especially as it related to the removal of the common levy. “Chambers and State Sen. Ron Raikes of Lincoln, chairman of the Education Committee, said they want the districts in the two counties to share resources. The superintendents’ proposal would drop the common tax levy required by the learning community law.”⁵³⁷ Raikes was quoted to say, “I wonder if it's realistic to expect much to happen. [...] Do we end up with nice comments and nice intentions?” He also added a little encouragement for the effort for discussion of alternatives, “Hopefully there are some things there we can pick up on.”⁵³⁸

⁵³⁵ Michaela Saunders, "Doubts on New Plan for Schools - Legislators are Skeptical about a Proposal by Metro-Area Superintendents, Who Want to Maintain District Boundaries," *Omaha World-Herald (NE)*, 2006k.

⁵³⁶ Ibid.

⁵³⁷ Ibid.

⁵³⁸ Ibid.

Among Raikes concerns for the learning community or any regional effort was that there be a formal structure to hold the effort together. As the *World-Herald* noted, “The superintendents' alternative suggests using existing state laws that allow school districts to exclude spending for cooperative projects from spending and levy lids. Raikes said another alternative is using other existing entities, such as educational service units, to formalize district-to-district cooperation.”⁵³⁹

The paper also reported that school leaders are counting on legislators “to preserve the additional funding provided in the learning community law for educating poor students and those from low-income families;” however, Chambers was steadfast in his opposition to a change from existing law. “I see nothing that alters my view that 1024 is the best approach under the circumstances,” Chambers was reported to say. “If anybody thinks . . . that some plan . . . is going to roll through the Legislature, they've got another thing coming.”⁵⁴⁰

By mid-December at least ten of the eleven metro area superintendents had crafted a plan they hoped to take to the Legislature even though Bellevue was unwilling to support the effort. “This was a legislative strategy meeting: how we go forward with a voluntary integration program and freezing boundaries,” Bird was reported to say after a two-hour meeting on December 12, 2006 at Westside headquarters.⁵⁴¹ The article

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

⁵⁴¹ Michaela Saunders, "Bellevue Schools' Leader Left Out of Meeting - Ten of the 11 Douglas and Sarpy County Superintendents Discuss how to Push a Plan that Bellevue's Deegan Opposes," *Omaha World-Herald (NE)*, 2006d.

reported the proposal was intended as an alternative to the two-county learning community law passed by the legislature. The plan was reported to be crafted by five superintendents and was supported by all but Bellevue. The focus of the plan was freezing boundaries and student achievement. It was also reported to keep LB 1024's establishment of a voluntary integration plan and would "entice students to move across the metro area with specialty schools and programs."⁵⁴²

Although Senator Raikes was cited in the article, he said he had not spoken with "a metro-area superintendent in several weeks" he didn't indicate much support to alternatives that would dramatically change the underlying learning community legislation. "He said that any new legislation must retain the sharing of financial resources by metro districts. And that, he said, means Douglas and Sarpy Counties."⁵⁴³

By the next day, the *World-Herald* reported that "metro-area school superintendents and the Nebraska senator who orchestrated the learning community law talked over their differences Wednesday, [December 20, 2006]."⁵⁴⁴ Senator Raikes was consistent in his opposition to abandoning the common tax levy or the governing structure and his commitment to include all eleven districts in the two-county area. "'It was friendly pushing back and forth,' said Westside Superintendent Ken Bird after the

⁵⁴² Michaela Saunders, "Bellevue Schools' Leader Left Out of Meeting - Ten of the 11 Douglas and Sarpy County Superintendents Discuss how to Push a Plan that Bellevue's Deegan Opposes," *Omaha World-Herald (NE)*, 2006e.

⁵⁴³ Ibid.

⁵⁴⁴ Michaela Saunders, "Superintendents, Raikes Seek Common Ground," *Omaha World-Herald (NE)*, 2006v.

90-minute closed meeting at Omaha's Ironwood Country Club. 'We think we have a good solution to the education issues. He (Raikes) has heard that.'"⁵⁴⁵ Raikes was reported to describe the meeting as useful and productive. "However, Raikes said, the existing law has more teeth. 'The general principles are very much consistent with 1024,' Raikes said. 'It's just a question of how much of a commitment you're willing to make to them.'"⁵⁴⁶

December, 2006: Senators Raikes and Chambers Float Separate Alternatives

The following week Senator Raikes floated his first public alternative to splitting-up Omaha Public Schools that would have included a new governance structure for elementary attendance centers. "Raikes said he wants to focus on the same goals that he and Chambers had with the OPS breakup plan: closing student achievement gaps and increasing community control over schools without sacrificing the efficiencies that come from a larger district."⁵⁴⁷

"Raikes said he has talked about his idea with Chambers and with OPS officials. Both have expressed enough interest to encourage his continued effort, he said, although neither has made a commitment. Raikes said his idea of elementary governing bodies would not go as far as creating new elementary-only, or Class I, school districts within Omaha. He said the elementary governing bodies would not be independent districts but would operate within the structure of OPS and of the metro-area learning community."⁵⁴⁸

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid.

⁵⁴⁷ Martha Stoddard, "New School Plan Proposed," *Omaha World-Herald (NE)*, 2006e.

⁵⁴⁸ Ibid.

Mackiel's response was to question whether this proposal was limited to OPS and if so would question it. However, he also added that if elementary schools were reorganized statewide and education was improved by doing so, it could be worth discussing.⁵⁴⁹

Senator Ernie Chambers was also beginning to craft his own alternatives and his public response to the alternatives proposed by the metro area superintendents was much stronger than Raikes' public comments. As the *World-Herald* reported on December 28, 2006, "The longtime lawmaker from north Omaha said he stands firm behind the law passed last spring that would break the Omaha Public Schools into three districts. Chambers said the breakup would increase community influence over the school system. But 'everything needs to be on the table,' he said if metro superintendents and other lawmakers want to consider a different approach."⁵⁵⁰ Chambers suggested that merging the Westside District into Omaha Public Schools would be appropriate based on the history of the formation of the district that "was established as a 'white enclave' and is a racially identifiable district," which he contended was counter to the arguments against breaking up Omaha Public Schools.⁵⁵¹

Chambers also argued that a merger "[...]would provide additional financial resources to OPS since metro-area superintendents have not endorsed a common tax levy

⁵⁴⁹ Michaela Saunders and Martha Stoddard, "Mackiel Concerned that Plan Singles Out OPS," *Omaha World-Herald (NE)*, 2006f.

⁵⁵⁰ Leslie Reed, "Plan would Push Westside into OPS - Sen. Chambers Says "Everything Needs to be on the Table." - Westside Community Schools Timeline," *Omaha World-Herald (NE)*, 2006c.

⁵⁵¹ Ibid.

for the districts in Douglas and Sarpy Counties.”⁵⁵² Chambers was reacting to what he considered a lesser plan than was adopted by the Legislature in the previous session. “Chambers noted that State Sen. Ron Raikes of Lincoln is preparing a possible alternative to LB 1024, as are the metro superintendents. Chambers called the superintendents’ proposal ‘an empty sack that addresses none of the underlying educational problems confronting nonwhite and poor children in the Omaha Public Schools.’”⁵⁵³ Chambers was also critical of Superintendent Mackiel’s suggestion that support of the alternative plan would leave OPS in a worse situation. “By giving up the money that would have been available through the common levy, in a sense, Dr. Mackiel has participated in the financial execution of OPS,” Chambers said.⁵⁵⁴

However both Mackiel and Bird countered that a common levy was not “ruled out” by the superintendents’ plan to focus on student achievement efforts. Mackiel was reported to say that a common levy might still emerge as the best answer. Regardless, “Chambers said he is preparing other legislation that he is not yet prepared to disclose. ‘With the problems I have with the way education is being delivered in Omaha for nonwhite and poor children, nobody’s going to get away easy or clean in this session,’ he said.”⁵⁵⁵

⁵⁵² Ibid.

⁵⁵³ Leslie Reed, "Plan would Push Westside into OPS - Sen. Chambers Says "Everything Needs to be on the Table." - Westside Community Schools Timeline," *Omaha World-Herald (NE)*, 2006d.

⁵⁵⁴ Ibid.

⁵⁵⁵ Ibid.

With the New Year only a couple of days away and the 2007 Legislative session imminent, it seemed as if the fireworks of the previous year had not been extinguished. On the final day of 2006, the *Omaha World-Herald* published the most detailed description of the metro area superintendents' plan that was expected to be introduced as legislation by Senator Gail Kopplin of Gretna. The proposal was reported to attempt to address a variety of issues that targeted academic achievement and included extended school day and school year, financial incentives for teachers who would work with high-needs students, and a variety of other efforts to improve education in the metro area.⁵⁵⁶ The article described a variety of school and community level supports for students and teachers that were discussed but not necessarily able to be legislated. ““There is a commitment gap,’ Gretna Superintendent Kevin Riley said. ‘Everyone talks about the achievement gap, but they have not had much success because there hasn't been that collaborative effort.’”⁵⁵⁷

As the paper reported, Senators Ron Raikes and Ernie Chambers previously criticized the proposal for lacking teeth and aiming to preserve the status quo. “Elkhorn Superintendent Roger Breed said Saturday that he was frustrated by those claims. ‘There's nothing here except a historical reversal of the idea that you're only responsible

⁵⁵⁶ Michaela Saunders, "Plan Targets Achievement Gap - Superintendents' Proposals Include Teacher Incentives, Longer Days, Expense-Sharing," *Omaha World-Herald (NE)*, 2006q.

⁵⁵⁷ Ibid.

for the kids in your district,' he said. 'Until this proposal,' the Elkhorn school district, board members and community 'were solely committed to Elkhorn.'"⁵⁵⁸

The details of the plan, including the removal of the common levy and learning community governance, would soon be encompassed in a bill introduced by Senator Gail Kopplin.

⁵⁵⁸ Ibid.

CHAPTER 5

2007 – The Second Round of Legislative Action

January, 2007

With the expectation of a legislative debate on the Learning Community on the Legislature's 2007 agenda, early posturing already suggested that school officials and state senators would be at odds. On Tuesday, January 2nd, 2007, it was clear that Bellevue was drawing a line in the sand. *The World-Herald* reported, "At a press conference this morning in Bellevue, [Senator Abbie] Cornett criticized the learning community law approved last year and said she would introduce a bill this session to remove Sarpy County from the school district cooperative. Cornett also criticized an alternative proposed by 10 metro superintendents, including three from Sarpy County, [...] The state senator appeared with Bellevue community leaders and Bellevue Superintendent John Deegan, another critic of the learning community law and the superintendents' alternative."⁵⁵⁹ The article went on to suggest that Cornett and Bellevue leaders were not in favor of freezing school district boundaries as that would stifle growth in Bellevue. Naturally, fixing the boundaries was a key component of the two year battle that led to the two-county learning community law.

It was apparent at the beginning of the 2007 legislative session that Omaha Public Schools would continue to assert their desire to address key points, including the break-up of the district, finance issues, and socio-economic integration. The Omaha school

⁵⁵⁹ Jeffrey Robb, "Sarpy Challenge to Schools Law - State Sen. Abbie Cornett of Bellevue Will Seek to have Her County Removed from the Metro Learning Community," *Omaha World-Herald (NE)*, 2007z.

district couched their efforts in terms of the proposal crafted in partnership with suburban schools. “If lawmakers approve the proposal crafted by 10 Douglas and Sarpy County school superintendents: or pass something close enough to accomplish its goals, the Omaha Public Schools would have no reason to hold onto the idea of a citywide school district, officials said Wednesday,[January 3, 2007].”⁵⁶⁰ Although, OPS was content with the proposal that would soon be encompassed in a legislative bill, Senators Raikes and Chambers had remained opposed to the effort. The *World-Herald* reported on conversations by the OPS board that suggested the board would officially support an alternative proposal. “OPS board members said they did not agree with critics including State Sens. Ron Raikes of Lincoln and Ernie Chambers of Omaha who have said the superintendents' proposal lacks an enforcement provision and aims to preserve the status quo.” The paper reported that Omaha board president, Sandra Jensen, was supportive and suggested the proposal had “teeth.” “Mackiel said those ‘teeth’ come in the form of state oversight. State school funding could be withheld he said, if school districts weren't living up to legislated expectations. Districts could be required to develop plans to meet those expectations before receiving money, he said.”⁵⁶¹ Mackiel also indicated his support for a common tax levy even though it was out of the superintendents’ proposal and at least one of Raikes’ expressed concerns. “[Mackiel] said ideas from the learning community law, such as a common tax levy for the 11 districts, could be incorporated

⁵⁶⁰ Michaela Saunders, "'One City, One School District' may be in Past - the Evolution of the Omaha Public Schools Position," *Omaha World-Herald (NE)*, 2007i.

⁵⁶¹ Ibid.

into the superintendents' proposal. A common levy specifically for school construction would make sense, he said.”⁵⁶²

As anticipated, Senator Cornett of Bellevue introduced LB 91 that would remove Sarpy County school districts from the Learning Community. Although boundary disputes had been a focal point of the effort, Bellevue Superintendent John Deegan suggested that Sarpy County school districts would be “better served” not to be a part of the learning community. “In Sarpy County,” Deegan said on January 6, 2007, “we need the ability to grow with our communities. That's essential.”⁵⁶³ At that time, the Papillion superintendent disagreed, “Right now, with all the work that's gone on to develop opportunities for students in the two-county area,” Harlan Metschke was reported to say, “we want to remain a part of that and have those opportunities for students.”⁵⁶⁴ As the *World-Herald* noted, “The Bellevue and Papillion-La Vista districts [had] ongoing disputes about who should control two elementary schools now in the Papillion-La Vista district,”⁵⁶⁵ and the current status was not perceived as favorable by Bellevue.

The morning of January 9th, the superintendents were scheduled to meet with a state senator expected to carry their plan to the legislative floor. Superintendents released information about their alternative plan. Ten of the eleven superintendents included in the learning community law worked with Senator Kopplin on their alternative to the learning

⁵⁶² Ibid.

⁵⁶³ Michaela Saunders, "Bill Introduced to Remove Sarpy from Schools Law," *Omaha World-Herald (NE)*, 2007a.

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid.

community. The alternative plan, that became titled the “Nebraska Student Advantage Act,” relied on a new governance structure that included a six area school board members and all eleven of the superintendents as well as the state student achievement coordinator hired by the state under the learning community legislation. The superintendents would serve as an administrative board, but “unlike the learning community council, the governing bodies proposed in the superintendents' plan will not oversee a common tax levy.”⁵⁶⁶

The *World-Herald* reported that while school board members were “optimistic about the opportunities they saw” some were harboring bad feelings from the prior fights and others, including Papillion LaVista board member Dan Flanagan, suggested that the development of this new proposal was “not ideal.” Also, it still did not include a unified front as Bellevue refused to participate.⁵⁶⁷

Elkhorn Annexation

Though the topic had been quiet for a while, the Nebraska Supreme Court issued its opinion on the Elkhorn annexation on January 12, 2007 “[...] in Omaha's favor, ruling that Elkhorn technically ‘ceased to exist’ on March 24, 2005.”⁵⁶⁸ Although the case was on hold to give Elkhorn the option of filing for a rehearing before the Nebraska Supreme Court, the decision would ultimately allow Omaha to absorb the city of Elkhorn by

⁵⁶⁶ Michaela Saunders and Jeffrey Robb, "School Plan Lincoln-Bound - Two-Board Governing Structure Part of Proposed Legislation," *Omaha World-Herald (NE)*, 2007k.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.

March 1, 2007.⁵⁶⁹ The consistent annexation and boundary issues in Omaha and Bellevue were part of the regular context to the ongoing learning community concerns.

Legislative Bills are Introduced

Although several legislative bills were anticipated in the 2007 Legislative session, Senator Don Preister and freshman Senator Tom White proposed LB 440 which would have simply repealed the controversial break-up of Omaha Public Schools. Jeff Robb reported, “Although [Senator Preister] recognizes that other metro schools bills will be introduced, Preister said he hopes his bill gives the breakup additional attention when the Education Committee discusses the Omaha controversy.”⁵⁷⁰

On Wednesday January 17th, “[...]three key lawmakers introduced major proposals that take different approaches toward OPS’s operation. Four possibilities are on the table for this session.”⁵⁷¹ One proposal was designed to exempt Sarpy County. Another proposal focused on restoring Omaha Public Schools under the current law. Senator Chambers proposed to merge Westside into OPS and still split the combined district into smaller districts, and Senator Kopplin introduced LB 547 that encompassed the superintendents’ plan. Senator Raikes introduced proposals to address the break-up

⁵⁶⁹ Michael O'Connor. and Tom Shaw, "Q and A on Omaha's Annexation of Elkhorn - Timeline in the Omaha-Elkhorn Annexation Case - Cost of Providing Services to Elkhorn," *Omaha World-Herald (NE)*, 2007.

⁵⁷⁰ Jeffrey Robb, "Proposal would Strike OPS Breakup from Law - it is Introduced a Day before the Expected Filing of several Major Bills Related to the Omaha Metro-Area Schools," *Omaha World-Herald (NE)*, 2007w.

⁵⁷¹ Michaela Saunders and Jeffrey Robb, "Schools Bills Take Different Tacks - Four Possibilities for Resolving the Metro-Area Dispute are on the Table for Lawmakers to Debate," *Omaha World-Herald (NE)*, 2007m.

of OPS and the underlying governance structure. As the *World-Herald* reported, “A new bill from State Sen. Ron Raikes of Lincoln, the Education Committee chairman, would relent on the breakup but impose a new governing structure to oversee all schools in a given high school attendance area. A related bill, also introduced by Raikes, would seek to combine Douglas and Sarpy Counties into a single educational service unit. That would allow a taxing mechanism for the districts involved, in addition to allowing the districts to collaborate on professional development, technology and other services.”⁵⁷² Senator Raikes re-opened the possibility of expanding the learning community role in funding buildings which had been dropped in the previous year. In response to what drove his proposals Senator Raikes was reported to say, “How do you bolster that (the learning community law)? How do you make it a stronger statute?”⁵⁷³ Regardless of the other proposals, Senator Raikes had made clear that his intent was to maintain the Learning Community as the basis for the concept even though he had indicated a willingness to modify or add to structure.

At the same point in time, it appeared some policy change was going to be necessary to recognize the efforts of the superintendents. Saunders and Robb reported, “Omaha Superintendent John Mackiel, speaking from the State Capitol this morning [January 17, 2007], said all school districts in the metro area are unique, and that should be recognized. Mackiel said OPS has a 25-year history of specialized magnet schools and

⁵⁷² Ibid.

⁵⁷³ Michaela Saunders and Jeffrey Robb, "Schools Bills Take Different Tacks - Four Possibilities for Resolving the Metro-Area Dispute are on the Table for Lawmakers to Debate," *Omaha World-Herald (NE)*, 2007n.

a culture of promoting diversity. ‘We look forward to simply building on that,’ he said. ‘To depart from that, I believe, is a step backward.’”⁵⁷⁴

The *World-Herald* pointed out in another article that there were “marked lines” developed between those that supported the Kopplin plan developed by ten of the eleven metro area superintendents and those opposed to that plan. Senator Raikes and Senator Chambers proposed very different plans to address the break-up of OPS. “The key players in the metro-area schools dispute drew battle lines Wednesday over the future of the education system in Omaha,[...]. Both sides agree that the controversial learning community law passed last year needs changes. The big disagreement: how much change?”⁵⁷⁵

The metro area superintendents suggested they were responsive to a charge from the Legislature and the Governor to suggest alternatives to the law. “We believe we’re presenting a unique opportunity to the Legislature and to the State of Nebraska,” said Ken Bird, superintendent of the Westside Community Schools.⁵⁷⁶ However, another *World-Herald* article seemed to expand on the “skepticism” of Senator Raikes and Senator Chambers regarding the school administrators’ plan. “State Sen. Ron Raikes of Lincoln, the Education Committee chairman, says the superintendents' plan doesn't go far

⁵⁷⁴ Ibid.

⁵⁷⁵ Michaela Saunders and Jeffrey Robb, "Sides Square Off on Schools - Both Groups Agree that the Learning Community Law must be Changed; How Much is the Crux. - Metro School Bills Under Consideration," *Omaha World-Herald (NE)*, 2007o.

⁵⁷⁶ Ibid.

enough in tackling the issues their bill embraces.”⁵⁷⁷ The same article reported, “‘I certainly hope that, first of all, they do get a chance to be heard,’ said State Sen. Gail Kopplin of Gretna, who is carrying the superintendents’ plan. Kopplin said all the plans introduced [...] deserve consideration. ‘I’m going to support the superintendents because I think they did what we asked,’ he said.”⁵⁷⁸ Kopplin’s bill, LB 547, proposed to do away with the entire LB 1024 concept from the prior year including striking all references to the learning community.

The *World-Herald* reported, “Several important policy disagreements have emerged between the superintendents and Raikes, who says his approach is stronger. Raikes sees strength in a common property-tax levy and shared tax base for the school districts in Douglas and Sarpy Counties, a key part of the learning community law passed last year. The superintendents, while asking for study of that, say the concept has proven unworkable thus far.”⁵⁷⁹

Raikes also saw an official governing structure across districts in the two counties as a necessary “formal commitment to cooperation and integration.” The superintendents claimed there was too much “bureaucracy” and it undermined school district decision making. Raikes also proposed a new structure to engage the Omaha Public Schools community rather than allow the district to “remain intact” as proposed by the

⁵⁷⁷ Jeffrey Robb, "Educators' Plan Faces High Hurdle - The Proposal's Two Biggest Skeptics: Sen. Raikes and, Likely, Sen. Chambers: Are also the Two most Powerful Gatekeepers," *Omaha World-Herald (NE)*, 2007g.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid.

superintendents' plan. "On the other hand, Raikes said the strength of the superintendents' plan is in offering programs to address student achievement. 'I wouldn't tell you I am ready to discard everything in (LB) 547, not by any means,' Raikes said."⁵⁸⁰ LB 547 included provisions to track student achievement which Raikes continued to be involved in and was supportive of statewide data systems to track achievement. "I'm going to try to include those parts of those plans that are consistent with good state policy," Raikes said in the *World-Herald* and he added, "I don't think that's going to involve being a hurdle."⁵⁸¹

However, there was obvious tension in the efforts as the *World-Herald* noted, "But last week, Raikes said an understanding should have been implicit in his invitation for ideas. 'Just because you come with an idea doesn't mean I'm going to accept it,' he said."⁵⁸² Westside Superintendent Ken Bird was reported to say he was "a bit frustrated" by Raikes' skepticism of the superintendents' plan after the senator asked for recommended changes.⁵⁸³

As the Legislature settled in to the new session, the newly assembled Education Committee, again chaired by Senator Raikes, would begin to establish a hearing schedule. The Committee as well as the whole Legislature looked very different, as

⁵⁸⁰ Jeffrey Robb, "Educators' Plan Faces High Hurdle - The Proposal's Two Biggest Skeptics: Sen. Raikes and, Likely, Sen. Chambers: Are also the Two most Powerful Gatekeepers," *Omaha World-Herald (NE)*, 2007h.

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

twenty-two new senators were seated after the 2006 election. As had been predicted in the prior year, a whole new set of senators would be involved in this second “round” of the Omaha metro schools issue. On the Education Committee, Senators Raikes, Howard, Kopplin remained. However, Senators Bourne, McDonald, Stuhr, Byars and Schrock were replaced on the committee with Brad Ashford of Omaha, Joel Johnson of Kearney, Greg Adams of York, Bill Avery of Lincoln and Carroll Burling of Kenesaw. Senators Johnson and Burling were in their final two-years of their legislative career along with Senator Raikes due to term limits. Senators Ashford, Adams, and Avery were all newcomers to the body although Ashford had previously served in the Legislature. Kopplin and Howard were just starting their third year of their first term.

Public hearings were scheduled on the major proposals addressing the metro education issues on February 5 and 6, 2007. Both of the mainline proposals, LB 547 introduced by Senator Kopplin and LB 641 introduced by Senator Raikes were scheduled on the first day along with the Preister-White LB 440 proposal to strike the break-up of OPS. The next day would include Senator Chambers’ and Senator Cornett’s bills as well as Senator Raikes’, LB 642.⁵⁸⁴

Finance Litigation in the Background

Also scheduled for February 6th were oral arguments in front of the Nebraska Supreme Court on a school finance case brought by a group of small schools in the state. However, this finance case was at least part of the recent discussions on school finance in

⁵⁸⁴ Jeffrey Robb, "Public Hearings on School Bills Set - New Legislation Seeking to Repeal Or Alter the OPS Breakup Will be Discussed," *Omaha World-Herald (NE)*, 2007x.

the state that also included a yet-to-be resolved lawsuit from a group of schools that included Omaha Public Schools. Although OPS had earlier tried to separate their “one city, one school plan” from the finance lawsuit, more recent conversations had turned to looking at school finance as part of the policy discussions. Jeff Robb reported, “For the past year and a half, Omaha area schools have been embroiled in a fight over their future, with boundaries, integration and money all in question. Throughout, a silent hammer hung over the dispute, rarely mentioned but with the potential to influence any resolution. Now, after sitting in the background of the policy debate, two lawsuits over state funding for education have re-emerged with new prominence. The Omaha Public Schools' two fights, its state funding lawsuit and the metro-area schools dispute, are intertwined in a plan put before the Legislature and in the goals of Gov. Dave Heineman.”⁵⁸⁵

Omaha and their litigation partners had a vested interest in the outcome of the rural schools effort. However, the OPS suit was proceeding on separate allegations that the funding system is discriminatory and unequal. But as the two cases developed and as the boundary dispute was reaching some general consensus from state policy makers, the idea of a state aid “task force” was being floated as a possible stand-down position on the finance lawsuits.⁵⁸⁶

⁵⁸⁵ Jeffrey Robb, "School Suits Back in Spotlight - Much has Changed in the Debate Over Education in the Years since Two Funding Lawsuits were Filed. - Pivotal Day: Feb. 6," *Omaha World-Herald (NE)*, 2007ac.

⁵⁸⁶ Ibid.

February, 2007

As had become customary, the *World-Herald* provided detailed coverage of the learning community debate on Sunday of each week, especially before major hearings or scheduled floor debate. On February 4, 2007, the paper suggested that a variety of interests would be “lining up” to testify and provide input at Education Committee hearing scheduled that week.⁵⁸⁷ The article reported the various interests that planned to testify including representatives from Bellevue, Omaha Together One Community (OTOC), the Chicano Awareness Center, and the African-American Achievement Council, among others. However, the article also reported, “As some prepare to testify, others have expressed their opinions behind the scenes. Last week, a group of prominent Omahans, including Warren Buffett, Susie Buffett, David Sokol and Walter Scott, met with Governor Dave Heineman and State Sen. Ron Raikes of Lincoln. Several people involved in or knowledgeable about the meeting declined to discuss it openly. It's not clear exactly what was discussed.”⁵⁸⁸

Senator Ernie Chambers reportedly talked about the gathering and criticized the group in his weekly television show. “They want everything to stay just the way it is in Omaha,” he said. While Raikes was quoted to say he was interested in gathering viewpoints suggesting, “Creative, workable solutions are in short supply.”⁵⁸⁹ Perhaps

⁵⁸⁷ Jeffrey Robb, "Education Advocates Lining Up - Supporters of Schools Bills Plan Testimony - School Hearings," *Omaha World-Herald (NE)*, 2007f.

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

most telling about the gathering, the *World-Herald* cited Dick Holland, an Omaha philanthropist who also attended said the meeting “didn't seem to lead anywhere.” According to the paper, “‘There’s some mutual understanding,’ Holland said. ‘In general, the whole thing needs to be debated.’ Holland said he supports the superintendents’ plan. ‘For the first time, the whole community is beginning to recognize we are a community,’ he said, ‘and not just a series of school districts with its own problems.’”⁵⁹⁰ The Omaha business community and Omaha’s influential citizens were making it clear they had an interest in the outcome of the dispute.

Senator Raikes remained true to a few principles embodied in LB 1024 and the general learning community concept. He maintained that, “Public education has the important role of providing a fair chance for everybody [... but], we've got to do this efficiently. We don't have money to throw away.”⁵⁹¹ As the *World-Herald* reported, “In last year's law and in discussions since its passage, Raikes has stressed the need for formal governance. Raikes says a formal structure will help ensure that students receive a quality education. He wants public schools in the metro area and across the state to embrace all children and turn out prepared, productive citizens of equal promise. ‘I am very interested that the state's involvement makes public education an institution that doesn't leave people out because they don't have enough money,’ Raikes said.”⁵⁹²

⁵⁹⁰ Ibid.

⁵⁹¹ Michaela Saunders, "Competing School Plans Offer Contrast in Structure - Raikes, Superintendents have Different Ideas on Governing Omaha-Area Schools. - Education Committee," *Omaha World-Herald (NE)*, 2007f.

⁵⁹² Ibid.

February 5, 2007: Hearings on LB 547, LB 440 and LB 641

On Monday February 5th, the Education Committee held the first of two hearings on the Omaha metro schools and learning community issue. As had already been made clear, Senator Kopplin introduced LB 547 on behalf of the coalition of superintendents that had worked to develop a plan. Senator Kopplin introduced his “Nebraska Student Advantage Act” that was fundamentally different than LB 1024 that had passed the prior year. Senator Kopplin introduced LB 547 suggesting that the effort was based on a challenge to the superintendents to work together. He added, “They worked through their differences, engaged in spirited debate, compromised, and formed an idea and proposal with a benefit of children in mind.”⁵⁹³ He also noted that the proposal, “instead of the learning community” would have the eleven districts in Douglas and Sarpy Counties work “cooperatively to increase equity and student achievement.” The proposal would have left Omaha Public Schools whole and fixed the boundaries of all of the existing districts. It would have also created a “superintendents’ executive board” and a student achievement council composed of school board members. Kopplin stated, “The common levy required by LB1024 is not in this proposal, but may not be out of the picture as there is a statement requiring a study of the inclusion of a common levy.”⁵⁹⁴ Although, the proposal in and of itself was fairly complex, the elimination of the common levy was a “selling” point to some of the proponents. However, the bill included a task force to examine finance issues including the common levy concept.

⁵⁹³ Clerk of the Nebraska Legislature, *February 5, 2007 Education Committee Hearing Transcript*, 100th Legislature, First Session, 2007, p. 4.

⁵⁹⁴ *Ibid.*, pp. 4-5

John Mackiel testified on behalf of the coalition of superintendents regarding aspects of the rationale for the plan including governance and integration. Senator Bill Avery posed several questions to Mackiel including asking about the elimination of the formal “learning community” and council. Avery also asked, “Does it [LB 547] preserve the concept of distributing the resources on the basis of need?” Superintendent Mackiel said, “Senator, the governance structure does not. The call that we have and my colleague from Gretna will be addressing that more precisely in terms of the finance. That is ultimately the goal. What I can assure you is that the preservation of that concept exists in the Omaha Public Schools. The commitment that is reflected in terms of recognizing the unique needs of youngsters is reflected in spirit in LB 547, but the actual mechanism we are anxious to get about within the next three to six months to have a solution and an assurance to the very issue you are raising.” Senator Avery responded, “It is a key issue.”⁵⁹⁵

Shortly after, Senator Raikes also addressed Omaha’s prior concerns about the state’s net option funding policy that benefited Westside at the expense of Omaha Public Schools. Senator Raikes said, “[...] you have said that one of the extreme difficulties for OPS is the state’s net option policy in the fact that Westside, a bordering district on the west, nonequalized district, uses the net option funding program of the state. You have suggested several different ways to get rid of that, but yet in LB 547 that remains?” Mackiel responded that option enrollment had to do with “the ability to integrate the Omaha Public Schools and the impact that was happening.” He also added, “I want to

⁵⁹⁵ Ibid., p. 12.

hasten to say that in the dialogue and the discussion, the option enrollment funding is on the table.”⁵⁹⁶ Senator Raikes questioned, “It is not off the table, but there is not commitment to doing it?”⁵⁹⁷ Mackiel noted that the commitment was reflected in the three to six month “plea” that it be addressed through the proposed study. Although part of the option enrollment issue was the impact on integration, it also had a substantial impact on funding impacted districts. Ken Bird, while addressing the issue of student movement testified that Westside had about 1,900 option students. Those students would have been a net positive in funding to west side and a net negative to the students’ resident districts.⁵⁹⁸

Most of the exchanges and testimony were related to the perceived positives or negatives of LB 547. However, there were a few exchanges that highlighted the removal of the common levy that provide some insights as to the committee’s thoughts. Senator Avery commented to Ken Bird, “On page 15, on state financing, this report states ‘appoint a commission to study the... underlined ‘study’, ‘the current state aid formula which may,’ underline ‘may,’ ‘include the consideration of a common levy.’ That doesn’t sound to me like you are committed to it.” Bird responded, “I appreciate that, Senator. We are committed to it. It would be up to that commission to study it. Our recommendation would be that they include the common levy. If the common levy is good for Douglas and Sarpy County, maybe it is good for other counties in the state. And to take Douglas and Sarpy County as a pilot program or a guinea pig for that concept, and

⁵⁹⁶ Ibid., p. 13.

⁵⁹⁷ Ibid., p. 13.

⁵⁹⁸ Ibid., p. 13.

not knowing how it could positively or adversely affect the state aid formula statewide doesn't seem right. We are committed to having the common levy as part of that study, but I can't speak on behalf of that committee.”⁵⁹⁹

Later Senator Ashford asked Dr. Bird, “[Would] you have any objection then, Ken, to a prescription to say that there shall be a common levy and it shall address the following issues, and leave it up to the committee to determine what that common levy should be for a period of time? As a matter of policy, getting to Senator Raikes’s question, can we not set forth that there are certain costs that clearly should be borne by all 11 districts, or no?” Bird responded, “Personally speaking for the Westside Community Schools and myself, I can’t say that. I don’t know that the common levy is the correct solution to be part of a state aid formula. I would agree with Senator...” Senator Ashford interrupted, “Or that there are costs that are common costs that should be addressed somehow, either through a common levy or through state aid?” Bird replied, “Certainly, and once Senator Raikes and many of us have talked about, is a common levy on capital improvements.” And Ashford added, “Well, that is what I was getting at, for example.” Bird injected, “Yeah, there may be real value there, and for those types of costs, we don’t know. The concept came to us late. All we are suggesting is let’s study it. Let’s step back from it and not just discard it.”⁶⁰⁰ Ashford later added

⁵⁹⁹ Ibid., pp. 17-18.

⁶⁰⁰ Ibid., pp. 18-19.

that if you were going to involve capital construction the “only place” to get it is from “some sort of common levy.”⁶⁰¹

Senator Adams also engaged in an exchange with Dr. Bird. Adams asked, “So is it fair to say that it was money that brought about LB 1024, and if it is, without a fixture like potentially a common levy, are we going to be right back here revisiting this a few years from now over money again?” Bird responded in part, “Money and boundaries certainly came together to create the perfect storm that brought us here.” He later added, “The common levy seems to be a concept to set aside Douglas and Sarpy County and deal with it over here. Well, we ignore the other 91 counties. You know, all we are suggesting is let’s step back and look at it. Common levy may percolate as the most wonderful concept ever. We are just not ready to say that.”⁶⁰² Bird also pointed out that perhaps the proposed “blue ribbon panel” would develop a “new solution” to equitable funding for schools and noted that “Senator Raikes appropriately has reminded me of net option funding for years” but he still was asking the committee to set aside the common levy for the time being until it could be further studied.⁶⁰³

Senator Adams took the opportunity to ask a Millard Public Schools board member if they “...had a choice between retaining their local boundaries or their tax base, which would they take, one or the other?” The board member, Brad Burwell responded, “Local boundaries are the first, highest priority to us.”⁶⁰⁴

⁶⁰¹ Ibid., p. 19.

⁶⁰² Ibid., p. 20.

⁶⁰³ Ibid., p. 20.

⁶⁰⁴ Ibid., p. 26.

Much of the testimony on LB 547 focused on the variety of other topics surrounding the education issues in the Omaha metro area. Some testified that LB 1024 was “too bureaucratic” while others focused on the recent collaborative efforts as a recent phenomenon that would lead to change. A parent from Bennington suggested that “LB 547 allows us to cooperatively address the more problematic challenges of equitable student achievement and school finance in an educational, not political method.” He added, “Student achievement and school funding are issues that did not become crises overnight, yet through LB 1024 we have tried to find a miracle cure for education. LB 547 is the first by-product of educational leaders sitting down in an open and cooperative environment to improve education in the Omaha metro area.”⁶⁰⁵ Just earlier Shirley Tyree, an Omaha School Board member had been asked by Senator Raikes if it concerned her that LB 547 proposed to eliminate the weighting for elementary students that are in poverty for the purposes of the state aid formula. She replied, “It concerns me... So I think that is up to the Legislature to find ways to get around those types of things so that all children can be educated equally.”⁶⁰⁶ Other testifiers provided thoughts about programs that might be created or envisioned to address student achievement and the achievement gap. Organizations including the Nebraska Council of School Administrators and Nebraska Association of School Boards testified in general support of the collaborative effort but questioned the school finance impacts.

⁶⁰⁵ Ibid., pp. 28-29.

⁶⁰⁶ Ibid., p. 27.

Ben Gray, representing the African-American Achievement Council that was closely aligned with Omaha Public Schools efforts on addressing achievement gaps, testified. He suggested he was there to offer conditional support of LB 547. He raised some questions about the long-term commitment level for the effort. He noted that he thought there needed to be benchmarks "...because as a person of color I have heard over the years, and I have been here for quite a few years now, individuals talk about we are going to do this for the community and that for the community [...]. And somehow even with the best of intentions, sometimes those things never happen." He also added, "I am a little concerned about when you are talking about the common levy, [i]f you are going to use the common levy as a means of funding schools, as long as it is not intended to be the cure-all for the concerns and the problems that face African American, Latino American, and Native American students. The common levy, nor will the \$28 million that was in LB 1024 even come close to solving those problems."⁶⁰⁷ He also continued, "So, if it is going to be used as a method of funding school districts with still an understanding that there needs to be significantly more dollars [...] then I am okay with that. But if you are going to use that as a mechanism to say the funding has been solved, that borders on the ridiculous to me."⁶⁰⁸

An exchange between Ben Gray, Senator Ashford and Senator Howard also focused on student movement and transportation that was also a theme throughout the testimony. Senator Raikes later asked Ben Gray, "Should we, as the Legislature, freeze

⁶⁰⁷ Ibid., p. 32.

⁶⁰⁸ Ibid., p. 32.

the boundaries and hope?” Mr. Gray responded, “I guess I don’t understand the question. Should we freeze the boundaries and hope for what?” Senator Raikes clarified, “Well, we freeze school district boundaries and hope that the right results in terms of cooperation among districts would happen.”⁶⁰⁹ Senator Raikes was drawing on his own concerns that there was not sufficient “teeth” or sufficient “commitment” by the actors in the LB 547. Ben Gray suggested that the African American Achievement Council and others would have to “stay on top of them” to make sure that Omaha Public Schools and the learning community “does right.” He added “If we stay on top of them, then they won’t have any choice.” Senator Raikes responded, “So in spite of what the legislation says, you are not worried about sanctions to make sure that everybody plays?” Mr. Gray responded, “No, what I am saying is that there [have] to be benchmarks and there [have] to be some...I mean, how are you going to enforce it if there aren’t benchmarks, and unless you have something that is enforceable in the law[...].”⁶¹⁰

Senator Avery asked another question about the common levy. He asked, “Given that you believe that resources might be part of the solution to the achievement gap, could you explain to me the basis for your skepticism about the common levy?” Ben Gray responded, “The common levy just doesn’t have enough money in it.” He added that the analysis of LB 1024 didn’t indicate that there would be significant dollars that would go to Omaha Public Schools.⁶¹¹

⁶⁰⁹ Ibid., p. 36.

⁶¹⁰ Ibid., p. 36.

⁶¹¹ Ibid., p. 37.

The opponent testimony included former senator, Pam Redfield, that had been a vocal proponent of LB 1024 and also the break-up of the OPS district and common levy during the prior legislative session. Additionally, Tim Kemper the director of finance for Lincoln Public Schools testified on his concerns with the finance provisions in LB 547. Additionally, Bill Mowinkel of Grand Island Northwest which had been in talks with Grand Island Public and other schools in Hall County expressed concerns that the learning community concept and common levy would be eliminated even though he indicated that Grand Island and Grand Island Northwest had “talks to agree to a common levy.”⁶¹² When Senator Adams asked Mowinkle the same question he asked the Millard board member about whether the Northwest board would prioritize “retaining” their identity or their tax levy, Mowinkle responded, “Retaining our identity.”⁶¹³

Also appearing in opposition to the bill was Senator Chambers. Although he indicated it was unusual for him to testify on other bills, he sought to make clear that he was primarily interested in improving achievement and not particularly concerned about integration. At one point he said, “I have emphasized the need to improve student achievement. My aim is to put quality education in every building in the district. Then it won’t matter whether a child attends school across the street or across town. But under the current administration of OPS, even the *World-Herald* points out, the segregation is worse now than it was ten years ago.”⁶¹⁴ Senator Chambers also was consistently critical of OPS and the administration. Those criticisms had fueled the controversial amendment

⁶¹² Ibid., p. 42.

⁶¹³ Ibid., p. 43.

⁶¹⁴ Ibid., p. 52.

to break-up OPS. Chambers testified that at the time of “one city, one school” OPS opposed being “landlocked” and they needed money prior to the passage of LB 1024. He added, “So what happens? They come down here now after Mr. Mackiel has entered an agreement that says, freeze the boundaries. Leave those suburban districts ringing OPS. Leave OPS landlocked. LB 1024 offered the common levy, and millions of additional dollars, \$28. That is money in hand. You take that and you build on it. What Mr. Mackiel went along with was doing away with the common levy. And for those who don’t understand it, the rich put in according to their means, the poor put in according to their means, then the allocation is on the basis of the needs of these districts, and the districts that I am concerned about will get more than they are getting now.”⁶¹⁵ At a minimum, Senator Chambers articulated his support for the common levy although he reiterated his support for breaking up Omaha which would leave him at odds with Dr. Mackiel and Omaha Public School supporters. When Senator Chambers was later asked by Senator Avery if there was anything in LB 1024 he would be willing to compromise on, he said, “Integration. I will let you kick that out altogether, because they are not going to get that anyway.” He also added, “But as far as anything else in LB 1024, let me tell you what I don’t want to give up. I don’t want to give up the common levy. I don’t want to give up the division of OPS into three districts. We will have the magnet schools and all such things as that, because those things are not even matters of controversy. But

⁶¹⁵ Ibid., p. 53.

we need to do something about achievement, local control, and I am not talking about the PTA, the common levy, and then you have me on your side.”⁶¹⁶

Later in the hearing, several others provided neutral testimony on the bill. Virgil Harden of Grand Island Public Schools testified of their “reservations” about LB 547. He testified, “Specifically that it eliminates LB 1024 in its entirety, and therefore the learning community concept. The learning community concept does have potential [...] for wider application than just the metro Omaha community, specifically within the Grand Island community. There are components within the learning community that represent some hope for Grand Island and Grand Island Northwest to start working together towards the best education of all the community’s children.” He added, “Items within the LB 1024 learning community concept that have promise are things like the shared common general fund levy, a shared common building fund levy, and especially the concept within Grand Island of an integration plan for minority students and students living within poverty; the elimination of boundaries as a major issue by introducing the concept or governance by a shared community school system.”⁶¹⁷ It was clear that other applications of the learning community were being considered and Senator Raikes had long sought to address other boundary issues across the state and had specifically addressed the Grand Island issue in 2005.

The Committee also took testimony on Senator Preister’s LB 440 as well as Senator Raikes LB 641. Both dealt with restoring Omaha Public Schools as a single

⁶¹⁶ Ibid., p. 55.

⁶¹⁷ Ibid., pp. 61-62.

district. LB 440 proposed to strike the prior year effort to break up the OPS district while Senator Raikes introduced a concept that would have created sub-districts under the larger OPS district. He referred to this as a “learning community within a learning community” that would achieve local community control. He also pointed to concepts for restructuring the overall governance structure that would be proposed in LB 642 the following day.⁶¹⁸ Raikes and the Committee were cognizant of Senator Chambers position on changes to the structure. Senator Avery asked Senator Raikes if he had discussed this with Senator Chambers and whether they had reached an agreement. Avery pointed out, “He is willing to die in the trenches over this issue.” Raikes suggested they had a “conversation,” and Avery responded, “Well, and that is a good start because conversation can be had between two parties that haven’t made up their mind. An argument is when you have made up your mind.” Senator Raikes indicated that Senator Chambers had been receptive not only to this idea but about some others.⁶¹⁹ At the very least, it pointed out that there was some room for compromise expressed.

During the conversations on LB 641, several committee members exchanged various thoughts with Senator Raikes. While addressing the importance of student integration versus educational opportunities, Senator Raikes made the distinction between two sides of a policy question as he saw it. “OPS, it seems to me, places integration above educational opportunity, and I am not necessarily being critical of them for that, but they do it.” He also added that he thought a student who has talent in the area of

⁶¹⁸ Ibid., pp. 83-84.

⁶¹⁹ Ibid., p. 85.

math ought to be allowed to go to a math magnet school regardless of an integration plan. He suggested, “the committee last year opted in favor of increasing the educational opportunities, [...]it is more important for us to honor that opportunity for education than it is to chase a goal of integration, important as that might be.”⁶²⁰

When asked by Senator Ashford if it was necessary to change the boundaries all around to “get them to do that,” Senator Raikes replied, “Well, in fact the split up of OPS needs to be looked at in the context of LB 1024, and the broader context of LB1024 was to tear all the boundaries down, make them all less important so that really as a school district you are providing educational opportunities metro area wide. Yeah, you have got a school district in terms of the school board members are elected, but there is a lot of commonality in that view. There was commonality in funding, operational level. There was commonality in maintaining building. But the key thing is that borders anywhere and everywhere, school district boundaries or borders, mean less because students can move across them, and in fact that is the real benefit of LB 1024 [...] that as a broad learning community, we can create educational opportunities...” Senator Ashford interjected, “Everywhere.” And Senator Raikes continued, “...that can’t be created by any one district and every student will have a shot at taking advantage of them.” Senator Howard added, “I would agree with you until the amendment was placed on the floor, and I think that took it in a different direction.”⁶²¹

⁶²⁰ Ibid., p. 87.

⁶²¹ Ibid., p. 88.

Former senator Redfield testified in favor of LB 641 in part adding “This bill retains the learning community that draws all districts in the metro area together to share in the responsibility, to share in a common levy, and to share in the consequences if they don’t cooperate because we can’t count on ‘kumbaya.’”⁶²²

The *Omaha World-Herald* news accounts of the hearing highlighted the concerns expressed by Lincoln Public Schools and others with the apparent flaws in the proposed finance elements of LB 547. The paper reported, “Omaha-area school superintendents are scrambling to calm concerns from other Nebraska districts that the superintendents’ metro-area schools’ bill would pay for its projects at the expense of schools elsewhere in the state. The concern is a dangerous one for the group of nine school districts, which last week lost the support of the Ralston Public Schools and faces other critics from home. The superintendents are counting on statewide support, both from school district colleagues and state senators, to get their plan through the Legislature. But Monday, superintendents apologized for what they said was an oversight in the Nebraska Student Advantage Act.”⁶²³ However, supporters of LB 547 tried to clarify during the hearing that a major intent of the bill was to have a statewide conversation about the state finance system. According to the paper “Kopplin has proposed both a full study of the state funding system and a study of the common property tax levy approved for the two counties last session. John Mackiel, superintendent of the Omaha Public Schools, said

⁶²² Ibid., p. 90.

⁶²³ Jeffrey Robb and Michaela Saunders, "Flaw in Schools Bill Draws Fire - Backers of the Legislation Say it Will be Amended to Protect the Funds of Districts Outside the Omaha Metropolitan Area," *Omaha World-Herald (NE)*, 2007a.

the metro-area districts want a statewide discussion of school funding. ‘The financial realities of our state and our metro area deserve a comprehensive discussion,’ he said.’”⁶²⁴ However, the paper reported, “the funding questions overshadowed supporters’ praise for a bill that they said would be a landmark in promoting school integration and improving low test scores. ‘This bill does the right thing,’ said Rebecca Valdez, executive director of the Chicano Awareness Center and a plaintiff in a lawsuit against the learning community law passed last year. ‘It puts kids first, not politics and litigation.’”⁶²⁵ The public turn of events however, pointed to the difficulty with which complex issues and complex policy making were inherently about both “politics and litigation” and as another article pointed out the issue had turned into a “tug of war.”⁶²⁶

The following day, February 6, 2007, the Education Committee met to hear four additional bills. The bills were Senator Cornett’s LB 91 that would exempt Sarpy County from the learning community; LB 473 introduced by Senator Chambers that would have merged Westside into Omaha Public Schools and then split the district into thirds; LB 558 proposed by Senator Ashford that would have addressed housing issues as part of the learning community; and, LB 642 introduced by Senator Raikes that would have made the educational service units reorganize to be the governance and structure of the learning community.

⁶²⁴ Ibid.

⁶²⁵ Ibid.

⁶²⁶ Michaela Saunders and Jeffrey Robb, "Schools Bill is seen as Tug of War - Outside Omaha, Districts Fear Plan would Deplete their Funds," *Omaha World-Herald (NE)*, 2007l.

First up at the hearing was Senator Cornett's bill. Although the proposed bill was intended to identify concerns with the impact of the learning community, it also served to highlight some of the rationale and intent of the common levy and general learning community concept. For instance, Senator Cornett opened on her bill and expressed concerns about the "financial aspects" of the learning community. She noted, "The common levy required under the learning community would not require any increase in Bellevue or Gretna. But in the Papillion-LaVista School District, it would require an 8-cent increase, and an 11-cent increase in school taxes in South Sarpy School District 46. And three of the school districts in Sarpy County, even with tax levy increases would lose anywhere from \$723 up to \$5.9 million in property taxes."⁶²⁷ Later in the hearing, Senator Cornett closed on her bill and addressed federal impact aid which the Bellevue school district receives because of the federal military presence in the district. She noted, "The reason we receive impact aid is because we are the fourth poorest property tax district in the state."⁶²⁸ The combination of different levy rates and different value bases was, at least in part, some of the rationale for the common levy. Additionally, the school finance formula was designed to address varying fiscal capacities of school districts. Senator Raikes would later ask, "Just to clarify, you mentioned having a low property tax base in Bellevue. Now that would be the job of state equalization aid to make up for that, would it not?"⁶²⁹

⁶²⁷ Nebraska Legislature Education Committee, *February 6, 2007 Education Committee Hearing Transcript*, 100th Legislature, First Session, 2007b.

⁶²⁸ *Ibid.*, p. 20.

⁶²⁹ *Ibid.*, p. 20-21.

Early on Senator Raikes also asked Senator Cornett about the nature of city boundaries in the area. He asked, “Senator, as you visit the cities, I do occasionally, it is clearer as you are driving around, or it is not clear, I should say, where driving through the city, that Douglas County ends and Sarpy County begins. Would you agree? It is sort of a continuous metro area?” Cornett responded, “Yes.” And Senator Raikes continued, “Okay, and so to some extent, to follow up with that, isn’t public education appropriately considered to be a challenge for the entire metro area?” Senator Cornett responded, “I would feel that yes it is a challenge for the metro area, but if you look at the past history of Sarpy County, all of the school districts have been doing a very good job of educating their students. We were not in the same position as the school districts in Douglas County, specifically OPS, even though OPS has quite a large percentage of my district.”⁶³⁰ The basic point highlighted is one that may be typical in urban areas that various municipal or local governments and interconnected but they do not necessarily have a shared sense of responsibility. Senator Burling also seemed to press on the same point. He asked, “Along that line, school districts lines do cross the county lines between Douglas County [...] But your bill specifically says that where the district offices are, that is where you want to be excluded.” He added, “So there is not a problem with your bill as far as a school district crossing a county line currently?” Cornett responded, “OPS would still be OPS.”⁶³¹

⁶³⁰ Ibid., p. 3.

⁶³¹ Ibid., p. 3.

Proponents to LB 91 were primarily from the Bellevue school or the city of Bellevue. John Hansen, a Bellevue school board member testified that he was concerned about funding. “I am very concerned about that funding as you look at how are you going to fund the learning community? How is that going to affect us when you throw Douglas and Sarpy County into one pot?”⁶³² Hansen highlighted the concern the assessment practices were not similar between the two counties and that he believed that they would be at a disadvantage for future growth. Perhaps clarifying that concern, Bellevue superintendent John Deegan testified that “We begin the dying process as soon as you put in the learning community and freeze our boundaries.” Senator Raikes asked, “So the real issue with you is the freezing of the boundaries?” and Deegan responded, “Absolutely.”⁶³³ Ed Babbitt, the Mayor of Bellevue also suggested that freezing boundaries created a problem for future growth and cited that “in Bellevue and Papillion, for example, we have housing areas that are ready to move forward, but they are on hold.” He suggested that developers wanted to be assured they are served by the Bellevue or Papillion school districts.⁶³⁴ Another testifier, Ralph Gladbach who was an architect and involved in land development suggested that “Sarpy County is finally becoming home to many national retailers. As the residential development continues, this commercial development will continue, which provides true tax base needed for

⁶³² Ibid., p. 5.

⁶³³ Ibid., p. 7.

⁶³⁴ Ibid., p. 8.

communities to prosper. One of the major considerations a developer considers in site selection is the school district a property is located and proximity to schools.”⁶³⁵

Yet another testifier suggested that the legislature should look to tenets in school reorganization law and in legislative efforts to address metropolitan disputes between utilities providers. He highlighted “[...] the educational needs of students and local communities; economic impact upon the affected school districts; common interests between platted areas and school districts, and the community with zoning jurisdiction, [and with regard to the utilities disputes...] legislation provides similar guidance when determining what is in the public interest based upon: economic feasibility; impact on existing and future residents; contribution to the orderly development of infrastructure; elimination of duplicative or redundant service in a development; as well as others.”⁶³⁶ Although this testifier was suggesting that Sarpy County schools could be left out for these recommended “tenets,” it was apparent that the scope of these issues was part of the conversation.

Megan Lucas, as the President of the Bellevue Chamber of Commerce suggested that both LB 1024 and the proposed LB 547 would “stifle growth” in their community by freezing boundaries, increasing taxes through a common levy, and removing local control. She implored, “Please do not drag Sarpy County into a learning community to address problems of Douglas County.”⁶³⁷

⁶³⁵ Ibid., pp. 9-10.

⁶³⁶ Ibid., p. 11.

⁶³⁷ Ibid., p. 12.

Another testifier, Pat Jones, testified that Bellevue would be willing to help other communities if help is needed. Jones suggested there were already a number of voluntary things in existence. “There are multidistrict groups that meet already, MOAC, MABE board which I [sit] on the Metro Reading Council, and others.” She later added, “There is no such legal entity that I am aware of and there should be no requirements to force something like a metro education plan on those of us who are our own cities, our own school system, and our own hometown identities.” She also added, “The problem in Douglas County should be solved by those in Douglas County. If OPS were one school district like Lincoln, sir, there would be this problem.”⁶³⁸

The discord between Sarpy County schools demonstrated that boundary issues in Sarpy County remained an important part of the discussion. Chuck Chevalier, as Superintendent of South Sarpy District 46, represented six Douglas County school districts and Gretna in Sarpy County, testified in opposition to LB 91. Chavalier testified, “I am glad that the previous testifiers have talked a lot about the boundary issue because that is in my mind the key issue.” He later added, “I didn’t know I was going to have to defend our school district today, and I feel somewhat attacked by the Bellevue community.”⁶³⁹ It was apparent that boundary and development issues between and among school districts in Sarpy County was as volatile as in Douglas County. Even the Papillion-La Vista superintendent testified in neutral on the Cornett bill suggesting that Bellevue stood alone in its support for LB 91.

⁶³⁸ Ibid., p. 17.

⁶³⁹ Ibid., p. 17.

With the conclusion of the hearing on LB 91, Senator Chambers was recognized to open on LB 473, his bill to merge Westside into OPS. Senator Chambers used the opening to describe some of history, or least his perspective on the history of Westside and the recent discussions of the learning community. Naturally, representatives from Westside testified in opposition to the bill. At one point Ken Bird noted, “The resource issues raised are valid and have merit, and the best solution lies within studying and redrafting our state aid formula as proposed in LB 547; not merging Westside, not a common levy.”⁶⁴⁰ Senator Avery would later have an exchange with Dr. Bird on the common levy. Senator Avery asked, “But I thought you said yesterday that the common levy was something you could support.” Bird responded, “Senator Avery, we could support it as part of the study, and that was the discussion we had. And you drew my attention to “may be” part of the story...” Senator Avery interjected, “Maybe study and ...probably...” Bird continued, “...shall be. And we would encourage it to be part of the study. It just...” Senator Avery interrupted, “But now you said you don’t support it. Right here it is.”⁶⁴¹

Dr. Bird further explained, “I don’t support it as it stands right here, but going back...I say, let’s go back to LB547, look at a study, let’s put it in there. And if it becomes the best solution to helping this state, maybe it should be applied to Lincoln and to Waverly and to the Lancaster County area. I don’t know. But from my position and the position of superintendents I’ve been working on, to fractionalize Douglas and Sarpy

⁶⁴⁰ Ibid., p. 27.

⁶⁴¹ Ibid., p. 28.

County off, make them the guinea pig for a common levy, we don't know how it's going to work. We need stability and predictability in state aid. We need the state to step back and look at TEEOSA, the state education funding system, statewide, and work it on it together, and let's come up with the right fix. It may be a common levy.”⁶⁴²

Senator Raikes also asked Dr. Bird, “Would you put net option funding in the same category? ” Bird responded, “Senator Raikes, we’ve had that discussion, and yes. You know, I would have to. Net option funding is certainly something that would have to be included in the study and I think has to be on the table.”⁶⁴³

Later in the testimony, Senator Raikes asked John Bonaiuto about the difficulty of addressing boundary changes from his point of view at the school board association. Raikes added, “[it] seems that we get the reaction that even if you keep the boundaries in place, requiring school districts to reach across the boundaries in any sort of a formal manner, even though the boundaries remain, is difficult too.” Bonaiuto responded, “It’s difficult, but we need to get used to change. Things...I’m convinced that we aren’t going to be able to do things the way we’ve always done them.”⁶⁴⁴

Senator Chambers bill and the testimony from the day did strike a chord with one member of the audience. Vickey Parks from Omaha decided to testify as she said, “After I heard the testimony opposing LB 473 I could not resist making my comments.” Parks said she was a member of the African American Achievement Team and added, “Dr. Mackiel did not get my permission to take the levy off the table, nor did he call anybody

⁶⁴² Ibid., p. 28.

⁶⁴³ Ibid., p. 28.

⁶⁴⁴ Ibid., p. 35.

in the African American community to get the levy taken off the table. And one city, one school district was all about equitable resources for our school district. So as an African American Achievement council member and volunteer for OPS, I want it to be clear on the record that we were not consulted in all these private meetings with these superintendents about their bill or Senator Chambers' bill."⁶⁴⁵ Late in her comments she suggested that there continues to be discrimination and added, "[...] those of us from the black community in the city of Omaha, we know the reality, and the reality is zip code discrimination still prevails. [...] But if we're going to have the city of Omaha be fair, give us Central High School, give us both sides of 72nd Street, and I bet you in five years we'll come up with the kinds of success stories that District 66 enjoys off of our tax backs today."⁶⁴⁶

Among the other testimony were echoes of all of the issues that had been raised from community history to economic opportunity to intentional racism. However, Senator Chambers concluded, "You all who come here against LB 1024 must realize that the chairman of the committee put a lot of time into that, and you all don't understand politics. Here's the way I'm going to end this. Asking Senator Raikes to throw away all of that work he did, and anybody can use this little rhyme for their purposes... It's like asking Shakespeare to destroy every play, asking the sun to abandon the day, asking

⁶⁴⁵ Ibid., p. 35.

⁶⁴⁶ Ibid., p. 36.

Louis Armstrong to trample his trumpets, asking Miss Muffet to forswear her crumpets.”⁶⁴⁷

Although the context of housing was raised in a hearing on Senator Ashford’s LB 548 and the issue of learning community governance through educational service units was raised Senator Raikes’ LB 642, few additional funding issues were raised that were fundamentally different or new. However, Senator Raikes took a few minutes in the closing on LB 642 to point to the committee and admonish those who didn’t participate in the dialogue constructively. Senator Raikes, perhaps fatigued by the two days of hearings, said, “As you know, I think, we have a significant issue to deal with and really what is important for us at this point is to have on the table the alternatives we might consider in terms of how to organize to provide services...and that includes not only ESU services but administrative services. I will tell you I was not surprised, but disappointed in some of the testimony that we heard from ESUs. Disappointed in the sense that there is sort of a staunch unwillingness to change anything, to defend exactly what we are doing now as we are doing it and to guarantee that there is absolutely no other way that it can be done, and I don’t think that is the case.” He later added, “I think a lot of people are very capable of coming up with those and much better ideas. So I am, as I say, disappointed in the sort of unwillingness to even consider. If we could do exactly what we are doing, exactly how we are doing it now forever, our life would be a lot easier. I think you know that. Unfortunately we can’t do that, and we have to look at making changes, and all of those changes unfortunately, cannot involve making everybody more

⁶⁴⁷ Ibid., p. 44.

comfortable and just charging the taxpayers more. We have to look for ways to do things differently.” He added, tongue in cheek, “Other than that, I agreed with everything that was said.”⁶⁴⁸ Perhaps in a show of some unity, Senator Avery said, “Just one comment, you know that this committee is not afraid of change.” Senator Raikes said, “I do, I do.” Senator Kopplin added, “Well, I am not so sure I am open...” to some laughter.⁶⁴⁹ However, the text and tone of the two days of hearings suggested the committee would have considerable work to arrive at an acceptable consensus that would stand the test of full debate and public scrutiny.

As the *World-Herald* reported the next day, “Members of the Education Committee know that the metro area schools issue is their No. 1 responsibility this session. What they haven't nailed down yet is the goal of the legislation they will advance.”⁶⁵⁰ The paper added, “State Sen. Bill Avery of Lincoln said Tuesday that the goal ‘is very clear, closing the achievement gap.’ Last year, the goal was ‘more clearly an organizational issue,’ said State Sen. Ron Raikes of Lincoln, the committee chairman and author of the learning community law passed last session. Now, he said, ‘it's somehow broadened in scope’ to include both organization and school programs.”⁶⁵¹ The paper also pointed out that discussion during the noon time Education Committee executive session and during the course of the hearings on February 6, 2007 included the

⁶⁴⁸ Ibid., p. 69.

⁶⁴⁹ Ibid., p. 69.

⁶⁵⁰ Michaela Saunders, "Competing School Bills Discussed - Four Proposals are Covered in the Second Day of Hearings on Metro Schools Legislation," *Omaha World-Herald (NE)*, 2007.

⁶⁵¹ Ibid.

concentration of poverty in east Omaha and the broader issues of health care, transportation and other social services. As the broader societal issues were raised, the complexity of the policy was certain to evolve to match.

As if the Legislative pressures were not sufficient, the Governor, courts, and Attorney General were all part of the context. Governor Heineman, who had vocally supported the suburban superintendents over the course of the debate was also calling for LB 547 to advance and was critical of Attorney General Jon Bruning's effort to lift a court order that had put the learning community law on hold.⁶⁵² Complicating matters further, it appeared that the Governor had sought negotiations with the plaintiffs in multiple court cases and that LB 547 was suggested to be part of settlement negotiations.⁶⁵³ "A lawyer for the plaintiffs said Heineman's comments moved the two sides closer to freezing the lawsuit. The plaintiffs had sought the governor's backing of the superintendents' plan as a condition to agreeing to a stay. "I think we're an inch away from a stay," said Steve Achelpohl, who represents the Chicano Awareness Center and several residents of the Omaha school district"⁶⁵⁴

The paper also reported, "If a stay is issued, lawmakers would work this session without the possibility of a court ruling coming down: keeping a potential wild card out

⁶⁵² Leslie Reed, "Heineman: Advance School Bill - Superintendents' Plan Backed; Court Action is Opposed," *Omaha World-Herald (NE)*, 2007.

⁶⁵³ Leslie Reed and Jeffrey Robb, "Suit May be Held Till School Law is Revised - Superintendents' Plan in Spotlight - Heineman Gives Key OK," *Omaha World-Herald (NE)*, 2007d.

⁶⁵⁴ Ibid.

of the process.”⁶⁵⁵ However, Senator Chambers had been openly critical of the notion of a stay as he preferred that the district court act so as to appeal the case up to the Supreme Court. Chambers and Raikes had both suggested that they would prefer the case to proceed. The whole question of how to proceed in the lawsuit was a point of dispute between Heineman and Attorney General Jon Bruning. Heineman said he asked Bruning to negotiate a stay to allow state senators to craft a new solution this legislative session. The governor criticized Bruning for wanting to press forward in the suit. Bruning said he has tried negotiating but met unacceptable conditions from the plaintiffs. “I’ll never quit negotiating,” he said. “We want this thing solved. I don’t want this resolved by the courts. I don’t think anybody does.”⁶⁵⁶

Although Heineman was reported to say, “I don’t understand the rush to judgment,” it had become clear that Senator Raikes and Senator Chambers preferred a Nebraska Supreme Court decision to a “stay.” Aaron Sanderford, the governor’s spokesman, said Bruning decided to move forward in the lawsuit with the agreement of Ron Raikes and Ernie Chambers.⁶⁵⁷

A court stay might have been used as political leverage against changes to the LB 547 proposal as it would have left other options to resolve the dispute less certain. However, in spite of the public support for the superintendents’ plan, Senator Raikes

⁶⁵⁵ Ibid.

⁶⁵⁶ Leslie Reed and Jeffrey Robb, “Suit may be Frozen Until School Law is Revised,” *Omaha World-Herald (NE)*, 2007c.

⁶⁵⁷ Ibid.

remained skeptical. Raikes said he preferred the framework of LB 1024. “That doesn't mean I wouldn't consider changes,” Raikes said. Of the superintendents’ proposal in LB 547, Raikes said, “I haven't quite figured out what the framework is.” He added, “The framework is less commitment by individual schools, at least in some respects.”⁶⁵⁸

“Chambers said he wants to move the lawsuit beyond Coffey's court so ‘seven real judges,’ the Nebraska Supreme Court, can determine its constitutionality. If the state loses the case, it can appeal. Once the Supreme Court takes the case, Chambers says, the learning community law would move forward. ‘I want to rush to have the law put in place,’ Chambers said. State Sen. Gail Kopplin of Gretna, who is sponsoring the superintendents' bill, said it is to Chambers' and Raikes’ advantage politically ‘to get things off the table so we don't have to talk about kids.’ Said Achelpohl: ‘It's high time somebody in state government stood up to Ernie Chambers on this issue.’⁶⁵⁹

The following week, the Education Committee was sorting through details of the various proposals and was beginning to reach consensus on some issues. With the committee meeting routinely on Tuesdays for lunch in executive session, (such sessions were open only to the press) the committee was finding time each week to work through details of legislation in front of them. By Tuesday, February 13th, the committee discussed removing Sarpy County from the metro-area schools issue. According to the

⁶⁵⁸ Leslie Reed and Michaela Saunders, "School Chiefs Pleased by Governor's Support," *Omaha World-Herald (NE)* 2007, p. 02.

⁶⁵⁹ Jeffrey Robb and Leslie Reed, "Suit May Be Frozen Until School Law is Revised," *Omaha World-Herald (NE)* 2007, p. 01B.

World-Herald, “two Omaha-area state senators, Gail Kopplin of Gretna and Brad Ashford of Omaha said the solution should be confined to Douglas County. Their position is in agreement with the Bellevue schools and a legislative bill offered by a Bellevue senator. But in a straw vote, the other six senators said Douglas and Sarpy County districts should work together.”⁶⁶⁰ Senator Greg Adams of York was reported to say the full legislature was looking to the committee. “We’re obligated to do something,” Adams was reported to have said after a hearing on February 12th. Adams also reportedly said the Omaha situation presents a chance to create a statewide model that other districts might choose to employ. “In smaller counties and school districts cooperation could become important when rural areas face losing their schools. We have an opportunity here, we really do, to find a model that may work in Lincoln, may work in Schuyler, may work in York, needs to work in Grand Island,” Adams said.⁶⁶¹

Adams and Bill Avery of Lincoln asked pointed questions in the hearings the prior week about the shared property tax base and common levy. “Adams said he sees value in the common levy. ‘In some shape or fashion, I think it has to be part of the solution,’ he said. Metro-area superintendents are asking the Legislature to step back from the common levy and not let the Omaha area become a funding ‘guinea pig.’ Instead, a group of nine superintendents wants a study of funding matters.”⁶⁶²

⁶⁶⁰ Jeffrey Robb, "Panel Backs Douglas, Sarpy Partnership - Education Committee Members Begin Reaching Consensus as they Draft a School Reorganization Plan to Send to the Floor," *Omaha World-Herald (NE)*, 2007.

⁶⁶¹ Ibid.

⁶⁶² Ibid.

Senator Avery also was reported to express support for the idea of creating sub districts within OPS, instead of fully breaking up the district as proposed in Senator Raikes' LB 641. "Avery said that could present a means to compromise with Sen. Ernie Chambers of Omaha, the other architect of the OPS breakup. 'Maybe this is a workable compromise,' Avery said last week. 'Creative minds do creative things.' But when the issue of dividing OPS has arisen, Senator Gwen Howard of Omaha has questioned the fairness of a state law that applies only to one school district."⁶⁶³

As the *World-Herald* reported, "Ashford, speaking on the floor Monday, said the committee would work diligently on the issues over the next couple of weeks. Said Raikes, 'The committee is very interested in working through the issue, taking into account all the bills that have been introduced but also (working) on their own terms.'"⁶⁶⁴

Part of those "terms" would likely be a hybrid plan that addressed several issues raised in the hearings and by school district interests. With the proposal from the superintendents that had been the subject of criticism by other schools as well as by Raikes, the effort was reported likely to "morph into a compromise plan."⁶⁶⁵ As was to be expected, the committee work would not result in a single effort staying intact. "Instead, the committee is set to pull together pieces from a number of bills, and the

⁶⁶³ Ibid.

⁶⁶⁴ Ibid.

⁶⁶⁵ Jeffrey Robb, "Piecemeal Plan Likely for Schools - Parts of the Metro Superintendents' Solution may be Combined with Other Ideas in a Final Bill, Legislative Observers Say. - Plans in Play," *Omaha World-Herald (NE)*, 2007u.

superintendents' plan will vie to make that mix. 'I'm going to fight for 547,' said State Sen. Gail Kopplin of Gretna, the committee's vice chairman and sponsor of the superintendents' plan. 'But I'm a pretty realistic guy, too.'"⁶⁶⁶ As suspected, Senator Raikes was viewing the foundation for any changes as the learning community rather than the "framework" of LB 547. Raikes said, "Whatever bill it's going to be is going to be a combination," And several committee members were supporting concepts that were counter to the superintendents' plan including a shared property tax base and new subdistrict organization within the Omaha Public Schools.

By the next week, Senator Howard was floating her own plan that included many of the provisions of the original learning community law as well as provisions of LB 547 and also added the inclusion of social workers to help address community and family level issues. Her plan also attempted a revamp of the governance structure suggesting a 12 member council and keeping a superintendent advisory group. Although her plan was just part of the conversation, it drew some encouragement from Ken Bird and John Mackiel.⁶⁶⁷

March, 2007

As March rolled around, the committee was reported to be reaching consensus on more issues as they worked toward a compromise. Senator Raikes and Senator Kopplin who were often at odds and had offered their own competing plans were sounding as if

⁶⁶⁶ Ibid.

⁶⁶⁷ Michaela Saunders and Jeffrey Robb, "School Compromise Plan Offered - Sen. Gwen Howard Uses some of the Superintendents' Ideas, some from Ron Raikes and some New Ideas," *Omaha World-Herald (NE)*, 2007j.

they had at least come closer to some agreement. Kopplin was reported to say he was pleased that the committee was looking at elementary school issues in ideas being floated by Senator Raikes. “We’re really not as far apart as you think,” Kopplin told the Education Committee on March 6th according to the *World-Herald*. Senator Raikes acknowledged that committee members have a lot of issues to settle before sending any bill to the floor of the Legislature but he noted, “I think we’re making progress.”⁶⁶⁸

“Raikes said that once the basic organization is set, lawmakers will have a way to approach funding, school programs, achievement and integration. Raikes said the idea stems from one of the weaknesses in his learning community concept. Last year’s law, he said, focused on improving education through specialized focus schools, not the neighborhood elementary schools that the vast majority of students attend. Raikes now has proposed creating a new resource center for elementary education within the learning community, perhaps offering reading tutors for students or expert advice to schools.”⁶⁶⁹ Addressing the complex nature of the problems presented and discussed by school officials and others, the overall concept was also being adjusted and amended. However, still remaining were the governance and structural issues as well as integration details.

As foreshadowed by Papillion-LaVista’s superintendent during the hearings on February 5th and 6th when he hinted that his board had “changed” and they had not yet established a position on Senator Cornett’s LB 91. By March 20th, the *World-Herald*

⁶⁶⁸ Jeffrey Robb, "Consensus may Emerge on Schools - Education Committee Members Report Constructive Work on a Metro Omaha Learning Community Structure," *Omaha World-Herald (NE)*, 2007c.

⁶⁶⁹ Ibid.

reported that the district was set to “join” Bellevue in opposition to being included in the learning community as the Papillion-LaVista board president emailed education committee members indicating that a majority of his board wanted to be left out of the learning community citing concerns of about the shared property tax base and provisions for attendance areas and transportation.⁶⁷⁰ However Senator Raikes was quick to dismiss the apparently growing sentiment. “This is a metropolitan community that is tied together economically, culturally and a number of other ways,” Senator Raikes was reported to say on March 19th. He added, “We share the obligation of public education of the kids.”⁶⁷¹

In addition to the outside conversations, the Committee continued to discuss options regarding the structure of OPS. Senator Raikes continued to offer his “middle ground” approach that would have created sub districts within Omaha. However, that proposal was not garnering sufficient interest to advance, even if there was a curious interest expressed by the committee. Additionally, OPS continued to be opposed to the approach.⁶⁷²

As March was drawing to an end, Papillion-LaVista voted 5-1 in favor of seeking an exclusion from the learning community. They were in favor of “continued

⁶⁷⁰ Jeffrey Robb, "Papio-La Vista Wants Out of Learning Community - The School District is Expected to Join Sarpy Neighbor Bellevue in Opposition," *Omaha World-Herald (NE)*, 2007t.

⁶⁷¹ Ibid.

⁶⁷² Jeffrey Robb, "Panel Warm to Revision of OPS Plan - Sen. Ron Raikes Offers a "Middle Ground" Proposal that would Still Create Subdistricts Under an Overarching Omaha School District," *Omaha World-Herald (NE)*, 2007s.

engagement” in the discussions to craft a policy “that benefits all students.”⁶⁷³ The board suggested “discussion had ‘trended away’ from the goal of improving academic performance” and although freshman Senator Tim Gay who represented most of the district urged them to delay taking a position until a proposal emerged from the committee, the board cast the vote.⁶⁷⁴

In a fairly quick and decisive message the next day, the Education Committee voted 7-1 to kill LB 91 which was authored by Senator Cornett to exempt Sarpy County school districts from the learning community. “Sen. Ron Raikes of Lincoln, the Education Committee chairman, said the committee is dealing with a complex issue. He said he wanted to be clear about the committee's intentions regarding Sarpy County.”⁶⁷⁵ “Cornett said she is willing to look at the Education Committee's plan, but if her concerns aren't met, she would try to incorporate her bill into the overall plan during floor debate.” But, by “indefinitely postponing” LB 91, the bar would be raised to require 30 votes rather than the simple majority of 25 votes to add the proposal to a bill on the floor.⁶⁷⁶

April, 2007

⁶⁷³ Joe Dejka, "Papio-LV Board Wants Out of Learning Community - The Change would Require Legislative Action, which Appears Unlikely," *Omaha World-Herald (NE)*, 2007.

⁶⁷⁴ Ibid.

⁶⁷⁵ Jeffrey Robb, "Sarpy Stays in Learning Community - A Legislative Panel Rejects a Bid for Removal Soon After Papillion-La Vista Joins Bellevue in Wanting Out of the Schools Plan," *Omaha World-Herald (NE)*, 2007a.

⁶⁷⁶ Ibid.

As the session reached April and a plan had not yet surfaced for full legislative debate, the impacted schools began to get restless. In part, the criticism was leveled that the “lawmakers’ discussions are off track” while at the same point superintendents suggested they were not being given “sufficient feedback.” Although tentative, the *World-Herald* reported on April 2, 2007 that “among committee members, consensus is growing for a plan to put before the full legislature.”⁶⁷⁷ Although the hurdle of putting Omaha “back together” in a fashion that would satisfy Senator Chambers was part of the dialog, “John Mackiel, superintendent of the Omaha Public Schools, has criticized the committee for looking at changing OPS’s operating structure instead of discussing quality education, integration and school finance. Westside Superintendent Ken Bird said metro superintendents are frustrated by the direction of the committee’s discussions. Bird said the superintendents have expertise that the committee should turn to. But he said that hasn’t happened. ‘It has been a struggle to have input into this,’ Bird said.”⁶⁷⁸

However, Raikes had been cited to say increasing educational opportunity was the committee’s main objective. “But first, Raikes said, a structure needs to be established for school districts to work together. He said that involves establishing a funding system that includes the whole metro area, some sort of shared property tax levy, and governance. ‘The basic idea of the learning community is educational enhancement,’ he said. Raikes has led the Education Committee’s discussions. He is slowly building

⁶⁷⁷ Jeffrey Robb, “Direction for Schools Questioned - Some Superintendents and Boards Say the Legislature’s Preliminary Plan for the Metro Area Fails to Address Crucial Needs,” *Omaha World-Herald* (NE), 2007e.

⁶⁷⁸ Ibid.

support around his concept of a new educational government operating over the 11 Douglas and Sarpy County school districts.”⁶⁷⁹

Senator Raikes who had a “knack for complicated policy construction” suggested, “It’s complex and sometimes maybe overwhelmingly complex, [...] But . . . it provides the greatest opportunity to really enhance educational opportunity.”⁶⁸⁰ There were a number of players that expressed concern, including the superintendents and, in particular, the vocal Sarpy County opposition. “Discontent has surfaced elsewhere, as well. A group called the Metro Student Achievement Steering Committee has been formed with the purpose of building a solution around student achievement. The group is lobbying in the Legislature and hired former Speaker Kermit Brashear.”⁶⁸¹ Brashear, with his working relationship with both Senator Raikes and Senator Chambers would prove to be at least a “new,” if not an influential actor in the discussions. Additionally, the role and voice of the superintendents was expanding as they presented the Education Committee with a breakdown of their opinions on the latest “working plan” which included counter points to elements such as the integration efforts and the role of educational service units.

The prior week, metro superintendents presented the Education Committee with a breakdown of their opinions on the working plan. While seeming to agree with the committee on a number of points, the superintendents countered the plan on several

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid.

points, such as the educational service units plan and the plan's integration efforts. And although the superintendents were critical of their level of engagement with the committee, Senator Ashford was seeing progress and the potential of the committee's plan. Even though the superintendents were starting to take an "us versus them" tone, Ashford suggested the plan would be "revolutionary."⁶⁸²

However the lack of consensus around a solution to the OPS breakup was not materializing and that was leaving some to question the next steps. According to a *World-Herald* article, "[...] one huge, thorny, controversial issue sits unresolved, the split of the Omaha Public Schools. The OPS question led two state senators to withhold support for the rest of the plan. 'I can't go along and say the rest of this is just fine,' Sen. Gwen Howard of Omaha said."⁶⁸³ In the executive session on April 2nd, the Education Committee agreed to amend LB 641 with several "groundbreaking" changes including school integration, education operating structures and funding according to the paper. Senator Raikes was apparently taking up consensus issues while leaving this "thorny" issue until other elements were decided. "We simply haven't addressed it," Raikes said about the OPS break-up according to the article. "I do think we will address it."⁶⁸⁴ At this point the committee seemed to resolve that the common levy would be part of the mix but

⁶⁸² Ibid.

⁶⁸³ Jeffrey Robb, "OPS Still Missing from Schools Bill - Lawmakers Agree on Many Changes but Still Face the Toughest Topic: The Omaha District Breakup," *Omaha World-Herald (NE)*, 2007p.

⁶⁸⁴ Ibid.

that the finance element of the plan would be “phased in” to alleviate some of the concerns posed by superintendents.

Even so, the issue of what to do with the breakup was still being negotiated. The *World-Herald* reported that one version of Raikes’ working plan included making OPS whole, but in a Tuesday, April 2nd executive session “...Raikes dropped OPS issues from the draft plan, leaving them for a later discussion. ‘I don't think we're as far along on that issue as we are with the others,’ he said.”⁶⁸⁵ The committee voted to adopt other amendments to the bill while Howard voted against it and Kopplin abstained. The paper also reported that Raikes continued to have “several discussions” with individual committee members leading up to their vote including Howard with whom he was reported to have talked with for 30 minutes. Senator Raikes was reported to be “trying to address concerns raised by Chambers” as well as negotiating with OPS based on what they would “deem acceptable.”⁶⁸⁶

Although Ashford reportedly voted in favor, he said, “We will discuss these other things prior to advancing the bill,” while Howard expressed that she was not comfortable without some resolution to the breakup. She said, “I don't want to go any further until we have this out on the table and deal with it.”⁶⁸⁷

By April 10, 2007, Senator Raikes was still promoting his new governance structure concept by including the reorganization of the metro area educational service

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid.

⁶⁸⁷ Ibid.

units. “This seems to me to be the most logical and efficient way to do it,” said Raikes although his LB 642 concept was generally opposed by ESU 3 and most of its school districts.⁶⁸⁸

Although the restructured ESU was one point of concern, the concept was essentially creating a new board that would in part set a common property tax levy, a school construction levy and a joint building fund levy. OPS expressed concerns through their attorney Elizabeth Eynon-Kokrda. She questioned whether board members would be informed on issues in the school districts and whether the structure would dilute minority residents’ influence. Millard joined in those concerns suggesting that it was a “step toward consolidating metro schools into a multicounty district” and Millard board member Mike Kennedy said, “It's fundamentally flawed, [...] It's a non-starter.”⁶⁸⁹

Raikes who had some committee support, said he did not see the plan as taking local control from metro districts. The learning community board would have set a minimum property tax levy, but school districts would have authority to tax higher than that. “It is a significant increase in cooperation among school districts, [...] But the school districts still are, in many, many respects, autonomous just as they are now,” according to Raikes. He added, “It's not one big school district set-up.”⁶⁹⁰ Also pointing to his earlier admonition of ESU supporters attitudes toward change, Raikes was reported

⁶⁸⁸ Jeffrey Robb, "Some Tout ESU Model to Realign Schools - Others Worry Power would be Too Centralized in a Merger of OPS' Educational Service Unit with no. 3," *Omaha World-Herald (NE)*, 2007ah.

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

to say, “I do think there are ways that this can happen, particularly with constructive attitudes, that there are not going to be any hard and negative consequences to all of this.”⁶⁹¹

In addition to the OPS breakup, a second unresolved issue was the approach to, and priority of integration. Raikes maintained that integration was an important goal but it was a second priority to educational opportunities. “Low-income students should be able to pick a school even if their choice doesn't improve that school's socioeconomic integration, Raikes said. ‘Diversity is a worthy goal,’ he said. ‘But I think it has to come second to educational opportunity.’⁶⁹² The superintendents, and in particular OPS thought that integration was an equally important goal that should be built upon the OPS magnet school approach to encourage student movement. “Viewing classroom integration as a goal or not ‘probably is the biggest difference in philosophy,’” said Raikes who was also mindful of Senator Chambers position he expressed multiple times that integration was not his priority. On this issue, the new Speaker of the Legislature, Mike Flood organized a meeting that included superintendents, Raikes, and Kopplin which led to agreement that integration would be included in the bill and would be debated on the bill. Flood said, “I would imagine (school integration) is going to be something that receives a lot of attention.”⁶⁹³

⁶⁹¹ Ibid.

⁶⁹² Michaela Saunders, "Classroom Integration a Sticking Point - Whether to make it a Goal of a Metro-Area Schools Plan has Yet to be Resolved. - Integration Approaches," *Omaha World-Herald (NE)*, 2007b.

⁶⁹³ Ibid.

By April 18, 2007 the Education Committee had come to consensus to keep OPS a single district but the committee did not yet have Senator Chambers' support. "Hopefully we've addressed it sufficiently enough to gain his support," Ashford said regarding Senator Chambers' position. He added, "We need the support of every senator on this floor, including Senator Chambers."⁶⁹⁴ Although the committee was intent on developing a plan that was ready to send to the full legislature, Senator Raikes wanted to know what the Speaker's plans were for scheduling floor debate as it was easier for the committee to make changes before advancing it from the committee. Also, the plan was floated to the various interests including Senator Chambers. The *World-Herald* reported the following day, "The committee voted 7-1 Wednesday to include a repeal of the breakup in its bill. With that, the committee has all but finalized its Omaha education plan after approving a series of legislative amendments regarding school district governance, finances and school integration."⁶⁹⁵ "This represents the essence of where the committee would like to go with this," Raikes said adding that LB 641 would represent "significant and substantial change" but also hedging as he suggested, "I'm well aware this is not as much of a change as some people would want," perhaps referring to Senator Chambers.⁶⁹⁶

⁶⁹⁴ Jeffrey Robb, "Unified OPS Plan May Hit Turbulence - the Committee's Proposal to Repeal the Breakup Marks a Turnaround on the Issue that Divided Lawmakers Last Year. - Gretna Meeting," *Omaha World-Herald (NE)*, 2007a.

⁶⁹⁵ Ibid.

⁶⁹⁶ Ibid.

As it appeared Senator Raikes was negotiating between OPS and Chambers the paper reported, “When told about the OPS amendment, Chambers first responded, ‘That’s nothing.’ But he said he would wait to draw conclusions until he sees the precise form of the bill advanced to the floor.”⁶⁹⁷ While Senator Howard was reported to say she didn’t anticipate OPS would have a problem and that was confirmed by OPS lobbyist, John Lindsay. He said the district was pleased the committee voted to keep OPS intact and although they had not seen all of the details he reportedly added, “We think we can work with that.”⁶⁹⁸

April 22, 2007: Details of Learning Community Common Levy

The following weekend, the *Omaha World-Herald* published the most complete overview of the latest version of the common levy as proposed in LB 641. While addressing all of the other elements of the increasingly detailed LB 641, Senator Raikes and the committee pressed forward with responding to finance questions and refining elements of the bill. *World-Herald* reporter Paul Goodsell, who often reported on the technical aspects of the learning community bill, authored an article that suggested, “No one knows exactly how a proposed move to a single property tax rate would financially affect metro-area schools.”⁶⁹⁹ Goodsell wrote, “The concept seems simple, but the

⁶⁹⁷ Ibid.

⁶⁹⁸ Jeffrey Robb, "Unified OPS Plan May Hit Turbulence - The Committee's Proposal to Repeal the Breakup Marks a Turnaround on the Issue that Divided Lawmakers Last Year. - Gretna Meeting," *Omaha World-Herald (NE)*, 2007.

⁶⁹⁹ Paul Goodsell, "One-Levy Plan may Not Simplify School Funding Equation - No One Knows Exactly how a Proposed Move to a Single Property Tax Rate would Financially Affect Metro-Area Schools. - Balancing the Tax Base," *Omaha World-Herald (NE)*, 2007a.

details are almost unfathomably complex.”⁷⁰⁰ However, he went on to describe in some detail the issue as well as offering some insights about why Senator Raikes and the committee were pursuing the policy. First, he pointed out that all of the schools in Douglas and Sarpy county would “rely” on the same property tax and cited that Raikes pointed out that such an effort would have the effect of “smoothing out” differences between “rich and poor” districts. Raikes reported said, “The idea is, we're all committed to supporting all of the public schools in the metro area.”⁷⁰¹

As Goodsell noted the specifics were tough to sort out, “It depends on what the language is when we see it,” said Ken Fossen, a business official from Millard. Although many finance minds had been reviewing the proposal, the Education Committee’s plan remained “[...]particularly unsettling for school officials: partly because the common levy would be a new approach to property taxes, and partly because the bill includes other provisions that have defied financial analysis.”⁷⁰²

And it wasn’t just Goodsell and Fossen from Millard who were left to question the impacts. “Your entire revenue picture is uncertain,” said Dennis Pool, an Omaha Public Schools administrator and former director of school finance for the state.⁷⁰³

⁷⁰⁰ Ibid.

⁷⁰¹ Paul Goodsell, "One-Levy Plan May Not Simplify School Funding Equation - No One Knows Exactly how a Proposed Move to a Single Property Tax Rate would Financially Affect Metro-Area Schools. - Balancing the Tax Base," *Omaha World-Herald (NE)*, 2007b.

⁷⁰² Ibid.

⁷⁰³ Ibid.

Others had scrambled as well, but Senator Raikes was accustomed to complex school finance decisions and was experienced with leading such discussions.

Goodsell reported, in the prior week, “Education Committee members scrapped a confusing, two-step version of the common tax levy in favor of a more straightforward approach,” but added “metro superintendents say the committee is going too far by proposing a common levy. As a compromise, they have asked for a study before the Legislature acts on the complex idea.”⁷⁰⁴

The Goodsell article included this overview, “Public schools in Nebraska rely mainly on two funding sources: local property taxes and state aid. Property tax revenues can differ widely, on a per-student basis, mainly because some districts have more valuable businesses, farms and houses than others. State aid helps narrow those gaps, giving more money per student to districts with weak tax bases and less to those with strong tax bases. Districts with the richest tax bases get no state aid. But current state aid doesn't entirely wipe out the financial differences among districts. So in creating the Omaha-area learning community, the Education Committee wants to add a common tax levy as a second layer of equalization.”⁷⁰⁵ And, the characterization of “a second layer of equalization” was descriptive as the effort required a step in the learning community that was not found elsewhere in the state. The article also pointed out that the revenue from the common levy would be distributed to districts based on the financial needs as calculated in the state aid formula. To add further uncertainty, other finance changes

⁷⁰⁴ Ibid.

⁷⁰⁵ Ibid.

were also part of the learning community package. Isolating the impacts of one change was part of the puzzle. However, Goodsell pointed out that the impacts from the common levy “wouldn't change the overall finances of the metro-area districts that qualify for state ‘equalization’ aid[...].”⁷⁰⁶ He also pointed out the inverse relationship between state “equalization aid” and the property tax base. Goodsell wrote, “If anything, the proposal is more involved than a learning community law passed last year.”⁷⁰⁷ And the multiple “unknowns” were broader than just the common levy. Individual school district decisions, transportation, and class size provisions added to the finance policy all made it difficult to predict. Additionally, it was clear that changes in the option enrollment funding were the most dramatic on non-equalized districts such as Westside that had testified they had nearly 2000 students that qualified. Moving to a common levy without option funding was discussed in committee hearings earlier in the year and the recent efforts to phase in the common levy over a period of years was largely targeted at that known impact. “[The bill] also phases in the common levy over five years, completing the shift in 2011-12. And while most property taxes would be shared, districts seeking extra money could set a slightly higher property tax rate than the common levy.”⁷⁰⁸

⁷⁰⁶ Ibid.

⁷⁰⁷ Ibid.

⁷⁰⁸ Ibid.

May, 2007

By the first day of May, the *World-Herald* was again reporting the frustration of some of the players' perception that progress wasn't being made. The Governor who remained publically supportive of the superintendents' plan and had already "tussled" with Senator Raikes publically about the direction of the bill was now calling into question the speed of the Education Committee deliberations. Senator Raikes reportedly shot back that he would rather get it right instead of end up with a bill such as the superintendents' effort that was slowed by errors. "Raikes said the committee would 'rather be deliberate than rush to judgment with something that isn't up to speed.' He said the superintendents' plan is an example of a proposal that wasn't properly prepared. 'I don't know how much time they took, but they didn't take enough time,' Raikes said."⁷⁰⁹ Although the Governor had supported that plan as a better "framework," Raikes continued to rely on the learning community structure. "Raikes said he has tried to accommodate the metro superintendents. However, he said, the matter involves state policy, which is the Legislature's responsibility. 'You don't allow (superintendents) to dictate what the policy is, nor do you allow them veto power,' Raikes said."⁷¹⁰

By the end of the week (May 4, 2007) it was clear that efforts and discussions had continued in the background and the bill was advanced from the committee on May 3rd. The *World-Herald* reported, "Behind the scenes, however, the issue has been the subject

⁷⁰⁹ Leslie Reed and Jeffrey Robb, "Frustration High Over Schools Bill - It's Coming, a Key Lawmaker Says, but the Governor Says the Bill Should've been Finished by Now," *Omaha World-Herald (NE)*, 2007a.

⁷¹⁰ Ibid.

of a flurry of discussions involving key lawmakers, metro superintendents and lobbyist Kermit Brashear, former speaker of the Legislature. The details of those discussions have not become public. But several state senators say Brashear has suggested alternatives to the committee's bill.”⁷¹¹

Brashear was lobbying for the “Metro Student Achievement Steering Committee” that included *Omaha World-Herald* publisher John Gottschalk, who has been active in the Omaha school discussions. Brashear's group appeared to be “in the middle” of the group of education committee members and the schools group that included Omaha Public Schools. Both Kopplin and Howard voted against advancing LB 641 although the remaining six pressed forward. Brashear was seeking alternatives to adjust the composition and structure of a governing board to advance, but those and any others would have to surface during the floor debate according to the *World-Herald* article.⁷¹²

“Raikes said the plan would put Nebraska and metropolitan Omaha at the forefront nationally in addressing urban education. Raikes said he still was looking for ideas that would improve the proposal. Raikes, though, has been criticized for listening to outside ideas, then going his own direction. ‘I regard this as a major accomplishment but

⁷¹¹ Jeffrey Robb, "Debate Over Schools Bill is Coming to Boil - The Education Committee Advances LB 641, which Will be Hashed Out on the Legislative Floor as Early as Next Week. - What would LB 641 do?" *Omaha World-Herald (NE)*, 2007d.

⁷¹² Leslie Reed and Jeffrey Robb, "Frustration High Over Schools Bill - It's Coming, a Key Lawmaker Says, but the Governor Says the Bill Should've Been Finished by Now," *Omaha World-Herald (NE)*, 2007b.

certainly not a completed task,' he said."⁷¹³ The committee also indefinitely postponed or "killed" the five other bills including Kopplin's LB 547. Like LB 91, before it appeared that the committee wanted to send a clear message that their recently advanced LB 641 was the only vehicle for addressing the metro issue.⁷¹⁴ Although the Education Committee was sending a message, so was Senator Chambers as he had threatened to filibuster the bill that now had the Speaker's priority designation. "Chambers said he would not 'roll over and play dead' during the debate. At the same time, he seemed to offer a measure of conciliation. 'I want an equitable solution' that reflects his interests in the debate, Chambers said. 'This might be the best framework for that to take place.'"⁷¹⁵

In similar fashion as the year before, the bill was going to the full legislature for debate with Senator Chambers suggesting he would oppose it in the midst of a controversy over integration and governance. Added to the pattern, OPS was once again threatening litigation. "If the Nebraska Legislature goes ahead with its latest bid to settle the Omaha-area schools dispute, the proposed law might be challenged in court before the ink is dry. 'We will have to resume the judicial process,' said John Mackiel."⁷¹⁶

⁷¹³ Jeffrey Robb, "Debate Over Schools Bill is Coming to Boil - The Education Committee Advances LB 641, Which Will be Hashed Out on the Legislative Floor as Early as Next Week. - What would LB 641 do?," *Omaha World-Herald (NE)*, 2007.

⁷¹⁴ Jeffrey Robb, "Schools Bill Discussions in High Gear - with Legislative Floor Debate Set to Start, Much Talking Goes on Behind the Scenes. - What would LB 641 do? - What do Metro Superintendents Want?" *Omaha World-Herald (NE)*, 2007ad.

⁷¹⁵ Ibid.

⁷¹⁶ Paul Goodsell and Michaela Saunders, "Schools Bill Raises some Legal Questions - OPS and Westside Superintendents and Others Criticize Integration and Governance Aspects of LB 641," *Omaha World-Herald (NE)*, 2007b.

Mackiel was joined in his opinion by Ken Bird, “‘I don't see the answer in 641 right now,’ said Westside Superintendent Ken Bird. ‘I think 641 would still be suspect.’”⁷¹⁷ Those challenges and criticisms, notwithstanding, the bill would soon “hit the floor” of the Legislature.

With the bill to set to go to the floor for consideration by the full body, the most pressing issue became governance. “For two years, Omaha and the Legislature have wrestled with issues of suburban school takeovers, the breakup of the Omaha Public Schools, integration, civil rights, urban poverty, school finance, student achievement and academic accountability. As the Legislature prepares to debate the overall issue for the second straight session, competing interests are on the brink of an agreement resolving all of those individual matters.”⁷¹⁸ Raikes remained resolute that a formal governance structure was necessary to implement the common levy and ensure the programs and provisions were implemented in the learning community. The superintendents and the Governor remained convinced that such a structure was “overreaching, bureaucratic, and even offensive” to elected school board members. However, it was becoming clear that both Speaker Flood and former Speaker Brashear were working in the background to negotiate a compromise position. Although the details of those negotiations were scarce, Raikes and Flood eventually emerged to announce the compromise governance plan. “The proposed compromise involves a paid, 18-member board, with three members from

⁷¹⁷ Ibid.

⁷¹⁸ Jeffrey Robb, "How to Govern Metro Schools? - No Consensus on Issue," *Omaha World-Herald (NE)*, 2007l.

each of six newly drawn election districts. Raikes has embraced that alternative, which was originally floated by lobbyist Kermit Brashear.”⁷¹⁹ Although the alternative plan was reportedly coming together, it had not yet officially surfaced as an amendment and the bill had yet to be debated.

The *World-Herald* suggested a likely showdown as the Governor held veto power while Raikes could withdraw the proposal altogether. “Flood said Raikes will pull the bill if he is not satisfied with the governance arrangement.”⁷²⁰ With debate scheduled to begin on Wednesday, May 9th, there were indications that at least some of the compromise effort was viewed as progress.⁷²¹

Several players were indicating support for the new compromise. Details about the revised proposal were scarce, except that the reported alternatives were being drafted by Brashear and Flood. According to the *World-Herald*, on May 8, 2007, “As the negotiating parties talked positively about progress; a flurry of private meetings and discussions continued. Monday, [May 7, 2007] Gottschalk met at the *World-Herald's* Omaha offices with Gov. Dave Heineman and Bird. This morning, Heineman is scheduled to meet with the Legislature's speaker, Sen. Mike Flood of Norfolk, and metro-area superintendents and school board presidents. Later in the morning, the Education

⁷¹⁹ Ibid.

⁷²⁰ Jeffrey Robb, "How to Govern Metro Schools? - No Consensus on Issue," *Omaha World-Herald (NE)*, 2007m.

⁷²¹ Jeffrey Robb, "Progress Trumpeted on Schools Legislation," *Omaha World-Herald (NE)*, 2007v.

Committee will brief other state senators.”⁷²² Raikes was guarded, if not cautious, “We're not definitive about what might be going in such an amendment at this moment. [...]We're trying to see where we can come a little closer.”⁷²³ But by the next day, May 9, 2007, the *World-Herald* reported that Senator Chambers was also on board. The paper reported, “Even State Sen. Ernie Chambers of Omaha, who last year won approval to break up the Omaha Public Schools and had threatened to filibuster this year's schools bill: is supporting the compromise plan. ‘I am giving up more than anybody else in accepting this compromise,’ Chambers said.”⁷²⁴ The proposed compromise was reported to include a paid 18-member board, with three members from each of six newly drawn election districts. “The public would vote for those members under a new election system with the potential to foster minority representation. Chambers said the compromise plan would provide the local control and community input he has sought.”⁷²⁵ The news of Chambers support was a positive sign as the floor debate was scheduled to begin that very day.

LB 641 Floor Debate: Round 1- May 9, 2007

On the afternoon of May 9, 2007, the Legislature finally took up the much anticipated floor debate on LB 641. Senator Raikes was recognized to open on the bill. Bill sponsors are allowed ten minutes to open on their bill and in this case, Senator

⁷²² Ibid.

⁷²³ Ibid.

⁷²⁴ Jeffrey Robb, "Schools Solution Nearer - Sen. Ernie Chambers Supports Compromise Plan," *Omaha World-Herald (NE)*, 2007af.

⁷²⁵ Ibid.

Raikes, as the Education Committee chair would also be allowed an additional ten minutes to open on the committee amendments. Senator Raikes started with his first opening statement to describe how the committee had replaced the original bill with this committee amendment. He let the body know he was going to use his time to describe the contents of the committee amendment which, in normal order, would become the bill. Raikes described his general support of the “one city, one school district” provision of Nebraska law that was at the center of the debate. He said it “permeates our state organizational policy, and which I will tell you I believe is a very sound policy. It’s a sound and enlightened policy. It’s not something that every state does, but I certainly believe that it is a very beneficial public school policy. The key features that I think are important [are], it provides a way for all the folks in a given city, metropolitan area, to help support all the kids in that area in terms of their public education.”⁷²⁶ However, he also noted the history of the Omaha area that had led to the recent controversy. He added, “We were left at that time with the proposition or the issue of, if you believe one city, one school district is a good policy – and I do, for the reasons I have mentioned – how do you adjust state policy given the situation that had arisen?”⁷²⁷ Raikes went on to describe “five key components” that had developed into the learning community effort. He described, “In the metro area specifically, there should be a two-county area involved in public education that involves both the cooperation and competition among public school districts. There should be shared financial resource. There should be governance

⁷²⁶ Clerk of the Nebraska Legislature, *Floor Debate, May 9, 2007*, 100th Legislature, First Session, 2007. pp. 54-55.

⁷²⁷ *Ibid.*, p. 55.

relating both to the individual school districts and to the cooperative involving all the school districts. And there should be a combined dedication to the expansion of educational opportunities for students, as well as diversity opportunities for students. Finally, the policy should be a statewide policy.”⁷²⁸ Raikes also added, “I think also I should say we’ve consistently, as a committee and a Legislature, rejected the following notions: one, that we do a short-term fix, which is clearly short-term and will not sustain us throughout any significant period of time. We’ve rejected the notion that we should simply push it under the rug, ignore it pretend the problem isn’t there. We’ve also rejected the notion that we should pretend to do something but really not do anything.”⁷²⁹

Senator Raikes also described the major components of LB 1024 from the year before, many of which were foundational to the committee amendment. He detailed, “We came up with a revised common operating levy. We continued with a special building fund provision which is, again, a combined levy in the learning community. We also included a provision to allow for a capital construction levy, whereby buildings approved for interdistrict purposes by the learning community council could be shared by the district in which the building would be located and the broader community as well.”⁷³⁰ He continued to describe the committee amendment and general efforts as he opened officially on the proposed amendment. However, in an uncharacteristic fashion, Senator Raikes deferred to Speaker Flood nearly eight minutes of his time to open on the amendments. Raikes first added, “The following amendment that you’re going to hear

⁷²⁸ Ibid., p. 55.

⁷²⁹ Ibid., p. 55.

⁷³⁰ Ibid., p. 56.

about offers some additional ideas, some changes in some of the ideas that we've considered so far. I would hope that we will have a productive and complete discussion and that we will move forward.”⁷³¹ He then yielded the remainder of his time to Speaker Flood.

Flood had designated LB 641 a “Speaker’s major proposal” in order to help exercise additional controls as granted by the rules and the Legislature’s Executive Board. Flood also suggested that the body handle this as they had addressed a controversial water bill in LB 701 where they agreed to generally discuss a bill on General File and agree to work out details before the next round of Select File debate.⁷³² Flood would note, “The Adams amendment that follows the committee amendment becomes the bill, with your adoption. It is written as a white copy amendment that strikes everything in the committee amendment, ends up replacing the language in LB 641, and it will come up next.”⁷³³

Flood offered a preview of the amendment as he summarized, “The amendment, the Adams amendment, puts OPS back together. And I’ll let Senator Adams go through this in more detail. It works to eliminate the common levy. It disengages ESUs from the process of being the governance for the two-county area. It makes significant progress in

⁷³¹ Ibid., p. 57.

⁷³² LB 701 was passed to address a water conflict with Kansas over the Republican River over-appropriation. In that bill, a special taxing authority was created for existing residents of that river basin. That bill would eventually be found unconstitutional and was cited by the Sarpy Co. Farm Bureau plaintiffs as a rationale that the common levy should also be found unconstitutional.

⁷³³ Clerk of the Nebraska Legislature, *Floor Debate, May 9, 2007*, 100th Legislature, First Session, 2007. p. 57.

areas of integration and transportation and attempts to address boundaries, [...]. It does include a two-county 18-member governance structure.”⁷³⁴ Flood announced his hope that senators would advance the bill with the intent that discussions and changes would be made going into the next round of consideration. “And on Select File, my intention is to bring forward, with Senator Raikes’s leadership, an amendment that addresses a number of issues.”⁷³⁵ Flood acknowledged problems with the amendment and pointed out to the body that “this is a process, and moving this from General to Select is the right direction to go.”⁷³⁶

Senator Adams then introduced AM 1258 and began to walk the body through the new proposal. Adams described the new finance and property tax approach that was no longer based on a common general fund levy. Instead, the proposal would cap the tax rate of each school district at \$1.00 per \$100 of valuation and reserve a remaining 5 cents of levy authority for the learning community. The state would then generate funds to “make up” for the diminished resources of the school districts while the learning community would have the “extra nickel” for its purposes.⁷³⁷ As Flood had previously noted, the proposal would eliminate the common levy.

Adams continued to describe other substantive changes including the governance provisions that included “sub councils” and an elementary resource center provision which would be administered by the sub-councils along with other functions. Adams then

⁷³⁴ Ibid., pp. 57-58.

⁷³⁵ Ibid., p. 58.

⁷³⁶ Ibid., p. 58.

⁷³⁷ Ibid., p. 59.

challenged his colleagues to listen, ask questions and be visionary.⁷³⁸ As the afternoon and evening continued, a variety of questions and recommendations were being recorded for the invariable changes if the bill advanced.

Senator Chambers took to the microphone after Senator Adams and posed the question, “So why would I agree to this compromise?”⁷³⁹ He went on to describe his position that he was convinced that breaking OPS into three individual districts was necessary however added, “But cooperation is better than warfare. And, if it’s possible to have a cooperative environment where educating children is at stake; that’s what we should have so that the children will have an example in how we conduct affairs, of how they should conduct their affairs.”⁷⁴⁰ He added, “So I see the possibility for obtaining some genuine local control, equitable distribution and providing of needed resources, electing people with responsibilities and loyalties to those in the sub district from which they will hail. Another reason I’m going to agree to go along with this compromise, it’s going to force cooperation, not just among the separate school districts. It’s going to force the individual school board [members] to cooperate with the learning community council and members of the sub district.”⁷⁴¹ Senator Chambers also suggested that the whole package of activities was necessary to have interrelated decision making. “So this is not just a needless, unnecessary, unduly complex overlay of a worthless, useless bureaucracy. It is going to drive the engine that will make this whole plan work. And it

⁷³⁸ Ibid., pp. 60-61.

⁷³⁹ Ibid., p. 61.

⁷⁴⁰ Ibid., p. 61.

⁷⁴¹ Ibid., p. 61.

will stand together or it will fall apart.”⁷⁴² As both Senator Raikes and Senator Chambers had been proponents of the common levy, the new alliance which included Senators, Raikes, Chambers, Flood, and others seemed likely to prevail. However, the details of what was actually going to be in the bill was still a matter of internal compromise that Speaker Flood clearly suggested would be up to Senator Raikes as the bill sponsor.

The remainder of the debate on the bill was generally a large “question and answer” session with several senators asking questions of Senator Adams and Senator Raikes. Many of the questions were general, but, there were also questions about specifics. For instance, the finance changes were questioned by some, especially as this new amendment proposed to inject aid with the common levy being removed from the proposal. Senator Pete Pirsch of Omaha asked Senator Raikes for a “ball park” estimate of the costs to the state. Senator Raikes responded, “Senator, in this proposal, there is, as Senator Adams has outlined, there would be a drop in the levy cap and local effort rate for metropolitan-area school districts. That would generate additional state aid to those districts. I don’t, I’m not exactly sure of the amount, but I think it would be in the neighborhood, if you had a five-cent levy drop, it would be in the neighborhood of \$20 million. This amendment, as it is, then would allow the learning community council to levy between \$1.00 and \$1.05, if you will, above the school district cap so that, in effect the money that would be provided by the state in the form of additional state aid could be

⁷⁴² Ibid., p. 62.

used by the learning community council to support its operations to include programming directed at elementary students and other focus programs and so on.”⁷⁴³

Senator Raikes, during the course of the debate clarified the differences between what was in the bill the year before and was proposed in the committee amendment. However, the new amendment had dramatically changed the common levy concept. Senator Howard asked how the common levy would work and how it would; for example, impact what she was paying on her own property tax bill. Senator Raikes, clarified “I think what I heard you describing was a proposal that is not the one that’s before us, to start with.” And he added after she said it was the one previous described, “Yeah. That is a similar proposal to this in that the levy cap would be reduced and the local effort rate would be reduced, bringing more state aid as a result of that. Then the difference from between the reduced levy cap and \$1.05 would be available to the learning community council to use either for a common building fund, which would be distributed to the member school districts or for money to administer the learning community programs and other functions that they perform.”⁷⁴⁴

Later in the debate, Senator Ashford addressed one of the concerns that had surfaced in the education committee and was of particular interest to him. He was interested in “mobility and truancy” and, although it was an underlying concern, it also was tangentially connected to student movement and tracking student movement in the

⁷⁴³ Ibid., pp. 65-66.

⁷⁴⁴ Ibid., pp. 86-87.

learning community, a common tax base and open enrollment.⁷⁴⁵ Many who spoke on the issues connected elements of governance, student movement, borders, and a common tax base as a package of issues addressed by the legislative debate. Senator Pirsch also asked Senator Raikes, “[Why] does this bill make the conscious decision to create a new governmental entity?” and Senator Raikes relayed some of the committee discussion about considering the ESU structure and suggested that using school board members as was now proposed as part of the structure. Senator Raikes said, “I think Senator Adams expressed, effectively, a concern with that particular approach, that you may well get school board...get members on the learning community councils that don’t have an ecumenical view.”⁷⁴⁶ Again, the issue of a holistic change in structure and a purpose for that change seemed to come together with a vision of new entity that had both authorities over certain issues as well as regional perspective.

Speaker Flood would later support this point of view. He suggested, “But, you’ve got to have a governance to be able to commingle and send assets and resources and dollars to areas of the two-county learning community that need the special aid to make good things happen so that we improve education and learning and ultimately test schools and everything else that’s important to us that we talk about.”⁷⁴⁷ Flood yielded the remainder of his time to Senator Chambers who further specified based on earlier discussions that the learning community school districts would have access to a “common

⁷⁴⁵ Ibid., p. 94.

⁷⁴⁶ Ibid., p. 99.

⁷⁴⁷ Ibid., p. 103.

levy of a nickel” in addition to the dollar levy that school district would have.⁷⁴⁸ Although the details were going to change, the theme around the common levy was evolving to include discussions about programs and services in the learning community which was beyond the original concept proposed by Senator Raikes.

As the debate on LB 641 continued, others started to question the changes in the common levy structure as now proposed. Senator Heidemann, who was the appropriations committee chair, had expressed a particular interest in school finance for rural schools and had played a substantial role in providing a finance amendment to LB 1024. Heidemann, who was criticized during the LB 1024 debate for his amendment a year earlier, posed a policy question to Senator Raikes. He asked, “On page 51 of AM1258, it talks about giving, in addition to state aid, they’re going to give an amount equal to 5 cents per \$100 of taxable valuation. How much does that paragraph cost us?”⁷⁴⁹ Senator Raikes suggested it was “roughly \$18 million” and Senator Heidemann said, “And that’s outside, and I think that’s a good word to use for me anyway, is outside the state aid formula.”⁷⁵⁰ Senator Raikes responded, “That’s the way that’s written; yes.” Senator Heidemann continued, “Do you remember a couple of years ago I brought a bill, or a couple of bills actually, to the Education Committee, and it would have, outside of the state aid calculation, give[n] some more money to some small K-12 districts that I was worried about. And those bills were shot down and I think one of the comments that you had made, that you didn’t want to go there because there [are] equity concerns and

⁷⁴⁸ Ibid., p. 104.

⁷⁴⁹ Ibid., p. 111.

⁷⁵⁰ Ibid., p. 111.

we could maybe set ourselves up for a lawsuit because one of the things you can be sued for is equity. And I accepted that at that time. Do you feel that this paragraph here, this language here, could be setting us up for the same thing?”⁷⁵¹ Senator Raikes responded, “Yes. I don’t agree with that. I don’t think that’s a good approach. I think we should go about that differently. In your vernacular, I think that should be inside the state aid formula rather than outside. It should be part of the equity distribution in the state aid formula.”⁷⁵²

The difference between Senator Raikes’ preferred method and the current amendment became obvious. The most substantial indication came in an exchange between the Appropriations Committee chair and the Education Chair. Senator Heidemann said, “I did want to point that out because when you talk about in addition to or outside the state aid formula, you will be given...and Senator Raikes, correct me if I’m wrong... you will be giving state aid to non-equalized districts; is that correct?” Senator Raikes responded, “Well, you might give to a, or you provide aid, state money, to a non-equalized district, or you would provide it to a district even if they’re equalized but on a non-equalized basis. So you might have an equalized district that has a high valuation per student, another one that has a low valuation per student. The distribution would be inequitable in that regard.” Senator Heidemann pressed, “Setting us up for equity concerns; is that correct?” And Senator Raikes proffered, “In my view, that’s an equity issue. I don’t know whether there’s any legal resolve, but I think the policy issue is...I

⁷⁵¹ Ibid., p. 111-112.

⁷⁵² Ibid., p. 112.

don't agree with that sort of a policy approach, is what I'm telling you.”⁷⁵³ Senator Raikes was not supportive of this new version of the common levy yet supported the advancement of the bill and did not stand in the way of the momentum that had built to advance the bill from the first round of debate.

As debate continued, it became apparent that the body would advance the bill and work out additional details between General and Select file debate. Senator Lathrop from Omaha reiterated that Senator Flood had “invited” them to take the “big picture view” and, like the water bill discussed earlier in the session, the body could resolve details between the debates.⁷⁵⁴ Senator Tom Carlson from Holdrege, who had been involved in the water bill issue, highlighted an issue that would later provide another intersection and eventual key difference between the “water bill” that would later be found unconstitutional and the key policy difference that would sustain the common levy as constitutional by the Nebraska Supreme Court. Senator Carlson while offering concerns about paying learning community council members and questioning the reason for that noted, “But Senator Lathrop brought up the water bill in talking, in his turn to talk, and I'd like to bring that up a little bit because that was a cooperative effort. One of the things that was true in the water bill is that this body asked for a significant financial commitment from the people in the Republican Basin before the state committed any dollars to that bill, and the Republican Basin stepped up. And it seems to me like perhaps the step-up opportunity for the learning community situation is the 5-cent tax levy that

⁷⁵³ Ibid., p. 112.

⁷⁵⁴ Ibid., p. 116.

would fund this learning community, the extras, which according to Senator Kopplin it looks like it's about \$18 million in that 5-cent extra. That looks to be like a good way to make an investment, to think outside the box, to prove that it's going to work and be a good example for others in the rest of the state. And in talking to Senator Raikes, one of the reasons I'm going to vote to take this to Select File is because he's indicated there's more work to do in terms of addressing this levy situation and the impact that that's going to have, and so I want to look at that and hopefully we do come up with a good, workable bill.”⁷⁵⁵

Senator Fischer of Valentine, who also had an interest and experience in working on school finance issues, expressed concerns with the changes to the common levy approach. She expressed concerns about the cost to the state and also about the interactions on the school finance formula. She said, “And even if we don't, even if we don't establish learning communities anywhere else in the state, except Omaha and the metro area, we all need to remember that this bill affects every other area of the state because of the school finance formula. If we're going to be seeing the learning community districts able to lower their levy to \$1.00 or \$1.02 and then levy extra for their learning community in that 5 cents or 3 cents, and we don't put more money into the state aid formula, where is it going to come from? I submit to you it's going to come from the school districts in my legislative district, and I submit to you that all of you better look at your school districts in your legislative district.”⁷⁵⁶

⁷⁵⁵ Ibid., p. 121.

⁷⁵⁶ Ibid., p. 122.

Senator Wightman of Lexington also expressed concerns with the finance provisions as proposed. Although he expressed support for advancing the bill, he asked Senator Adams, “I know Senator Raikes said that he felt there might be problems with having the 5 cents that would be replaced by...5 cents per \$100 of valuation that would be replaced through state aid, having it outside the formula. Was that a discussion within the committee itself?” Senator Adams indicated it was and Senator Whiteman continued, “And I know he said that he felt it probably should be within the formula. Do you think there would be any thought on the part of the committee that that should come under the formula?” Senator Adams responded, “No, I think the committee would be more than willing to bring that under the formula.”⁷⁵⁷ The dialog between the senators continued for a while and later included a question about the role of the learning community council and the “execution of additional levy authority” and the proposed additional state aid to address the “replacement” of the lost levy authority by the districts. Senator Whiteman commented, “I know it was mentioned, and I think by Senator Carlson, that maybe this could be kind of related to the water bill and that maybe Omaha ought to step up. I do see there being a major problem to this in that it seems to me there was a more common interest in the water bill because you were trying to save a whole area and everybody was somewhat equally affected by it. I think that perhaps that's not the case here. You're trying to work out compromises and it might be very difficult to get the entire group to step up with a contribution similar to what they made, or the Republican Basin made, under the water bill. But I do see where this could possibly be used--I'm certainly not

⁷⁵⁷ Ibid., p. 127.

proposing that now in Dawson and Buffalo County--or some of the tools provided by this, and I do look upon it as a tool rather than imposition of what may be precedence down the line.”⁷⁵⁸ The ongoing perceived relationship between the Republican River Basin water issue was an attempt by the legislature to settle a dispute with Kansas while the Omaha metro area issue was clearly between and among Nebraska political subdivisions. Although Senator Whiteman was agreeing with some similarities, he clearly was seeing a difference. He noted that it was difficult for an entire area to work together to find common financial agreement. That was among the necessities of a governance structure to implement common financial authority as had been expressed by Senator Flood and others earlier in the debate.

Senators often deferred to Senator Raikes on the finance issues. Senator Kopplin at one point was offering that the body could further address issues. He added, “[...] we can solve the money issue. I mean that’s what Senator Raikes loves to do. Let him spend the weekend now doing it while we’re out fishing or something.”⁷⁵⁹ Senator Fulton of Lincoln also pointed out, “I spoke with Speaker Flood and he has some ideas as to the process, how this can work, and Senator Raikes, of course, is going to be driving the bus here.”⁷⁶⁰

Although a variety of senators contributed to the record, the majority of issues raised would have to wait for Select File, the second round of debate. As Senator Adams closed on the amendment, he added, “The finance is open for adjustment. We need to

⁷⁵⁸ Ibid., p. 128.

⁷⁵⁹ Ibid., p. 133.

⁷⁶⁰ Ibid., p. 134.

adjust that.”⁷⁶¹ He also ran through the litany of other issues and concerns but implored the body to vote to advance and work on the details before the next round of debate. Senator Flood and Senator Raikes among others outlined plans to continue the effort to refine the bill. By the end of the long day, the bill advanced on a 42-0 vote.⁷⁶²

By the end of the week, the *World-Herald* was complimenting the efforts on the editorial pages. The perspective of vested interest in the Omaha community was reflected in the *World-Herald* editorial that at least viewed this as a “positive start” and credited the legislature for their “diligence.” The article cited some of the rationale debated by the body for a governing structure, “Without an overarching board, its supporters say, the individual school districts could well go their own way over time, succumbing to division and excuse-making for failing to meet the desired standards.”⁷⁶³

As the momentum seemed to be building toward a resolution, it was apparent that some of that momentum was coming from the desire to establish some certainty about the future. Senator Chambers had addressed on the floor his willingness to compromise for the good of the big picture and school districts were being impacted by the nearly two-year rancor and divisiveness. The *World-Herald* published an article on May 13, 2007 that described the numerous dynamics of the impact of the “uncertainty” for OPS as well as for the suburban districts.⁷⁶⁴ However, celebrations of a solution were premature as

⁷⁶¹ Ibid., p. 138.

⁷⁶² Ibid., p. 160.

⁷⁶³ "A Positive Start - Nebraska Lawmakers show Diligence in Tackling Douglas-Sarpy School Issue," *Omaha World-Herald (NE)*, 2007.

⁷⁶⁴ Michaela Saunders, "OPS Feels Effects of Uncertainty," *Omaha World-Herald (NE)*, 2007j.

the effort still had a big hurdle to overcome in all of those issues and details that were being worked out since the compromise approach passed.

May 19, 2007: Details Still a "Sticking Point"

The following Saturday (May 19th), solutions were elusive as the *World-Herald* reported that Senator Raikes and the superintendents were not on the same page related to governance. Additionally, Senator Tim Gay of Papillion was also suggesting alternatives and even one proposal floated would include a governance board of as many as 72 members. Senator Raikes remained steadfast on the issue of an elected versus an appointed board and the paper cited him to say, "That probably is a sink deal."⁷⁶⁵ The paper affirmed, as had been promised before, "Speaker Mike Flood said that if Raikes is dissatisfied with the governance provisions of the plan, he will pull the bill."⁷⁶⁶

Nonetheless, the bill was scheduled for the next round of debate the following Monday.

On Sunday May 20th the *World-Herald* published a Jeffery Robb article that framed the issues. Robb wrote, "There's a fine line between the scrap heap and law. A resolution to the dispute over school boundaries, money, integration and the future of Omaha's disadvantaged children is caught in a clash of politics, personalities and policy. Competing parties are wrestling over the issue of control. A debate is coming over using current school officials or a new elected board to govern cooperation among metro-area schools. Starting Monday, lawmakers have less than two weeks to come up with a

⁷⁶⁵ Jeffrey Robb, "Bill Hung Up Over Control - Lawmakers and Omaha Metro-Area Superintendents Remain Far Apart on Governance of the Learning Community," *Omaha World-Herald (NE)*, 2007b.

⁷⁶⁶ Ibid.

resolution to the whole issue, or this legislative window of opportunity will close.”⁷⁶⁷ The article also reported as expected, “Raikes has offered an amendment to LB 641 that resulted from discussions among lawmakers last week. The amendment would change the bill's approaches to integration and finance. It also would drop board members’ annual salary.”⁷⁶⁸

During the anticipation of the upcoming debate, the *World-Herald* reported on the latest thoughts of Senators and the issues still surrounding the effort. First and foremost was the governance issue that had recently become the primary tipping point that pitted Senator Raikes against the superintendents. However, the notion of an elected governing board was also linked to the issue of a common levy that, at the very least Senator Raikes saw as intertwined and inseparable in the learning community model. Additionally, the Sarpy County boundary issue was reported to be still unresolved.⁷⁶⁹ “In addition, Raikes has proposed shifting away from the finance structure proposed in LB 641, which would cost the state \$21 million more than is budgeted. An amendment under consideration would shift back to Raikes’ plan for a common operating levy for metro districts.”⁷⁷⁰

⁷⁶⁷ Jeffrey Robb, "'The Kids are Waiting' as Legislative Clock Ticks - State Lawmakers have an Opportunity this Week to Resolve the Long-Standing Omaha Schools Controversy. - By the Numbers - Components of the Law," *Omaha World-Herald (NE)*, 2007ai.

⁷⁶⁸ Ibid.

⁷⁶⁹ Jeffrey Robb, "Senators 'in a Box' on Schools Solution - Dispute on Control Impedes a Deal - Time Pressure Builds," *Omaha World-Herald (NE)*, 2007ag.

⁷⁷⁰ Ibid.

Perhaps capturing the general sentiment of the majority of legislators, “Sen. Deb Fischer of Valentine said everyone wants to do what is best for students. However, she said, that is not the question at hand. ‘The question is the details of the proposals,’ she said.”⁷⁷¹ As those details were still coming together most would have to be revealed on the floor during the next round of debate.

May 21, 2007: Raikes brings back the common levy during LB 641 Select File debate

The Select File floor debate started soon after the body convened on May 21, 2007. Unlike the first round of debate, Senator Raikes reassumed the lead in offering amendments to the bill. Additionally, the ordering of the amendments was still controlled according to the special circumstances of a “Speaker’s major proposal” allowed. The body discussed the latest proposal offered by Senator Raikes to amend the LB 641 in the form that it passed the first round of debate.

Senator Raikes was recognized to open on his amendment to the bill (AM 1386). During his opening description of the amendment he described the recent discussions and procedural efforts to move forward with changes since General File. He stated, “Probably the most significant change brought by this amendment, as compared to what is now on Select File, concerns funding. I won't go into great detail but you will remember what we advanced off General File involved a lower levy cap in the learning community as compared to other places in the state and some other changes regarding levy ability of the learning community and so on. What this does is goes back to the proposal where all school districts would have a levy cap of \$1.05 as school districts.

⁷⁷¹ Ibid.

There would be a 95-cent common general fund levy. That general fund levy, which is at the minimum levy rate level, would be available, would be the maximum levy that would be available to the learning community council as far as setting a general fund levy. Each school district could have a discretionary levy then of greater than, equal to eight cents. It would be ten cents unless the learning community council decided to levy a common special building fund. And the way the common special building fund would work is that the entire learning community would be levied to collect funds for building repairs and maintenance and that would be distributed back to the school districts in the learning community on the basis of number of students. There's also in this proposal up to a five-cent capital construction levy cap. This would be above the \$1.05 levy cap. It would be discretionary or optional for the learning community. And its purpose would be the following: it would provide a way that school districts in the learning community could jointly contribute financially to the construction of buildings that would be used by the entire learning community.”⁷⁷² This portion of the amendment restored the common levy as it had previously existed. It also assured that the original purposes of the common levy as in the original LB 1024 law were congruent. The mechanism, if this amendment passed was to be back in alignment with the finance efforts and processes originally constructed by Senator Raikes. The amendment also proposed to restore other changes in finance to reflect changes that were originally passed as part of LB 1024 the year earlier. As Senator Raikes noted, “This also includes many of the formula changes that were in

⁷⁷² Clerk of the Nebraska Legislature, *Floor Debate, May 21, 2007*, 100th Legislature, First Session, 2007.p. 5.

LB1024. This includes accountability for poverty and LEP. It also includes the needs stabilization factor that was put in LB1024. There is one addition of note to the formula and that is to include a provision to allow a [formula] needs adjustment for rapidly growing school districts. In effect, what this says is that right now you can't, even though you project an increased enrollment, you can't get the needs for that increased enrollment until it actually happens or happens plus a year. This would allow a school district to project the amount of their increased enrollment, have the needs reflect that increased enrollment, but with accountability.”⁷⁷³ The addition of a “growth allowance” was substantial for rapidly growing districts in surrounding Omaha and was among the concerns districts had with the common levy.

Like on General File, it was clear that there was momentum to advance the bill but there was also a methodical approach to address the issues presented in order to address technical concerns. Senators Lathrop and White also suggested that “doing nothing” was not an option. They warned that court action was likely if the legislature didn’t act and they suggested that the Legislature was in a better position to address the issues instead of the courts. Both Lathrop and White were “courtroom” attorneys and White offered a cautionary tale. “Lest anyone think that the courts do a good job of this, check what happened to Kanas City, not only to their schools, not only to their tax structure, but to their social structure as well. The courts are not equipped to handle these problems.”⁷⁷⁴

⁷⁷³ Ibid., p. 6.

⁷⁷⁴ Ibid., p. 8.

Senator Ashford generally speaking in favor of the amendment and bill described the financing of focus schools which was proposed as part of the common funding perspective. Ashford added, “Senator Raikes talked about the financing of focus schools. And it provides that if the learning council, community council decides that there ought to be a focus group, let's say downtown, to teach a particular topic, children can come from all over the two-county area to go to school in this focus school. Diversity will be guaranteed and they will be taught in an environment that is specifically designed to educate children in a particular area, whether it's education or technology or construction management, whatever it is, and there will be diversity. And the cost of that building is shared by everyone in the two-county area because [of] the benefits of that child being educated in a center of excellence goes far beyond any boundary of any school district.”⁷⁷⁵ Like much of the sentiment behind the concept, those who supported the proposal often articulated possible cost sharing provisions. Chambers also supported the other finance provisions through the interaction with the state aid formula provisions for poverty and limited English proficiency allowances as well as the common levy distribution of resources based on needs. Chambers noted, “There will be adequate funding made available to areas which currently are left in the lurch by OPS. There are certain categories of students whose presence results in weighted state aid. That aid comes into OPS without strings attached or without being earmarked so it does not go into the school buildings where the children attend whose presence brings that money.”⁷⁷⁶

⁷⁷⁵ Ibid., p. 9.

⁷⁷⁶ Ibid., pp. 10-11.

The proposed changes in school finance linked together the poverty allowance with some measure of accountability for the school district as reviewed by the Learning Community Coordinating Council.

Senator Raikes later described the role of the sub-councils proposed in the new structure. He said, “Under the formula revision in LB1024, we included the, in order to get poverty or LEP funding, the school district needs to provide a plan for how they're going to use that funding and then [formula] needs to come back after the year is up and show that that's in fact how the money was used. The sub-councils would be involved in that process. They, with the broader learning community council, would review and approve the plans submitted by the school districts for LEP and poverty funding. So those are two key issues that they deal with.”⁷⁷⁷ Because the proceeds from the common levy would be distributed to the finance formula, the interaction of the new poverty and LEP allowance was a substantial and new power established in the Learning Community.

Although there were several finance related concerns presented during the first few hours of this second round of debate it was generally becoming clearer as to the impacts of the amendment. Senator Heidemann sought to clarify as the new funding arrangement would appropriate funds to the learning community for administration rather than draw that from property tax proceeds. Senator Raikes described the benefits of the common levy, at least in regard to substantiating an appropriation to the learning community directly. Raikes pointed out, “The idea of a common levy within a learning community, whereby you have a sharing of high valuation and low valuation districts

⁷⁷⁷ Ibid., p. 13.

actually does, I'll say, free up state aid money for the state. So you may view that additional state aid money that is available as funding that could be made available for learning community operations. I will tell you that I am hopeful, at least, that the learning centers; the learning community council will be successful in getting leveraging money from the community in the metro area to help support some of these programs.”⁷⁷⁸

Although the common levy may have saved state aid dollars, primarily because it minimized option enrollment funding impacts, the identification of a long term administrative cost was at least a concern that would surface in the future. However, for the time being, Senator Raikes largely addressed the concerns with that operating expense with the tradeoff between the prior projected costs to the state that was nearly \$20 million.

There were a couple senators that continued to ask how this proposal might be used in rural places. Senator Cap Dierks from Ewing about a decade earlier had successfully sponsored a bill that allowed for “unified” school systems where two or more school districts could organize and share their tax bases with a single levy and a single board. He asked for some clarification and mentioned the similarity to unified systems. Senator Raikes responded, “First off, you are certainly correct in drawing a parallel between what’s being proposed here and unified systems or unified districts. To some extent, unified systems go further in the direction of a common levy than is gone here. The unified systems, as you know, have a common General Fund levy across the entire unified system, and I think that we have unified systems that involve as many as

⁷⁷⁸ Ibid., p. 29.

five separate school districts. That organizational structure is different than this one, but it does have commonality with it.”⁷⁷⁹

Senator Engel from the northeast part of the state later expressed an interest in a more aggressive common levy. He asked, “But is there going to be one common levy across all the learning communities, or is that going to be separate levies?” Senator Raikes responded, “Each school district could have a separate...could, and likely would, have a separate levy. There would be a common part of it, but there would be a discretionary part of it as well, which could, and likely would, vary between the districts.” Senator Engel added, “The reason I brought that up, I thought that if you wanted to equalize everything, let's equalize it. Let's have one common levy; everybody has the same levy and the money is distributed where it needs to be distributed. But that isn't in the makings right now, right?” And Senator Raikes again connected the learning community to the unified system approach as he answered, “Well, actually, that's the mechanism that's used in the unified systems that Senator Dierks referred to. This one is a more gradual, a less aggressive approach to a common General Fund levy than that.”⁷⁸⁰ Although it was connected, Senator Raikes was able to articulate the differences between the common levy and structure of unified districts versus the proposed learning community.

Senator Raikes, during the morning debate, offered an amendment (AM 1398) to his current amendment. This technical amendment included a provision to change a “minimum levy” provision for the learning community as well as amendments to

⁷⁷⁹ Ibid., p. 31.

⁷⁸⁰ Ibid., p. 35.

accommodate concerns raised by Senator White about diversity and open enrollment that were presumably viewed favorably by Omaha Public Schools. The amendment was well received by Senator White as he addressed the body. He indicated the changes as proposed would win his support for the bill overall. He added, “This bill becomes, in my opinion then, with regard to diversity and integration, a strong positive.”⁷⁸¹

The Legislature would adjourn for lunch before taking any votes and returned for a long rest of the discussion in the afternoon. Shortly after the recess, the body continued on the debate. Senator Raikes gave an overview of elements of the amendment. He reiterated, “We do have a common operating levy in this proposal. Senator Dierks pointed out that in unified systems we do have a common levy. In fact, that is a more aggressive common levy than what we are proposing here. What we are proposing here is that there's a base of 95 cents against the valuation in the entire learning community that goes in a common pot. And then, that common pot of property tax monies would be distributed amongst the school districts in proportion to their needs calculation in the aid formula. Each of those school districts would, in addition to that 95 cents, have a discretionary levy of at least 8 cents that would be for their district only, and would be applied only to the valuation in their district, and would be for the use of that single school district only. There is then, in addition to that, a levy authority available to the learning community to share with school districts on providing buildings for interdistrict programs. It's important to keep in mind on all the funding that the school districts really are the drivers. They're the ones that are in charge. The learning community has

⁷⁸¹ Ibid., p. 33.

overarching responsibilities regarding the common levy.”⁷⁸² During the course of debate very little new or substantially different conversations were had. In addition to questions of clarification, there were a number of technical issues which surfaced and were gradually addressed in discussion. Issues surrounding governance and possible issues addressing housing patterns were also discussed. After additional input, Senator Raikes was recognized to close on the amendment (AM 1398) to the amendment (AM 1386). That effort passed on a vote of 33-0.⁷⁸³

Avery Amendment on Learning Community Governance

After the first amendment to the amendment passed, Speaker Flood took over the chair position to preside over the body. As had been the case, the Speaker would control and order the sequence of amendments presented. He announced that he was making a change in the order of amendments and recognized Senator Avery to open on AM 1401.⁷⁸⁴ Senator Avery’s amendment proposed to alter the make-up of the coordinating council and sub-councils. Although the council would still have 18 members, Avery proposed that 12 of them be elected and 6 others would be school board members. Avery noted, “This is in the spirit of compromise, giving the school districts an opportunity to have a member on each of these sub councils, giving them a role with a vote.”⁷⁸⁵ Avery, a retired political science professor, was successful in offering the compromise concept and it was soon apparent that this approach to governance was going to break a dead-lock

⁷⁸² Ibid., p. 54.

⁷⁸³ Ibid., p. 86.

⁷⁸⁴ Ibid., p. 87.

⁷⁸⁵ Ibid., p. 87.

on the issue. Speaker Flood spoke to the issue as well. He said, “This is an opportunity for us to get past the governance issue, look at the rest of the bill, and move something to Final reading”. He also acknowledged Senator Chambers and Senator Raikes had agreed to the change. Jokingly, he added, “because trust me—and I’ve told Senator Raikes—he could frustrate somebody in a coma... He’s tough to move.”⁷⁸⁶ Although debate continued on the amendment, it was clear movement on this issue would open the opportunity to advance the bill. Even Senator Chambers would later praise the body for their efforts as he said, “I think the Legislature is closer at this point that it ever has been, in all of the decades that I’ve been in this Legislature, to taking some concerted action to deal with very serious educational problems in a comprehensive manner.”⁷⁸⁷ The Avery amendment (AM 1401) was adopted on a 29-2 vote.⁷⁸⁸

Cornett Seeks to Address Sarpy County Boundary Issue

Speaker Flood once again adjusted the order of amendments to allow Senator Cornett to introduce an amendment (AM 1426) to adjust school district boundaries in Sarpy County before the new learning community would form. Cornett opened on the amendment and it garnered support from Papillion Senator Tim Gay. However, Senator Pankonin representing rural Sarpy County and the South Sarpy School District stood in opposition to the effort. Speaker Flood also addressed the tense issue although spoke in support of the amendment as three school districts involved in a long standing dispute could not come to agreement. Flood said, “I think everybody in this Legislature should

⁷⁸⁶ Ibid., p. 90.

⁷⁸⁷ Ibid., p. 94.

⁷⁸⁸ Ibid., p. 105.

be all ears, because I think Senator Kopplin from the very start has said, we need to find a way to settle the boundaries in Sarpy County, and I think it is unconstitutional to do something that just picks a street and says, you're going to do it. My preference would be that South Sarpy and Bellevue would sit down and sign an agreement, that Papillion and South Sarpy would sign an agreement. That would be the best resolution, and that, in fact, is what Senator Kopplin, I think, has been working to bring people to the table on. He has been working to try and find an agreement where two sides sign a document outside of the Legislature and walk away. That, unfortunately, hasn't happened, and that has brought us to this point.”⁷⁸⁹

Senator Raikes also spoke in support of the Cornett amendment, although he did relay some of the history of the boundary disputes that bothered Flood. However, in regard to reasons for supporting it he said, “One is, in this particular case you would be moving valuation from a nonequalized district to an equalized district. I think that is a solid policy on which to operate, so that part of it I do agree with. The other thing I will mention to you that all along in our discussion of the learning community is the hope, the belief, and the plan that school district boundaries would become less important over time--not unimportant but less important. That there would be more of a cooperative attitude, cooperative operations between schools districts so that certainly there are district boundaries and there are the distinct differences within those districts, but there is a common effort within the entire learning community to address educational needs. So I certainly respect the fact that there are those that disagree with this, but I do think it's

⁷⁸⁹ Ibid., p. 111.

important that a resolution come, and this is, at least at the moment, the best I know of in that regard, so I do support it.”⁷⁹⁰ Raikes was interested in the broad application of the learning community to address multiple issues and had stated and restated several of these reasons.

Cornett would later withdraw the amendment in light of concerns with the way it was drafted.⁷⁹¹ At that point Senator Raikes was recognized to open on another amendment, AM 1400 which would have removed the growth factor for suburban districts. The amendment was adopted 25-8 over the vocal objection of Senator Kopplin and Senator Gay. Raikes also proposed AM 1419 to remove another funding provision that created a funding “weighting” for the learning community was introduced “reluctantly.” To Senator Raikes’ surprise and without any debate, AM 1419 advanced on a vote of 31-0.⁷⁹²

Sarpy County Disenchantment

As debate continued a flurry of amendments was considered. Most of which were technical, or at least minor relative to the overall issues. However, Senator Kopplin would introduce an amendment to take Sarpy County out of the learning community.

It was becoming obvious that there was a growing dissatisfaction with the events of the day among the Sarpy County senators including Senator Kopplin, Senator Gay, and Senator Cornett in particular. Senator Cornett responding to some of her rural colleagues who had suggested that this issue was limited to the learning community. She

⁷⁹⁰ Ibid., p. 112.

⁷⁹¹ Ibid., p. 115.

⁷⁹² Ibid., p. 122-123.

said, “I’ve heard time and time again today that the learning community should pay for itself; that the western senators don’t want to pay for the learning community. Sarpy County never asked to be part of the learning community. Sarpy residents, taxpayers, our constituents don’t want to be part of the learning community. We’re not saying that Douglas County doesn’t have its issues. We’re not saying OPS doesn’t have problems that need to be addressed. We’re saying that we shouldn’t have to be included with their problems. I don’t think that there is a senator in here that can say that they received...I received one now, e-mail in favor of us being included as a county. I’ve received e-mails from Gretna, Papillion, South Sarpy. Regardless of what our differences are inside the community and the county, those aside, there isn’t a person in our county that has corresponded with us, other than one for myself, that wishes to be included. We understand that Senator Raikes and the education community looks at Bellevue, Sarpy County, Papillion as part of the metropolitan area. We have a distinct identity. We do not associate ourselves mentally as part of Omaha. We do not wish to be included. We will handle our own problems inside of our own county with our own constituents.”⁷⁹³

However, remarkably the boundary issues between the Sarpy County districts persisted and as Senator Raikes and Senator Flood had previously noted, the Sarpy County players were not resolving their own boundary disputes.

Senator Gay and Senator Raikes also engaged in a dialog where Senator Gay expressed some of his frustration with the current state of the financial picture and, in particular, the common levy provisions. Senator Raikes addressed some of the questions

⁷⁹³ Ibid., p. 145-146.

and concerns but eventually responded, “Well, Senator, I will try to assist in any way I can with that kind of information and provide whatever explanation I can. I will assure you, at least conceptually, I have done the best I can to explain to you how it is intended to work. There is in fact a sharing of financial resources involved in this. As was mentioned earlier, it's not nearly as aggressive as what we currently do in the state in unified systems but there is a sharing. And one of the advantages of that is it provides a financial basis for citizens and taxpayers in the various districts feeling comfortable in educating students from other districts or sending their students into other districts to take advantage of educational opportunities because there is a sharing. It's not that we're paying for your students and we're getting nothing in return or vice versa. And that's really a big part of the driver for approaching it in this particular manner.”⁷⁹⁴

The dialog between and among Sarpy County senators and Senator Raikes gradually deteriorated. Although a few other senators addressed the concerns, Senator Raikes generally responded to the obvious frustration from Senators Kopplin, Cornett, Gay and occasionally others. Senator Kopplin closed on his bill and offered these comments; “I have no apologies about bringing this amendment up and taking it for good discussion. I'd like to, in my closing, just respond to a few things. I know Senator Johnson said we have got to work together. Keep that in mind for a moment, because not two hours ago, Senator Raikes stood up and said, I support doing Sarpy County boundaries different, no matter what we said last year. And Senator White spoke eloquently about the need for...that we care for everybody. And yet, I remind you of the

⁷⁹⁴ Ibid., p. 149.

vote on the language that took out the growth factor. You can't have it both ways. If you're truly concerned that we need to be working as a team, then we need to treat everybody in that learning community as a team. I'm not going to withdraw this. I'm going to ask you to vote on it. I know where I stand on the vote, but that's okay. It's time we press a button, yes or no, on Sarpy County.”⁷⁹⁵ Senator Raikes pointed out that the proposed amendment was substantially similar to another bill that had been indefinitely postponed by the Education Committee earlier in the session. Therefore under the rules of the Legislature, the Chair ruled it would require a super majority, 30 votes to be successful. The Kopplin amendment failed on a 9-15 vote.⁷⁹⁶

Debate “Wraps-Up”

Late in the debate, Senator Erdman introduced a floor amendment, FA 123 that would change the threshold to create a learning community in other areas of the state. In part, the debate recognized the possible implications for rural and trade center communities across the state. After some extended conversations FA 123 was adopted 25-9.⁷⁹⁷

With some additional discussion and general debate on amendments that either failed or were withdrawn, Senator Raikes was recognized to close. The bill advanced on a voice vote as is the standard process for Select File bills.⁷⁹⁸ Additionally, the appropriations bill, LB 641A for operating expenses was also advanced on a 35-2 vote.⁷⁹⁹

⁷⁹⁵ Ibid., p. 171.

⁷⁹⁶ Ibid., p. 171-172.

⁷⁹⁷ Ibid., p. 191.

⁷⁹⁸ Ibid., p. 201.

The next day the *World-Herald* reported on the events of the legislative debate and suggested the “end of the Omaha schools dispute just might be in sight after the Legislature moved toward cooperation and compromise.” It also added that “several metro school districts, including the Omaha Public Schools, Westside and Elkhorn, got on board with Legislative Bill 641. Omaha Superintendent John Mackiel said the Legislature made a move toward creating the Omaha educational system that the district has long sought. ‘The metro area is in a much better position today than it was yesterday in terms of opportunities available for young people,’ Mackiel said.”⁸⁰⁰

However the paper also reported that some were still critical of the effort. Millard and Sarpy County school districts remained critical of the legislative process and the result. “Millard school board member Mike Kennedy said he was disgusted by the process and concerned about school districts losing control over education. ‘It's going to drive people to private schools,’ Kennedy said. ‘It's going to destroy the public education we in this community have worked so hard to build, [...]. I'm completely disheartened our legislators wouldn't even listen to us.’”⁸⁰¹

The paper reported that the bill was expected to come up for a final vote on Thursday, May 24th and also reported that Heinemann's signature wasn't certain. It also suggested the new plan could suffer from legal challenges including the from the Millard

⁷⁹⁹ Ibid., p. 202.

⁸⁰⁰ Jeffrey Robb, "Governance Dispute Settled - Schools Bill Sails Ahead - Final Consideration by the Legislature is Tentatively Set for Thursday," *Omaha World-Herald (NE)*, 2007j.

⁸⁰¹ Ibid.

board member who reportedly threatened a suit over the governance structure.⁸⁰²

However, Senator Tim Gay of Papillion, who had pushed for an appointed board, said he supported the mixed-board compromise. Regarding the caucus of school board members that would select six of their peers to serve on the learning community coordinating council Gay was reported to say, “I'd like all school board members, but there is merit to the election process.”⁸⁰³

The paper reported that the metro superintendents continue to have concerns about the bill's shared property tax base although it didn't “appear to be a make-or-break issue.” Also reported was that the Sarpy County school officials are left to continue working on their own boundary dispute.⁸⁰⁴ And at this point, Sarpy County was solidly in the learning community based on the “up or down” vote forced in the Select File debate.

The Sarpy County disenchantment with the learning community was reported to include the threat of a lawsuit on the common levy. Sarpy officials and residents were unhappy with the concept and that was confirmed in a *World-Herald* report. “Sarpy County officials are threatening to sue if the Legislature requires a common property tax levy to support schools in the proposed two-county learning community. ‘We would litigate to protect the taxpayers of Sarpy County,’ said County Attorney Lee Polikov, although he said the final decision would be up to the Sarpy County Board. Polikov

⁸⁰² Ibid.

⁸⁰³ Ibid.

⁸⁰⁴ Ibid.

contends that it would be unfair to make Sarpy homeowners pay school taxes at the same rate as Douglas County residents. Sarpy property valuations are updated more frequently and, he said, are closer to market value.”⁸⁰⁵

Cathy Lang, the Nebraska Property Tax Administrator and Senator Raikes did not see the valuation difference between the two counties as substantial. Lang agreed that the two counties have different assessment practices, but it didn’t result in a wide disparity between Douglas and Sarpy Counties. “There's always going to be variability,” she said.⁸⁰⁶ Senator Raikes pointed out it is not unusual to collect property taxes across county lines using the same tax rate. “As long as each county meets state valuation standards, Raikes said, a common levy shouldn't be an issue.”⁸⁰⁷

By May 24, 2007 Speaker Flood had scheduled the LB 641 on Final Reading. Flood was reported to say “Things are good.” A new coalition of state senators and school districts says the plan deserves to be implemented. “LB 641 is a good bill and the right thing to do,” said John Mackiel.⁸⁰⁸ The *World-Herald* also reported that Bellevue and South Sarpy school districts were actively working on a boundary agreement. According to the paper, “[under] the prospective deal, South Sarpy would transfer its

⁸⁰⁵ Paul Goodsell, "Sarpy may Fight Common Tax Levy - Lawsuit Threatened if a Levy Identical to Douglas County's Stays in the Schools Bill," *Omaha World-Herald (NE)*, 2007c.

⁸⁰⁶ Ibid.

⁸⁰⁷ Ibid.

⁸⁰⁸ Jeffrey Robb, "Harmony is Growing on Schools Bill - the Measure, Expected to Come Up for a Final Vote Today, Gains Support from Millard Officials, Though Legal Questions Remain," *Omaha World-Herald (NE)*, 2007k.

property east of 36th Street to Bellevue, then agree to transfer land in another swath to Bellevue as the City of Bellevue grows over time. The plan would not be incorporated into LB 641, but it is contingent on the bill becoming law.”⁸⁰⁹ South Sarpy Superintendent Chuck Chevalier said, “We feel like we're doing the best thing at this point in time,” And John Hansen, the Bellevue school board president, said the plan would help Bellevue as the community grows adding “It's probably going to be good for both districts.”⁸¹⁰

Millard schools officials spoke more favorably than the original discontent expressed by one of their board members. Millard board member Brad Burwell credited the plan for protecting Millard's boundaries, providing a voluntary integration program and offering more opportunities for all students. Burwell said, “We can work with this.” And he added, “We need to get beyond this. We need to get on with the business of educating children.”⁸¹¹ Although it was clear there were finance elements yet to be worked out, Westside Superintendent Bird suggested, “We've got a great framework to work with.”⁸¹²

May 24, 2007: LB 641 on Final Reading

During floor debate on May 24, 2007, Speaker Flood offered a motion to allow time for a description of the Bellevue and South Sarpy boundary agreement to be

⁸⁰⁹ Ibid.

⁸¹⁰ Ibid.

⁸¹¹ Ibid.

⁸¹² Ibid.

recognized. Flood said, "The discussion we've had in the last couple of days has really encouraged me that we can work through just about any problem in the Legislature that confronts our state."⁸¹³ Both Senator Pankonin and Senator Cornett recognized Senators Raikes, Adams, White and Flood for their efforts to reach compromise. The bill then was passed on a 33-14 vote.⁸¹⁴ After two long and controversial years, this most recent effort provided reason for optimism. However, as the *World-Herald* reported, "First, Legislative Bill 641 goes to Gov. Dave Heineman, who questioned an earlier version of the plan. Heineman has not said whether he will sign or veto the measure, and he offered no comment immediately after the vote."⁸¹⁵

Senator Raikes was reported to say, "I'm hopeful he will join us in this effort." The paper also reported "The Legislature's action this morning is 'monumental,' Omaha Superintendent John Mackiel said, because it makes where children live in the metro area irrelevant to their education. 'A new era has dawned in Nebraska,' Mackiel said. If signed into law, the plan could become a national model, Mackiel said. 'Here's an example of what can be done,' he said. 'That's what's so powerful about this.'"⁸¹⁶

⁸¹³ Nebraska Legislature Education Committee, Floor Debate, May 24, 2007, 100th Legislature, First Session, 2007, p. 2.

⁸¹⁴ Ibid., pp. 3-4.

⁸¹⁵ Michaela Saunders and Jeffrey Robb, "Landmark Schools Bill Approved - Heineman Signature on Measure Uncertain; Sarpy Bloc among those Voting Against Final Passage - LB 641: What does it Mean?" *Omaha World-Herald (NE)*, 2007f.

⁸¹⁶ Ibid.

Governor Heineman did later that same day sign LB 641 into law.⁸¹⁷ Shortly thereafter, two of the lawsuits that were filed after LB 1024 was passed the year before were dropped although the school finance case filed by OPS and a coalition of districts was still proceeding as OPS attorneys were still concerned about finance equity issues.⁸¹⁸

By the next day the *World-Herald* was sorting through the “landmark opportunity” that was the passage of LB 641.⁸¹⁹ Senator Brad Ashford said, “It’s a new day for education in metropolitan Omaha. [...] The opportunities for children in poverty and all children are significantly enhanced by this collaboration. It’s very exciting.”⁸²⁰ However, it was obvious there were a number of details yet to work out. “Metro school officials say they have too few details about the new financial arrangement that will be phased in. Concerns about the common tax levy were reflected in a bloc of Sarpy County senators voting against final passage.”⁸²¹ However, the common feeling a week after the bill passed was still reported to be positive. Omaha leaders and legislators alike were enjoying a substantial “stand-down” from the emotional battle that had been ongoing for

⁸¹⁷ Nebraska Legislature Education Committee, Floor Debate, May 24, 2007, 100th Legislature, First Session, 2007, p. 39.

⁸¹⁸ Michaela Saunders and Jeffrey Robb, "Omaha Metro Area Learning Community - New Law, New Challenges? - End of Two Schools Suits Won'T Signal an End to Concerns," *Omaha World-Herald (NE)*, 2007i.

⁸¹⁹ Michaela Saunders Jeffrey Robb and, "'A Landmark Opportunity for Change' - Learning Community is Law - Governor Signs Bill to End Boundary Battles - Primer on LB 641 - How they Voted on LB 641 - LB 641: What does it Mean?" *Omaha World-Herald (NE)*, 2007e.

⁸²⁰ Ibid.

⁸²¹ Ibid.

nearly two years. The negative national attention and lawsuits sparked by the breakup of OPS were fading. “This year, I feel like we’ve done something we can be proud of,” said Senator Gwen Howard of Omaha, who fought last year’s breakup law.⁸²² Although no one thing could be credited, a variety of new players and some changed attitudes of old players were reported to have transform the dynamics. New players included John Gottschalk from the *World-Herald* and several new members of the Education Committee including Greg Adams, Brad Ashford, and Bill Avery. Other players decided to work together to change the dialog and Kermit Brashear went from an insider to a third-party “deal broker.” “It’s a set of circumstances that I’ve never seen before,” Sen. Brad Ashford of Omaha said.⁸²³

Other voices weighed in with thoughts about the new opportunity. “Pete Festersen, vice president of public policy for the Omaha Chamber of Commerce, said the chamber is encouraged that the plan provides a road map for the community’s educational future ‘with all interests working together.’ ‘There was no doubt that there was national awareness about the status of things last year,’ Festersen said. ‘It wasn’t positive. I think we’ve now moved beyond that.’”⁸²⁴

⁸²² Jeffrey Robb, "'A Historic Session' - A New Spirit Sparked Unity - Last Year's Acrimony Gave Way to Cooperation this Year among those Working to Resolve the Schools Dispute," *Omaha World-Herald (NE)*, 2007a.

⁸²³ Ibid.

⁸²⁴ Ibid.

Relative Calm: 2007 Summer Months

The prior two years were marked with controversy, so the relative calm after the 2007 Nebraska Legislative session was only occasionally broken by the uncertainty of the finance system that would eventually be implemented. However, the majority of the analysis and background work were generally not even reported. Occasionally, such as a report on June 27, 2007 out of the *World-Herald*, there was news of public discourse on the new legislation. Any skepticism and uncertainty were met with efforts to explain the new law and a variety of statements by school officials and policy makers suggested productive conversations were ongoing.⁸²⁵

Omaha Westside hosted a community meeting and senator panel to discuss the new law. Superintendent Ken Bird and the panel of state senators including Ron Raikes as well as John Nelson, Steve Lathrop and Tom White, all of Omaha said they recognized that the law was not perfect. "But they also encouraged the audience to consider the alternative. 'The cost of doing nothing is so much more overwhelming,' according to Senator White. 'It's our children we're asking to bear the brunt of the change. We're looking for hope. When we look for hope we look to our children. Nobody has to leave their district,' he said, referring to the law's voluntary transfer program."⁸²⁶

With the national attention on Nebraska the prior year, cases addressing desegregation in Kentucky and Seattle were known to the Nebraska policymakers so

⁸²⁵ Michaela Saunders, "School Law Skeptics Urged to Wait, See - 'We're Setting Out to make it Work,' the Westside Superintendent Tells Residents Airing Concerns at a Forum," *Omaha World-Herald (NE)*, 2007k.

⁸²⁶ Ibid.

when the cases were decided and reported by the *World-Herald* it was newsworthy in Nebraska. According to the *World-Herald* “The U.S. Supreme Court on [June 28, 2007] rejected two major school districts’ use of race in the assignment of students, with the majority advocating race-neutral plans like the one used in Omaha. The student assignment plan currently used by the Omaha Public Schools and the concept of integration for the planned metro-area learning community both consider students’ socioeconomic status rather than their race.”⁸²⁷ According to Senator Raikes “What we’re doing in Nebraska is consistent with that decision. We have not used race.”⁸²⁸

The integration issue gradually gave way to discussions of school finance. In early July, the *World-Herald* reported that OPS had not been capturing all of the property taxes it was allowed under the levy limits. However, the district reported that the spending limits prohibited the district from levying higher. Although the issue for Omaha was also rooted in the history of local tax activists and state policy restrictions, it was clear that policy makers and neighboring districts were more interested in this finance plight as it had the potential to impact future learning community and policy conversations.⁸²⁹

⁸²⁷ Michaela Saunders, "No Role for Race in Assigning Students - The U.S. Supreme Court Advocates Other Means of School Integration, such as those used by OPS," *Omaha World-Herald (NE)*, 2007h.

⁸²⁸ Ibid.

⁸²⁹ Jeffrey Robb, "OPS Failing to Claim its Full Funding - Even if the School District were to Raise all the Tax Money it is Allowed to, the State Puts Up some Restrictions on its Spending," *Omaha World-Herald (NE)*, 2007o.

Also, as July proceeded, a *World-Herald* through analysis by Paul Goodsell and Jeff Robb began to report the impacts of the new learning community common levy and new finance provisions. Although, still preliminary, and with the likelihood that the Legislature would still address finance in the following session, they reported that some districts were already demanding changes and talking about lawsuits. “If this is truly to be a learning community, we can't be worrying about funding our own district,” said Gretna Superintendent Kevin Riley.⁸³⁰

Senator Raikes continued to propose changes as he promised during the LB 641 floor debate. “Whether or not it will calm all the disgust or angst, I kind of doubt it,” said Senator Raikes in the article. He added, “It's a big change, and for people to be concerned is not unreasonable.”⁸³¹ “I think it's flawed at its get-go,” South Sarpy Superintendent Chuck Chevalier said. “It was not ever intended to diminish our resources at all to work with our kids. Unfortunately, that's clearly what happened in the funding.”⁸³² According to the article, “It's a system set up to benefit some and hurt others because, according to some lawmakers, it aims to balance the current property tax system, which benefits some and hurts others.” Although true, the shared property tax base was set up to direct money from districts with higher valuations which included the rural districts with more property and fewer students. “Raikes, the architect of the bill,

⁸³⁰ Jeffrey Robb and Paul Goodsell, "Financial Loss is a Sore Point in 7 Districts - The Odds seem Stacked Against them in the Metro Schools' Learning Community. - Making Up the Shortfall - Financial Impact Varies Widely among Districts," *Omaha World-Herald (NE)*, 2007.

⁸³¹ Ibid.

⁸³² Ibid.

said the intent of the law is to equalize resources among Omaha area districts, forcing everyone in the two counties to share in the costs of educating all children. To do that, the state established a common tax levy for the entire learning community. Most school property taxes will be pooled and then distributed to the 11 districts using a formula based on enrollment and student characteristics.”⁸³³

State aid in Nebraska had been distributed based on principles of wealth-neutrality or equity. However, the new common levy would impact both growing districts and the high property value per student outlying districts. The early analysis suggested that the immediate impacts may have to be mitigated. “Raikes and State Sen. Brad Ashford of Omaha, another Education Committee member, said they will work with the suburban districts to address their concerns. ‘We do have a little time to make adjustments,’ Raikes said. Specifically, Raikes and Ashford said they want to restore a provision that would have provided more money to fast-growing districts. Lawmakers removed the provision shortly before the bill passed this spring.”⁸³⁴

There were differing views on the appropriateness of the common levy. “Elkhorn Superintendent Roger Breed said it's wrong to layer a local equalization formula on top of the state's equalization formula. ‘It is inappropriate and it doesn't work,’ Breed said. ‘We haven't been listened to.’”⁸³⁵ However, Bellevue Superintendent John Deegan in a reversal of prior positions suggested that the common levy creates a level field. He also

⁸³³ Ibid.

⁸³⁴ Ibid.

⁸³⁵ Ibid.

was reported to say, “Without the common levy, we don't have a learning community.”⁸³⁶ Mackiel from OPS was also on the record supporting the common levy but he still was concerned that overall resources were too low. “Gretna's Riley agreed, urging policymakers to start working off financial data, not financial theories. Riley said he doubted the plan would have earned the approval of lawmakers and Gov. Dave Heineman if they had seen solid numbers on the impact. Heineman declined to comment for this story. ‘We passed a bill where very few people understand the finances,’ Riley said. ‘We can do better.’”⁸³⁷

Over the course of the summer Raikes agreed the state could and should alleviate the financial hit that the three fastest-growing districts expect to take from the new system. “The problems that we face are manageable,” he was reported to say.⁸³⁸ Generally, the problems faced in the common levy were already predicted, but not yet addressed in a school finance system. Senator Raikes removed the provisions during the course of debate that he was now proposing to help address the growing districts. He generally suggested that the impacts on the more property wealthy districts were expected.

⁸³⁶ Ibid.

⁸³⁷ Ibid.

⁸³⁸ Jeffrey Robb, "Raikes Eyes Financial Help for 3 Districts - He Proposes to Make Up Expected Learning Community Shortfalls for Elkhorn, Gretna and Bennington with State Aid," *Omaha World-Herald (NE)*, 2007y.

By the middle of July, 2007, the *World-Herald* editorial page was calling on school districts to stay steadfast in supporting the new regional educational structure.⁸³⁹

The common theme of moving beyond the past controversy continued when the official dismissal of one of the lawsuits at the end of August, 2007. Additionally, the federal lawsuit filed by the NAACP was expected to be officially dismissed in early September.⁸⁴⁰

Fall, 2007

During the course of the fall, the school districts began to return to some normalcy; however, as the next legislative session was drawing near, the thoughts and conversations started to anticipate what changes may be needed. On November 11, 2007 the *World-Herald* reported "Some metro Omaha school districts are stepping up their lobbying for revisions to or even an overhaul of the new learning community law. With the Legislature convening in January, the Papillion-La Vista school district is trying to get out of the two-county cooperative, or see all of Sarpy County jettisoned."⁸⁴¹

Although Raikes was reported to be working with a number of the schools on possible modifications to the law, he was not inclined to let Sarpy County schools excuse

⁸³⁹ "Slow Down and Think - Districts should Stay Steadfast in Promoting Metro-Wide School Vision," *Omaha World-Herald (NE)*, 2007.

⁸⁴⁰ Michaela Saunders, "Dismissal of School Lawsuit is Praised - After a Judge's Ruling in the Omaha Schools Controversy, a Latino Center Official Says, "Now we can Move on.", " *Omaha World-Herald (NE)*, 2007g.

⁸⁴¹ Jeffrey Robb, "Schools Law Faces Renewed Challenges - this Time it's Suburban Districts, Not OPS, Questioning the Two-County Cooperative Meant to Help Disadvantaged Students," *Omaha World-Herald (NE)*, 2007ae.

themselves. Additionally, by this point in time, Bellevue had changed positions to become a supporter of the new entity. Even Governor Heineman was not publically supporting major changes to the law and instead was suggesting that the school districts should be focusing on implementing the law. “Everybody's got something they're not totally satisfied with[...] It's time to move forward. How many times do we have to revisit this?” the Governor was reported to say.⁸⁴²

As the *World-Herald* had been prone to do when the school district conversations started to turn on the learning community concept, it published an editorial on December 2, 2007 reminding the districts and community of their recent histories and encouraged support of the learning community.⁸⁴³ A couple weeks later, the paper was reporting that the Education Committee was moving the learning community issues to the “back burner.”⁸⁴⁴ “State Sen. Ron Raikes of Lincoln, in a presentation last week to school administrators, said he is preparing to take on a range of education matters, many of which have been discussed by lawmakers previously in some form. Raikes said he plans to propose legislation to make small classes a requirement in early elementary grades, change parts of the state aid formula and further address Nebraska's controversial testing system. At the same time, Raikes and other lawmakers are not done addressing

⁸⁴² Jeffrey Robb, "Educators Told: Focus on the Kids - Heineman Says Districts should End Debate Over Governance," *Omaha World-Herald (NE)*, 2007i.

⁸⁴³ "Stay on Course - Don't Move Back Toward Rancor. Learning Community Deserves our Support," *Omaha World-Herald (NE)*, 2007.

⁸⁴⁴ Jeffrey Robb, "Metro Schools on Back Burner - With the Learning Community Law Perking Along, the Legislature Plans to Widen its Focus to Other Education Matters in '08," *Omaha World-Herald (NE)*, 2007n.

the learning community. Several state senators, however, say major changes to the law are unlikely.”⁸⁴⁵

Senators Raikes and Ashford also published an editorial that was printed in the *World-Herald* on Sunday, December 16, 2007. The opinion piece suggested that the new learning community was important for the future of the state. They concluded, “We must have the courage to stay the course. The alternative is continued controversy and failure.”⁸⁴⁶

Looking into the next legislative session, the message from policy makers was to “let the new system work.”

⁸⁴⁵ Ibid.

⁸⁴⁶ Brad Ashford and Ron Raikes, "Learning Community Recognizes that 2 Counties Rise, Fall as One," *Omaha World-Herald (NE)*, 2007.

CHAPTER 6

2008 – Re-Focusing on Finance

Finance Takes the Forefront

The 2008 session started with a new sense of calm in the Omaha metro area education system that had not existed in the recent two legislative sessions. However, there were a number of issues that would surface including school finance and ongoing Sarpy County concerns with the new learning community. It was an election year that would mark the end of several legislative careers as well as the beginning of the new learning community governing body. This session meant the last opportunity for legislators to make changes in the learning community dynamic before it was fully implemented. A *World-Herald* survey of state senators before the session suggested that few were interested in changes, much less wholesale ones. “State senators responding to the *World-Herald's* pre-session survey found few interested in trying to make major changes in the landmark legislation passed in 2007. But 21 senators, including the law's chief architect, said they would like to see at least some tweaks to the learning community law during the legislative session that opens Wednesday. [...] ‘We had a rough two years, and I don't expect huge changes this year,’ said State Sen. Gail Kopplin of Gretna, vice chairman of the Legislature's Education Committee. ‘I hope we can work at it and make a little progress.’ Kopplin said this likely will be the first of several years during which lawmakers revisit parts of the law as new questions and concerns arise.”⁸⁴⁷

⁸⁴⁷ Martha Stoddard, "Schools Law Changes Sought - but of the State Senators Who Responded to a World-Herald Survey, Only 21 Want to Alter the Learning Community Structure. - Learning Community," *Omaha World-Herald (NE)*, 2008b.

Senator Raikes suggested, “We’re talking about changes, modifications that would enhance its effectiveness and operation.”⁸⁴⁸ Although Raikes was reported to be working on various changes to affect state aid and rapidly growing school districts in the learning community, only thirteen senators responded to the survey that they were interested in addressing changes in the learning community funding matters. Raikes was also reported to be working on statewide changes that included easing the financial transition for school districts impacted by the new common levy provisions in the learning community as well as ways to address poverty and limited English proficiency.⁸⁴⁹

The *World-Herald* survey also suggested that only few senators were interested in addressing the common levy in the learning community. Only nine senators said they would be willing to make changes in that provision of the law and four of those were from Sarpy County. “We need to address the assessment practices in the two counties to ensure that it's fair for all,” said Sen. Abbie Cornett of Bellevue.⁸⁵⁰ Although the paper reported that five senators were willing to remove Sarpy County from the learning community, Senator Tim Gay of Papillion was looking for more moderate options. He

⁸⁴⁸ Ibid.

⁸⁴⁹ Ibid.

⁸⁵⁰ Jeffrey Robb, "More Schools Law Changes Sought - the Papillion-La Vista District Still has Problems with the Governing Structure and Still might Sue," *Omaha World-Herald (NE)*, 2008s.

was reported to say, “Right now, it’s the law, so I want to improve the law as it is.”⁸⁵¹

During the interim, Papillion-LaVista schools had positioned itself as the most vocal opponent and critic of the learning community.

With the new session set to begin on January 9, 2008, it was apparent that finance and school aid would get the attention of a variety of important leaders. Senator Raikes had pushed finance reforms during the fall. There was also a push from learning community schools and Omaha leaders. The *World-Herald* reported, “A powerful pair of civic leaders who influenced the creation of the learning community law, now are turning their attention to the divisive subject of the state school finance system. John Gottschalk, chairman of the *Omaha World-Herald* Co., and Kermit Brashear, former speaker of the Legislature, are floating a plan to state and school officials that aims to help relieve school finance concerns in the Omaha area.”⁸⁵² Raikes and Brashear had long been colleagues in the legislature and the pairing of Gottschalk and Brashear on the learning community issue with other leaders from Omaha had seemingly aligned philosophies on some unfinished business related to the learning community. Gottschalk apparently considered the current school finance system “chaotic” as well as “unprincipled, unfocused and unaccountable” at least in a letter to a committee of Omaha leaders.

⁸⁵¹ Martha Stoddard, "Schools Law Changes Sought - But of the State Senators Who Responded to a World-Herald Survey, Only 21 Want to Alter the Learning Community Structure. - Learning Community," *Omaha World-Herald (NE)*, 2008c.

⁸⁵² Jeffrey Robb, "School Aid Still a Work in Progress - Two Omaha Leaders Get a Positive Reception for their Ideas to Ease Concerns about the Formula that Distributes Dollars," *Omaha World-Herald (NE)*, 2008aa.

“Brashear, who is the lobbyist for that committee, has been in close contact with State Sen. Ron Raikes of Lincoln, the influential chairman of the Education Committee and a guardian of the current state aid system. Raikes said Brashear has raised important concerns, although the two differ on some specific proposals. ‘A lot of what he’s done, I think, is on target,’ Raikes said.”⁸⁵³ Raikes also was cited in the same article; “But though he agreed that the state aid system needs changes, he defended the system overall. Raikes said the aid system makes sure every school district can support its needs. ‘In that sense, I don’t think you can argue it’s chaotic or even unpredictable,’ Raikes said.”⁸⁵⁴

John Mackiel was reported to consider the discussion about proposed finance changes to hold “extreme potential for good policy on a statewide basis.”⁸⁵⁵ Gottschalk wielded some influence with regard to the Governor as he sent him details of their proposal and pushed for support out of the Legislature. Heineman had previously called for a review of the funding system although continued to see the ongoing lawsuit as a barrier.

“Unless we can come to grips with the chaotic shortcomings of the present distribution formula,” Gottschalk reportedly wrote to his committee, “there is little hope (the Legislature) can or will do anything other than what has brought us to this mess.”⁸⁵⁶ Brashear took a more incremental approach in his comments as he said, “It is a natural

⁸⁵³ Ibid.

⁸⁵⁴ Ibid.

⁸⁵⁵ Ibid.

⁸⁵⁶ Ibid.

progression to continue to support what is now law and to amplify and strengthen and implement what we're now doing.” The proposal was reported to work in the existing framework but sought to address concerns already recognized by Senator Raikes. “Raikes said some of his own legislative proposals will closely resemble ideas being suggested. ‘There are some ideas in there that are very close to what I think would be a good change,’ Raikes said.”⁸⁵⁷

The *World-Herald* reported that ten of the eleven learning community superintendents met to discuss the Brashear proposals and the superintendents were looking for some common ground. As finance was among the next steps identified by Senator Raikes during the passage of LB 641, it was reported to be “encouraging” to see proposals come forward. Westside Superintendent Ken Bird suggested the meeting was positive and said, “the framework proposed, and the people behind it, could make a difference” and he indicated the superintendents are “anxious to roll up their sleeves and work on it.”⁸⁵⁸ Other superintendents indicated they would have to discuss the issues with their local boards and Rick Black, as superintendent of Papillion-La Vista, “said the proposal offers a starting point for a discussion. He said he would take the opportunity given to respond to the plan. The proposal does not address the level of school funding or detail the impact of individual changes to the state aid formula.”⁸⁵⁹

⁸⁵⁷ Ibid.

⁸⁵⁸ Ibid.

⁸⁵⁹ Ibid.

Regarding the recent proposals and general interest in such proposals, Raikes reportedly said lawmakers will need to be “very conscious” of the cost to the state.⁸⁶⁰ This sentiment was one shared by the Governor and other state level players. Raikes had hinted at the need to be fiscally responsible and the Governor was a regular supporter of frugality in policy matters. “Heineman said this week that he wants to start a discussion with lawmakers about revamping the way state aid is distributed, a task he said can't be completed in the current session. The governor also is pressuring some of Nebraska's largest school districts, including Omaha Public Schools and Elkhorn Public Schools, to rein in their own spending.”⁸⁶¹ Heineman had been a proponent of simplifying the state aid formula but also thought it would be difficult to change it in the short session. “Over the last decade, we have made the state aid formula too complex,” he said according to the *World-Herald*.⁸⁶²

Raikes had long been a proponent of making changes in the formula based on equity principles and based on accommodating school districts needs as defined in policy. Given the equity principles of the common levy and the intended and unintended consequences of the new learning community, Senator Raikes had made it known that he intended to take up finance issues in the upcoming session. He was reported to say, “Obviously I've opted in the direction of: If we know things that should be changed, we

⁸⁶⁰ Ibid.

⁸⁶¹ Jeffrey Robb, "Eyes Turn to State School Aid - State Sen. Ron Raikes and Gov. Heineman Both Want to Look at the Way Funds are Distributed," *Omaha World-Herald (NE)*, 2008m.

⁸⁶² Ibid.

should go ahead and do it.”⁸⁶³ The 2008 legislative session was the last for Raikes due to term limits and it was clear that his policy checklist included wrapping up the learning community policies and K-12 funding issues that had dominated his career as Education Committee chair. “Raikes and the Education Committee's counsel briefed the committee Tuesday [January 15, 2008] on the concepts, saying they were aimed at fairness, not simplicity. Raikes said the proposal would increase funds for schools in some areas but cut back in others. The plan, for instance, would provide extra funding if schools provide longer school days or school years, or if their teachers have advanced degrees. But Raikes said he didn't know how the various calculations would balance out. He acknowledged that such a financial analysis will be ‘very important’ for the bill, although it isn't expected until February.”⁸⁶⁴

The recent learning community development and the ongoing litigation on school finance had the state's school districts interested in potential policy changes. Raikes was reported to be “floating his proposal” outside of the Legislature in the annual gatherings and meetings of school administrators and school officials. The Governor was also reported to be publically asking school districts to rein in spending.⁸⁶⁵

Sarpy County Issues

The Sarpy County boundary issue that appeared to be resolved at the end of the prior legislative session resurfaced with legal concerns in early 2008. Although Senators

⁸⁶³ Ibid.

⁸⁶⁴ Ibid.

⁸⁶⁵ Ibid.

Flood, Cornett, and Pankonin announced a deal between South Sarpy and Bellevue at the close of the 2007 session, the Bellevue school board backed down from the deal because their school attorney claimed the deal was not legal.⁸⁶⁶ “State Sen. Abbie Cornett of Bellevue, who attended Monday's meeting, said she agreed with the board's decision to discontinue the agreement. She said there most likely will be some changes to LB 641 during the coming legislative session, which begins today. She and Bellevue Superintendent John Deegan said everyone involved wants to resolve the boundary issue. Deegan said he would like the Legislature to draw permanent boundaries for the Bellevue, Papillion-La Vista and South Sarpy school districts.”⁸⁶⁷ South Sarpy Superintendent Chuck Chevalier was surprised by the change of heart as was Senator Pankonin according to the paper.⁸⁶⁸ As Speaker Flood had explained to the legislature before LB 641 passed on Final Reading the previous session, the agreement was originally brokered by state policy makers to avoid establishing the boundaries in statute.

Bellevue attorney, “Sullivan said legal restrictions prevent Bellevue from paying the \$20 million lump sum the agreement called for. Also, the payment and land transfer were to be made Jan. 1, 2008, but LB 641 doesn't go into effect until 2009. Chevalier said

⁸⁶⁶ Jennifer Palmer, "Bellevue School District Scraps Land Deal - Lawyer Calls South Sarpy Sale Illegal," *Omaha World-Herald (NE)*, 2008.

⁸⁶⁷ Ibid.

⁸⁶⁸ Ibid.

he and the South Sarpy School Board believe the agreement is legal. Pankonin said statutory changes could have been made to accommodate the terms.”⁸⁶⁹

Within the next week it was also clear that Sarpy County wanted out of the common levy provisions as Senators Tim Gay and Gail Kopplin introduced legislation to change the finance structure.⁸⁷⁰ Gay introduced LB 970 to eliminate the common levy and Senator Kopplin signed as a co-sponsor. “Gay also proposed a bill Tuesday to further regulate school district boundary changes within a learning community. Under LB 978, Class III school districts, such as Papillion-La Vista or Bellevue, could not expand their boundaries more than 500 acres in one year or more than 1,500 acres over a three-year period.”⁸⁷¹

Learning Community Candidates Start to Surface

There was interest in the newly created council elections in the Learning Community. Candidates began to surface in January, 2008, very early in the process, which included former and current state senators. As there was no primary for the election, potential candidates had until August 1 to file.⁸⁷² Additionally, Omaha Public Schools was filling a vacancy on their board and were interviewing candidates. “Freddie

⁸⁶⁹ Ibid.

⁸⁷⁰ Jeffrey Robb, "2 Seek to End Common Schools Tax," *Omaha World-Herald (NE)*, 2008a.

⁸⁷¹ Ibid.

⁸⁷² Jeffrey Robb, "4 More Seek Learning Council Seats," *Omaha World-Herald (NE)*, 2008b.

Gray and Justin Wayne will be interviewed Wednesday by current school board members. One of the candidates will be selected before the board's Feb. 4 meeting.”⁸⁷³

Various Proposals are Introduced

Legislative proposals introduced in January largely looked to provide “tweaks” to the general principles of the Learning Community. With the exception of Senator Raikes’ school finance proposal and the challenge to the common levy introduced by Senator Gay, other changes were minor adjustments.

Senator Howard introduced LB 1005 that would help assure that enrollment preferences were granted to students with siblings in schools as part of the diversity plan. Senator Ashford, who was also on the Education Committee, was one of the bill’s sponsors.⁸⁷⁴

Senator Raikes introduced LB 1083 that proposed to allow school districts in a learning community to leave their ESU and take funding with them. However, even that proposal was scaled back considering he introduced measures in the prior two sessions to have the ESU become the learning community structure.⁸⁷⁵

Senator Raikes also introduced what would become the main vehicle for learning community changes in 2008 through LB 1154. As introduced, the bill would have

⁸⁷³ Michaela Saunders, "2 Seek Vacant Omaha School Board Seat - Interviews Will be Conducted and a New Member Selected before a Feb. 4 Meeting," *Omaha World-Herald (NE)*, 2008a.

⁸⁷⁴ Jeffrey Robb, "Bill Targets Diversity Plan," *Omaha World-Herald (NE)*, 2008f.

⁸⁷⁵ Jeffrey Robb, "ESU's Authority would be Cut - A Proposed Bill would Let School Districts in the New Metro Learning Community Leave their Educational Service Unit," *Omaha World-Herald (NE)*, 2008l.

created a learning community advisory board of the 11 Douglas and Sarpy County superintendents and would have establish nonvoting members on the learning community coordinating council for school districts not represented by the council's 18 other members. The bill also would allow for a boundary change between the Bellevue and South Sarpy districts.⁸⁷⁶

Brad Ashford of Omaha introduced LB 1159 to address truancy in schools. The proposal would require students who were truant and their parents to participate in a program for mediation or face criminal charges.⁸⁷⁷

Senator Kopplin introduced LB 873 to create a growth factor for growing districts. Kopplin also introduced LB 879 which would create an adjustment in the finance formula to address construction or expansion of school facilities. Those bills would later be heard on February 11, 2008 along with Senator Raikes' LB 988 and LB 1079 that would exclude certain attorney fees from expenses that would impact school aid.⁸⁷⁸ Senator Gay's LB 970 and LB 978, which addressed the common levy and school district boundaries respectively, rounded out the basic slate of issues around the learning community for the session. The paper reported, "Legislative Bill 595 would authorize a study of the state school finance formula. LB 886 would delay the new busing rules. And

⁸⁷⁶ Jeffrey Robb, "Cash Bonuses to Boost Teacher Pay Proposed by Senators, Union - They Say it's Needed to Stop Nebraska from Falling Behind," *Omaha World-Herald (NE)*, 2008i.

⁸⁷⁷ Ibid.

⁸⁷⁸ Clerk of the Nebraska Legislature, *Education Committee Hearing Transcript, February 11, 2008*, 100th Legislature, Second Session, 2008.

LB 970 would eliminate the common levy. Raikes opposes a school finance study and supports the common levy.”⁸⁷⁹ Raikes also had proposals to change transportation requirements in the learning community.

As the *World-Herald* noted, “The Papillion-La Vista school district, the learning community’s harshest critic, is pledging to work through the legislative process even though it looks increasingly doubtful that the district can achieve its goals in the Legislature. With bill introductions for the session finished, no lawmaker even proposed accomplishing Papillion-La Vista’s top goal: leaving the learning community.”⁸⁸⁰

Papillion-LaVista superintendent Rick Black and school district officials endorsed several bills that officials said would help address the district’s concerns, including Senator Gay’s LB 970 which proposed eliminating the learning community’s common property tax levy. Papillion-LaVista identified itself as a staunch opponent to the new law and it actively campaigned against the learning community. Additionally, district officials suggested they might challenge the law as unconstitutional. That position evoked a strong response from Omaha Superintendent John Mackiel who suggested Papillion-La Vista’s efforts demonstrated they preferred to just go back to the status quo without any shared responsibility.⁸⁸¹ Raikes expressed willingness to address some of the Papillion-LaVista concerns, “but he said he does not want to back away from the

⁸⁷⁹ Jeffrey Robb, "Opposition to Learning Community - Papillion-La Vista to Push Bills - Community Forum," *Omaha World-Herald (NE)*, 2008v.

⁸⁸⁰ Ibid.

⁸⁸¹ Ibid.

governance plan and shared funding. ‘That’s not something that I see as constructive at all,’ he said. ‘I think we’re moving in the right direction.’”⁸⁸²

State aid changes were already likely to be proposed by Senator Raikes, but local and state officials were surprised by the increase in state aid calculated in the February 1, 2008 certification for the 2008-09 school year. Nebraska Department of Education officials calculated aid by February 1 before each following school year. This year the changes established in statute the prior year looked to be more generous than expected. Although Omaha Public Schools and other larger districts were pleased with the early numbers, state officials wondered if it was a sustainable model. “That increase has caused concern among some state leaders because the total unexpectedly increased \$53 million more than the Legislature budgeted. Some of the increase resulted from changes in the school finance formula. School districts’ own spending increases also contributed to an increase in state aid spent per student.”⁸⁸³

The *World-Herald* reported on the aid projections, “The largest state aid increase in years will pump significant new money into the Omaha Public Schools and several other major school districts affected by immigration and poverty. Three-fourths of Nebraska’s 254 school districts are set to get more state aid next year. At \$27.6 million, OPS will receive its largest state aid increase since the district filed a lawsuit against the State of Nebraska over the school finance system in 2003. Two of OPS’s partners in the

⁸⁸² Ibid.

⁸⁸³ Jeffrey Robb, “OPS Calls Jump in State Aid a 1st Step - In Light of the Increase, One Metro School Official Questions Whether a New Shared Tax Base is Needed. - Omaha-Area Districts’ Share of State Aid Pie,” *Omaha World-Herald (NE)*, 2008w.

lawsuit; Grand Island and Lexington, also are seeing their biggest gains since the lawsuit started. The \$132 million more that will go to Nebraska schools in 2008-09 is the state's second-largest hike, after adjusting for inflation. The largest was a benchmark aid increase in 1990.”⁸⁸⁴

The combined impacts of growth resulted in more aid than projected which would later be cause for concern. However, Senator Raikes was reported to say the Legislature sought to financially support districts that have higher levels of poverty, high English language learner populations and those districts providing small class sizes. Raikes said, “That's the way it came out [...], I think that's consistent with what we intended.”⁸⁸⁵

However, Kevin Riley from Gretna questioned the need for the common levy as he suggested that the shared property tax base might not be necessary if the state aid distribution system would properly place funds. Riley reportedly said, “The state is dealing with it, [...] There's no need for the common levy.”⁸⁸⁶ John Deegan from Bellevue reportedly disagreed adding, “The common levy is a great equalizer.”⁸⁸⁷ However, Raikes remained vocally supportive of the common levy and also of his own school finance reforms in LB 988.

⁸⁸⁴ Jeffrey Robb, "Big School Districts Get Hike in Aid - The State is Allocating \$132 Million More for '08-09, Largely to Address the Needs of Poor and Immigrant Students. - State Aid for Nebraska's Largest and Omaha-Area School Districts," *Omaha World-Herald (NE)*, 2008c.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

Papillion-LaVista dropped its lawsuit against Bellevue over the boundary issues that had been largely resolved by the learning community provisions that froze boundaries and prevented Bellevue from attempting to claim new territory based on an agreement dating back to 1983. “A district court judge earlier ruled that a state law passed as Legislative Bill 1024 rendered the 1983 agreement moot. Papillion-La Vista disagreed and last year asked the State Supreme Court to consider its appeal.”⁸⁸⁸ “This dismissal doesn't affect Papillion's right to refile a lawsuit if Bellevue persists in attempting to extend its boundaries,” a Papillion attorney said. “If Papillion feels threatened, we will file suit in district court asking a judge to enforce the 1983 agreement.”⁸⁸⁹

Early February, 2008: Community-Level “Fears”

Although the premise for the learning community was to find commonality among the two-county “community” as there was a distinct Omaha metropolitan area that was interdependent economically and socially. However, the fierce independent streak was highlighted by activities of the Papillion-LaVista district and its constituents. The district organized a rally of sorts. “Papillion-La Vista Superintendent Rick Black encouraged more than 250 parents and others at a meeting Thursday [February 7, 2008] to lobby the Legislature to overturn the learning community law, reminding them that facts, not fears, are driving the district's position. ‘Anyone who thinks Papillion-La Vista

⁸⁸⁸ Kevin Cole, “Papio-La Vista Drops Boundary Lawsuit - But Neither that School District nor the Bellevue District has Changed its Basic Position,” *Omaha World-Herald (NE)*, 2008.

⁸⁸⁹ Ibid.

does not care about children,' Black told the crowd, 'is just flat wrong.'"⁸⁹⁰ Amid concerns that the learning community was "all about money" and that the effort was simply to "tap into" the Sarpy County tax base, the level of rancor was high. "Black challenged the comments of some that the district is trying to avoid an influx of disadvantaged students. Still, in a short exchange during a 90-minute question-and-answer session, two residents shared concerns about students from 'north Omaha.' One said she didn't want her tax dollars to fund a 'Muslim curriculum school' because of the law's provisions for specialty schools."⁸⁹¹

With such uncomfortable rhetoric, at least one parent said he was concerned about the use of euphemisms such as "north Omaha" and Superintendent Black said the district "would support the students 'whether they're our own or option, low socioeconomics or high.' He said expressions of elitism will not help the district. With that, 'all we do is make ourselves an island. We have to make sure we're not doing that.'"⁸⁹² Nevertheless, the district officials were encouraging residents to speak at the upcoming Education Committee hearings with the goal of removing the common levy from statute.

It was also reported that concerns circulated that the new learning community was an effort to consolidate the whole metropolitan area into a single district. "The issue surfaced last week when Papillion-La Vista Superintendent Rick Black and school board President Gene Kelly told more than 250 patrons gathered for a community forum that

⁸⁹⁰ Michaela Saunders, "Papio Urged to Fight Learning Law," *Omaha World-Herald (NE)*, 2008d.

⁸⁹¹ Ibid.

⁸⁹² Ibid.

aspects of the law could push the 11 districts toward consolidation, always a controversial topic in Nebraska.”⁸⁹³ Kelly claimed that all of the requirements would lead to common calendars, curriculum and added together ultimately one school district. Black also was quoted to say “You're sharing (state aid and property tax money) into a pool. That sounds a lot like a school district.”⁸⁹⁴ Kevin Riley from Gretna expressed similar concerns. He said “I think that's always the fear; that this will just end up as one big school district.” Although he added, “But I don't think that's the intent of the Legislature. Could it happen years from now? Yes. Would we support that? Absolutely not.”⁸⁹⁵

Both Senator Raikes and Senator Kopplin were reported to dismiss the concern as they were on record with support for maintaining multiple districts within the learning community. Raikes was quoted to say, regarding the eleven districts in the learning community, “the job was to, yes, allow those districts to remain, compete, operate individually, but also to cooperate.” However; the paper pointed out, “It doesn't help that Raikes has a history of pushing consolidation. In 2005 he championed the dissolution of elementary-only school districts, citing efficiency concerns. Raikes also supports the idea that school districts should continue to grow with city boundaries, as they do in Lincoln.”⁸⁹⁶ Ken Bird also suggested, “I think its smoke and mirrors to say the learning

⁸⁹³ Michaela Saunders, "Metro Area's Learning Community - School Law Raises Consolidation Fears -- Some Officials Say Concerns make Sense, but Others Call them "Unfounded." *Omaha World-Herald (NE)*, 2008c.

⁸⁹⁴ Ibid.

⁸⁹⁵ Ibid.

⁸⁹⁶ Ibid.

community itself will cause that to happen. I think those are more scare tactics than reality.” And Sandra Jensen, the OPS board president, was quoted to say, “It provides choices for families and preserves the uniqueness of each school district, while ensuring equal educational opportunities for children, [...] I think their fears are unfounded.”⁸⁹⁷

February 11 & 12, 2008, Education Committee Hearings

On February 11, 2008, the Education Committee heard testimony on Senator Kopplin’s LB 873 and LB 879. Both bills addressed issues impacting growing districts that were exacerbated by the impact of the common levy. The superintendents from Bennington, Gretna, and Elkhorn were all present to support the bills. LB 873 would have created a student growth factor that would have allowed school districts to project their enrollment each year and LB 873 would have allowed school districts to increase their needs based on projected construction and building costs. Additionally, LB 988 which was introduced by Senator Raikes was a more comprehensive reform of the state’s school finance formula. The bill focused on the “needs” calculation of the formula that estimated each school district’s necessary expenditures in order to help calculate the aid that would be required to fund a school district after their local property tax receipts were considered. The basic premise of Nebraska’s finance formula was based on the “equalization assumption,” suggesting that the state would help fill in the gap between local “needs” and local “resources.” The effect of distributing the common levy based on this “needs” calculation made the accuracy of this calculation more important as was addressed by the three districts at the hearing.

⁸⁹⁷ Ibid.

Senator Kopplin opened on his LB 873. Kopplin described, “Its basic purpose is to help school districts that are experiencing significant enrollment growth by allowing them to project enrollment growth and have that reflected in the current year state aid payments. Beginning with the 2009-10 state aid calculations, LB873 would provide a qualifying school district the opportunity to estimate and report anticipated enrollment increases in a timelier manner. As a result, the school district would receive funding at the time the students are enrolling as opposed to one year in arrears.”⁸⁹⁸ The basic premise was that growing districts were disadvantaged in the formula. Bennington superintendent, Terry Haack, testified on behalf of the three districts in favor of LB 873. He explained that the proposal would help the districts recognize their rapid student growth by allowing them to project student enrollment for the purposes of the need calculation. Haack added that the new learning community proposals would be an extra “disabling factor” as they used to be able to rely on a corresponding growth in value to pay for student growth. He added, “It is projected that Bennington would lose between \$400,000 and \$500,000 due to LB641's shared property tax provision. In order to recapture this lost revenue, Bennington will need to request a levy override from its property tax owners to simply maintain a current funding system.”⁸⁹⁹

In similar fashion, Senator Kopplin introduced LB 879 to create a construction, expansion, or alteration adjustment in the school finance formula. The rapidly growing

⁸⁹⁸ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 11, 2008, 100th Legislature, Second Session, 2008., p. 4.

⁸⁹⁹ Ibid., p. 7.

suburban districts had also been able to use growth in tax base to maintain sufficient resources to keep ahead of the student growth. However, the new law was projected to be problematic for those growth districts. Kevin Riley, from Gretna, testified on behalf of the three districts. He testified, “However, LB 1024 and LB 641 inadvertently [punish] growing districts within the learning community. By imposing a common levy on the learning community, growing districts can't access the funds they need when they grow and open buildings. We have two major sources of funding, as you know--state aid and property tax. State aid growth is one year in arrears, but we're able to connect the dots by the increase in our property tax valuation that's brought in by more students, more houses, etcetera. Under the common levy, we no longer can access that increase at anywhere near the same level that we currently can.”⁹⁰⁰ The plight of the growing districts was recognized by Senator Raikes as he proposed similar changes in his more comprehensive bill.

Senator Avery asked Riley if he was opposed to the Learning Community. Though Riley generally supported the coordination and cooperation of the eleven districts, he said he was not speaking against those broader elements. He added, “But the inclusion of us in that learning community takes away our ability to access the full power of our valuation increase because we are a smaller district. And it appears, because that spin hasn't occurred yet, but it appears that those school districts with high numbers of agriculture acreage are the ones that lose the most in terms of the common levy. And the 11 superintendents have agreed that none of us should be penalized financially for being

⁹⁰⁰ Ibid., p. 15.

in the learning community. So for us, it's the common levy part of it that hurts us in terms of sustaining our growth in paying our bills when we open schools.”⁹⁰¹

Senator Ashford and Riley also had an exchange that indicated Ashford understood both the impact and intent of the common levy on the situation. For instance, Ashford noted at one point, “And arguably, the changes in the formula on the state aid side would also impact the common levy calculation”⁹⁰² He continued, “So if we...assuming that we’re able to successfully do these changes that you would pick up both in the property tax side and on the state aid side, additional revenue.”⁹⁰³ Ashford was clarifying that if funding was distributed on needs and if this adjustment would increase needs, the situation would be rectified. Riley added, “And we’d be asking you to recognize that the growing districts have a need.”⁹⁰⁴

Senator Raikes would later introduce his school finance bill. Although the common levy was never specifically mentioned in his bill, he did include some thoughts about provisions that would impact schools such as Gretna, Elkhorn and Bennington. Specifically he said, “I will just mention, though, a couple, three things because they tie in very closely with Senator Kopplin's bills. There is a provision in here for a student growth adjustment, which very closely, I think, parallels what he offered in LB 873. There's also a new school adjustment, which again, is similar to that. And I would strongly support what was said both by Senator Kopplin and by the supporters of those

⁹⁰¹ Ibid., p. 16.

⁹⁰² Ibid., p. 17.

⁹⁰³ Ibid., p. 17.

⁹⁰⁴ Ibid., p. 19.

bills in that these are legitimate components of the financial requirements of school districts. They ought to be included in the needs calculation. And that's what this is about, is trying to make that needs calculation as accurate as possible.”⁹⁰⁵ Senator Raikes would later discuss the need to address funding for certain expenses that had been included in the learning community conversations such as transportation. He noted, “There will be learning community schools and probably other [bills] that would deal with that.”⁹⁰⁶ Senator Ashford later specifically asked, “Does that to some extent, I know there was some press over the weekend about how Papillion or some other district was arguing that the transportation would raise property taxes, but in essence the transportation, if it's paid on time so to say, would to some degree address that same thing.” And Senator Raikes responded, “Yes.”⁹⁰⁷

Senator Raikes later addressed a point about the local effort rate used to estimate access to local property taxes. He said, “The local effort rate, just mention a point here that I think the testimony made clear that to some extent, our building fund is nonequalized. Well, not to some extent—it is nonequalized. We equalize general operating funding up to the local effort rate, the \$.95 in the current formula. So the amount you can spend on your building fund in effect depends on how much valuation you have per student. If you're a district that has less, you're worse off. If it's a district that has more, you're better off. Now we have addressed that in the learning community by making a part of that levy a common building fund, but in other districts it hasn't. And

⁹⁰⁵ Ibid., p. 43.

⁹⁰⁶ Ibid., p. 44.

⁹⁰⁷ Ibid., p. 46.

so the point was made we need more than \$.05 to deal with the building fund, but it still is nonequalized.”⁹⁰⁸ He also highlighted how the common levy process in the learning community was “more equalizing” than other areas of the state. The notion of “equalization” was limiting the impact property wealth per student.

Although there were other detailed finance discussions, Senator Raikes also pointed out that another provision to mitigate the impact of the common levy implementation would be heard during the hearing on LB 1154 the next day.

The *World-Herald* reported, “A key lawmaker says it's time for the Legislature to rein in its spending on state aid to schools [...] Raikes, who also sits on the Revenue Committee, told the Education Committee that the state's rosy revenue picture could turn around and that state aid changes are ‘prudent, appropriate and needed.’”⁹⁰⁹

Additionally, OPS testified in a neutral but favorable position. John Lindsay, the OPS lobbyist, testified, “There's quite a bit we like about this bill.” The bill generally would preserve the general goal of providing aid to meet students' special needs and to make up the amount districts can't generate in property taxes.⁹¹⁰

On February 12, 2008, the Education Committee met to hear Senator Gay’s LB 886 on transportation, LB 970 on the common levy, and LB 978 on boundaries as well as Senator Howard’s LB 1005 on integration preferences for siblings, and Senator Raikes’ LB 1154 on his learning community proposals.

⁹⁰⁸ Ibid., p. 58.

⁹⁰⁹ Jeffrey Robb, "Bill would Alter School Funding Formula - Education Chairman Ron Raikes Favors a Proposal that would Curb Growth in State Aid," *Omaha World-Herald (NE)*, 2008g.

⁹¹⁰ Ibid.

Senator Gay opened on his LB 886 which would have postponed requirements for transportation of students on interdistrict open enrollment in the learning community. This concept was also addressed in Senator Raikes' LB 988. Although the two bills addressed the issue differently, both proposed to delay the implementation of the requirement.

LB 970 was also introduced by Senator Gay. He, in part, addressed his rationale for introducing the bill, "It is no secret that the Papillion-La Vista school district opposes many provisions in the learning community law. One of the components that causes the biggest heartburn is the common levy. LB 970 eliminates the common levy for the general fund budgets and the special building funds for the member districts. It puts back into place \$1.05 maximum levy for each district and puts the authority to determine the levy back with the locally elected school boards. Taking property tax dollars from a specific group of taxpayers and essentially giving that money away is simply not fair. The learning community law has constantly and drastically changed since its inception. Some questions to consider are what are the different levy limits among member districts examined? Do we know how much property tax dollars are diverted for public schools because local TIF [tax increment financing] projects? What about the different assessment practices of the two counties?"⁹¹¹

Senator Gay also addressed what he believed were problems about local decision making and local control. Regarding the funding of poverty students and ESL students

⁹¹¹ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 12, 2008, 100th Legislature, Second Session, 2008, p. 8.

he said, “However, it is a state problem. The problem is that the underlying funding mechanism for our public schools no longer works, and the common levy does not address that. I feel that the taxpayers in Sarpy County are being used as a transfer agent to fund a larger statewide funding problem, and this is just not right. There isn't one of us who doesn't believe every Nebraska child should have the right to learn and succeed. As you know, during our debate, I spoke several times about poverty being a statewide problem and the need to address this problem as a statewide proposal, which is a TEEOSA funding program.”⁹¹²

Senator Avery asked Senator Gay, “I have one question for you. If we change the current law with common levy, does that in any way undermine the likely success of the learning community?”⁹¹³ Although Senator Gay said he didn't think it undermined it, he asked the committee to take another “serious look” at the common levy.

Senator Raikes asked Senator Gay if the common levy was financially harmful to Papillion. And Senator Gay suggested it was not now, but added, “This isn't all about money; it's about fairness and equity, I think, in the process. You know if it's just about money, are you a winner or a loser in this thing, it's not just about that. I think it truly is that a local person getting taxed by a local entity feels that money should stay locally.”⁹¹⁴

Senator Ashford would later address a series of issues. He addressed his comments to Senator Gay; “But if we have a situation where Papillion's needs, either because of their growth of their school district or because of their valuation, their needs

⁹¹² Ibid., p. 9.

⁹¹³ Ibid., p. 11.

⁹¹⁴ Ibid., p. 12.

are greater than let's say Westside where I'm from, where I live. And what we're trying to do is we're trying to get a situation where every child has equal access to educational opportunity. That's both with education itself, but also with funding. And you have these two counties, which are pretty integral. I do agree with you that people like to pay property tax for their areas...they're still doing that, by the way, in LB 641, but there is a redistribution of some of it. Other than they don't want to pay property taxes to Westside or OPS, the money that goes to OPS via some formula, is that it? Is that basically the point, that they would rather their property taxes just stay in that school district? Is this what we're talking about? Even if there's a financial benefit to having those distributed out throughout the two-county area?"⁹¹⁵

Senator Avery commented, "I believe the rationale for what was done, which was done not last year but the year before with LB1024, it was that all the Sarpy County and surrounding communities and OPS all contributed to the problem that had been created, which is a huge achievement gap needed to be fixed. And because of that, there needed to be a common solution, which led to the common levy and the learning community concept. What I was suggesting with changing TEEOSA would put the burden on firstly, put it on the state or a lot of it on the state and take it away from some of these groups like your county."⁹¹⁶

Steve Coleman, testifying in favor of eliminating the common levy as proposed in LB 970, suggested that Sarpy County constituents were concerned with assessment

⁹¹⁵ Ibid., p. 13.

⁹¹⁶ Ibid., p. 15.

practices among other issues. He testified, “I think another element that you have to look at in talking about a common levy is, I think Dr. Riley put it very succinctly yesterday, in regard to learning community school districts in the past that are growing considerably have had the opportunity to take advantage of the growth in their tax base to help support and fund to that growth. And now for those growing communities, part of that growth that they've relied on in tax base would be diluted, even though their own enrollment growth within their district may remain the same as it has for the last 8-10 years. So there's that issue involved. I think it's the issue of fairness in the assessment practices as we hear our constituents talk is relative and certainly our board, I know that's not a surprise to anyone on this committee, the position they have taken is more in regard to why us? Why just these two counties? Why not a statewide look at addressing poverty and achievement gaps, and are we looking at achievement gaps between students, are we looking at achievement gaps between districts, what that might be. But back to the common levy itself, I think our people are not yet able to embrace the fact that local property taxes that they pay are still going to be local property taxes, and their definition of local is Papillion-La Vista Schools potentially, and not learning community, yet [that] has not fit into their definition of their local tax responsibility.”⁹¹⁷

The following exchange between Senator Raikes and Steve Coleman demonstrated both the general feelings and the conflict between those and the purposes of

⁹¹⁷ Ibid., p. 16.

the common levy. Additionally, the exchange demonstrated the way Senator Raikes and the committee were attempting to refine the policy.⁹¹⁸

SENATOR RAIKES: Suppose that all of the school districts in the learning community were equalized. What then would change as a result of the common levy?

STEVE COLEMAN: I think it's that definition of what a local property tax is to the people that they've not yet embraced that. It would still require a pooling of a common tax levy of dollars, some of which would come from someplace to help another place and vice versa, and they would move in different directions. But it's that propriety of their property tax that they feel very closely associated with that we're having difficulty explaining to that constituency to look at this situation bigger, more than just the Papillion-La Vista Schools, but in a broader perspective. And I can just say, Senator Gay is absolutely correct when what he's hearing is people aren't willing and ready to do that.

SENATOR RAIKES: But you would agree with me that in practice, in operation, really what we're doing now in equalization for individual school districts is very much parallel to what we do with the common levy at \$.95. We equalize the operating levy at \$.95. Anything over \$.95 is in effect, it's an individual levy that you get more if you have more valuation per student, you get less if you have less valuation per student. So there's a

⁹¹⁸ Ibid., pp. 17-18.

very common theme that runs between equalization and the mechanism that's in place for the common levy in the learning community.

STEVE COLEMAN: And I think it would appear that way. Number one, [...] is if all the districts in the learning community were equalized.

SENATOR RAIKES: Which they're not.

STEVE COLEMAN: They are not.

SENATOR RAIKES: Right, although Papillion is.

STEVE COLEMAN: That's correct. And again, from a financial win or lose, that's not where we're coming from in our testimony. Just like Senator Gay indicated, that's not a position that's based on winning and losing. I think you have to look at the fact that not all districts are equalized within the learning community and especially with a nonequalized district will be sharing in their tax base during the first year of implementation, but will not start participating in the state aid share until later. That could create a sacrifice for those districts from the onset in the early years, until the five-year phase-in comes into place.

SENATOR RAIKES: So you're saying that there's a timing mismatch between the sharing of the common property...

STEVE COLEMAN: ...and the sharing of state aid.

SENATOR RAIKES: Okay. I'll have to study that issue, but thanks for bringing that up. Any other questions? Thank you, Steve.⁹¹⁹

⁹¹⁹ Ibid., pp. 17-18.

John Lindsay, who represented Omaha Public Schools, testified in opposition to LB 970 and quipped, “I think Senator Raikes would tell you that he was either beloved or despised depending on what version of what approach he took to those different issues at any given time during the whole negotiating process on the bill, but the common levy was one, diversity of plans was the other. And you can all, I think, recall how much this committee had to struggle with those issues last year, but those were the heart of this bill. So when we try to take the common levy out, we are going to the heart of LB 641.” And he added, “LB 641 is not anything near what we were hoping it would be when we first came to the Legislature. If you recall what the situation was like at that time, it was a whole different mantra that was being used, and yet I think the Legislature looked through those issues and got to what are the problems, and tried to address those problems.”⁹²⁰

Lindsay continued to express support for the common levy and also pointed out that the state aid formula would continue to require districts to be reliant on the property tax base. Senator Ashford also engaged in an exchange with Lindsay. Ashford said, “Also, the other one is the point you're saying about TEEOSA not being adequate, the point is that the common levy provides additional revenue to districts that would need it in addition to state funding.” Lindsay responded, “Property [tax] is a very stable source of funding.” And Ashford continued, “Right, and so in effect the common levy resource, the money that comes from the common levy and is redistributed back pursuant to the

⁹²⁰ Ibid., pp. 18-19.

state aid formula, that's another pot, or another source of funds that is more or less stable compared to the vagaries of state aid,[...] And that's another reason why the common levy makes sense to districts that rely upon state aid today.”⁹²¹ Lindsay suggested that the cuts in state aid in recent years, state funding reductions were disproportionately large on Omaha.

Ashford pointed out, “And theoretically, a district, like, let's say Westside that has a higher valuation per student, would not...so all this discussion about winners or losers, and I would agree with Senator Gay and the other comments that were made about winners and losers, is really maybe not the way to put it. Because if you get into a situation where you have cuts on the state aid side, you have higher valuations on the local side. Then a district like Westside, for example, would be potentially a contributing district because it is higher valuation, but isn't that the way it should be if we have an overall goal of educating the kids and the children in the urban area on an equal plane? And children who are in poverty or ESL have higher needs.”⁹²²

He also added, “And if you're Papillion, it's the same deal. If your property tax, I realize that people like to pay property tax to their schools, but if that property tax is not enough to run your schools in a time of declining state aid, for example, in that scenario then the common levy would be there to help support Papillion schools. The other point is that they're still making their decisions locally.”⁹²³

⁹²¹ Ibid., p. p.21-22.

⁹²² Ibid., p. 22.

⁹²³ Ibid., p. 22.

Later Senator Ashford also added, “So theoretically, it is the potential, TEEOSA's not always going to be going up at the rate it has gone up. It could go down, it could go up, it could fluctuate. The common levy is a bit of an insurance policy...”⁹²⁴

John Deegan from Bellevue also testified that he had problems with LB 1024 but came around to be a supporter of LB 641. He said, “Eventually, when it got around to LB 641, you've done a number of things to take care of poverty children, transportation, take care of that cost, and the common levy. To me when the common levy came around and was final, you actually then created the reason for the learning community. That to me is the reason you have a learning community. Without a common levy, you should just get rid of the learning community because all you do is freeze school district boundaries, makes some superintendents happy because they've got frozen boundaries and they've got room to do things. But there are some schools, like the Omaha school district, the Bellevue school district, that are frozen up against time and can't move and can't go ahead, and we have poverty issues to deal with. And so when you deal with those poverty issues, you've got to deal with the resources. And so when you deal with the resources, you only have a limit of whatever the state might decide they're going to give you. And every year when we sit down and calculate our state aid or it's been told to us what we're going to get, there always comes an adjustment afterwards and we lose \$1 million or \$1.5 million and there's nothing you can do about it, you just have to make the cuts. And so in districts like Bellevue where we have that situation, I think the common

⁹²⁴ Ibid., p. 22.

levy is a tremendous equalizer for all children. That's what people forget sometimes in this learning community.”⁹²⁵

Senator Gay while closing on his bill pointed out that his bill “did not remove the common levy” and actually would maintain a levy across the area.⁹²⁶ However, his bill would have removed the common levy for the common general operation of schools and would have only had a “levy to fit the portion that we’d need to fund the learning community.”⁹²⁷ However, it was not that the common levy was directed at the learning community operation, it was that the common levy was a regional redistribution of the majority of the tax base and it was that portion that would have been removed by LB 970.

Senator Gay also introduced LB 978 that was supported by Bellevue and opposed by South Sarpy. LB 978 took on the school district boundary issue and would have allowed boundaries to move. Again, relationship between the boundary issue and the common levy was highlighted by the sequence of the bills. However, it was clear that “freezing boundaries” and “common levy” were linked as part of the overall compromise of the policy. It was also clear that governance, integration and diversity were linked. Although that issue had largely been resolved in LB 641, the Education Committee continued to adjust provisions including the consideration of Senator Howard’s LB 1005 to allow siblings to have preferences in open enrollment and also through the committee’s continuing efforts to refine the policy to address concerns with transportation and finance. Those would all be reflected in Senator Raikes LB 1154.

⁹²⁵ Ibid., p. 23.

⁹²⁶ Ibid., p. 25.

⁹²⁷ Ibid., p. 25.

The Committee also worked to help smooth concerns with transitions. Senator Raikes proposed in LB 1154 that “We do a phase-in or a hold harmless, as you might want to describe it, of the common levy ...”⁹²⁸

The *World-Herald* reported the day after the hearings that Papillion-La Vista was alone in its opposition to the new learning community law. Although the Committee seemed to solidly support the common levy and all that was entailed in LB 641 the prior year, they took some offense to Papillion’s challenge to the effort. “In hearings before the Legislature’s Education Committee, Papillion-La Vista officials testified against several key components of the learning community and opposed a proposal from the Education Committee chairman to rework parts of the law. After the district detailed its positions, Sen. Greg Adams of York said, ‘The essence of it is: ‘We don’t like the whole concept. Let us out.’”⁹²⁹ The paper reported more of that tension, “‘What part of the learning community do you support?’ State Sen. Bill Avery of Lincoln asked Papillion-La Vista Superintendent Rick Black. ‘You don’t have to answer because you already have. ‘Not much.’”⁹³⁰ However Black said Papillion-La Vista officials “agree with some very basic intentions found within the law,” although they disagreed with how the law went about addressing those issues.⁹³¹ Senator Raikes was reported to say at a later point, “We need to take the hard path of change. That’s always tougher than living

⁹²⁸ Ibid., p. 33.

⁹²⁹ Jeffrey Robb, "Papio-LV Finds itself Alone on School Law," *Omaha World-Herald (NE)*, 2008x.

⁹³⁰ Ibid.

⁹³¹ Ibid.

with things the way they are.”⁹³²

Metro Area’s First Joint Focus School

Some of the metro school districts attempted to get a “jump” on the focus school efforts and although the learning community was not yet operating, Elkhorn, Westside, and Omaha Public Schools had opened a joint school focused on leadership, technology, and communication. The venture in part was to demonstrate that schools could informally create structures to address the concerns in Omaha. However, the effort was costing more than the average cost per student at least at Elkhorn. “The focus school will open before the learning community law goes into effect. It is meant to demonstrate that cooperation among the school districts, as well as resource sharing, is possible now. The learning community law will establish a new governing body and require the 11 school districts in Douglas and Sarpy Counties to pool property tax and state aid resources.”⁹³³ Elkhorn board member Kim Fasse said the focus school “a perfect example of playing well together.” And she suggested that educators can “come up with a better plan if they cooperate.”⁹³⁴

“Despite the higher cost of sending students to the metro area's first focus school, the Elkhorn school board agreed Monday that it remains committed to helping open Underwood Hills, a collaboration of three districts. Superintendent Roger Breed told his

⁹³² Ibid.

⁹³³ Judith Nygren, "Extra Costs Don't Deter Elkhorn - the School Board Reiterates its Commitment to the Metro Area's First Focus School," *Omaha World-Herald (NE)*, 2008.

⁹³⁴ Ibid.

board the cost of enrolling up to 24 Elkhorn students at the focus school would be about \$250,000: or an estimated \$10,500 per pupil. Elkhorn spends \$8,143 to educate a child within its district.”⁹³⁵

A number of other issues surfaced in the 2008 session including Senator Ashford’s concern about student absenteeism⁹³⁶ and ongoing concerns with the governance structure and governmental interactions between school districts, ESUs and the Learning Community. LB 1083 introduced by Senator Friend would have changed the finance structure of ESUs in a Learning Community. As this had been a perennial part of the learning community conversation, the interaction between agencies was not completely clear to the Committee. However, school districts were largely supportive of maintaining the current status rather than disrupt processes at the time. At that point, ESU 3 also was apparently offering to help facilitate the initial start-up and operation of the learning community. Mary Campbell, speaking at an Education Committee hearing on behalf of ESU 3 testified, “Let the learning community take immediate advantage of the infrastructure and management services of ESU 3, and then, let’s say after a year or so of operations, evaluate how well that management agreement worked and come back with recommendations to the Legislature. In summary, we are suggesting a plan to facilitate the immediate operations of the metro learning community without having to

⁹³⁵ Ibid.

⁹³⁶ Michaela Saunders, "Lawmaker Says School Absenteeism is Epidemic," *Omaha World-Herald (NE)*, 2008b.

deal with the politically charged and logistically difficult task of reshaping both funding and governance for ESUs statewide.”⁹³⁷

March, 2008

As already noted, 2008 was highlighted by changes in the school finance policy. The primary objective of the Education Committee was a focus on the school finance proposal, LB 988 that was reported out of Committee on March 4, 2008 and would be debated by the full legislature during general file on March 18th. Although the finance provisions were viewed, in part, to be connected to elements of the learning community and reinforced other elements that had previously been passed in LB 641 the prior year, the general file debate seldom addressed the learning community and never directly addressed the common levy provisions.⁹³⁸

Also following suit, the public discourse on the common levy and even on the learning community seemed to wane. After a quiet few weeks, the Education Committee advanced LB 1154 with amendments on March 18, 2008. As the *World-Herald* reported, the bill was advanced unanimously and that signaled the likely ease with which the effort would proceed.⁹³⁹ The bill and the committee amendments were largely

⁹³⁷ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 19, 2008, 100th Legislature, Second Session, 2008, p. 20.

⁹³⁸ Nebraska Legislature Education Committee, *Floor Debate*, March 18, 2008, 100th Legislature, Second Session, 2008.

⁹³⁹ Jeffrey Robb, "Bill Advances on Revision of Learning Community Law," *Omaha World-Herald (NE)*, 2008d.

technical “tweaks” in regard to the common levy as well as an address of a phase-in of certain funding elements.

The *World-Herald* reported on March 23rd that the LB 988 changes in state aid were moving through the Legislature without much immediate concern, but there was a general concern that the bill was going to change the aid distribution in the next year. Additionally, Papillion- La Vista was reported to have concerns while Omaha Public Schools was reported to be quiet on their stance. As the paper reported, “Some metro school officials are reacting to the bill with a mix of concern and encouragement. Omaha Public Schools officials, who would benefit the most of any district in the state, are keeping their position quiet.”⁹⁴⁰ The bill was being advanced in part due to the concerns of the economic times and at least there was some sentiment that the state support of aid should continue at a higher level. “Steve Coleman, an assistant superintendent for Papillion La Vista, said the district can't support the bill as it stands. He suggested lawmakers balance the budget by drawing from the state’s cash reserves, although he said, ‘I wish I could feel optimistic that that was going to happen.’”⁹⁴¹ Similar sentiments were shared by Millard, while others were watching closely. The paper also reported, “Gretna Superintendent Kevin Riley said he is encouraged by the bill, which he figures would keep the district in its current financial condition when the learning community starts. He said Raikes and other senators are addressing the issues that Gretna

⁹⁴⁰ Jeffrey Robb, "Bill Earning a Passing Grade - Papillion-La Vista is the Only School District in the Omaha Area Slated for a Drop in State Funding Under the Evolving Legislation. - Changes in Aid," *Omaha World-Herald (NE)*, 2008e.

⁹⁴¹ Ibid.

considers important. ‘I really believe they're trying to make it all work,’ Riley said. ‘It's not going to work perfectly for everyone.’”⁹⁴² The finance bill would still be subject to two additional rounds of legislative consideration but it did advance with a vote of 29-13.⁹⁴³

March 26, 2008: LB 1154 Advances After the First Round of Debate

The following week on March 26, 2008, LB 1154 advanced the first round without much discussion except on an amendment offered by Senator Gay that would have eliminated the common levy. As the *World-Herald* reported the next day, “State Sen. Tim Gay of Papillion tried to muster opposition to the bill and proposed an amendment to kill much of the learning community’s common property tax system. He represents an area encompassing the Papillion-La Vista Public Schools, whose officials are the most vocal critics of the 11-district cooperative. Gay questioned the fairness of the financing system and of mandating a learning community only for the metropolitan area. He asked senators if they understood the law and urged them to ‘fix this problem now.’”⁹⁴⁴ Gay asked the body, “Is this the right way? [...] Are you absolutely sure this is the right way to do this?”⁹⁴⁵

⁹⁴² Ibid.

⁹⁴³ Nebraska Legislature Education Committee, Floor Debate, March 19, 2008., 100th Legislature, Second Session, 2008, p. 42.

⁹⁴⁴ Jeffrey Robb, "Learning Community Bill Sails on - the Measure, which Revises the Cooperative Created Last Year, Advances After Little Debate," *Omaha World-Herald (NE)*, 2008o.

⁹⁴⁵ Ibid.

The Legislature and most of the school districts were losing any momentum toward meaningful opposition to the learning community implementation. As the *World-Herald* noted, “[t]he debate, which lasted less than an hour, was a stark contrast to those in the two previous legislative sessions. Two years ago, the issue generated tense disagreements over the breakup of the Omaha Public Schools. Last year, the learning community was subject to heavy negotiation as senators repealed the breakup and crafted the new structure. Wednesday, many senators weren't even present for the debate, instead stepping into a side room for dinner.”⁹⁴⁶

Although few seemed willing to engage in the discussion, a few important points were discussed by Senator Raikes as he introduced LB 1154 and as he had exchanges with Senator Gay.

Senator Raikes addressed Senator Gay’s amendment and the concerns Gay articulated about the common levy and LB 1154. Senator Raikes added these thoughts to the record as he addressed Senator Gay, “Concerning the property tax distribution, which is, I think, one of the two significant issues that you raise, keep in mind that there is not part of the property taxes collected that go to the learning community. All of the property taxes collected go to the school districts. There is a 95-cent common levy that is shared among school districts proportional to the need calculated in the aid formula. And again, that highlights the importance of calculating needs in the aid formula. And in LB 988, of course, we're trying to refine that, and make sure that is an accurate reflection of the costs, so that's the way that's done. Now, there's an additional discretionary levy authority

⁹⁴⁶ Ibid.

that again is available to each school district, but again it goes to that school district. There is not something that's diverted away from that school district and deposited with the learning community council. The only funding that would be available to the learning community council would be an appropriation from the state, which we approved last year in the bill we dealt with last year, and if this bill is adopted there would be some additional funding made available to the learning community council via the ESU core services funding.”⁹⁴⁷

At one point, Senator Gay asked Senator Raikes, “Why do you need this common levy?” Senator Raikes responded, “The common levy, I believe is a critical part of the needed funding arrangement for the educational opportunities in the learning community. It enhances the provision of educational opportunities, the open enrollment provisions, and it also enhances the notion that you get, at least financing wise, equal educational opportunities for students in the metro area.”⁹⁴⁸

Senator Gay also questioned why the legislature would not just allow the learning community to have a levy for operating and leave the school districts levy separate. Senator Raikes, noted, “Well, actually the common levy...funds raised through the common levy go to the school districts.” Senator Gay clarified his understanding and said, “So am I wrong then when I say the money does not go to...for... I levy it in my area; I give it to the learning community; and then it’s redistributed back according to

⁹⁴⁷ Nebraska Legislature Education Committee, Floor Debate, March 26, 2008., 100th Legislature, Second Session, 2008, p. 113.

⁹⁴⁸ Ibid., p. 115.

need?”⁹⁴⁹ Senator Raikes explained that all of the proceeds from common levy were to be redistributed back to school districts. However, the basis for this distribution was on the needs calculation and not based on the existing property valuation. Senator Gay noted, “Okay. And that's the point where I'm saying under what we just did we've added ESL[English as a second language] and poverty money in the state formula that's going to the school districts. And now we're taking again a common levy and redistribution again to those schools in need. So it's almost like you're getting twice the money if you are a poorer school district, because needs minus resources equals state aid, correct? So if you have more resources, you're going to get more of the money from the common levy, is that correct?” Senator Raikes responded, “If you have more need, you would. It's distributed in proportion to need.”⁹⁵⁰

Senator Gay's amendment would soon fail to be adopted on an 11-19 vote and soon after LB 1154 would advance as amended by the Education Committee on a 26-0 vote.⁹⁵¹

March 27, 2008: LB 988 Advances to Final Reading

With the apparent “fast-track” nature of LB 1154, the school finance changes followed as LB 988 that had its own momentum to move forward. On March 27, 2008 the Legislature debated and voted LB 988 to advance with some amendments and changes. Some of the changes addressed further cost reductions to have immediate impact on the distribution of aid for the following year. In part, the policy addressed the

⁹⁴⁹ Ibid., p. 116.

⁹⁵⁰ Ibid., p. 117.

⁹⁵¹ Ibid., p. 124.

changes Senator Raikes had maintained as important for a number of years while others were, in part, an effort to reduce state commitment to education funding. The *World-Herald* reported, “Facing budget concerns, the Legislature voted for further scaling back a proposed overall increase in school aid. When lawmakers convened in January, the state had planned to spend \$901 million on school aid next year, an increase of \$132 million, or 17 percent, from 2007-08. But with lower-than-expected tax revenue forecasts, lawmakers voted last week to reduce that school aid increase by about \$50 million. The new total still left a \$10 million shortfall in the state budget, so lawmakers trimmed more out of the increase Thursday.”⁹⁵²

The combination of projected aid reductions and policy changes had rural and urban Senators on edge during the debate. “State Sen. Gail Kopplin of Gretna said the latest trim was too much and voted against the proposal. He said metro-area schools need additional dollars to carry out the learning community changes approved by the Legislature in the past two years. ‘Never mind that we gave millions in incentives to business and we're giving millions to roads. We have to take that budget deficit out of education,’ he said.”⁹⁵³ Kopplin also argued the additional reduction could have come out of state reserves. Regardless of the questions and concerns expressed in a lengthy debate, the bill passed on a 28-12 vote.⁹⁵⁴

⁹⁵² Leslie Reed, "Aid Bill would Cost Metro-Area Schools - How they Voted," *Omaha World-Herald (NE)*, 2008.

⁹⁵³ Ibid.

⁹⁵⁴ Nebraska Legislature Education Committee, Floor Debate, March 27, 2008., 100th Legislature, Second Session, 2008, p. 174.

April 2, 2008: LB 988 Becomes Law; Finance Suit Dropped

Only a few days later, on April 2, 2008, the school aid bill passed on final reading. As the bill was advanced, it was celebrated by Omaha Public Schools and a coalition of schools that had waged a legal fight on school finance. As reported, “LB 988 was debated mostly as a budget-balancing tool because it scaled back planned increases in state aid to schools. But district officials call the bill sound education policy that would address many of the needs of disadvantaged students and many of the allegations in the lawsuit.”⁹⁵⁵

The *World-Herald* reported, “By midafternoon, Gov. Dave Heineman signed the bill that had earned the endorsement of OPS and its lawsuit partners, the Grand Island, Lexington and South Sioux City school districts. Within 20 minutes of the bill signing, the four districts in the Nebraska Schools Trust dismissed their state aid lawsuit.”⁹⁵⁶ The article stated, “That ended a case that sharply divided state and school district officials while calling attention to the pressing academic needs of students in poverty and children from immigrant families who are just learning English.”⁹⁵⁷ The OPS attorney added, “We’re very pleased with the work of the Legislature the last two years with regard to the learning community and funding.”⁹⁵⁸

⁹⁵⁵ Jeffrey Robb, "School-Aid Revamp Passes - New Formula may Resolve a Funding Battle Waged by OPS, Others," *Omaha World-Herald (NE)*, 2008ab.

⁹⁵⁶ Jeffrey Robb, "New Aid Law Puts End to Schools' Suit - OPS Representatives Praise the New System, but Rural Districts Fear Loss of Funds," *Omaha World-Herald (NE)*, 2008t.

⁹⁵⁷ Ibid.

⁹⁵⁸ Ibid.

Although there were accolades from some, both rural and suburban schools were less certain. In particular, the perception that Omaha Public Schools got the changes they wanted in the formula, while others may have been hurt, left some uncertainty in the minds of other metro area schools. “The learning community will draw on Douglas and Sarpy Counties' suburban and agricultural tax base to help the inner city. Under that system, Elkhorn, Gretna and Bennington were projected to lose funding, along with the Westside, South Sarpy and Douglas County West districts.”⁹⁵⁹ Because there were elements that were built into the new system to address concerns about a growing suburban district, those districts were reported to say they hoped they were able to “break even” financially. “This is pretty good policy going forward,” said Elkhorn Superintendent Roger Breed.⁹⁶⁰ Both Kevin Riley of Gretna and Terry Haack of Bennington were more cautious in their response as they were both concerned that the legislature remained committed to the changes made for the future. Additionally, Senator Raikes was reported to say the growing districts had legitimate concerns about the learning community’s financial impact, given that they would no longer be able to fully tap their property tax base to support their growth.⁹⁶¹

The accolades continued to surface in the days after the new funding law was passed. An article authored by Paul Goodsell of the *World-Herald* suggested Nebraska

⁹⁵⁹ Jeffrey Robb, "Suburban Schools Keep Eye on Funding Pie," *Omaha World-Herald (NE)*, 2008ae.

⁹⁶⁰ Ibid.

⁹⁶¹ Ibid.

“averted” a long legal fight over finance. “You could imagine a sequence of happenings that would be very unhappy,” said State Sen. Ron Raikes, head of the Legislature's Education Committee. “Given what's happened in other places, you certainly can make the argument that you dodged a bullet. Or, on the other extreme, you can say sanity has returned.”⁹⁶²

OPS officials, including Superintendent Mackiel, indicated their support and appreciation for the policy changes. And although, “Raikes said it's clear that the school districts are pleased with the new school finance law, which specifically addresses issues that OPS and other districts have raised for years,” he noted, “[...]the changes represent good policy and were not written specifically to settle the lawsuit; the bill was based on ideas he first floated five or six years ago. At the time, he said, OPS didn't support his proposed framework. Instead, he said, the district has wanted more sweeping changes.”⁹⁶³ However, an amicable solution to the long standing dispute was welcome according to published articles, and, school officials were reported to be moving forward to make major changes.⁹⁶⁴

⁹⁶² Paul Goodsell, "A Bruising School Fight is Averted - the New Aid System Spares Nebraska the Long Legal Battles Other States have Endured," *Omaha World-Herald (NE)*, 2008.

⁹⁶³ Ibid.

⁹⁶⁴ Jeffrey Robb and Michaela Saunders, "Extra Aid Will Let OPS make Dreams a Reality - School Officials are Poised to Implement Plans for More Buildings, Smaller Classes and New Programs," *Omaha World-Herald (NE)*, 2008.

LB 1154 Revisions to Learning Community Advance

Less than a week later, the Legislature advanced LB 1154 with several revisions to the learning community with only minor changes to the common levy provisions. LB 1154 passed with a 30-15 vote. However, it remained clear that Papillion-La Vista and others in Sarpy County were still concerned. “The bill advanced without support from three senators who represent parts of Sarpy County: Gail Kopplin of Gretna, Tim Gay of Papillion and Chris Langemeier of Schuyler. Three others were absent and didn't vote.”⁹⁶⁵

The *World-Herald* reported that implementation of the new property tax system would be phased in and would be in full effect by 2012-13. Responding to the concerns of Sarpy County, that included the possible question of a lawsuit, Senator Raikes said the learning community bill and new school finance law address several of Papillion-La Vista's concerns. But he said, “Papillion-La Vista, in several respects, demanded we abandon our approach with the learning community [...] We didn't do that.”⁹⁶⁶

However, the negative sentiment in Sarpy County continued. County Attorney Lee Polikov was reported to say he wanted to talk with the Sarpy County Board after the session so board members could consider their options. “Polikov said the changes approved this session don't address his concerns about the common property tax levy. The county attorney questions the fairness of that tax system because of the different

⁹⁶⁵ Jeffrey Robb, "Questions Left on School Plan - The Legislature Passes Revisions to the Learning Community Bill without Resolving all of Sarpy County Officials' Objections," *Omaha World-Herald (NE)*, 2008y.

⁹⁶⁶ Ibid.

property valuation practices in Douglas and Sarpy Counties. ‘That affects every taxpayer in Sarpy County, I believe,’ he said.”⁹⁶⁷ Not surprisingly, the discontent led to conversations about legal challenges and future legislative action.⁹⁶⁸

Amid the ongoing complaints from Sarpy County, there was still recognition of the positive nature of the new learning community. The *World-Herald* editorialized about the general effort. An editorial published on April 9, 2008 said, “The Nebraska Legislature has spent the better part of three years debating the future of urban and suburban education around Omaha. State senators worked with local superintendents who moved beyond parochialism to look at the overall needs of children. Thanks to them all, our community awaits a landmark moment.”⁹⁶⁹ The writer also added, “Clearly the time has come to embrace the new reality of metropolitan cooperation on schools. The learning community is coming.”⁹⁷⁰

As the Legislature wrapped up the 2008 session the impact of term limits on the body and on the recently passed learning community suggested a feeling of “angst” for the loss of experience and the uncertainty of policy directions as fifteen state senators including major players in the learning community discussion would be leaving the body.

⁹⁶⁷ Jeffrey Robb, "Learning Law Fight: Not Over Yet?" *Omaha World-Herald (NE)*, 2008r.

⁹⁶⁸ Jeffrey Robb, "Sarpy Official Questioning School Tax Base," *Omaha World-Herald (NE)*, 2008z.

⁹⁶⁹ "Landmark Moment - LB 1154 Sets Stage for 2009 Launch of Learning Community," *Omaha World-Herald (NE)*, 2008.

⁹⁷⁰ Ibid.

That included both Ron Raikes and Ernie Chambers who had brokered and balanced the complex learning community dynamic.⁹⁷¹

2008 Interim and Election Cycle

Although the legislature marked the end of several state legislative careers it marked the beginning of the new era of elected officials serving on the new Learning Community Coordinating Council. The *World-Herald* reported on the start of the campaign efforts for the new body in mid-June although the final field of candidates wouldn't be known until August 1st that year.⁹⁷² The *World-Herald* editorial board also seemed to "warn" schools and Omaha patrons not to engage in litigation, but instead, to support the new effort.⁹⁷³ Given the significant presence of the Union Pacific railroad in Omaha, the analogy to "get on board" and suggest that the "learning community train" had "gotten down the tracks," was ironically appropriate and might have suggested that the effort was gaining support. However, it seemed that a couple of Papillion-LaVista board members and others in Sarpy County took exception to the attempt to dissuade schools and residents from considering litigation. An opinion editorial written by school board members Gene Kelly and Dan Flanagan suggested that Papillion-LaVista would

⁹⁷¹ Martha Stoddard, "Goodbye . . . So what Now? - With the Exit of More Veteran Senators Comes More Angst Over Loss of Experience. - Second Wave of Term Limits - Term-Limited Senators," *Omaha World-Herald (NE)*, 2008a.

⁹⁷² Jeffrey Robb, "Learning Council Campaigning Starts - One Candidate's Aggressive Efforts Indicate that the Races Will be Hard-Fought. - The Learning Community," *Omaha World-Herald (NE)*, 2008q.

⁹⁷³ "Time to Get on Board - Learning Community Deserves Support; Court Fight would Hurt," *Omaha World-Herald (NE)*, 2008b.

reserve the right to litigation.⁹⁷⁴ That point was later made official by their whole board during their June board meeting.⁹⁷⁵

The *World-Herald* reported on July 11, 2008 that Senator Ernie Chambers would indeed pursue a position on the new learning community council.⁹⁷⁶ By the time the August 1st deadline passed, 53 candidates had filed to run for the twelve elected positions. That included two other state senators that had debated the learning community law. Both Dwite Pedersen and John Synowiecki served with Chambers. Synowiecki was a staunch opponent of the break-up of OPS but both ended up supporting the eventual creation of the new council.⁹⁷⁷

As the weeks and months went on Millard school officials started to raise some concerns about the new learning community. Although a council had yet to be elected, the cautious optimism in some circles had given way to more vocal concerns. Such was the case at Millard as the school board members began to criticize the effort. "Board member Mike Pate said the learning community 'is just another layer of government that doesn't need to exist.' Pate also said he has seen nothing to convince him that

⁹⁷⁴ Dan Flanagan and Gene Kelly, "Learning Community Still Unfair to Sarpy; Suit must be an Option," *Omaha World-Herald (NE)*, 2008.

⁹⁷⁵ Jeffrey Robb, "Board Reserves Right to Sue Over Law," *Omaha World-Herald (NE)*, 2008h.

⁹⁷⁶ Jeffrey Robb, "Chambers Seeks Seat on New Council - the Veteran Senator and a Longtime OPS Critic Wants to Help Oversee the Metro Learning Community," *Omaha World-Herald (NE)*, 2008j.

⁹⁷⁷ Jeffrey Robb, "Learning Community Race Begins in Earnest - A Total of 53 Candidates File to Run for the 12 Seats on the New Governing Board. - Learning Community Council Candidates," *Omaha World-Herald (NE)*, 2008p.

‘the learning community council will have a positive impact to those students in need.’”⁹⁷⁸

Among the other changes taking place in state leadership, Doug Christensen had stepped down as commissioner of education and by the end of September, long time Elkhorn Superintendent Roger Breed was selected to become the new commissioner and head the Nebraska Department of Education.⁹⁷⁹ The *World-Herald* editorial page also gave Dr. Breed a vote of confidence suggested that he could help usher in a “new spirit” of cooperation on education issues that had been marked by several divisive issues over the past few years.⁹⁸⁰

That fall progressed into the election and finally to the point of both the election of the 12 elected members of the learning community coordinating council as well as the soon-to-follow caucus selection of the 6 board members to serve on the new council. The *World-Herald* reported on the campaign, election, caucus, and process.⁹⁸¹

⁹⁷⁸ Jeffrey Robb, "Learning Community - Millard School Board Skeptical - Members Voice Concerns about the Governing Council's Power, Diversity Expenses and Learning Centers' Location," *Omaha World-Herald (NE)*, 2008n.

⁹⁷⁹ Jeffrey Robb, "Educator Sees Tough Job Ahead - Elkhorn Superintendent Roger Breed Says He's Up to the Challenges of His New Post as State Education Commissioner," *Omaha World-Herald (NE)*, 2008k.

⁹⁸⁰ Ibid.

⁹⁸¹ "Learning Experience - Omaha Region Undertakes Important New Educational Effort," *Omaha World-Herald (NE)*, 2008a.; Jeffrey Robb, "Two Counties, One System - The Learning Community is Getting Under Way. on Nov. 4, Voters Will Choose 12 Members to Sit on the Learning Community's Governing Board. Here's a Primer on the New Education Effort in Douglas and Sarpy Counties," *Omaha World-Herald (NE)*, 2008af.; Jeffrey Robb, "New Board to have Old Hands - The Learning Community Council Will Include Former Legislators and School

As the end of 2008 was drawing near, a study of the finance provisions of the new learning community and projections suggested that the smallest two districts in the learning community would likely take the brunt of the common levy change. "The study, completed by metro school districts and released this week, indicates that South Sarpy stands to lose as much as one-fourth of its funding to the learning community's new shared property tax base. That's one of the biggest potential hits from the funding overhaul."⁹⁸² Douglas County West was also projected to have a significant loss. Although, Omaha Public Schools recognized the hit and recognized the concern, they were not willing to dramatically change the common levy. In part, the concern that if the Legislature was to make significant funding cuts in the future, the common levy helps to shore up all of the districts. "Although conceding that OPS would receive relatively little from the common levy system, OPS officials say the changes bring needed balance to the property tax funding of metro schools. Dennis Pool, an OPS finance administrator, said the district would be willing to work with the two small districts to address their concerns. But he said the district will not support a delay in implementing the new property tax system or doing away with it."⁹⁸³ Pool added, "If you take away the common levy, you destroy the component of the learning community that puts

Administrators. - Learning Community Election Districts - About the Learning Community," *Omaha World-Herald (NE)*, 2008u.; Michaela Saunders and Jeffrey Robb, "Long Shot Gets Spot on Learning Community Council - The Elkhorn School Board President is One of Six Final Voting Members Selected," *Omaha World-Herald (NE)*, 2008.

⁹⁸² Jeffrey Robb, "Stakes Get Clearer for Schools - Smaller Districts See Likely Blow to Wallet - Learning Community Finances," *Omaha World-Herald (NE)*, 2008ad.

⁹⁸³ Ibid.

the learning community together on a solid financial basis.”⁹⁸⁴ And although the analysis was cause for concern, it did not take into account all of the changes including the provision to phase in the common levy over several years or the recent changes to the state aid formula. “The state aid provisions ‘are critical for fair treatment of school districts in the learning community,’ said State Sen. Ron Raikes, the outgoing Education Committee chairman.”⁹⁸⁵

⁹⁸⁴ Ibid.

⁹⁸⁵ Ibid.

CHAPTER 7

2009 – Changing of the Guard

The Fundamental Legislative Focus Shifts to Other Topics

The new legislative session brought new legislators and legislative leaders. The Education Committee, now chaired by Senator Greg Adams of York, included Senators Ashford, Avery, and Howard from the prior year. Additionally, newcomers to the committee included Senator Cornett of Bellevue, Senator Brenda Council of Omaha, Senator Ken Haar of Malcolm, Senator Robert Giese from South Sioux City and Senator Kate Sullivan of Cedar Rapids. Gone to term limits were Senator Raikes, Senator Burling, and Senator Johnson. Additionally, Senator Kopplin lost his re-election bid to Senator Scott Price, in part, due to Sarpy County political concerns with the common levy that shaped the legislative race.

The Education Committee faced transition and implementation issues for the learning community as well as another challenge to the common levy as introduced by Senator Gay. The Committee also faced the uncertainty of state aid as the economy continued to slow which necessitated legislative action to slow the growth of state aid. Senator Adams introduced LB 61 to delay the 2009 certification of aid and also introduced LB 62 to address implementation issues in the transition from the long standing option enrollment program to the new open enrollment system in the learning community. Both legislative bills were heard on January 20th and quickly advanced to the full Legislature.

Faced with some finance uncertainty in a budget year, the Committee was preparing for the likelihood that, for the second straight year, it would have to find a way

to reduce aid. At the same point in time, the committee would further address the implementation of the learning community. Senator Adams introduced LB 391 with some technical modifications to the distribution of the common levy and that bill was scheduled for hearing on February 23, 2009. Additionally Senator Gay reintroduced his bill from the prior year that would have eliminated the common levy for the learning community. As might have been expected, Papillion was on hand to support the bill. However, this year testimony from Millard and Douglas County West also supported the bill. Similar to the prior year, Senator Avery and Ashford defended the common levy and the learning community in general. The two senators raised the point that, although Papillion had been consistent over the last couple years, the new official stance from Millard was considered a surprise. Senator Ashford, who was apparently perturbed at the testimony, asked “but is there anything in the needs formula that is used to determine the common levy that you object to... your client objects to? Is there something about the needs formula that is not...in the distribution formula, there something in the needs formula that is catawampus or?”⁹⁸⁶ Bill Mueller who lobbied for Millard and was there to testify on their behalf found himself addressing Senator Ashford’s fairly “rapid fire” questioning. At one point Senator Ashford stated, “...the essential element of the learning community, I mean to me, was joining the districts together with a common levy. Without that you really don’t have a learning community.” He also added, “Even though the money is distributed per needs, you don’t think that somehow that the

⁹⁸⁶ Nebraska Legislature Education Committee, *Education Committee Hearing Transcript, February 23, 2009*, 101st Legislature, First Session, 2009a.

underlying learning community...the learning community is undermined—not you personally, your district—that the underlying purposes behind the learning community would be in some way thwarted by not having a common levy that’s distributed pursuant to a needs formula.” Mueller responded that Millard didn’t believe that it would be undermined.⁹⁸⁷

Later Senator Ashford would tell Mueller, “But that’s the central core issue. To me the central core issue of the learning community is the common levy. If you throw the common levy out, then let’s just unwind the whole thing.” Mueller responded, “And I don’t know that Millard would agree that that is the common element of the learning community.” Ashford continued to state his case, “Well, I mean, you can have interlocal agreements and all get together and have a good...you know, get everybody together and have meetings and have...but unless you create a ... unless you have a common levy, it seems to me that you’re just back to interlocal agreements and just stuff that didn’t happen, and we let OPS and some of the poorer districts really go down. And I think...and that was the concern we were trying to address. I never heard Millard say...though they raised their...you know, certainly the superintendent...we had many conversations with the superintendent and he did a good job in expressing his concerns, but there was never opposition to the common levy that I recall. I’m just surprised by this testimony is all.”⁹⁸⁸

⁹⁸⁷ Ibid., p. 7.

⁹⁸⁸ Ibid., pp. 8-9.

Senator Ashford later continued to raise his concerns, “Well, you could have done a change in statute, but you didn't need the complete creation, it doesn't seem to me, of the Learning Community Coordinating Council and all of the work that went into this if we weren't going to have a common levy. I think it's disruptive at the very first year that we've done this, after two years of incredible amount of work, to now backtrack on the common levy. I can understand some of the issues involved in delaying it and all that sort of thing, and I certainly...again, Papillion has been above board in their opposition. I disagree, but I certainly cannot argue with them being clear. But I guess I am...maybe I should have been not surprised. Maybe Millard sent enough signals that they really don't like the common levy. And it must be for some philosophical reasons, is that...? They don't...” Mueller responded, “It is. It truly is.”⁹⁸⁹ The level of tension expressed continued to be high although Mueller took the brunt of the concern. DC West Superintendent George Conrad also testified in favor of LB 387.

John Mackiel testified in opposition to Senator Gay's LB 387. Mackiel testified that it was essential to have resource sharing to ensure that education is equitable. He stated, “Without the common levy, the other key learning community commitment also fails and that's integration.” Later he would add, “And now that boundaries appear to be protected, you're being asked to forget about why the common levy works. You're being asked to eliminate or erode the very ingredient that makes the learning community work. Just as the longstanding, still-ringing debate subsides and progress is underway, the elimination of the common levy will empty the promise, it will unravel the potential of

⁹⁸⁹ Ibid., pp. 9-10.

the learning community, and it will reignite the debate over educational equity and opportunities in Nebraska.”⁹⁹⁰

Ashford continued to point out that the major efforts over the past two years and more were all encompassing. He stated that once the border issue was resolved, “[...] then we dug in, and you and everyone else and Senator Brashear over there working with the learning community, and lots of others, spent two years, as I recall, of my life at least, and Senator Howard and many others, to get this thing right. And there are tweaks around it.” He went on to point out that Omaha was willing to work with the others on these revisions or “incremental changes” collectively. Mackiel would also point out that “everything is workable, it truly is.” But he also added, “There are two primary ingredients at stake here. One is the common levy; two would be integration. And we are going to stand when we believe that those two essential pillars are compromised in any way. And so the spirit has been, and in direct answer to your question, I don't recall anything as significant as the common levy and integration being challenged.”⁹⁹¹

Senator Ashford continued to be emotionally invested in the effort and added, “I guess, in conclusion, there is no, at least in my personal perspective, there is no more, at least on education--and maybe I'm being a little partisan here--there is no more critical issue than the maintenance of the learning community and bringing our school districts together on the issue of learning opportunity and integration. And this is a model for the

⁹⁹⁰ Ibid., pp. 15-16.

⁹⁹¹ Ibid., p. 17.

country, and I, for one, cannot possibly budge on the fundamental underpinnings of the learning community.”⁹⁹²

Others also testified in opposition included Virginia Moon from Ralston, Walt Radcliff who lobbied for Bellevue, Jay Sears on behalf of the Nebraska State Education Association, and Kermit Brashear on behalf of the Secretary of State who was working on the implementation of the learning community. Brashear was asked by Senator Ashford how he would characterize the common levy. Brashear answered that the common levy was one of the “major legs” that helped balance the status quo yet join together to allocate resources. He also added, “It is, in my opinion, it's axiomatic to the undertaking of the totality of the effort. It's how everybody comes together to be one in equalizing this focus upon the things that are adversely impacting education at the early levels and with regard to English as a second language and with regard to poverty and the need for more focused attention in teaching.”⁹⁹³

Senator Adams LB 391 was generally supported by all of the schools at least as he described his intent to work with the superintendents to ensure that the proceeds from the common levy would be distributed directly to the school districts. Also included in the bill was an effort to extend a transition period from 3 years to 5 years but Adams suggested that they consider amending the bill based on recent conversation so as to use additional state aid rather than further shifting of the common tax base.⁹⁹⁴

⁹⁹² Ibid., p. 18.

⁹⁹³ Ibid., pp. 20-21.

⁹⁹⁴ Ibid., pp. 31-32.

The following day the *World-Herald* reported on the hearing. Like prior years, the Committee members looked fairly united on the basic issues. The paper reported that the schools seemed “divided over dollars,” however, “...the new chairman of the Legislature's Education Committee [Adams] said he remains optimistic that he can help address the districts’ concerns. ‘It doesn't mean everybody's going to come away happy.’”⁹⁹⁵ The repeal proposed by Senator Gay of Papillion was reported to be “unlikely to get out of committee, given the lineup of sitting members.” Ashford was reported to say he was “flabbergasted” and that the district's position was counterproductive to the work being started by the learning community’s governing council.⁹⁹⁶

The next day the Education Committee would hear bills introduced by Senator Adams, Senator Ashford, and freshman Senator Price from Sarpy County. Price’s LB 534 would have changed provisions related to open enrollment that were supported by Papillion and some of the other suburban schools and strongly opposed by Omaha Public Schools. Senator Ashford’s LB 597 addressed focus school funding and Senator Adams LB 392 addressed other technical changes to help address the implementation of the learning community as agreed by all of the superintendents.⁹⁹⁷ Even as challenges confronted the Education Committee, it seemed that any learning community legislation

⁹⁹⁵ Jeffrey Robb, “Learning Community Districts Differ Over Funding at Hearing,” *Omaha World-Herald (NE)*, 2009.

⁹⁹⁶ Ibid.

⁹⁹⁷ Nebraska Legislature Education Committee, *Education Committee Hearing Transcript, February 24, 2009*, 101st Legislature, First Session, 2009b.

would be minor and consistent with the implementation plans established over the past lineage of LB 1024, LB 641, and LB 1154 of the last three years.

Legal Challenges to Learning Community Common Levy

Although it looked as if the Education Committee was resolute on the common levy and were only set to amend general, technical provisions of the learning community, some attention to the possible legal challenges to the common levy in Sarpy County surfaced. Possible implications of a challenge to the common levy had been “bubbling up” in Sarpy County for well over a year. On March 25, 2009 the *World-Herald* reported that former Nebraska Attorney General Don Stenberg suggested Sarpy County could win a lawsuit challenging the constitutionality of the common levy. “‘In my opinion, that tax is unconstitutional,’ Stenberg told Sarpy County Board members. Stenberg's comments on Tuesday [March 24, 2009] kicked off a 90-minute board meeting arranged at the request of Sarpy County Republican Party officials who question the property tax fairness of the educational cooperative.”⁹⁹⁸ The County board listened to the presentations and discussions but did not take any action.

A couple days later the *World-Herald* editorial board weighed in as well. Once again the *World-Herald* admonished those who suggested a lawsuit as a solution. They suggested that would be an “irresponsible move” that would be a “protracted affair” and would “create confusion and uncertainty” for the regions school districts.⁹⁹⁹

⁹⁹⁸ Joe Dejka, "Sarpy is Urged to Sue Over School Levy - The County Board Hears Requests to Fight the Learning Community's Common Tax Rate," *Omaha World-Herald (NE)*, 2009i.

⁹⁹⁹ "Common Levy Debate - Beware of the Surprises," *Omaha World-Herald (NE)*, 2009.

By the July 1, 2009 the *World-Herald* was reporting that the Sarpy County Board was continuing to explore legal options. The board voted 5-0 to direct Sarpy County Attorney Lee Polikov to explore options for dealing with what officials contend is an inherent unfairness with how the new entity will be funded. “The board directed [County Attorney] Polikov to research the ‘disparate’ ways that Douglas and Sarpy Counties value property for tax purposes and report back on ‘what actions, if any, can be taken.’ ‘I’m not asking the county attorney to sue anybody right now,’ said Commissioner Pat Thomas, who requested the action. ‘That may come later.’”¹⁰⁰⁰ The paper also reported Sarpy county officials suggested that the common tax levy may be counter to the Nebraska Constitutional requirement that taxes be levied by valuation “uniformly and proportionately” and they argued that Douglas County assessment practices were less “rigorous” than Sarpy County which had been previously claimed and somewhat dispelled by the state property tax administrator.

Spring/Summer 2009: Learning Community Council Agenda Develops

As the Learning Community coordinating council and its members became organized around the duties and challenges that faced them, they also became a new and central “collective” around the common levy. Only a few months into the formal council setting, the new body would have to concern themselves with the issues that led to their formation. This included the common levy which they would “set” in late August each year. Additionally, they had to begin to take on the topics they were charged with. In part, this was revealed in an article published on Friday, June 5, 2009. The article

¹⁰⁰⁰ Joe Dejka, "'Unfair' Tax Rates Irritate Sarpy," *Omaha World-Herald (NE)*, 2009l.

described a conversation on diversity and former senator and current council member Ernie Chambers was reported to push a conversation to focus improvement efforts on inner city schools. According to the paper, “Chambers, who represents parts of inner-city Omaha, described Omaha as ‘a racist city’ and vowed to push the diversity plan, not to promote racial integration but to prod whites to support improved education for inner-city children.”¹⁰⁰¹

Although council member Mike Avery of Gretna, a former state legislator himself suggested that the council take its time in developing a plan that was required to be reported to the legislature by the end of the year. “Avery said that if the council sends a flood of students into suburban schools, pushing them over capacity, taxpayers who paid to build those schools ‘are going to push back.’”¹⁰⁰² The council members recognized some of the same concerns that had been raised on school facility capacity. They additionally took up the issue of elementary learning centers that had been part of the legislative charge. The initial efforts included forming a task force for each issue and were planned to report by October 31. However, at this point in time the council was just getting its arms around the process it would follow.¹⁰⁰³ Additionally the superintendents were organized as an official advisory group according to statute and they had selected Kevin Riley from Gretna as their official liaison. John Mackiel reportedly urged the

¹⁰⁰¹ Joe Dejka, "Diversity Hot Topic at Meeting - Suburban Learning Community Council Members Worry that a Sudden Flood of Students Will Push them Over Capacity," *Omaha World-Herald (NE)*, 2009c.

¹⁰⁰² Ibid.

¹⁰⁰³ Ibid.

council to view the learning community as “borderless” although South Sarpy superintendent Chevalier pointed out that his district most likely would be “hit hard by the common levy” he would “naturally take a position reflecting those interests.”¹⁰⁰⁴

By July 8, 2009 the Learning Community was communicating with state lawmakers on their efforts. Kermit Brashear who had assumed the role of lobbying for the new council was reported to brief the Legislature’s Education Committee on the Learning Community efforts to date.¹⁰⁰⁵ The paper reported that the new learning community might need a generation to raise the achievement of poor and minority students. Brashear reportedly noted, “You won’t close the achievement gap immediately. [...] But you will make progress on closing the achievement gap.”¹⁰⁰⁶ The article also noted that “Later this summer, the council will levy up to 97 cents [95 cents for the common levy and up to 2 additional cents for building] per \$100 valuation on all the property in the two-county area, and the money will be pooled and divided among school districts based on need and enrollment. That levy will take the place of a large portion of what is currently levied by individual districts. Those districts then could supplement that amount with their own local levies up to the current state lid of \$1.05 per \$100 of valuation.”¹⁰⁰⁷

¹⁰⁰⁴ Ibid.

¹⁰⁰⁵ Joe Dejka, “Learning Community Can’t Deliver Quick Fix, Officials Tell Lawmakers,” *Omaha World-Herald (NE)*, 2009e.

¹⁰⁰⁶ Ibid.

¹⁰⁰⁷ Ibid.

Momentum Builds Toward Common Levy Litigation

By the end of July, 2009 there seemed to be ongoing momentum toward litigation in Sarpy County. Additionally, a recent ruling on a tax levy imposed to address a water dispute with Kansas seemed to bolster the common levy critic's case. As the *World-Herald* reported on July 26, 2009, "Critics of the Douglas-Sarpy learning community are buzzing over a Nebraska Supreme Court ruling arising from the state's arid southwest region. They say the ruling opens the fledgling education cooperative to a constitutional challenge. Sarpy County Attorney Lee Polikov said he's 'taking a hard look' at the ruling, which arose from a tax dispute in the Republican River basin. 'There are parallels, definitely,' Polikov said."¹⁰⁰⁸

Polikov reportedly said that the ruling in *Garey v. Nebraska Department of Natural Resources* could be 'a foundational stone' of a lawsuit. According to the *World-Herald*, "The case centers on a special property tax law - known as Legislative Bill 701 in 2007 - imposed as part of the effort by the Legislature and the Upper, Middle and Lower Republican Natural Resources Districts to comply with the 1943 Republican River agreement by Colorado, Kansas and Nebraska."¹⁰⁰⁹ As noted in the 2007 history, the passage of LB 641 to refine the learning community was actually passed in the same session as LB 701 and it was even part of the discussion relating to a model process to

¹⁰⁰⁸ Joe Dejka, "Watershed Moment in Schools Dispute? - Critics Cite a Republican River Basin Ruling in their Objections to the New Common Levy," *Omaha World-Herald (NE)*, 2009m.

¹⁰⁰⁹ Ibid.

advance a bill from General File allowing senators time to resolve disputes and make changes before Select File discussions.

These parallel histories were noted by critics of the common levy while supporters of the common levy suggested that there were differences. At issue in the water case was that the state of Nebraska was seeking to fund a lost “damages” dispute with Kansas over the Republican River flows. The “special property tax” created under LB 701 was challenged by tax payers in Southwest Nebraska and the Supreme Court heard the case. “Justices ruled that lawmakers violated the state constitution, which expressly forbids lawmakers from imposing a state property tax for state purposes, even when disguised as a local one.”¹⁰¹⁰ At the heart of the matter would be whether the learning community common levy was established for state or local purposes.

On one hand Don Stenberg continued to argue that the situations were similar. “The Legislature felt more money was needed, and had the legal authority to appropriate that money, but politically did not want to use state sales and income taxes,” Stenberg reportedly said. “Instead (lawmakers) chose to put a burden on property taxpayers that the (state) constitution doesn't allow them to do.”¹⁰¹¹ On the other hand, common levy arrangements in school districts had been upheld by Nebraska courts in the past. However, “in *Garey*, the court said the central issue was whether the ‘controlling or predominant’ purposes are state or local.”¹⁰¹² Omaha Attorney Eynon-Kokrda said that in

¹⁰¹⁰ Ibid.

¹⁰¹¹ Ibid.

¹⁰¹² Ibid.

any case involving a state-authorized property tax, the key question is whether it's for state purposes and she suggested the learning community levy would hold up to a challenge.”¹⁰¹³

The *World-Herald* reported on a key decision on the implementation of the common levy. First of all, the common levy was established with a maximum of 95 cents per \$100 of valuation and it also established a penalty for a levy of less than 90 cents.¹⁰¹⁴ The paper reported that schools were anticipating the levy to be set at 95 cents. However, districts would have access to the additional levy authority up to \$1.05. On August 6, 2009, the learning community superintendents met to discuss their joint recommendation on a levy rate. “All except Papillion-La Vista Superintendent Rick Black voted to recommend that the Douglas-Sarpy County learning community council set the rate at 95 cents per \$100 of property valuation - the maximum allowed by law.”¹⁰¹⁵ The paper reported that the discussion of the superintendents demonstrated an understanding that the higher the rate, the more the high value districts would “kick-in” and the more it would benefit the lower value districts. It also pointed out that most were willing, at least in this first year, to recommend the maximum. It was also clear that the superintendents were acting with a full sense of the responsibility imposed by the legislature. Kevin Riley reported noted that all of the policy “tweaks” were with the assumption that the levy

¹⁰¹³ Ibid.

¹⁰¹⁴ “Changes Ahead for Students, Parents, Taxpayers.” *Omaha World-Herald (NE)*, 2009.

¹⁰¹⁵ Joe Dejka, “Superintendents Advise Common Levy at Top Rate - to Set it Lower would be a “Bait and Switch,” One School Leader Says,” *Omaha World-Herald (NE)*, 2009k.

would be set at the maximum and that the superintendents would be breaking with their agreements if they recommended anything less. Riley said, “The Legislature's already helped us, and helped us based on 95 cents. [...]For us to go in now and say we want 90 cents, that's the classic bait and switch.”¹⁰¹⁶ Chevalier from South Sarpy said he was “comfortable” with that recommendation adding “This isn't a hill that our district needs to die on.” But he apparently added that “he told council members the taxpayers would hold them accountable to make sure the extra money flowing out of his district actually serves needy students.”¹⁰¹⁷ Black cited concerns for his district finances and the concern that Sarpy County residents would pay more because of valuation practices as he rationale not to support the maximum.¹⁰¹⁸ The superintendents also recommended a levy of 1 cent for the common building fund levy although the maximum authority was 2 cents.

The new levy setting process also made it more complex for school districts to plan for their own levy rates. Each school district was dependent on the rate established by the learning community to finalize their own levy. The new challenges presented in finance included an influx of Federal stimulus funds that were to be distributed to school districts adding another factor to school district planning.¹⁰¹⁹

In Omaha Public Schools, the combined funding efforts were a focus of discussions at a budget meeting. “Willie Barney, president of the African-American

¹⁰¹⁶ Ibid.

¹⁰¹⁷ Ibid.

¹⁰¹⁸ Ibid.

¹⁰¹⁹ Joe Dejka, "Stimulus Funds, State Aid Hold Tax Rate Steady," *Omaha World-Herald (NE)*, 2009j.

Empowerment Network, took a turn at the microphone during the board's regular meeting to remind members that they must use stimulus funds and other new resources to help students achieve more. He wanted to know if the district could use its budget to directly target the concentrations of poverty in some neighborhoods it serves.”¹⁰²⁰

In a predictable, but philosophically critical move, the Learning Community Coordinating Council set the common levy rate at 95 cents at an August 27, 2009 meeting. It also set the common building fund at 1 cent as had been proposed by the superintendents. The Learning Community also could levy up to 5 cents for their own building projects and elected to only set a ½ cent levy although Chambers argued for a 2.5 cent levy.¹⁰²¹

With the common levy set, other pieces of the finance puzzle would fall into place as school districts set their own budgets and levy rates. The learning community phase-in was moving forward and moving from policy theory to policy implementation. In short, the common levy mechanism was successfully implemented. In OPS there was recognition that there were benefits from the common levy. “OPS also is seeing the first benefits of the learning community’s common levy, which went into effect this year. [...]Because property-rich districts will generate more money per penny of their tax rate than less wealthy districts, they'll be required to share part of that revenue with the other

¹⁰²⁰ Michaela Saunders, "OPS Urged to Spend to Help Students - Learning Property Tax - If the Learning Community Council Adopts its Recommended 95-Cent Property Tax Levy, OPS Taxpayers could be Asked to Pay about 2 Cents More Per \$100 of Assessed Valuation than Last Year's \$1.20. T," *Omaha World-Herald (NE)*, 2009b.

¹⁰²¹ Joe Dejka, "Learning Community Tax Rate Set at ½ Cent - Members Balk at Ernie Chambers' Proposal for a Higher Levy," *Omaha World-Herald (NE)*, 2009g.

districts. OPS, Bellevue and Ralston are among the districts with lower values, while South Sarpy and Douglas County West are among the property-rich districts. ” ¹⁰²²

The *World-Herald* also reported on other districts budget and levy rates including Westside and Ralston providing yet another indication that the system was apparently working.¹⁰²³ However within a few weeks, the first legal challenge would be filed to contest the constitutionality of the new common levy. On Monday, October 19, 2009 the Sarpy County Farm Bureau and eight other property owners filed suit and asked the Nebraska Supreme Court to declare the new tax levy unconstitutional. “The plaintiffs, represented by former Nebraska Attorney General Don Stenberg, allege that the levies violate the Nebraska Constitution, including a prohibition against levying property taxes for a state purpose. Stenberg is now in private practice.”¹⁰²⁴ Stenberg argued that that when state senators debated creating the learning community their purpose was to equalize revenues to school districts. He reportedly alleged, “sales and income taxes can be used for that purpose, property taxes cannot.” Additionally he added, “Their statements make their purposes very clear, that they're taking property tax money from some schools and they're transferring it to others based on a formula that the Legislature adopted, and that it's basically an equalization formula.” ¹⁰²⁵ The paper reported that the

¹⁰²² Michaela Saunders, "OPS Budget Comes with Property Tax Increase - Omaha Public Schools 2009-10 Budget," *Omaha World-Herald (NE)*, 2009a.

¹⁰²³ Julie Anderson, "Two School Districts Set Lower Tax Rates," *Omaha World-Herald (NE)*, 2009.

¹⁰²⁴ Joe Dejka, "Learning Community - Suit Challenges Two Tax Levies - the Plaintiffs Want them Declared Unconstitutional," *Omaha World-Herald (NE)*, 2009d.

¹⁰²⁵ Ibid.

lawsuit cited former Senator Ron Raikes (who had recently been killed in a farm accident) as “saying a common levy to share resources between high- and low-resource districts would ‘free up state aid money for the state.’”¹⁰²⁶ Stenberg had unsuccessfully challenged other legislative initiatives championed by Senator Raikes including the Class I reorganization.

It was also apparent that the new Learning Community leadership was not likely to take the legal challenge lightly. “Rick Kolowski, chairman of the learning community council, said today the plaintiffs are ‘grasping at straws.’ Kolowski said he welcomes the challenge to settle once and for all the dispute that's simmered for two years since the Nebraska Legislature created the new education cooperative. ‘Let's get it resolved and find out where we stand,’ he said.”¹⁰²⁷

The paper reported that the Nebraska Supreme Court would only hear the case based on conditions it alone decided. “The plaintiffs argue the case presents important questions of state constitutional law that affect a large number of taxpayers and should be decided by the state’s highest court. Stenberg said a quick decision by the court could avoid an unconstitutional collection and distribution of taxes and give senators time to approve a constitutional school finance plan.”¹⁰²⁸

“One-Time Glitch” Reported in the Initial Implementation of the Common Levy

¹⁰²⁶ Ibid.

¹⁰²⁷ Ibid.

¹⁰²⁸ Ibid.

The *World-Herald* reported on a “one-time glitch” that was addressed by state legislators in the prior session. Although the total dollar results were essentially “on target” the order of the distribution changed when the state aid was calculated district by district rather than by the learning community as a whole. Interestingly, some of the districts with weaker property tax bases contributed more than projected of their respective property taxes but were “made whole” by state aid. Although it was a surprise to the folks analyzing it from the *World-Herald*, the districts seemed to be prepared for the anomaly.¹⁰²⁹ “OPS was one of eight districts that poured more local property taxes into the system than it got back, according to a *World-Herald* analysis. Because of its high percentage of children in poverty and learning English, OPS had been expected to be a big gainer from the new system of shared resources. Educators say the OPS revenue dip was an anomaly that did not hurt the district financially, and they're confident it won't be repeated next year. An increase in state aid was the reason for -- and offset -- the loss, officials said.”¹⁰³⁰

Additionally *World-Herald* reported that the Millard assistant superintendent for finance, Ken Fossen confirmed that the common levy system “misfired” for OPS this year. “That's why it threw in a year here that people are scratching their heads saying, ‘Well, how did that happen?’ Rather than recalculate the aid, senators amended the

¹⁰²⁹ Joe Dejka, "Learning Community Funding - OPS Takes Surprise Hit in Property Tax Dollars - it's a One-Time Glitch, and State Aid Makes Up the Gap," *Omaha World-Herald (NE)*, 2009f.

¹⁰³⁰ Ibid.

learning community law to delay by one year the start of calculating the aid for the learning community as a whole,” Fossen said.¹⁰³¹

Fossen added, “Next year's finances are going to reflect what people were thinking it was supposed to do. [...] And in fact, in the end, if you total up property tax and state aid, it's doing today what it was supposed to do.”¹⁰³²

Common Levy Lawsuit: The Nebraska Supreme Court Ponders Taking the Case

The *World-Herald* also noted, “Education officials throughout the metro area are waiting to see if the Nebraska Supreme Court will agree to hear a lawsuit filed by the Sarpy County Farm Bureau and eight individuals challenging the common levies as unconstitutional. If so, the future of the common levy system could be uncertain for months until the court rules.”¹⁰³³

In late November, the Nebraska Supreme Court set conditions for it hearing the case that primarily indicated that attorneys for both (or all) sides of the case would have to stipulate to the facts of the case. Although the notion of multiple attorneys coming to agreement seemed like the start of a “how many lawyers does it take...” joke, Chief Justice Michael Heavican allowed the rare opportunity to file directly with the court if the parties could present the agreed upon facts by December 2, 2009.¹⁰³⁴ OPS Eynon-Kokrda suggested it was a “high-bar” to agree, unconditionally, to a set of facts.

¹⁰³¹ Ibid.

¹⁰³² Ibid.

¹⁰³³ Ibid.

¹⁰³⁴ Joe Dejka, "Learning Community's Tax System - High Court Will Hear Challenge - However, both Sides in the Case must Agree to the Facts by Dec. 2," *Omaha World-Herald (NE)*, 2009h.

Stenberg suggested that it was indeed rare for the Supreme Court to accept “original cases” such as this. But both attorneys said it’s not unusual for the court to ask for the parties to stipulate to the facts.¹⁰³⁵

Although Stenberg and the other parties to the case met twice they could not reach agreement and Stenberg asked the court to appoint a special master. The *World-Herald* reported, “Stenberg, in asking the court for a special master, described the central issue in the case as the constitutionality of taking money from one district and giving it to another. He said the issue was ‘very straightforward,’ An attorney for OPS, however, said Wednesday [December 2, 2009] that Stenberg's framing of the issues is flawed and that ‘a fundamental disagreement’ remains over the central issue in the case. ‘The plaintiffs would like to pretend the learning community does not exist,’ Elizabeth Eynon-Kokrda said.”¹⁰³⁶

By December 5th, six suburban districts were also calling for a special master, a judge to help resolve the facts of the case.¹⁰³⁷ “Filing letters of support with the Nebraska Supreme Court were the Elkhorn, Bennington, Douglas County West, Gretna, Papillion-La Vista and South Sarpy districts. The judge, called a special master, would attempt to resolve the disputed issues and make recommendations to the court.”¹⁰³⁸ Although these districts were parties to the case, they sided with Stenberg in the effort to attempt to get

¹⁰³⁵ Ibid.

¹⁰³⁶ Joe Dejka, "Court Deadline Missed in Education Lawsuit," *Omaha World-Herald (NE)*, 2009a.

¹⁰³⁷ Joe Dejka, "Districts Request Special Judge," *Omaha World-Herald (NE)*, 2009b.

¹⁰³⁸ Ibid.

the high court to reach a decision rather than go through the traditional path of district court. Omaha attorneys were already on record suggesting that the fundamental differences were not likely to be resolved.¹⁰³⁹

¹⁰³⁹ *Ibid.*

CHAPTER 8

2010: Common Levy Legislation Largely Gives Way to Litigation

By the time 2010 arrived, the common levy had been officially implemented by the learning community and the major legislative issues around the learning community were operational issues. The grassroots discord on the common levy was most vocal in Sarpy County as critics had started to organize around a belief that the common levy was contrary to the Nebraska Constitution. Within the Legislature, there was an undercurrent of concern with the provision of a per diem payment for learning community council members. Senator Fischer introduced LB 937 to discontinue the payment to the council members. Additionally, there was an attempt to “feel out” the best path for the operations of the new council. Senator Adams had worked with the new Learning Community leadership as it developed its agenda and efforts. In doing so, he introduced LB 974 and LB 1070 that among other things introduced modifications to the learning community levy authority but not the common levy. Senator Avery introduced LB 974 that would have also allowed for discretionary levy authority for things other than capital expenditures. Senator Lathrop introduced LB 1095 to return an ESU funding source to ESU 3 and ESU 19 that had been used, in part for Learning Community operations. The Committee would eventually advance an amendment blending ideas from these bills into a single package under LB 1070.

All of these bills were heard by the Education Committee on February 2, 2010. After a hearing on an unrelated ESU bill, Senator Lathrop introduced LB 1095 that would, as proposed, remove the Learning Community from the ESU Core Services Aid Distribution. ESU 3 and its schools supported the bill as did the State Board of

Education and the ESU Coordinating Council. The Learning Community testified in opposition. However, as the hearing progressed, it was clear that Senator Adams intended that the Committee include in their considerations all of the proposals in front of them. During Senator Adams introduction of LB 1070 he stated, “LB1070 that's in front of you--I'll give you a little of the history of how we got to this point or how I got to this point. And I think, ultimately...Senator Avery has a bill that follows this, LB1095 that we just looked at--in my opinion and my opinion only, probably--for this committee, become a package of things that we ought to look at. And as that package, I could sense, was evolving during the interim, I decided in the final hour to put this bill in, to add my two bits to this ongoing discussion about funding and services and the relationship of the learning community council to ESU 3 to the elementary resource centers.”¹⁰⁴⁰ Senator Adams would later describe that LB 1070 would reduce the capital levy allowed to the learning community from 5 cents down to 2 cents and then establish a 1 cent levy for operating “wraparound services” through the elementary learning centers.¹⁰⁴¹ LB 1070 also addressed some operating concerns with data sharing, elementary learning center director qualifications, and expenses for non-voting council members.¹⁰⁴²

Senator Adams and Senator Avery each introduced bills to allow the learning community a discretionary levy out of the existing 5 cents of capital authority. Senator Avery described, “I think that the limits that we put on the authority of the coordinating

¹⁰⁴⁰ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 2, 2010, 101st Legislature, First Session, 2010, p. 40.

¹⁰⁴¹ *Ibid.*, p. 41.

¹⁰⁴² *Ibid.*, pp. 40-41.

council was not intended to tie their hands, but it was intended to simply define the kind of expenditures. I think that the council can be trusted to use their discretion broader than capital expenditures.”¹⁰⁴³

The following day, the *World-Herald* reported on the hearing with a focus primarily on the Fischer bill to eliminate per-diem pay for members of the learning community coordinating council. The paper reported, “The group's 18 voting members last year took in an average of \$11,000 apiece. That's too much for State Sen. Deb Fischer, who wants to outlaw the practice. ‘This is not right; it’s not right,’ Fischer told members of the Legislature's Education Committee on Tuesday. ‘School board members are there to represent children. They’re not there to make \$12,000 a year like state legislators.’”¹⁰⁴⁴ Brashear defended the per diem payments as the law was written the “new educational model” would require significant time and effort. However, other opposed the continued practice and in particular the notion of paying the new council members and prohibiting the payment of school board members was suggested to create a “caste system” according to the Nebraska Association of School Board testimony.¹⁰⁴⁵

Both Julie Brewer, the new executive director of the Douglas-Sarpy Learning Community and Rick Kolowski, the chairman of the new council testified at the hearing. On the issue of expanded levy authority Kolowski described “[...]the challenge of

¹⁰⁴³ Ibid., p. 66.

¹⁰⁴⁴ Joe Dejka, "\$192,000 to Go to Meetings? 'Not Right,' Says Senator - Per-Diem Pay for Members of New Council may Come to an End," *Omaha World-Herald (NE)*, 2010a.

¹⁰⁴⁵ Ibid.

delivering services to as many as 10,000 disadvantaged elementary school students in north and south Omaha as an imposing task that needs the funding help.”¹⁰⁴⁶

Eventually the committee would use LB 1070 as the vehicle for the packaged proposal Senator Adams described. LB 1070 would be advanced by the Committee in early March and was debated on General File on March 15th. The bill advanced easily after limited debate and few questions. The majority of the dialog was in the overview presented by Senator Adams and some background provided by Senator Ashford.¹⁰⁴⁷ There were a few questions raised by Senator Gay, Senator Price and a couple others. Both Price and Gay were on record for their general opposition to the learning community. The bill also advanced easily on March 26, 2010 and subsequently on final reading on March 29th. In its final form the bill did allow the Learning Community to have a 2 cent capital levy for focus schools and elementary learning centers as well as a 1 cent discretionary levy.

For the second straight year, it seemed clear that the Education Committee was generally supportive of the Learning Community efforts and was simply helping to adjust statute to make the effort at least palatable politically and ultimately successful toward the goals that had evolved over the past three sessions. However outside of the Legislature and specifically in Sarpy County some were set on challenging the new Learning Community tax levies. After Don Stenberg and Sarpy County Farm Bureau

¹⁰⁴⁶ Ibid.

¹⁰⁴⁷ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 2, 2010, 101st Legislature, First Session, 2010, p. 67-71.

were unable to convince the Nebraska Supreme Court to hear their case directly, they decided to file their case in Sarpy County and did so on January 11, 2010.¹⁰⁴⁸ The levy critics also changed their strategy and some of the original name on the suit split off to take another strategy while Stenberg and the Sarpy County Farm Bureau as well as two individuals continued to press forward with their original claims. The paper noted, “Some of the former plaintiffs removed themselves from the lawsuit in order to pursue an administrative refund of their learning community taxes, Stenberg said. ‘You can’t do both a declaratory judgment and go through the tax refund process.’”¹⁰⁴⁹ While the current state statute was being challenged, the Legislature would leave the common levy concept alone until the courts were able to rule one way or the other.

In early February, there continued to be a murmur of discontent that, on occasion, bubbled to the surface in the *World-Herald*. Serious concerns seemed to focus on the common levy from Sarpy County taxpayers. The paper reported on February 10, 2010 that individual taxpayers were sending letters demanding refunds of their learning community taxes. “Sarpy County Treasurer Rich James said he’s received about a dozen of the form letters, some attached to tax payments. The letters challenge the constitutionality of levies imposed last summer by the coordinating council of the learning community, which includes public school districts in Douglas and Sarpy Counties. Property owners demand a refund within 90 days and say they may sue the

¹⁰⁴⁸ Joe Dejka, "Learning Community Levies Challenged - some Changes have been made to a Lawsuit since it was First Proposed, but it Still Takes Issue with the Constitutionality of the Taxes," *Omaha World-Herald (NE)*, 2010k.

¹⁰⁴⁹ Ibid.

County Board if the money is not returned.”¹⁰⁵⁰ As might be expected, the grassroots effort to protest the common levy in the learning community was being supported by the people who supported challenging the levy in the courts. “Gene Kelly, a former Papillion-La Vista school board member, was a plaintiff in last fall's unsuccessful attempt to convince the Nebraska Supreme Court to hear a constitutional challenge directly, without going through lower courts. The court declined to hear that challenge after the various school and government officials who were parties to the case could not agree on the underlying facts. Now he's set up a website [...] where property owners can obtain the form letters and instructions.”¹⁰⁵¹ Although Kelly suggested that county boards should return the taxes, the county officials said it would be premature at best.

By early March there apparently was a concern that the negative undercurrent would begin to “erode support” for the learning community. Senator Fischer’s bill to remove per diem payments was advanced by the Committee and advanced first round of debate on a 35-10 vote.¹⁰⁵² “The Education Committee had proposed a phase-out in which current council members and those who are elected to office this year would get payments through the end of their terms. But lawmakers rejected that proposal in favor of

¹⁰⁵⁰ Joe Dejka, "World-Herald Exclusive - Tea Time? Letters Demand Refunds - Taxpayers Say they might Sue if Learning Community Payments Aren't Returned," *Omaha World-Herald (NE)*, 2010q.

¹⁰⁵¹ Ibid.

¹⁰⁵² Martha Stoddard, "Learning Community Bill seen as an Effort to Erode Support," *Omaha World-Herald (NE)*, 2010.

an amendment that would allow per diems to continue only for current officeholders.”¹⁰⁵³

Additionally LB 1070 was advanced by the committee on March 2, 2010. The bill proposed to “earmark” up to 1 cent of the learning community’s property tax levy for operating elementary learning centers. It would also reduce the 5 cents for capital projects down to 2 cents so in the combination the levy was limited to 3 cents as Senator Adams had proposed.¹⁰⁵⁴

March 16, 2010: Common Levy in the Sarpy County District Court

On March 16, 2010 Sarpy County District Judge William Zastera presided over a hearing on the lawsuit. Zastera promised a quick decision at the end of an hour-long hearing attended by 13 attorneys involved in the case, who outnumbered spectators in the gallery.¹⁰⁵⁵ Several of the parties named in the suit, including Omaha Public Schools filed motions to dismiss on the grounds that a 1996 ruling in a Cherry County case school district case. “That case, *Swanson v. State*, is “settled law,” and should pave the way for dismissal because the facts mirror the learning community facts, OPS attorneys say in court documents.”¹⁰⁵⁶ If the judge denied motions the case would proceed and his proposed quick timeline at least held promise that a decision one way or the other would keep the issue moving forward. “If Zastera denies the motions to dismiss, the lawsuit

¹⁰⁵³ Ibid.

¹⁰⁵⁴ Ibid.

¹⁰⁵⁵ Joe Dejka, "Judge Promises Quick Decision on Learning Community Tax Lawsuit," *Omaha World-Herald (NE)*, 2010h.

¹⁰⁵⁶ Ibid.

challenging the learning community would stay in Sarpy County District Court, where it would move on to a fact-finding stage known as discovery. The case would still be far from a final resolution.”¹⁰⁵⁷

By the following week, Zastera kept his promise to move the case along by denying motions to dismiss and setting a full hearing for May 4, 2010.¹⁰⁵⁸ According to a *World-Herald* account, “Zastera ruled that at this early point in the case the [Sarpy County] Farm Bureau’s complaint ‘should be liberally construed in plaintiffs’ favor.’ ‘At this juncture,’ he wrote in a Friday [March 19, 2010] opinion, ‘this court is not to look beyond the face of the complaint.’ [...] He [also] dismissed motions contending that the District Court lacks jurisdiction to hear a case that challenges the constitutionality of a law.”¹⁰⁵⁹

Within about a month, Judge Zastera agreed to delay the hearing until September 28, 2010 and set aside four days for the “trial”. Lawyers representing the Learning Community “[...]argued that they needed extra time to prepare because a ruling striking down the learning community tax statutes would have ‘an immediate and potentially

¹⁰⁵⁷ Ibid.

¹⁰⁵⁸ Joe Dejka, "Hearing Set for May 4 - Learning Community Lawsuit Gets Green Light - Judge Rejects 11 Districts' Effort to Dismiss a Suit Calling New Tax Levies Unconstitutional," *Omaha World-Herald (NE)*, 2010f.

¹⁰⁵⁹ Ibid.

devastating impact' on the learning community and its delivery of services in Douglas and Sarpy Counties.”¹⁰⁶⁰

“Learning community attorney Scott Daniel wrote in court papers that the case filed by Sarpy County property owners is so complicated that it will require a trial of five to seven days. But attorney Don Stenberg, who represents the Sarpy County Farm Bureau and two residents challenging two learning community tax levies, said their case is so simple they need only an hour to present it.”¹⁰⁶¹ Stenberg also argued it would be best to have the case resolved before levies were set again allowing schools to levy on their own.¹⁰⁶²

In a Sunday, June 20, 2010 article, the school district dissatisfaction with the Learning Community was apparent as Millard, Elkhorn and Papillion-La Vista school boards were all reported to have voted to support efforts that would eliminate the coordinating council and replace it with a new structure that might be something like had been proposed by Senator Kopplin in LB 547 back in 2007. Additionally, Douglas County West, South Sarpy, and Ralston all had reportedly “adopted positions” that were critical of the new council. “The unrest comes after the 11-district Learning Community enjoyed relative calm for the first year and a half of its existence. Millard

¹⁰⁶⁰ Joe Dejka, "Judge Delays Trial on Learning Community - The Case Challenges the Entity's Tax Levies," *Omaha World-Herald (NE)*, 2010g.

¹⁰⁶¹ Ibid.

¹⁰⁶² Ibid.

Superintendent Keith Lutz recently called the council ‘dysfunctional,’ and the South Sarpy board used the word ‘separatist’ to describe how the council operates.¹⁰⁶³

Although the concerns had been there from the beginning of the dispute, the emergence of a new set of educational leaders in the Learning Community and the efforts to both implement the complex new structure as well as begin working in collaboration with the school districts was a daunting task at best. That challenge was bound to create problems.

The frustration surfaced in several ways. “The council ‘duplicates everything we’ve been doing for 20 years,’ Lutz said. [He added] there’s no intention to undermine the Learning Community’s common property tax levies, programs or services. But he said nearly all the council’s work could be done under a streamlined system by professional educators and through agreements among districts.”¹⁰⁶⁴ Lutz held concerns that were shared by other superintendents as well. Julie Brewer, as executive director addressed the concerns with the lawsuit and the need for the learning community to defend itself. However, the normally conciliatory, South Sarpy Superintendent Chuck Chevalier said the rising legal fees are “absolutely angering us.”¹⁰⁶⁵

¹⁰⁶³ Joe Dejka, "World-Herald Exclusive - Learning Community Council Under Attack - Some of the Member School Boards Seek a Streamlined Governing Structure that Gives them Greater Control. - At Issue: How Money is being Spent - Learning Community Coordinating Council," *Omaha World-Herald (NE)*, 2010o.

¹⁰⁶⁴ Ibid.

¹⁰⁶⁵ Ibid.

Millard board President Mike Pate speaking about their desire to change the structure was reported to say, “[t]he last thing we want to do is open a can of worms’ regarding the boundary disputes that forced Millard officials to fight for their district’s existence under the specter of an OPS takeover. But Pate said the governance is ‘a public policy issue, and this is just bad public policy to create a government entity that does not have to exist.’”¹⁰⁶⁶

Senator Adams and former Senator Chambers were also cited in the *World-Herald* article. Adams called the criticism ‘unfortunate’ and added that he wasn’t convinced changes were needed. Chambers who was reported to be considering another run for the legislature in 2012 said that changes were “premature” and added, “People who undertake to open Pandora's Box may be surprised at what emerges.”¹⁰⁶⁷

Senator Brad Ashford said he is open to a governance change as long as the Learning Community’s core mission remains intact. He indicated the council needed its independence and he would not favor school board members or superintendents controlling the governance. Chambers who also was opposed to “transferring control” school boards and superintendents described them as “the perpetrators of the problems that resulted in the creation of the Learning Community.”¹⁰⁶⁸

Senator Adams said it was too early to judge the council's effectiveness and Rick Kolowski, council chairman and a retired Millard West High principal, said the council

¹⁰⁶⁶ Ibid.

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Ibid.

was looking to address concerns and work more collaboratively with school districts. He said, “Whoever wants action and wants it now does not understand what it takes to put something like this together.” Chambers similarly said “it would be ‘preposterous and very naive’ to think that the Learning Community, which deals with highly contentious public school questions and turf fights, ‘is going to move with the precision and smoothness of a Rolex watch.’”¹⁰⁶⁹

2010 Budget and Levy Setting

By late summer it seemed as if the common levy, by entering its second year, would be part of the “new normal” as news accounts of school district budget meetings in Bellevue and Millard were not particularly unusual and the mention of the learning community levies impacting districts were basically “matter-of-fact” realities.¹⁰⁷⁰ In Millard, the budget was reported to rest “[...]on the expectation that the Learning Community Council will set the common general fund levy at 95 cents and the common building fund levy at zero. Brad Burwell, a Millard school board member who also serves on the council, said he expects that the council will use those

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Julie Anderson, "FYI... - A Roundup of Local Governmental Meetings," *Omaha World-Herald (NE)*, 2010b.; "School Budget Draws no Comments at Meeting." *Omaha World-Herald (NE)*, 2010.; Joe Dejka, "2010-2011 Budget - Millard Public Schools' Tax Bite Won't Get any Bigger - But that could Change when Federal Stimulus Money Runs Out for the 2011-12 Year," *Omaha World-Herald (NE)*, 2010c.

amounts.”¹⁰⁷¹ As was the case in other places, the reports on school district budgets meetings were straight forward in Omaha Public Schools and Papillion-La Vista.¹⁰⁷²

The Learning Community was also working on its budget which for the first time would include a one-cent levy authority for operating various programs and services through elementary learning centers. “The Learning Community Council on Thursday night [August 12, 2010] unveiled a 2010-11 budget that includes a new 1-cent property tax for programs aimed at helping disadvantaged children achieve in school.”¹⁰⁷³ This represented the first time the council could access the levy since LB 1070 had passed in the spring and it was reported to generate about \$4.7 million dollars. The council also reduced a capital levy to one-eighth of a cent and did not levy for a common building fund to be shared with school districts. It also set the common operating levy at 95 cents as expected.¹⁰⁷⁴

Near the end of August Judge Zastera ruled that the Sarpy County Farm Bureau was 11 days late in filing its lawsuit challenging the constitutionality of two Learning Community property taxes. The judge did not address the merits of the case but dismissed it on the grounds that such a case would have to be filed in the year the taxes

¹⁰⁷¹ Ibid.

¹⁰⁷² Michaela Saunders, "FYI...a Roundup of Local Governmental Meetings," *Omaha World-Herald (NE)*, 2010b.; Scott Stewart, "Hearings Set on School Budget, Levy," *Omaha World-Herald (NE)*, 2010a.

¹⁰⁷³ Joe Dejka, "1-Cent Property Tax Sought to Help Disadvantaged Students - The Learning Community Council Unveils the New Levy, Part of its \$5.5 Million Spending Plan," *Omaha World-Herald (NE)*, 2010b.

¹⁰⁷⁴ Ibid.

were levied. The options for Stenberg and his clients were to appeal the ruling, persuade the Nebraska Supreme Court to accept the case, or re-file the lawsuit meeting the deadline. “Our goal is to get as prompt a decision as possible,” Stenberg said.¹⁰⁷⁵ The ruling most likely meant that the issue would go unresolved for some time; however, school districts and learning community continued to operate largely without a technical hitch. Papillion-La Vista was reported to offer some concerns about open enrollment and transportation but the financial planning seemed to be working for them like the other districts. “Open enrollment with the Learning Community also resulted in transportation costs in excess of what the district anticipated for state aid calculations in October, Lewis said. Transportation costs are up 12.13 percent for regular and special education, for a total of \$1.6 million for district transportation. ‘The logistics of open enrollment continue to be a challenge,’ said Renee Jacobson, assistant superintendent for human resources.”¹⁰⁷⁶

Millard school officials again raised the idea of changing the Learning Community governance in early September which was met with criticism from Omaha Public Schools and others. However, Millard Board member Pate suggested that others would be interested in a change. “We'd like to have a consensus of all 11, but we know that's probably not going to be possible,” Pate reportedly said. He added, “But I think

¹⁰⁷⁵ Joe Dejka, "Court Rejects Learning Community Tax Fight," *Omaha World-Herald (NE)*, 2010d.

¹⁰⁷⁶ Scott Stewart, "Papillion-La Vista Schools Propose 2.3 Percent Property Tax Increase," *Omaha World-Herald (NE)*, 2010b.

from the comments I've heard, most people are in favor of doing something.”¹⁰⁷⁷ The plan would have reportedly left the common levy in place but other activities would operate through interlocal agreements. Pate added that the main goal was to “just to get rid of the governance structure, just eliminate that, and put the authority back into the local school districts, which are the local school boards and superintendents.”¹⁰⁷⁸

As the pieces fell into place for a second straight year, Millard, Omaha, and Elkhorn all set levy rates after the learning community set the common levies.¹⁰⁷⁹ It, at least appeared as if the common levy was working as expected. With a national economic downturn impacting values and impacting the amount of state aid available to school districts the common levy was balancing out some of the modest tax base variability. For instance, in Omaha, the district's tax based dropped more than had been projected but the learning community tax base did slightly better and made up for the discrepancy.¹⁰⁸⁰

¹⁰⁷⁷ Joe Dejka, "Learning Community Downsizing Proposal Draws Mixed Reaction," *Omaha World-Herald (NE)*, 2010j.

¹⁰⁷⁸ Ibid.

¹⁰⁷⁹ Joe Dejka, "Millard District Still Holds Line on Tax Rate," *Omaha World-Herald (NE)*, 2010l.; Michaela Saunders, "Board Approves Budget with Slightly Smaller Tax Rate - The Owner of a \$150,000 Home in the Omaha District Will Pay about \$3 Less for the Current School Year," *Omaha World-Herald (NE)*, 2010a.; Julie Anderson, "Elkhorn School Tax Levy Going Up - The District's Tax Base Hasn't Kept Pace with Enrollment Growth," *Omaha World-Herald (NE)*, 2010a.

¹⁰⁸⁰ Michaela Saunders, "Board Approves Budget with Slightly Smaller Tax Rate - The Owner of a \$150,000 Home in the Omaha District Will Pay about \$3 Less for the Current School Year," *Omaha World-Herald (NE)*, 2010a.

The *World-Herald* continued to analyze the differences between the common levy and the likely results if districts maintained separate levies. The paper reported that Omaha and Bellevue would have been slightly better off under the old system while Millard was slightly better off under the common levy.¹⁰⁸¹ Officials for Omaha and Bellevue suggested they were still supportive as they were taking into account the longer view. Millard board member Pate did not change his mind either as he suggested it was about “public policy” and not about whether Millard gained or not. “Liz Standish, OPS controller, said the common levy was intended to create equitable access to resources by tying together the 11 districts to create a stable tax base for education. That has happened, she said, giving OPS access to property values in outlying parts of the two counties. [...] ‘The economic conditions have resulted in essentially flat property value growth in the two-county area,’ Standish said.”¹⁰⁸² Also, Douglas County West was “smacked the worst” according to their superintendent as was expected based on the valuation per student in the district.¹⁰⁸³

In late October, it was announced that Julie Brewer who had served for 18 months as the Learning Community chief operating officer would resign. Brewer, who been an active advocate for setting up the new system announced she was moving to California due to her husband’s new job. Brewer said leaving was hard and added, “But I’m proud

¹⁰⁸¹ Joe Dejka, "Districts Thrown for Loss - But Despite the Setback, OPS and Bellevue School Officials Still Back the Learning Community. - Who Gained, Who Lost Under Learning Community," *Omaha World-Herald (NE)*, 2010e.

¹⁰⁸² Ibid.

¹⁰⁸³ Ibid.

to have been part of the initial team and hope we have created a strong foundation that will allow others to lead the organization to the next level,” she said.¹⁰⁸⁴ The council acted quickly to search for Brewer’s replacement.

By November, the *World-Herald* reported that most were “not ready to give up on” the learning community. Citing their own poll in a November 14, 2010 article, the paper suggested supporters and critics, alike, thought changes in transportation were necessary as the costs for such an ambitious inter-district transfer program were more than expected. That coupled with uncertain financial times would likely result in some changes.¹⁰⁸⁵ “Omaha State Sen. Brad Ashford, a supporter of the two-year-old Learning Community, said lawmakers must address the transportation costs and possibly ‘tweak’ the law in the coming session to refine its purpose. The public is confused over where the Learning Community spends its money, what its goals are and what the results are, Ashford said. ‘All of that is mushy and unclear,’ he said. ‘The Learning Community needs a re-start.’”¹⁰⁸⁶

Senator Greg Adams also weighed in with his appreciation for the respondents’ patience and he added the learning community needs more time before doing anything

¹⁰⁸⁴ Joe Dejka, "Learning Community Chief to Resign - Julie Brewer Says Her Husband has Accepted a Job in California," *Omaha World-Herald (NE)*, 2010i.

¹⁰⁸⁵ Joe Dejka, "World-Herald Exclusive - Not Ready to Give Up on Learning Community - A World-Herald Poll Suggests Many Remain Patient, but Even Backers Say Transportation Costs must be Curbed," *Omaha World-Herald (NE)*, 2010p.

¹⁰⁸⁶ Ibid.

different. "I can't stand here and say we've created the perfect educational model, that's why I've been open to making adjustments," he said.¹⁰⁸⁷

The Learning Community was required to produce a formal report to the Nebraska Legislature and presented that report to the Legislature in December, 2010. The report was basically to provide a "baseline" for evaluation in the future of the open enrollment and other functions of the Learning Community. However, the *World-Herald* reported "the biggest news is not what's in the 2010 Baseline Evaluation Report but what was left out."¹⁰⁸⁸ The article reported some of the underlying tension between school districts and the learning community resulted in a fight over data sharing although some of that data was necessary for the learning community to accomplish its defined tasks.

¹⁰⁸⁷ Ibid.

¹⁰⁸⁸ Joe Dejka, "Not all School Districts Cooperative - Some Members of the Learning Community Failed to Provide Data Needed for the First Formal Report to the Legislature," *Omaha World-Herald (NE)*, 2010m.

CHAPTER 9

2011: School Finance Dominates While a Revived Court Challenge Lingers

As time progressed and yet another year started, issues with the learning community continued to surface. As the 2011 Legislative Session started, the question of common levy had largely been relegated to the discussion in the courts. However, as the past few months of 2010 revealed, there were ongoing concerns with the governance structure, transportation and open enrollment, as well as a general working relationship between school officials and the Learning Community that had surfaced, in part, as a data sharing issue. Additionally, other issues including focus schools and truancy would surface as issues linked to the Learning Community. However, the Legislature would also face another round of school finance concerns that proved to supersede and overshadow many other issues.

Before the session started, it was appeared that the Sarpy County Farm Bureau would continue to challenge the common levy in the Learning Community. Don Stenberg who had represented the group but was about to assume his new office as State Treasurer said “The legal issues on the merits are identical.”¹⁰⁸⁹ However, now the group would be represented by new legal counsel as attorney Thomas Culhane has took over the case and a separate lawsuit in which Dwight Trumble of Sarpy County is suing for a refund of Learning Community taxes. “Stenberg said he hopes one of the cases eventually will be decided on the merits. ‘I think we've got all the procedural bases

¹⁰⁸⁹ Joe Dejka, "Learning Community Opponents File Suit Again," *Omaha World-Herald (NE)*, 2011.

covered now, and hopefully now the court will reach the merits of the constitutionality of the statutes,' he said."¹⁰⁹⁰ Kurth Brashear (son of Kermit Brashear) who represented the Learning Community said, "Obviously we believe the common levy is constitutional and disagree with their assertions."¹⁰⁹¹

The Rise of Tangential Issues

While the legal challenges to the common levy now were eminent, the ongoing efforts to adjust the focus of the Learning Community included a plan to redirect funds for operation to concerns about student truancy in the metro area.¹⁰⁹² That effort encompassed in LB 463 was largely orchestrated by Senator Ashford but was also supported by Governor Heineman among others. The truancy focus also seemed to be on target according to Commission of Education Roger Breed and some of his former colleagues among the Learning Community superintendents. "The superintendents have agreed to make the issue a priority, said Gretna Superintendent Kevin Riley, the group's liaison to the Learning Community. The group, he said, has been working with Ashford, the Douglas and Sarpy County attorneys, judges, and public and private agencies involved in child services on how to coordinate anti-truancy efforts. The group plans to have that protocol ready in a couple of months."¹⁰⁹³ As some of the funding was planned

¹⁰⁹⁰ Ibid.

¹⁰⁹¹ Ibid.

¹⁰⁹² Julie Anderson, "Bill Would Shift Funds to Fight Truancy - Superintendents in the Learning Community Say They're On Board with the Plan. - Student Absenteeism - Plan Specifics," *Omaha World-Herald (NE)*, 2011.

¹⁰⁹³ Ibid.

to come from a state appropriation for the Learning Community, Rick Kolowski said they agreed with the need to reduce absenteeism but would have to find other funds for operation of the Learning Community.¹⁰⁹⁴

On January 20, 2011 it was made public that the Learning Community would hire the former head of the Iowa Department of Education to serve as the new administrative head of the organization. Ted Stilwell had an extensive career in Iowa and he said the Learning Community is a "pretty remarkable" entity bringing 11 school districts together to help students.¹⁰⁹⁵

By the end of January, it was clear that the Underwood Hills focus school that originated through a partnership between Omaha, Westside, and Elkhorn would not survive another year. The original focus school effort predated the official formation of the Learning Community but ever tightening budgets left districts with the tough choice of abandoning the effort.¹⁰⁹⁶

As expected the transportation issue would be addressed by the Legislature and some options were presented at a hearing on February 28, 2011 before the Education Committee. "State Sen. Bob Krist of Omaha introduced Legislative Bill 53 to limit free bus rides only to students whose transfers help achieve the Learning Community's goal

¹⁰⁹⁴ Ibid.

¹⁰⁹⁵ Joe Dejka, "Learning Community Lands Former Iowa Official," *Omaha World-Herald (NE)*, 2011h.

¹⁰⁹⁶ Joe Dejka and Jonathon Braden, "Popular Focus School to Close for Lack of Funds - the Innovative Multi-District Partnership at Underwood Hills Will End in June," *Omaha World-Herald (NE)*, 2011.

of improving socioeconomic diversity in every public school in Sarpy and Douglas Counties.”¹⁰⁹⁷

The Education Committee rejected a proposal that would overhaul the Learning Community governance structure on March 3, 2011. The proposal, LB 548 had been supported by suburban schools that were frustrated by some of the Learning Community activities. Millard, Papillion La Vista, Douglas County West, and Elkhorn all were on record supporting the change. However, the effort that seemed to stem from Millard board member Pate had been opposed by former Millard principal and current Learning Community council chair, Kolowski.

On hearing the word that LB 548 had been rejected by the Education Committee Kolowski said, “That's good news. We're very pleased with that. We think it was misguided and inappropriate.”¹⁰⁹⁸ Senator McCoy who introduced the bill said he respected the committee’s decision but added that more discussion was needed to address the governance and make the operation more efficient.¹⁰⁹⁹

As the session progressed, some of the tangential issues were advanced including a revamped version of Senator Jeremy Norquist’s bill on focus schools while others were kept in committee including the bills to reduce the transportation of students in the Learning Community. Norquist’s LB 558 was the only stand-alone piece of legislation

¹⁰⁹⁷ Joe Dejka, "Not all Kids would Get Free Rides Under Bill - Only those Students Whose Transfers Help with Diversity would Qualify," *Omaha World-Herald (NE)*, 2011l.

¹⁰⁹⁸ Joe Dejka, "Bill on Learning Community Control Fails," *Omaha World-Herald (NE)*, 2011a.

¹⁰⁹⁹ Ibid.

addressing the Learning Community to make it across the Governor's desk and be signed into law. His bill was essentially, a technical amendment to allow multi-district focus schools to qualify for an allowance under the finance formula.

The proposals addressing transportation in a learning community ended up languishing in committee. Although there was a concern with the costs associated with transporting students the committee elected to keep and maintain student options as a priority. Two legislative bills, LB 53 and LB 520, proposed restricting who gets free rides under open enrollment were stopped in the Education Committee. "We always knew that this transportation feature in the law would cost something," Senator Bill Avery said. He added, "But the overall objective of providing kids who are in poverty with the best opportunities to achieve was an overriding and compelling interest."¹¹⁰⁰ Senator Greg Adams said committee members were opposed to limiting students' choices. "If our goal is academic achievement and options, there would be some kids who qualify for free and reduced price lunch that wouldn't have options," he said.¹¹⁰¹

With the legislative session winding down and having addressed the need to slow down school aid and resources growth through the state aid formula, the only thing left was a little bit of distaste in mouths of a few learning community critics. With the common levy lawsuit still to be decided, it seemed to be news whenever someone leveled a criticism against the learning community. For instance, just the mention of the

¹¹⁰⁰ Joe DeJka, "Only in the World-Herald - Bills to Restrict Students' Free Bus Rides Go Nowhere - The Proposals were Aimed at Cutting the Learning Community's Transportation Costs Resulting from Open Enrollment," *Omaha World-Herald (NE)*, 2011m.

¹¹⁰¹ Ibid.

Learning Community in questions to potential board members during an interview to fill a vacancy became a news story.¹¹⁰² Although subtle, the strain of the last few years of fight was apparent.

Tight budgets and shrinking resources also added to the context. Many of the Learning Community school districts were facing funding challenges brought on by state and federal “belt-tightening.” As districts started to review budgets in the summer of 2011, it was clear that there was some pain. Omaha Public Schools was going to look at a budget \$5.3 million less than the prior year. ““We’ve made some real sacrifices in programs,”” Pool said after Monday night’s [June 20, 2011] school board meeting. Among the sacrifices: the equivalent of 198 full-time positions will no longer be paid for from the general fund budget. Some of the positions, however, will be paid for by grants or other financial means in the short term, Pool said.”¹¹⁰³

July 12, 2011: Sarpy Judge Hears Arguments in Common Levy Suit

Sarpy County District Judge William Zastera took the case under advisement after hearing arguments July 12, 2011. That afternoon, the parties to the suit presented about 70 pieces of evidence to be reviewed by Zastera. Both sides reportedly asked the judge to decide the case based on the facts presented. “This is the first time that the merits of the case are before the court,” said Kurth Brashear, attorney for the Learning Community.¹¹⁰⁴

¹¹⁰² Joe Dejka, "Millard Finalists Criticize Learning Community," *Omaha World-Herald (NE)*, 2011j.

¹¹⁰³ Jonathon Braden, "OPS Faces Budget Cut of \$5.3 Million," *Omaha World-Herald (NE)*, 2011c.

¹¹⁰⁴ Joe Dejka, "Sarpy Judge to Determine Constitutionality of Tax Levy," *Omaha World-Herald (NE)*, 2011r.

Budget Planning and Adoption Season

The budget for the 2½-year-old Learning Community was proposed to increase 80 percent in part because of s cash reserves carried over from last school year. ““This is the year things are really kicking into full gear,’ said Ted Stilwill, executive director of the entity, which is tasked to raise academic achievement for youths in Douglas and Sarpy Counties.”¹¹⁰⁵

The Council had plans for the FY 2011-12 year to have \$3 million in grants to support extended-learning programs for elementary students primarily in poverty stricken areas of northeast and southeast Omaha as well as Bellevue. The budget includes \$250,000 for the Douglas County Attorney's Office to pay for processing truant students. There is also \$1.8 million included toward the remodeling costs of buildings that were being planned to serve as hubs for delivering services. The council set a 1-cent services levy, a 95-cent common levy for distribution and elected not to use any of the capital levies available.¹¹⁰⁶ The Learning Community budget would be adopted by the council at a meeting on Thursday, August 25, 2011.¹¹⁰⁷

In September, the school districts would begin adopting budgets and setting levies for the third straight year under the learning community. Omaha, Bellevue, Westside, Elkhorn, Papillion-LaVista and Ralston were all reported to set their annual budget and

¹¹⁰⁵ Joe DeJka, "Learning Community - With no Tax Hikes, Budget Up 80% - A Public Hearing on the Proposed \$9.7 Million Budget is Set for Aug. 18," *Omaha World-Herald (NE)*, 2011f.

¹¹⁰⁶ Ibid.

¹¹⁰⁷ Joe DeJka, "Learning Community - \$9.7 Million Budget OK'd by Council," *Omaha World-Herald (NE)*, 2011d.

levies in the new normal order under the learning community during the second week of September, 2011.¹¹⁰⁸

Sarpy County District Court Judge Rules Against the Common Levy

Just when the dust was settling on the budget activity, the Sarpy County district court ruled on the common levy and as the *World-Herald* reported “the bumpy takeoff of the Learning Community hit more turbulence” with a September 23, 2011 ruling that would strike down the common levy system.¹¹⁰⁹ Zastera, in an eight-page opinion, said the levies violate a Nebraska constitutional prohibition on levying property tax for a state purpose. However, the Nebraska Supreme Court had the final word on the constitutionality of state laws. Judge Zastera wrote that Legislators sought “to convert the traditional state function of providing ‘equalization aid,’ as it is free to do with the use of sales and income tax monies, into a local function supported by property tax funds.”¹¹¹⁰

Initial reaction to the decision ranged from disappointment to relief to “wait and see.” Senator Avery expressed, “I think the common levy is essential. Without

¹¹⁰⁸ Jonathon Braden, "OPS Board Approves \$470.9 Million Budget," *Omaha World-Herald (NE)*, 2011b.; Jonathon Braden, "District Sees More Students, Lower Budget - The Shortfall Will be made Up by a Hold on Curriculum Purchases, and Higher Property Valuations Will Help - but no New Taxes," *Omaha World-Herald (NE)*, 2011a.; Jonathon Braden, Mitchell Warren, Julie Anderson and Joe Dejka., "Area School Boards Set 2011-12 Budgets," *Omaha World-Herald (NE)*, 2011.

¹¹⁰⁹ Joe Dejka, "Judge Strikes Down Learning Community's Common Levies - The 11-District Cooperative is Dealt a Blow by the Ruling that its Tax System is Unconstitutional," *Omaha World-Herald (NE)*, 2011c.

¹¹¹⁰ Ibid.

the common levy, I'm not sure the Learning Community can be successful.”¹¹¹¹ Douglas County West superintendent George Conrad was pleased with the ruling as his district had been hit hard by the common levy practice due to high valuations per student. Although the Plaintiffs argued that the redistribution through a common levy was improper, OPS attorney Elizabeth Eynon-Kokrda said, “We think the district court erred in its decision.” On the other side, Tom Culhane, an attorney for plaintiffs, said “the court got it right. [...]The constitution says that the state cannot raise property taxes through a state property tax - it's just as simple as that.”¹¹¹²

With the ruling came uncertainty on behalf of the school districts. “School officials scrambled Monday to figure out if they need to hastily redo next year's budgets in light of the ruling. Meanwhile, a lawyer for the Learning Community filed a request with the Nebraska Supreme Court on Monday, [September 26, 2011] seeking a quick stay of the order to preserve school budgets while the ruling is appealed.”¹¹¹³ “Now with the Learning Community thing ruled unconstitutional, if they don't get a stay, I'm not sure what's going to happen, because the county won't be able to levy the Learning Community tax,” Millard Superintendent Keith Lutz said.¹¹¹⁴

The uncertainty of the situation and the necessity to have an answer before upcoming county board action to approve tax requests seemed to spark a flurry of pleas

¹¹¹¹ Ibid.

¹¹¹² Ibid.

¹¹¹³ Joe Dejka, "Districts Scurry for Plan B on Budgets," *Omaha World-Herald (NE)*, 2011b.

¹¹¹⁴ Ibid.

to the Nebraska Supreme Court. Learning Community attorney Kurth Brashear asked the Nebraska Supreme Court to expedite its decision. Because of the timing of the judge's ruling, "a precarious situation is developing, which can only be avoided with certainty if this court maintains the status quo and issues a stay pending its final determination of the constitutionality of the statutes in question."¹¹¹⁵ If the ruling is not stayed, individual taxpayers could refuse to pay the tax, he said. Brashear asked the court to rule on the stay by October 10th, because the Sarpy County Board of Equalization was scheduled to meet October 11th to approve tax requests of political subdivisions.¹¹¹⁶

The *World-Herald* reported, "Sarpy County Attorney Lee Polikov said he is advising school districts to abide by the judge's ruling until they hear differently. 'We're under a court order, and we've got to abide by the court order until a higher court authority tells us to do differently,' Polikov said. He said districts should revert to the tax structure that preceded the Learning Community, in which districts levy their own property taxes and keep the revenue."¹¹¹⁷

All of the school districts were forced to scramble in the uncertainty of the moment. Although the learning community attorney and several school districts were calling for a stay, the districts still were forced to consider options to make sure they could collect property taxes in the next year. The *World-Herald* reported on September 29, 2011 that, "While officials in some of its 11 member districts began laying plans to

¹¹¹⁵ Ibid.

¹¹¹⁶ Ibid.

¹¹¹⁷ Ibid.

rewrite their budgets to conform with the ruling, an attorney for the Learning Community has asked the Nebraska Supreme Court to act quickly to weigh in on the question of whether its system of common property tax levies is constitutional.”¹¹¹⁸

By October 3, 2011, the situation was getting more intense. The paper reported, “School boards for the Millard, Westside, Elkhorn, Papillion-La Vista, Bellevue and five other districts are hastily setting hearings to adopt alternative tax requests for 2011-12 in case the Nebraska Supreme Court does not grant a pending request to stay the judge's order.”¹¹¹⁹ By the next day, OPS had also scheduled a hearing for a new budget. And the paper reported that Mackiel was wishing that all 11 school districts would have also asked for a stay. However, as the paper reported, “some districts appear ready to move forward instead of trying to preserve the common levies, which [Mackiel] said is part of a “calculated unraveling” of the common levies and the Learning Community.”¹¹²⁰ The claim may not have been too far-fetched as several districts were now on record with their dissatisfaction with the overall effort.

Omaha attorney Elizabeth Eynon-Kokrda also sent an “urgent plea” to the high court to take action or suggested “chaos would reign” in the metro area. “Eynon-Kokrda wrote that some districts ‘are taking frantic, possibly unauthorized steps to fund their

¹¹¹⁸ Joe Dejka, "Speedy Appeal Sought on Levies - Learning Community Lawyers Want to Allow the Legislature enough Time to Act if Necessary," *Omaha World-Herald (NE)*, 2011s.

¹¹¹⁹ Joe Dejka, "Only in the World-Herald - School Districts Scrambling to Find Budget Alternatives," *Omaha World-Herald (NE)*, 2011o.

¹¹²⁰ Jonathon Braden, "OPS Schedules Hearing for New Budget - With the Learning Community's Common Tax Levy Struck Down, the School Board is Beginning to Pursue Alternative Funding," *Omaha World-Herald (NE)*, 2011d.

schools.’ A stay would maintain the status quo until the high court can rule on the constitutionality.”¹¹²¹

At the same time, the plaintiff’s side was asking the Supreme Court not to issue a stay. “‘A stay will not resolve anything,’ said Matthew Rusch, an attorney for the Sarpy County Farm Bureau and landowners John Knapp and Ron Woodle.”¹¹²² Instead, he suggested it would create more confusion if the higher court would later affirm the decision.

By Friday October 7, 2011 the Nebraska Supreme Court issued a stay which allowed the taxes to be imposed under the common levy. The *World-Herald* reported, “In an order signed by Chief Justice Michael Heavican, judges said that lawyers for the Omaha Public Schools, Bellevue Public Schools and Learning Community had shown ‘sufficient cause’ to warrant a court order staying the Sept. 23 ruling by Sarpy County District Court Judge William Zastera.”¹¹²³

The stay would mean that districts would not have to alter their budgets or tax requests. “Kevin Riley, superintendent of the Gretna Public Schools, said the stay ‘clarifies the budget and tax asking issue that had us all concerned.’ [He added] ‘Without

¹¹²¹ Ibid.

¹¹²² Joe Dejka, "Learning Community - Landowners Oppose Stay of Tax Ruling," *Omaha World-Herald (NE)*, 2011e.

¹¹²³ Joe Dejka, "Ruling Spares Learning Community Chaos - The Nebraska High Court's Stay Order Means Districts can use Budgets they Already Approved," *Omaha World-Herald (NE)*, 2011q.

the stay, we had districts that would have lost millions, and we would have had to straighten that out in the Legislature,”¹¹²⁴

Soon after the stay was ordered, the Nebraska Supreme Court set oral arguments for December 9, 2011 in order to expedite their ruling in case the Legislature needed to respond to their ultimate decision. Opposing parties each were reported to get 20 minutes to argue their positions before the state’s high court at that time.¹¹²⁵

The *World-Herald*, as had become an annual overview, analyzed the results of the common levy and estimated who the winners and losers were in the system. Once again, it appeared that districts that would have been expected to benefit from the new system were reported to be losers. However, once again Omaha and Bellevue suggested that the long term policy would benefit them. In part, the slow-down on valuation growth due to the stagnant economy was to blame, as was the mechanism of sharing both the percentages of value and aid. Although somewhat counter-intuitive, the long-term benefits were reported to outweigh the short-term losses. Dennis Pool, OPS's assistant superintendent for general administration suggested the system needs growth to work. “In a declining value situation, or a flat valuation situation, there’s no growth within the model,” Pool reportedly said. Kathy Bradley, a member of the Westside school board who also serves on the Learning Community Council agreed and noted that the common levy was designed during an economic boom when property values were

¹¹²⁴ Ibid.

¹¹²⁵ Joe Dejka, "Learning Community Gets Early Day in Court - The High Court Will Hear Arguments on the Shared Tax System Dec. 9 - Which may Leave the Issue for Lawmakers," *Omaha World-Herald (NE)*, 2011g.

surging and expected to continue rising - but that didn't happen. "It was sort of the perfect storm," Bradley said.¹¹²⁶ "Bellevue's school superintendent, Frank Harwood, said the district is better off in a shared tax pool than going it alone. Harwood said that 'to cry foul when it doesn't work in our way doesn't seem like the right way to do things.'"¹¹²⁷

Arguments in Front of the High Court

The late Senator Ron Raikes' words were central to the case as both sides of the dispute picked apart his words in determining the intent of the Learning Community Common Levy. One *World-Herald* article started, "In life, Ron Raikes reigned as Nebraska's education king. The powerful Lincoln lawmaker, killed two years ago in a farm accident, is credited as the architect of the experimental and controversial Learning Community of Douglas and Sarpy Counties. In death, his words, uttered on the floor of the Legislature, have become crucial evidence in the court fight that will decide whether the shared tax structure he created for the 11 school district entity is unconstitutional."¹¹²⁸ However, it is fitting, not just due to his prowess as a lawmaker, but, because as he often quipped and was quoted to say during a presentation five years earlier, "'It's all part of

¹¹²⁶ Paul Goodsell and Joe Dejka, "Only in the World-Herald - Common Levy's Big Losers Optimistic - A Shared System, for the Long Haul," *Omaha World-Herald (NE)*, 2011.

¹¹²⁷ Ibid.

¹¹²⁸ Joe Dejka, "Only in the World-Herald - Tax Suit may Turn on Raikes' Words - the Fight Over the Common Levy of the Learning Community Goes before the State's High Court Today," *Omaha World-Herald (NE)*, 2011p.

my effort to become Nebraska Bar Association's Man of the Year,' Raikes said in jest about his role as author of the controversial bills.”¹¹²⁹

Lawyers addressed the court for just under an hour on December 9, 2011. According to the *World-Herald*, the central issue in the case could be traced to a 1960's tax “revolt” led by Nebraska farmers and specifically the Nebraska Farm Bureau Federation. The result of that effort was a state constitutional prohibition of state property taxes. “The Nebraska Farm Bureau Federation launched a petition drive to prohibit the state ‘from levying a property tax for a state purpose.’ Voters approved it in November 1966, and lawmakers were left to fund state government with sales and income taxes.”¹¹³⁰ By December, 2011 the challenge to the common levy questioned the common levy on based on that constitutional prohibition as well as the notion of ‘uniformity’ and ‘commutation’ of taxes across county borders and for other political subdivisions. “Lawmakers, Farm Bureau lawyers say, ‘used a legislative subterfuge’ to create a system of equalizing state aid within the Learning Community, saving the state from committing additional aid to the metro area from other sources.”¹¹³¹ The unique scale of the learning community drew more attention to the issue; however, the common-levy had been found constitutional on a smaller scale among school districts in rural

¹¹²⁹ Michaela Saunders, "Education to Loom Large in Legislature - At a Gathering of Educators, State Sen. Ron Raikes Lists Likely Subjects for Debate," *Omaha World-Herald (NE)*, 2006.

¹¹³⁰ Joe Dejka, "Only in the World-Herald - Next Move on Tax Levy is Up to High Court - Judges Show Interest in the Words of the Late Ron Raikes, Architect of the Learning Community," *Omaha World-Herald (NE)*, 2011.

¹¹³¹ *Ibid.*

Cherry County. The lawyers defending the common levy argued the constitution gives lawmakers power to control local school districts, organize political subdivisions and authorize local property taxes in Nebraska. To bolster their argument they pointed to the 1996 case *Swanson v. State Department of Education*, in which the Supreme Court found constitutional a similar common levy in rural school districts.¹¹³²

Lawyers were also reported to argue that the creation of the Learning Community was a local issue and “the controlling and predominant purpose” was education of local students, the definition of local boundaries, and to bind together districts of a common interest.¹¹³³

The litigants cited Raikes, as Education Committee chairman and principal sponsor of the law that created the Learning Community, suggesting he was the expert on its purpose. But the supporters of the common levy suggest the Sarpy County Farm Bureau counsel used “snippets of a rich legislative history.”¹¹³⁴

John E. Anderson, a professor of economics at the University of Nebraska-Lincoln who focused his research on public finance, said in an interview with the *World-Herald* that the complexity rested, in part, on how property taxes and state aid work together in the Learning Community. “The essential issue, it would appear,” Anderson said, “is whether the interaction of the local property taxes and the state aid mechanism

¹¹³² Ibid.

¹¹³³ Ibid.

¹¹³⁴ Joe Dejka, "Only in the World-Herald - Tax Suit may Turn on Raikes' Words - The Fight Over the Common Levy of the Learning Community Goes before the State's High Court Today," *Omaha World-Herald (NE)*, 2011.

used to distribute money to the districts in the Learning Community essentially converts the local property taxes into state taxes.”¹¹³⁵

As the *World-Herald* reported, “The judges searched for answers on that relationship Friday[December 9, 2011]. Did lawmakers create the system to equalize funding between districts using local property taxes instead of using state income and sales taxes? Does the Learning Community Council play a significant role in levying the taxes, or is the levy-setting vote a formality? Could lawmakers set up similar super-size school entities elsewhere in the state to equalize funding and cut down on state-aid spending?”¹¹³⁶

Tom Culhane, attorney for the Sarpy County Farm Bureau and two landowners, argued that because state lawmakers dictated how the proceeds of the common levy would be distributed to districts the levy serves a state purpose. “At one point, Chief Justice Michael Heavican asked Learning Community lawyer Kurth Brashear if use of the aid formula indicates a state purpose. ‘Does that diminish your argument that it's not a state issue?’ Heavican asked.”¹¹³⁷

Although the judges did not give a time line, most expected that if the court struck down the current law, the legislature would need to act. If the law was sustained, it would presumably no longer be a point of legal dispute.

¹¹³⁵ Joe Dejka, "Nebraska Supreme Court - Debate Focus: Is School Levy a State Issue?" *Omaha World-Herald (NE)*, 2011k.

¹¹³⁶ Ibid.

¹¹³⁷ Ibid.

CHAPTER 10

2012: The Common Levy is Constitutional

2012 started like most of the previous few years. There was nothing remarkable on the horizon, the substantial issues that had surfaced during “one city, one school” debate had largely subsided and most concerns were focused back on the routines of school finance, curriculum, and student opportunities. However, the one lingering issue was the resolution to the most recent case in front of the Nebraska Supreme Court. Legislators were hesitant to address the common levy issue, not knowing if they would even have to change course with the metro area schools.

Learning Community bills were almost non-existent in 2012 and although Senator Krist had introduced a county school reorganization bill, that was only half-hearted, in part thinking that the legislative session may be turned upside down if the Supreme Court upheld the Sarpy County court decision.¹¹³⁸

The *World-Herald* reported that Millard Public schools was in “no hurry” to put another bond issue in front of their voters after losing such a request just a few months earlier. “The district’s financial picture depends, of course, on how much state aid lawmakers direct to schools, whether the Learning Community and its common property tax levy remain intact and whether senators tinker with other school funding mechanisms such as tax and spending lids according to Ken Fossen. Despite the district’s dissatisfaction with the Learning Community, Millard had been a “winner” under its

¹¹³⁸ Nebraska Legislature Education Committee, Education Committee Hearing Transcript, February 7, 2012, 102nd Legislature, First Session, 2012, p. 4.

system of shared state aid and property taxes. District officials were reported to be “awaiting” a decision from the Nebraska Supreme Court on the constitutionality of the common levy.¹¹³⁹

The *World-Herald* published a lengthy article about the cost of attorneys in the Omaha Public Schools on Sunday, January 29, 2012. The article reflected a sentiment that had been highlighted for several years as OPS had engaged in legal battles with the state and with neighboring districts. Most recently, the district had engaged in helping defend the challenge to the Learning Community.

On Friday, February 3, 2012 the Nebraska Supreme Court upheld the current law and the common levy as constitutional.¹¹⁴⁰ The ruling was reported to be “a victory for the Omaha and Bellevue school officials who fought to save the shared property tax system as crucial to their districts’ long-term financial health.” But, the 36-page opinion disappointed some suburban Omaha school officials, dashing their hopes that the court would strike a blow to the 11-district education cooperative created by lawmakers in 2007.”¹¹⁴¹ The high court Friday ruled the common levy passed muster on all three constitutional challenges raised by the plaintiffs: that the levy was created to serve a state

¹¹³⁹ Joe Dejka, "After Bond Rejection, Board Hesitant to have another Go," *Omaha World-Herald (NE)*, 2012a.

¹¹⁴⁰ *Sarpy County Farm Bureau, et al. v. Learning Community of Douglas and Sarpy Counties, et al.*, Nebraska Supreme Court, No. S-11-805, February 3, 2012

¹¹⁴¹ Joe Dejka, "Learning Community Levy is Upheld - Nebraska High Court Rejects Argument the Tax System has a State, Not Local, Purpose," *Omaha World-Herald (NE)*, 2012.

purpose, that the taxes were not uniformly applied and that the system took money from some districts and gave it to others.¹¹⁴²

The court, with no dissenting opinions, rejected the argument of the Sarpy County Farm Bureau and two landowners that the levy, which redistributed property taxes among districts, violated the Nebraska Constitution's prohibition on property taxes for a state purpose. The court said the levy served a primarily local purpose. "The legislative history makes it clear that the Learning Community legislation was enacted to resolve specific, local problems and that the predominant purpose of the legislation was not to benefit the state as a whole," judges said.¹¹⁴³ The court also dismissed plaintiffs' arguments that the taxes were unconstitutional because they were not applied uniformly and represented an unconstitutional taking of tax revenue from one district for the benefit of another.¹¹⁴⁴

The chairwoman of the Learning Community Coordinating Council, Lorraine Chang was pleased with the ruling so the work could move forward while critics were disappointed by the ruling. Mike Pate, from Millard, suggested he was still going to fight for elimination of the Learning Community. Rick Black of Papillion LaVista also suggested he still had questions about the learning community including the governance

¹¹⁴² Joe Dejka, "Learning Community - Director: Court Affirmed Principle - Critics Disappointed with the Property Tax Ruling Say they Will Keep Pressing for Changes," *Omaha World-Herald (NE)*, 2012b.

¹¹⁴³ Joe Dejka, "Learning Community Levy is Upheld - Nebraska High Court Rejects Argument the Tax System has a State, Not Local, Purpose," *Omaha World-Herald (NE)*, 2012d.

¹¹⁴⁴ *Ibid.*

structure, transportation costs for open-enrollment and what he suggested was “specialized legislation” affecting only the metro area.¹¹⁴⁵

The executive director of the Learning Community was pleased with the Supreme Court ruling upholding its common property tax levy. Ted Stilwill said the ruling confirms the Learning Committee's belief that helping the Omaha metro area's most disadvantaged children is not the responsibility of just one school district.¹¹⁴⁶

“Greg Adams, chairman of the Legislature’s Education Committee, said Friday he was confident, though ‘not absolutely,’ that the legislation he helped the late Education Committee Chairman Ron Raikes craft would pass constitutional muster. [...] In this case, the Supreme Court has said, ‘You did it right,’ Adams said.”¹¹⁴⁷ Adams reportedly said he had hoped for a ruling early in the 60-day legislative session in case the common levy was struck down, and lawmakers needed to re-write the law. As the paper reported. “Adams said he remains open to legislative changes that would improve the Learning Community. In almost every session, someone has proposed legislation to chip away at the regional education entity or to make technical changes, he said.”¹¹⁴⁸

The *World-Herald* editorial writers, as they have done through the course of this issue, offered their view of what the court ruling means. “This decision resolves a key

¹¹⁴⁵ Ibid.

¹¹⁴⁶ Joe Dejka, "Learning Community - Director: Court Affirmed Principle - Critics Disappointed with the Property Tax Ruling Say they Will Keep Pressing for Changes," *Omaha World-Herald (NE)*, 2012b.

¹¹⁴⁷ Ibid.

¹¹⁴⁸ Ibid.

and divisive issue that has dogged the Learning Community, which was designed to shift tax money from property-rich districts toward Omaha Public Schools and other districts with high needs and lower resources. This decision clears the way for the Learning Community to fully focus on the business of helping students. Ensuring their educational opportunities and boosting academic achievement are not small goals. With doubts about the common levy removed by the court, the Learning Community can concentrate on producing those results.”¹¹⁴⁹

A parallel legal challenge to the Learning Community tax system was dismissed on largely technical and procedural grounds on March 16, 2012 by the Nebraska Supreme Court. This one was filed in 2010 by a Sarpy County landowner and challenged the constitutionality of the common general and building fund levies. Dwight Trumble sued the school districts in the Learning Community and the Sarpy County Board, claiming the levies imposed on property in Douglas, Sarpy and parts of Washington Counties violated the Nebraska Constitution. The ruling suggested, “Since the district court lacked jurisdiction, it properly dismissed the action,” according to the Supreme Court judge.¹¹⁵⁰

Given the timing of the court decision and the short session and election year, the Learning Community survived another legislative session. And as time has a way of doing, “it marches on” and the story undoubtedly continues.

¹¹⁴⁹ “Levy Doubts Lifted,” *Omaha World-Herald (NE)*, 2012.

¹¹⁵⁰ Joe Dejka, “High Court Dismisses Challenge to Learning Community Levies,” *Omaha World-Herald (NE)*, 2012.

CHAPTER 11

Findings

Review of the Study Purpose

As previously identified, “The purpose of this study is to isolate and identify the specific purposes and intent of the common levy in the Learning Community so as to provide a basis for future research and evaluation of the effectiveness of the common levy.” And, as the history unfolded, it became clear that the purposes and intent of the common levy are intertwined with the other purposes and other intentions of the broader policy agenda. If the Learning Community is somehow analogous to a “tent,” it would seem to follow that the common levy is the “tent pole.” The purpose of this study in particular is to isolate the purposes of “tent pole” from the “tent.” One without the other may be nonsensical; however, each could be separately functional, but they reach their highest and best use collectively. This study does take into account the “learning community common levy.” Although it would be possible to just focus on the common levy, it reasonably follows that a “tent pole” without a “tent” is just a “pole.” The Learning Community without the common levy might still be functional, but the common levy provides the structure and formal purpose that seems to bolster and validate the other functions of the Learning Community.

Research Question Revisited

The central research question of this study is, “What are the Legislative purposes and intent of the common levy as implemented in the Learning Community?” The lead up to the issue and the history as it developed over the period of time between May, 2005 and February, 2012 provide an account that molded those purposes and intent. This study

relied primarily on newspaper accounts and legislative history and focuses less on the specifics of the policy as much as the general concept of the Learning Community common levy. The findings are organized with a review of the issues that led to the “moment of policy choice,” the recorded evidence that supports the findings, and ultimately the legislative purpose and intent including the policy outcomes and expectations of the common levy.

Issues that Led to the Learning Community and Common Levy

One City, One School as a Dramatic Catalyst: It is certainly tempting to look for a single point or catalyst to an issue such as this, however the history that leads up to the sudden attempt for Omaha Public Schools to claim rights the neighboring districts could be a study in and of itself. It is clear that there is a history that positioned the district to decide to suddenly attempt the boundary change. The justifications documented included the concern that the legislature would limit the future opportunity as well as justifications based on legislative action to consolidate elementary only districts and legislative inaction to diminish “one city, one school” provisions of law for other cities in Nebraska. However, it was years of inaction by the Omaha Public School district that forced the suddenness of the action in June, 2005. The history of inaction was detailed in newspaper accounts and at the very least it was tied to the urban and suburban development patterns that persisted in Omaha that resulted in socio-economic and racial isolation. All of that history could and maybe, should be studied in detail as well. This research however finds that all of that collective history led to the sudden and, either desperate or strategic move by Omaha to attempt “one city, one school.”

School finance equity: Although, much more complex than is portrayed in this history, it is clear that, in part, concerns about school finance prompted Omaha to attempt one city, one school. The isolation of an urban center school district gradually undermines available finance and a fear of being “land-locked” was expressed. Additionally, a broader tax base would be protected from urban value decline and economic development strategies that tend to undermine the value base. Policy wise, larger tax bases are part of the motivation behind school reorganization generally as it provides a more stable footing for school districts. Finance equity also was known to be a fundamental policy principle of the state finance system, but concerns about long term state commitment to that both bolster OPS and fit the policy objectives of the state, at least as articulated by Senator Raikes.

Boundary Wars: One thing that seems remarkable in the history is that the boundary fight between Bellevue and Papillion LaVista had persisted for years even though it seemed to be in “remission” for two decades. However, the remarkable part was that even as their issue surfaced, Sarpy County officials suggested that the “problems” in Douglas county were “not their issue.” Senator Raikes immediately had involved Sarpy County in his learning community concept, but Bellevue and Papillion-LaVista failed to see how they were part of the problem. Naturally, the boundary issues in Bellevue and in Omaha were connected to the same statute the history of the Sarpy County boundary issues were of substantial influence in the policy purposes in the learning community.

Metropolitan Regional Community: Certainly the desire to main local autonomy, services, and even schools is appropriate and even healthy. However, the failure to see the interconnection between the broader communities is a challenge in metropolitan areas such as Omaha. However, it was also clear, at least to Senator Raikes and those that followed him that the metro area needed to concern itself more broadly with the education of students across the region. Unfortunately, the parochialism that had plagued the metro Omaha area was also a problem for suburban Sarpy County. William Dodd who studied the impact of the property tax base in Douglas County on school districts back in 1976 also recognized some opportunity to have a tax-base sharing plan. The nature of a broader community of interest wasn't lost on him as he quoted former Omaha Mayor Eugene Leahy regarding the importance of understanding their interests. He said,

*People who refuse to get involved in the problems of their community are much like the four men ship-wrecked in a life boat; the two on one end watched as the two on the other end bailed frantically to keep the boat afloat. One said to the other, thank heavens the hole is not in our end of the boat.*¹¹⁵¹

The regional nature of the one city, one school “problem” was well documented and the school districts in both counties were perceived by Senator Raikes and others to be in the “same boat;” and certainly part of the same community.

¹¹⁵¹ William Henry Dodd, *Property Tax Base and Revenue Yield Projections within Selected Public School Districts of Omaha, Nebraska and Douglas County, Nebraska to the Year 2000 A. D.*, 1976.

Racial and Socio-Economic Isolation: Although not at the forefront of the conversation in the initial few months, it was highlighted by a variety of community leaders and eventually highlighted by Senator Raikes and Senator Chambers in the proposed break-up of the Omaha Public School district. The history that predates this study includes the impact of the national context of segregation and eventual mandatory desegregation. In Omaha Public Schools, the role of Federal court-ordered busing in an era after the 1974 *Milliken v. Bradley* case disallowed court-ordered desegregation plans across school district boundaries contributes to a history worthy of further study.

Political and Educational Instability: The history demonstrates how utterly disruptive the uncertainty was on the affected school districts as well as on the policy debate in the Legislature. The need to reach a stable “new starting point” as Senator Raikes put it after the passage of LB 1024. Even later as the challenge to the common levy was in the courts, the notion of stability and certainty was necessary and schools looked to the legislature to find that stability.

Lack of Intergovernmental Communication and Trust: School districts and other local political subdivisions failed to effectively communicate and work together. The background tension redefined the need for educational leaders to collaborate and communicate effectively for the common good. Additionally, the system established did not enhance trust as the boundary issue had long been an issue and a “cold war-type” environment persisted between many of the districts. That sentiment was portrayed in several ways in the history including editorial comments by the *World-Herald*.

School District Accountability: The Legislature is designed to respond slowly and school districts are focused on their narrow role. The Nebraska Department of Education, is also by its nature, prodding. Individual school district accountability arrived quickly on the scene through state and federal changes. Additionally, the pressure on Omaha Public Schools to address and improve educational improvement had in the past materialized as a school finance fight that made it Omaha against the state. A shared sense of accountability had not developed between districts and the state or among districts. Accountability turned up the pressure.

Policy actors' willingness to treat "causes versus symptoms:" The tension between solving the boundary issue and solving the bigger picture concerns was at the center of the debate. Senator Raikes at one point was viewed to "stand alone" in promoting his view of the common levy and the whole Learning Community. Had he not promoted treating some of the underlying causes, OPS and the suburban districts would have potentially been locked in a battle over freezing boundaries. Raikes was successful in convincing sufficient legislators that this was their problem to solve. However, at any point, it looked possible to simply retreat to freezing boundaries. Without the threat of Senator Chambers standing behind "one city, one school", that might have been the policy result.

Legislative Purposes and Intent of the Common Levy in the Learning Community

Common Financial Base: Senator Raikes repeatedly stated that the common levy would establish a common financial base that would ensure that all citizens would help pay for the education of students in the community. Raikes and other said multiple times

that the common base would help address matters of funding inequities between school districts and also could be used to help address common building fund and focus school collaboration.

Remove a Finance Barrier to Open Enrollment, Student Choice: The common levy removed a finance barrier between school districts for the movement of students that included changing state funding for “option enrollment.” The open enrollment concept was part of Raikes original LB 1024 and survived to be a part of the conversations about student mobility and choice for integration.

Reduce the importance of school district boundaries: Although boundaries were frozen under the Learning Community, provisions to change boundaries are provided so that in the future boundaries could be addressed. However, the main concept was that school district boundaries would be less important for student movement and in the future consideration of boundary changes between schools. Additionally, the same Council that would have power implement boundary changes would be charged with broader responsibilities.

A Purpose for Common Governance: Education Committee members were dedicated to establishing a common, workable governance structure and saw the common levy as central to the governance issue. Without, a common levy such a board would have less “teeth” and less power. The common levy, although straight forward in function, elevates the Learning Community as a local government with taxing and other authority that also effectively binds together the school districts.

“Good State Policy;” One City, One School or a Learning Community: Raikes had made clear that one city, one school was appropriate policy; however, the circumstances where Omaha had not used the option for so long had allowed established districts to grow to make the one school portion impracticable. Instead, the whole state would still have a basic premise of moving school district boundaries with the city or a broad regional tax base. Additionally, it points to the complex nature of state policy making when addressing such a diverse state. There is also a role for incremental policy development that relies on “new uses” of “old policies.” In this case it was the ability of the legislature to “tap” several concepts from its school finance “tool box” and make that work with a broad regional effort.

A Common Union for Schools: Raikes was quoted a couple times to suggest that without some commitment the districts would resort to “good intentions and happy talk” and he insisted on shared governance, levies, and shared buildings. The Committee viewed the common levy as central to that common union or bond and defended it several times against challenges by reiterating the importance of the common levy to the success of the learning community. Even at times, suggesting that without the common levy there was “no learning community.”

A Common Finance System with Equity Parameters: The common levy isn’t simply a shared pot of money for distribution at the whim of the governing body. The distribution of funds is based on the state aid formula and the decisions left to the Learning Community Council are essentially the level at which to tax. Other dedicated levy amounts have been adjusted to address other Learning Community functions but the

common levy is based on the original tenets passed in LB 1024. Those tenets survived with minor modifications in distribution processes since 2006.

Finance Stability, Wealth Neutrality: The common levy would smooth out differences between school districts value bases and help ensure that growing tax bases contributed to the whole area. Economic growth and decline is equally shared at a regional level. This was appropriately described as a “second layer of equalization.”

“Needs-based” Distribution, not simply shifting funding: The common levy was perceived as shifting funding to OPS however, the common levy itself is a resource side distribution-sharing that is distributed by a formula that attempts to account for both vertical and horizontal equity issues including number and circumstances of students including poverty, English language learner, among others that establish a “needs” calculation. The common levy mechanism by itself was designed primarily with the wealth neutrality goal in mind but coupled with the method of distribution it was intended be a stable source for the whole Learning Community.

Policy Outcomes and Expectations

Regional Stability: Clearly, the hope of the policy was to introduce stability to the region in terms of funding and educational directive regardless of pockets of growth or decline. Ideally, the whole area would rely on a broader, more stable tax base.

Student Mobility: The common levy was to help remove the need for district transfer funding or option enrollment funding while generally removing the importance of boundaries for student movement. Districts were also able to benefit from offering

programs that would encourage student movement if they could attract students to grow their enrollment.

Wealth neutrality: The common levy was to help “smooth out” differences in spending per student that may have otherwise been based on valuation per student. Additionally, it was intended to provide funding stability for the whole area and share in the relative growth (or decline) of the collective value base.

Minimize Boundary Disputes: By minimizing the value of additional property, the movement of boundaries was expected to be less important to districts for finance or student base.

Expanded Educational Opportunities: Although highlighted by the possible support of the Learning Community through elementary learning centers, focus schools, and magnet programs, the specific drive to improve educational opportunities is embedded in promoting student movement and school district sharing of existing programs. Largely, such enhancements would be up to local initiative and possibly through local collaboration. The common levy, in and of itself, is not responsible for this. Instead, it is assumed that the stability for districts and the formal connection between districts would provide a foundation for school district collaboration that would enhance educational opportunities. As Senator Raikes and Senator Ashford wrote, the two county system would “rise and fall” together.

CHAPTER 12

Implications of the Findings and Recommendations

Implications for State Level Policy Makers and Elected Officials

Legislators: State legislators have the often untenable position of dealing with policy issues that might first appear to be local issues. However, any challenges that face education, including finance, organization, accountability and equity are long standing state level disputes. Legislators have to recognize when it is appropriate to act and provide structures that enhance opportunities for successful systems. At the same point, it is important to exercise some restraint when educational issues are best addressed at a policy or administrative level. The learning community history introduces a whole other power that the state has occasionally exercised in the reconfiguring of systems and the reordering of authorities. However, the exercise of random legislation without a broad policy principle is potentially damaging to the very systems that have been created to implement the constitutional charge. The issues that led to the creation of the learning community were issues left to the local districts to address over time and systems were not in place to bolster communication, collaboration, and trust. It would seem that among the implications of this story is that when those systems are not present, the ramifications are likely to end up in a future legislative bill or in a court room.

Governors: Like the implications for legislators, the issues that led to the eventual development of the common levy in the learning community are at first glance local issues that local leaders need to address. However, the ability to interject statewide leadership either can help diffuse the situation or potentially ignite controversy. In these

times, it may be helpful to collaborate with other state leaders to appropriately balance politics and policy.

State Boards of Education: Like legislators, it is incumbent upon state boards of education to understand and create systems that improve communication and collaboration among entities under its purview. Finding a balance is difficult but a necessary role in partnership with other state leaders.

Implications for Local Level Policy Makers and Elected Officials

School board members: Local board members are sandwiched between local communities, administrators, and a whole educational infrastructure that is difficult, but critical to understand. Neighboring school districts might be best to endeavor to have solid communications between and among board members. Extreme parochialism is demonstrated to be potentially damaging to the system they seek to represent. It is also evident, that board members would do well to consider their policy role and align efforts effectively with the administration.

Learning Community Council members: Being unique is not likely to be easy, however the future of the learning community would seem to rest with the collaborative leadership role that has been developed. As a body, the Council is an intrusion to the normal status quo of school districts and the tenuous nature of the new body suggests that establishes clear and collaborative roles with school districts is important if not even critical.

City, County, ESU and other officials: There are implications for all local governments but the reality is that each local government official has to be cognizant of how their actions or inactions can impact other entities.

Implications for Educational Administrators and School Leaders

Commissioner of Education: Perhaps the most difficult scenario is to exercise both the role of leader and regulator. Balancing the ever changing education policy environment and pointing out the known battle fronts is likely to be a critical role for any Commissioner of Education. Providing a credible balance between policy makers and school districts as well as leading effective communication between school districts will continue to be important. Perhaps the Commissioner can play the role of the first responder and a “forest ranger” that is constantly looking for that first sign of smoke.

Superintendents: Clearly, the future of school leadership requires those adept at, not only leading their district, but also leading effective strategies for collaboration. This is requires balancing the efforts of local boards with the broader educational community. Although, schools historically have competed for students and resources, the implication of this history is first and foremost that leaders be concerned with educational improvement for all schools.

General Implications for Policy Makers, Educational Leaders, and Researchers

The policy history presented has several facets that worth mentioning. The fact of the matter is “change” is constant. Nebraska legislators are subject to term limits which were documented to impact the development of the learning community in a couple ways. First of all many of the state legislators who first passed LB 1024 were in their

final term and not subject to another election. Perhaps that allowed them to make the dramatic policy choice that proposed to split-up the Omaha School District. However, the next year, Senator Raikes and Senator Chambers agreed to restore Omaha Public Schools in part due to the fact that they would soon be leaving the body due to term limits. Now, approaching the 2013 legislative session the class of Senators that were elected in 2006 and played a substantial role in modifying and implementing the Learning Community are now facing their final two-years in the legislative body. Senator Adams, Senator Ashford, and Senator Avery who each played a critical role in seeing the implementation of the learning community through are now looking to leave their final impressions on the state. That being said, Senator Chambers is set to return to the Legislative body in 2013 after winning election over Senator Council who succeeded him in 2008.

Among the educational leaders of the state, Commissioner Doug Christensen retired in 2008 and was replaced by Dr. Roger Breed who had been at Elkhorn. Dr. John Mackiel retired from Omaha Public Schools in 2012 and accepted a faculty position at the University of Nebraska-Lincoln. Virginia Moon who retired from Ralston Public Schools served as an interim Superintendent in Broken Bow, only to return as an interim Superintendent of Omaha Public Schools. Other superintendents have exited from their previous positions. Ken Bird retired and took a position for a non-profit focused on education in the metro area. Terry Haack of Bennington, Kevin Riley of Gretna, and Keith Lutz are the only superintendents to have remained among the eleven districts that were present in 2005. Others have even come and gone during the controversy including George Conrad and Chuck Chevalier. Even the course of the Learning Community has

experienced change on the council as well as in the executive director role. Rick Kolowski, the original chair of the Learning Community council was recently elected as a state senator. There are certainly leadership changes that will constantly impact the area. The pace at which substantial and important leadership turnover happens is an implication for policy makers, educational leaders, and researchers alike. In a short time, someone will cast a vote or ask the question, why did we create this learning community, anyway? No one will be around to recall. If such major policy decisions are to be effectively evaluated in the future, the history must be recorded.

Recommendations for Researchers

This study was to establish some credible basis for further research on the Nebraska Learning Community and hopefully contribute, in some small way to the efforts of those who examine regional education models, regional finance models, education policy development, and urban planning. However, the effort to establish a credible outline of the history of the development of the common levy in the learning community produces as many questions as answers from a historical perspective. This research was ostensibly limited to written public records. Future research on the topic could improve on certain elements by seeking personal accounts. This history could be enhanced by better understanding the history of the development of Omaha and suburban Omaha and may also be enhanced by focusing in on the other prominent issues of socio-economic integration that became a substantial thread through the creation of the learning community.

There is also a growing need to understand how or if regional tax base sharing at this scale is beneficial and in what way. Presuming that the tax base sharing impacts all of the areas outlined in the expected outcomes, future research could be conducted to evaluate the impact on finance, leadership, integration, governance, collaboration, and student achievement.

There is also a reasonable expectation that the learning community would impact housing patterns, student movement, regional development, and economic stability. Presumably, the effort would impact the focus on resources for disadvantaged students and programs and services that are developed with the regional tax base through elementary learning centers or eventually through focus or magnet schools. It is also reasonable to assume that there will be unintended consequences of the Learning Community common levy and these would also merit study.

The learning community itself has established some statutory evaluation efforts that could contribute to future research efforts as well. The elementary learning centers as well as the poverty and English language learner allowances could be studied to see if that impacts distribution of resources through the formula “needs” calculation.

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