
Committee Meeting

of

ASSEMBLY APPROPRIATIONS COMMITTEE

"Testimony of individuals involved in the production and submission of the State's application for Phase 2 of Federal Race to the Top funding"

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: September 7, 2010
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Nellie Pou, Chair
Assemblyman Ruben J. Ramos Jr., Vice Chair
Assemblyman Peter J. Barnes III
Assemblyman Herb Conaway Jr.
Assemblyman Louis D. Greenwald
Assemblyman John F. McKeon
Assemblywoman Linda Stender
Assemblywoman Bonnie Watson Coleman
Assemblywoman Dawn Marie Addiego
Assemblyman John DiMaio
Assemblyman Erik Peterson
Assemblyman Samuel D. Thompson



ALSO PRESENT:

Philip N. Liloia
*Office of Legislative Services
Committee Aide*

Mary Alice Messenger
Mishael Azam
*Assembly Majority
Committee Aides*

Christopher Hughes
*Assembly Republican
Committee Aide*

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Meeting Transcribed by
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ASSEMBLYWOMAN NELLIE POU (Chair): Now, I've been asked by Speaker Oliver to have this panel examine this mistake and I take my responsibility as Chair of this Committee very seriously.

Unfortunately, today, we begin today's hearing with a sense of frustration. The Governor's Office did not, as we requested, permit key players to attend this hearing to explain to the people of New Jersey what really, truly happened. We also did not get a timely response to our request for documentation.

We will hear today from the State Department of Education officials, and at least that's a start -- but that's all it is -- a start. Before we hear from them, I want to make this very clear: This is not a witch hunt, as some partisan has carelessly claimed. That attitude and rhetoric is insulting to the people of New Jersey who lost \$400 million in education funding just when it was needed most. Speaker Oliver has made clear that the Assembly take seriously its oversight role over the Administration. This oversight role is a long tradition of American democracy, dating back to our founding fathers. Checks and balances are vital to a strong democracy, and I would be disappointed if some of my Assembly colleagues continue to advocate shirking their oversight responsibility in favor of partisan politics. I would be especially saddened if members of this Committee fall victim to that corrosive attitude today, rather than joining in a cooperative legislative effort to find out exactly what happened.

To use the Governor's own phrasing: Legislators should not be mindless drones. They should be independent thinkers. This is, after all, more than lost money for our taxpayers. This was a lost opportunity to truly make a difference in our classrooms, especially for our neediest

children. Protecting taxpayers and at-risk children should be among our highest priorities. That's why taxpayers deserve answers as to how something this inexcusable could have possibly happened.

For the benefit of those testifying today, and for listening here in person or online, I will give you an idea of the beginning of today's lineup: With us here today will be-- And I'm going to ask that -- the lineup was going to be the Acting Commissioner, Commissioner Hendricks; Deputy (*sic*) Commissioner Smarick; Assistant Commissioner Willa Spicer; Mr. Gohl; and Ms. Gordon -- in that order, please.

Acting Commissioner Hendricks, if you would please come forward.

Commissioner -- Acting Commissioner -- let me just say that I know that we have a series of questions for you. I'd like to begin, if it's okay-- I don't know if you have opening remarks or not.

ACTING COMM. ROCHELLE HENDRICKS: I do. And I'd like to begin with that, if that--

ASSEMBLYWOMAN POU: I'd like to, yes. What I'd like to do -- because there are a number of questions, and you might find that some of those questions may very well be covered by your remarks -- if there's anything that we might have left out, or that you feel that you need to add to the -- as part of your remarks -- we'll be happy to hear your comments at that point.

But if I can just begin some of the questioning, specifically with respect to the actual application and at the time when the actual editing took place. If you can just take us to that point, and let us begin there at that particular phase. Who was responsible or was involved in the actual

process? Who was in the room? How did you begin, and who did you find-- Who was in the room at the time when the first edit, the decision to edit the application was made?

ACTING COMMISSIONER HENDRICKS: Well, one of the reasons I want to begin with the testimony, because I think it would help to contextualize all that happened.

I was not in the room and, therefore, I could not address that. What I would like to be able to do, with your permission, is provide an overview of everything that occurred, including the time and place in which the question was posed that raised all of these issues. And then invite the team that you introduced to join me, so that we can field questions. Because each of us had different experiences and entered the process at different junctures.

ASSEMBLYWOMAN POU: Okay, let me just ask a question, though, before you do that. You were not part of the team in the room at the very beginning, for the editing. Is that what I just heard you say?

ACTING COMMISSIONER HENDRICKS: That is correct.

ASSEMBLYWOMAN POU: Is any member of the team that I've just named -- were they in the room at the time?

ACTING COMMISSIONER HENDRICKS: Um--

ASSEMBLYWOMAN POU: Okay -- I see Assistant Commissioner--

ACTING COMMISSIONER HENDRICKS: Assistant Commissioner Spicer.

ASSEMBLYWOMAN POU: --Willa Spicer's hand going up; okay. Who was in the room at the time?

UNIDENTIFIED MEMBER OF AUDIENCE: (Indiscernible)

ASSEMBLYWOMAN POU: Okay. I'm going to-- Acting Commissioner, why don't I then-- And again, for the purpose of time, I just thought it might be easier for us to start here, because I'm sure there's going to be a series of questions in that regard. And really what we're trying to get to-- We understand the first-- We understand the application that was submitted, we know that there were, obviously, various steps that had to be followed. We're trying to establish what actually occurred at the time of when the decision was made to really edit or change the direction of where the application was going.

ACTING COMMISSIONER HENDRICKS: I think that the testimony I prepared will provide you with some significant factual information. And I think it will be useful. It may provoke other kinds of questions, but it may clarify a number of concerns that the Committee has. Do I have your permission--

ASSEMBLYWOMAN POU: If you could just highlight them, then.

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYWOMAN POU: Rather than reading them verbatim.

ACTING COMMISSIONER HENDRICKS: Okay.

ASSEMBLYWOMAN POU: Is that--

ACTING COMMISSIONER HENDRICKS: Part of our concern is that the focus has been specifically on our failure to include simple financial comparisons from 2008-2009. And, as we all know, everyone considers that that omission cost us the \$400 million. And like

you, we believe that the people of New Jersey need a full story on what exactly happened.

In the second round of Race To the Top competition, as you know, 35 states and the District of Columbia were applicants. New Jersey was chosen as a finalist and ultimately came in 11th place. The Federal government awarded funds to only 10 states, so that left us a little bit shy -- out of 3 points out of a potential 500 points. In round one of the competition we had, as a State, 387 points earned out of that 500, finishing 18th overall. In round one we fell 57 points shy of winning the application. In round two, we finished with 437.8 points, gaining 51 points in the competition. And the plan had remarkable strengths. And while I'd like to delineate those strengths and all the praise that we received from the reviewers of the plan, in response to your request I will go beyond that. At some point, perhaps, you'd like to hear some of those things.

The results show that New Jersey was the lowest-scoring state to make it into the finals this round. Before the presentation interview, we were in 19th place out of 19, with only 403 points. Had the 10 winners been declared then, we would have finished far out of the money. In our presentation and interview, we achieved a remarkable feat: We gained more than 34 points during our time in front of the peer reviewers, far eclipsing every other states' performance. By way of comparison, we beat the average gain by a factor of 4. And, in fact, during that presentation interview, we lost no points.

Every New Jerseyan has seen us on the TV, and everybody's focused on a specific data element that should have been in the application. Lost in that frenzy is an explanation of the rules around the application

process. These rules prevented us from providing new information in the interview, even if the new information would correct an error in the application. Let me repeat that: These rules prevented us from providing new information in the interview, even if the new information would correct an error in the application. As you know, when the application was submitted with the missing financial data, the die had been cast. Our presenters were not allowed to provide that missing information during the interview, and we were not able to win the points that had been lost -- we couldn't get them back.

There's more that I want to say about the 90-minute interview process; there's more about where points were lost; there's more about opportunities gained. But the reviewers also responded strongly to the strength of some of our reform laws and regulations, our departmental reorganizational efforts, and the proposed use of county education offices in the broad support of our plan among a wide variety of State organizations. We gained a lot of points in STEM. In one section-- And I think it's important for people to know this -- in a number of sections we scored nearly perfectly. We collected more than 69 points out of 70 in the section on standards and assessments. We lost only one point out of 50 in the section on improving low-performing schools. Most important, however, was our success in the section of teachers and principals. The section with the most points available, in the section that most challenged states to be bold. We tallied there 124 points out of 138. In round two, only three states scored higher than we did in this section.

This is a bold plan around teacher evaluation, compensation, and termination, noted by the reviewers as the focus on using effectiveness measures to improve the profession.

And there are other areas, as you know, where New Jersey did well -- on our NAPE scores, closing the achievement gap; and comparable areas.

ASSEMBLYWOMAN POU: Acting Commissioner, but isn't that--

ACTING COMMISSIONER HENDRICKS: Let me--

ASSEMBLYWOMAN POU: That's why I wanted to start where I did--

ACTING COMMISSIONER HENDRICKS: Alright.

ASSEMBLYWOMAN POU: --because a lot of what you're sharing with us pretty much underscores exactly why we're here today -- because of the fact that there was that particular question, in Section F, that absolutely was answered incorrectly, is the very reason why we've lost the \$400 million. So I thought it would be important for us to really get to what we actually know, and try to address--

ACTING COMMISSIONER HENDRICKS: Let me at least provide some of that.

UNIDENTIFIED MEMBER OF COMMITTEE: Excuse me, Madam Chair.

ACTING COMMISSIONER HENDRICKS: I will go beyond some of the other matters, and perhaps we'll have an opportunity to share them. And the reason I wanted to share that is because, as a team, we worked really very, very hard to put together a competitive application.

And we knew full well there were no guarantees that we were going to win. And I guess, being a life -- what it feels like, a decade-plus, two decades -- employee of the Department of Education, I know the passion that came to this work. And so I really thought it was important that the State knows that, yes, we lost those few points, but we also made tremendous gains. We weren't even competitive until those 34 points were gained in the presentation. And I just-- My angst is that a lot of that is lost by that focus.

But let me give you some specifics in terms of that section, F1, and I think it will be helpful. Because as you know, for a lot of us, that error was both baffling and a source of mystery.

But here's what we did find out as a result of some work from the consultants. And I think you have that information in front of you. I'd like to briefly review the sequence of events that perhaps will clarify the F section, and what happened in the application.

There was an e-mail from Jennifer Mance (phonetic spelling), who was one of the Wireless Generation consultants, to two staff members that was dated Tuesday, May 25, at about 11:22 p.m., and includes version 7 of Section F and directs them to provide a printed copy of version 7 of F1 to Commissioner Schundler on Wednesday morning, the 26th, for his review. The message specifically notes that Section F1 largely reflects language included in New Jersey's Phase 1 Race to the Top application. And the 2008 and 2009 budget data is included in the draft. The handwritten notes on page 3 of Section F appear to be the handwritten notes of former Commissioner Schundler, editing version 7 of Section F.

ASSEMBLYWOMAN POU: I'm sorry, did you say appears to be?

ACTING COMMISSIONER HENDRICKS: Right.

ASSEMBLYWOMAN POU: You don't know whether--

ACTING COMMISSIONER HENDRICKS: I cannot confirm or not. I'm just sharing with you--

ASSEMBLYWOMAN POU: Where did you get the idea that it was his signature on this?

ACTING COMMISSIONER HENDRICKS: From the consultants.

ASSEMBLYWOMAN POU: Where did they get that information from?

ACTING COMMISSIONER HENDRICKS: I suspect -- however they received it. I couldn't speak to that beyond that.

The second e-mail shows--

ASSEMBLYWOMAN POU: Wait, wait. I'm sorry-- Commissioner, I'm sorry--

ACTING COMMISSIONER HENDRICKS: I'm sorry.

ASSEMBLYWOMAN POU: If you're going to make such a statement, I'm just trying to understand-- How do we know definitively that it was, indeed, Commissioner Schundler's editing -- handwritten--

ACTING COMMISSIONER HENDRICKS: (Indiscernible)

ASSEMBLYWOMAN POU: --if it wasn't the consultant, or any other member of the Department? How do we--

ACTING COMMISSIONER HENDRICKS: I could not speak definitively to that, but perhaps another member of the team--

ASSEMBLYWOMAN POU: But you're making that representation.

ASSEMBLYMAN THOMPSON: The Commissioner has stated it appears to be his handwriting.

ASSEMBLYWOMAN POU: I think what he-- I agree, Assemblyman Thompson, I agree. I think what he said is, it appears to be because it's been so stated to him, but he has not seen the document, nor has the document--

ASSEMBLYMAN THOMPSON: (Indiscernible)

ASSEMBLYWOMAN POU: Do you have that?

ASSEMBLYMAN THOMPSON: Yes.

ASSEMBLYWOMAN POU: Okay. Do you know if that's--

ASSEMBLYMAN THOMPSON: I wouldn't recognize his handwriting, but I'm sure he does.

ASSEMBLYWOMAN POU: Okay, alright.

Has he seen the handwritten document? Has he represented--

ASSEMBLYMAN THOMPSON: (indiscernible) whether or not he has--

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYMAN THOMPSON: But he has, in his statements, that he had decided three months beforehand that the information in there was out of date, and he felt it should be changed. So this suggests that he was probably the person who did it, and he takes full responsibility (indiscernible).

ASSEMBLYWOMAN POU: What we're trying to establish, Acting Commissioner, is-- And again, that goes back to my original

question. It would be important -- it would be extremely important and very helpful to know who were the members involved in the process of the changing -- I'm going to use the word editing --

ACTING COMMISSIONER HENDRICKS: Editing, yes.

ASSEMBLYWOMAN POU: --because that's what-- But in the editing of the application. Because that's how, then, we're able to really focus and pay attention to the specifics of what happened, for the purpose of making sure that we not only get the answers that we're looking for, but also allow for us to know what actually occurred and what can be done to make sure that it is prevented in the future.

So if someone of your position, the importance of your position-- If you were not in the room, I'd like to know who actually was in the room, so that we can help to get to the point of where we're going.

UNIDENTIFIED MEMBER OF COMMITTEE: Madam Chair, just a point, if I may.

When we have -- because I might have questions on the same area -- if we hear something that she's saying, should we ask our questions then, or will she make her statement, then we-- How would you like us to proceed?

ASSEMBLYWOMAN POU: The protocol will be that you can raise and ask as many questions as you like once you are recognized by the Chair. And I will get to each and every one of you. I know that there are a lot of questions, that's why I'm trying to move this along, and rather than try to specifically deal with the history, which many of us and most of us know, I'm trying to get to the specifics of what actually occurred, when did it occur, who was responsible for making that change, who were the ones

involved -- so that we can then specifically get to those questions, rather than spending a great deal of our time on trying to find out what many of us already know in terms of the application and how it started.

So that will be the protocol, and I will acknowledge everyone, I assure you.

UNIDENTIFIED MEMBER OF COMMITTEE:
(indiscernible)

ASSEMBLYWOMAN POU: That's done in Budget -- this is not the Budget Committee.

ASSEMBLYMAN PETERSON: Madam Chair.

ASSEMBLYWOMAN POU: Thank you.

I am going to only entertain one more question, and I'd like to get back to the Acting Commissioner.

Assemblyman Peterson, I think I heard-- Was that your voice?

ASSEMBLYMAN PETERSON: Yes ma'am.

ASSEMBLYWOMAN POU: Yes.

ASSEMBLYMAN PETERSON: I understood from your remarks that we were here today to find out why we didn't receive the money -- how we didn't make it into the top 10 point corral. We didn't score a perfect score in every other category and then miss on one, in this one area. So I think it's incredibly important, if our goal here today is to find out how we do better on future applications, that we look at each and every category in which we didn't score a perfect score and find out how we can achieve a better score in each and every one of those categories. Focusing in one particular area is not going to be productive, because other states are going to increase and improve over time, and if we only improve

in one area and not in all, we will be -- we'll lose again. And it's my goal that we succeed and we bring forth these reforms that the Governor has put forth in this application. And it's my hope today that out of these hearings that we will come away with a plan to implement those reforms today, and not just focus in on the mistakes of the past.

ASSEMBLYWOMAN POU: Assemblyman--

ASSEMBLYMAN PETERSON: So that I hope we look at the whole program, because from what I can see, the reviewers, in their notes, found our application to be very good throughout, and there was not just one area that we were deficient, but there were some other areas that it was deficient. Notably, the remarks continue to talk about how we didn't have the support of the education establishment here in New Jersey. So I think we should look at all the facets of the application so that we can improve over time.

ASSEMBLYWOMAN POU: Assemblyman, I don't disagree with you. I'm not suggesting that you not ask those questions. I'm simply starting out my questions and trying to direct the attention to that particular area, and that section that really led to the actual mistake that took place.

You certainly have-- When your name is called upon, you can certainly concentrate on whatever other section within the application you so desire, okay?

Acting Commissioner?

ACTING COMMISSIONER HENDRICKS: Yes.

If I could just continue with some specifics related to Section F. As I indicated -- let's leave names out, then. A handwritten edit was sent to

Wireless. The second e-mail shows the distribution of the revised draft of Section F, from Wireless Generation consultant to Andy Smarick on Thursday, May 27. The 2008 and 2009 budget data is no longer present in this new version 8. Instead, version 8 now reflects the handwritten edits removing the 2008 and 2009 budget data, changes which were incorporated into the document by the Wireless Generation consultants. Although version 8 tracks some of the changes to Section F in a redline form, there is no redline indication of the changes made to Section F1 that would have highlighted the deletion of the 2008-2009 data. And there were roughly 12 various versions of F -- not F1, but F section -- through the revisions.

And, of course, as is obvious, we all deeply regret the omission of that information from the application. And we're putting everything we can in place to ensure that nothing like that would happen again, and ensure that the appropriate time and resources are given to the development and review of any grant. In fact, the internal mechanisms that we use in the department to ensure accuracy, completion, and full alignment with any kind of application regulatory requirements are considered in working even with consultants. And I'm sure that was the case here as well.

Another area that perhaps warrants clarification with the use-- Well, maybe you don't want me to get into that. It has to do with the use -- with the Race to the Top funds.

ASSEMBLYWOMAN POU: Acting Commissioner, you talked about the partnership between staff and the consultant. What was their role in all of this? What did they actually do? What was their responsibility? Were they involved in the actual editing process of that application?

ACTING COMMISSIONER HENDRICKS: I think the person who could probably best answer that with some certainty is Willa Spicer. But what I can say, from my own experience working with consultants, is that we provided data. We also worked to develop certain aspects of the application for their review.

ASSEMBLYWOMAN POU: Did you work with them at all on this application?

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYWOMAN POU: What was your involvement?

ACTING COMMISSIONER HENDRICKS: The involvement was to either provide data around, particularly, charter school information and inter-district choice programs -- some general narrative about what those programs were; as well as information related to some of our cutting-edge work involving community development and that relationship with the school districts.

ASSEMBLYWOMAN POU: I'm sorry; I didn't mean to speak over you.

ACTING COMMISSIONER HENDRICKS: That's all right.

ASSEMBLYWOMAN POU: Did you have any part in the review of the application upon its completion, just prior to the submission?

ACTING COMMISSIONER HENDRICKS: No, I did not.

ASSEMBLYWOMAN POU: Is that generally the case? Let me not imply-- What is the procedure of the Department when an application of this magnitude is being submitted, what is the process of the Department for the purpose of reviewing and final submission of this application?

ACTING COMMISSIONER HENDRICKS: Most typically, people with some expertise in a specific area would review those sections for accuracy and completion. And certainly some review of the language to make sure the language communicates what it is we want it to communicate.

ASSEMBLYWOMAN POU: Who are they?

ACTING COMMISSIONER HENDRICKS: Well, that would vary depending on the area of expertise. Say, for example, if it's assessment, it would be someone from assessment. Then there would be, I would imagine, the lead manager or others -- the Commissioner, whomever -- would look at the entire application with that lens, for the coherency components. But beyond that, I can't address the particulars of what occurred.

ASSEMBLYWOMAN POU: But in this particular application -- and I understand that there may be a process for all applications whenever submitted. In this particular application, what was the-- Who was involved? What was the chain of command in the editing or the process, the submission of this application? If you can just help to take us there. Tell me, who was involved?

ACTING COMMISSIONER HENDRICKS: I think, again, I'm going to defer to my colleagues, because I had no direct engagement at that level with this particular process.

ASSEMBLYWOMAN POU: Okay, all right.

Do you have any idea who had the final sign-off on this application?

ACTING COMMISSIONER HENDRICKS: Well, I would think it would have been the Commissioner.

ASSEMBLYWOMAN POU: But you're not sure.

ACTING COMMISSIONER HENDRICKS: That is our typical process.

ASSEMBLYWOMAN POU: Okay. I'll wait to raise the same questions then to the other members of your team that may, in fact, have some idea as to how this-- How any of this--

ACTING COMMISSIONER HENDRICKS: Because it would be the Commissioner, or the Commissioner's designate -- that has been the traditional process in the agency.

ASSEMBLYWOMAN POU: Okay.

I know that -- Assemblyman Greenwald, did you have your hand up?

ASSEMBLYMAN GREENWALD: Madam Chairwoman, I'm sorry. I didn't know if the Commissioner had a further statement to make though, before we ask questions.

ASSEMBLYWOMAN POU: The Commissioner indicated that she would like to respond to questions that may be part of her statement.

ASSEMBLYMAN GREENWALD: Okay.

ASSEMBLYWOMAN POU: But in response to your specific question--

ASSEMBLYMAN GREENWALD: Sure.

ASSEMBLYWOMAN POU: --or anyone's specific question, whether it's on other sections of the application, as Mr. Peterson indicated, or any particular--

ASSEMBLYMAN GREENWALD: Okay.

ASSEMBLYWOMAN POU: --or any particular issues.

ASSEMBLYWOMAN ADDIEGO: Madam Chairwoman, I actually agree with Assemblyman Greenwald, and think that she should be allowed to make her statement first, in case we had questions with regard--

ASSEMBLYWOMAN POU: That wasn't a question; that was a statement. He was asking me if she had any--

ASSEMBLYMAN GREENWALD: Had a statement.

ASSEMBLYWOMAN POU: --and I said she had agreed to continue to move this along. I don't want to paraphrase it -- am I right, Acting Commissioner?

ACTING COMMISSIONER HENDRICKS: Yes, that is correct.

ASSEMBLYWOMAN POU: And respond to questions as they come. They may very well be part of her opening remarks.

ASSEMBLYWOMAN ADDIEGO: I know, but I think we, as the Minority, would request that she be allowed to give her statement.

ASSEMBLYWOMAN POU: I appreciate your request.

We're going to go to Assemblyman Greenwald's questions.

ASSEMBLYMAN GREENWALD: And Commissioner Hendricks, if any of your staff that was a part of this, that may have answers to the questions -- if you want to bring them up, that's fine with me, if that's okay with the Chair, so that we can move the process along.

ASSEMBLYWOMAN POU: Absolutely. I'm not looking to--

ACTING COMMISSIONER HENDRICKS: I think that would expedite the process.

ASSEMBLYMAN GREENWALD: Yes.

ACTING COMMISSIONER HENDRICKS: And I do hope at some point I can share with the Assembly Committee, and certainly with our general public, some of the richness of the application. Because the richness of that application, quite frankly, is front and center--

ASSEMBLYMAN GREENWALD: Right.

ACTING COMMISSIONER HENDRICKS: --to our education reform agenda.

ASSEMBLYMAN GREENWALD: And Commissioner--

ACTING COMMISSIONER HENDRICKS: And with or without that money, we are committed to bringing this to fruition. We have a blueprint which we think, you know, has a real map for education reform, and we want to get busy doing that plan for the good of the children of the State of New Jersey. I think it's exciting, and it's bold. The reviewers saw it as exciting and bold, comprehensive. We think it's scalable, we think it's systemic, and we're anxious to get busy doing the work of the State government to advance quality education for all the children of New Jersey.

ASSEMBLYMAN GREENWALD: Commissioner--

ACTING COMMISSIONER HENDRICKS: There's a lot of ways in which I can say it, and as I said--

ASSEMBLYMAN GREENWALD: Yes.

ACTING COMMISSIONER HENDRICKS: --I hope that we have an opportunity to come back--

ASSEMBLYMAN GREENWALD: (indiscernible) maybe--

ACTING COMMISSIONER HENDRICKS: (indiscernible)

ASSEMBLYMAN GREENWALD: I'm hoping through give-and-take today you can point to some of those advancements. My goal here today is to find out what went wrong -- \$400 million was lost in this process. And this should be a learning experience for us. And as a legislative branch, as an equal branch of government, this Department, as many of you have participated in, comes before the Budget Committee. One of the most grueling issues that we deal with every year is the issue of property taxes -- many respects outside of our control, done at local levels. But one of the key components is aid to municipalities and school districts that help stem the rising costs of property taxes, and why I believe people in the state feel overtaxed. And this is an issue -- \$400 million -- that has a direct impact on children and taxpayers around the state of New Jersey. And I think it's important for us to understand where we think we went wrong in this application so that we don't make that mistake again.

So I guess I would ask you, Commissioner: Where was the application-- Where were we short? Where did the application come up failing compared to other states in your mind? And one of the references I heard as you answer that question is that we didn't have the support of the education community in the application. That's not my understanding. My understanding is that the education community worked hand-in-hand with the Legislature and the Department of Ed to put together the original application. And that application was scrapped for a revised application that the Department put in.

So my question to you would be: Where did we come up short? And if the suggestion is that the Department of Ed did not have support of the education community, I know our legislative office worked

hand-in-hand with your Department and Commissioner Schundler on an original application reform that was shut down, and a change was made. So I'd like to know where you think you came up short. Do you believe that that was the major failing of the application. And if we thought that would be the major failing of the application, why did we scrap their input and go forward without their participation in the application?

ACTING COMMISSIONER HENDRICKS: All right, there are two areas that I want to mention, and I certainly would encourage the team, if they have anything to add, to please do so.

But let me kind of come back to your point about the engagement of the stakeholders -- the education community stakeholders -- and reference our data system. We lost somewhere between -- well, a minimum of 10 points -- maybe as many 15 points, depending on how one analyzes the scoring -- because of our data system. Specifically, the data system which we are building forward -- and we think it's going to be in very good shape a year from now. It's just not there at this point. So there were certain kinds of linkages that we were not able to make in the student-level database. And those linkages are certainly between students and teachers, but also between us and the higher education community. So that's 10 to maybe 15 points right there.

ASSEMBLYMAN GREENWALD: I'm sorry, Commissioner--

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYMAN GREENWALD: For those of us who-- I don't understand the point structure. So 10 to 15 points out of 100, out of-- What did that mean in the grand scheme of things, and how many points did we ultimately lose by?

ACTING COMMISSIONER HENDRICKS: Well, the total point system was 500 points.

ASSEMBLYMAN GREENWALD: Okay.

ACTING COMMISSIONER HENDRICKS: We had, I believe it was 437.8, so we lost by 62 points, total.

ASSEMBLYMAN GREENWALD: Okay.

ACTING COMMISSIONER HENDRICKS: And remember that we gained 34-- We were at the very last place going into the finals. But because of the oral presentation, the case made that we have the capacity and the will, as well as the vision and the plan, we gained 34 points -- more than anybody else.

ASSEMBLYMAN GREENWALD: Commissioner, I don't want to get off--

ACTING COMMISSIONER HENDRICKS: But to your point--

ASSEMBLYMAN GREENWALD: I don't want to get off my original question. I need you to fill in a couple-- Our understanding is we lost by less than 4 points; you're saying we lost by 62 points.

ACTING COMMISSIONER HENDRICKS: No.

ASSEMBLYMAN GREENWALD: So--

ACTING COMMISSIONER HENDRICKS: No, no, no.

ASSEMBLYMAN GREENWALD: Okay.

ACTING COMMISSIONER HENDRICKS: No, you were asking what was the gap between the total number of points that we had--

ASSEMBLYMAN GREENWALD: No, I'm asking how much did we lose by? We lost to Ohio--

ACTING COMMISSIONER HENDRICKS: Oh, okay. We lost by 3 points, basically.

ASSEMBLYMAN GREENWALD: Okay, so we lost 10 to 15 on this one component. We lost-- That would have made up part-- That would have made of the difference in--

ACTING COMMISSIONER HENDRICKS: Exactly.

ASSEMBLYMAN GREENWALD: --between the top 10. But coming back to the original question: Is this the failing of the application? Or was there other parts that you thought were more contributing to us losing the application? And why is there this misinterpretation that the stakeholders were not involved, when I know they worked with our office on the original application with Commissioner Schundler?

ACTING COMMISSIONER HENDRICKS: All right, the reason I mention the data points is because we've been focusing on the 5 points we would have gained with that one specific reference around financial data. So I'm talking about a place that had that many more points that we didn't have. And to your point, in terms of the stakeholder engagement: We probably lost roughly 20 points, I believe, in that arena. We actually were able to gain some points from the written application, even without that, after we did the presentation before the panelists. And I think it's because we were able to talk about the range of stakeholder engagement; but also that there has been engagement, specifically with the NEA and, as you all know, the AFT did sign on. But here's the other piece of that: One of the things that Secretary Duncan spoke about is that if you have to make a choice between a bold plan and the buy in, he said go bold. And so clearly it was a decision by the Administration to go bold. It doesn't

mean that you dismiss the interest of building consensus and the full engagement of all your stakeholders. But rather at this point, you want to put forth a plan that you think really reflects the direction the State wants to go in.

ASSEMBLYMAN GREENWALD: So is it your opinion, then, that by going bold, were we reckless in losing these points, which ultimately put us out of the top 10? And at the end of the day, it's about outcomes, right? So we could be bold, but we lost \$400 million. Should we have maintained that relationship? Because on May 27, the NJEA -- the Principals and Supervisors Association endorsed the Department of Ed's application after weeks of negotiating. And it was after that that the Administration said, "We're not going forward with that application." I mean, that's my understanding of what happened. And then we worked throughout the night over the weekend in order to put in this new application that came up 3 or 4 points short, which missed some key components. Now, it's sexy to look at: we didn't use the right number. But that's only one component. There are other components of this process that I think we should be going through a debriefing to understand what went wrong. Because there are other applications that will be coming before this State that we can't afford that type of mistake.

I know there's an application right now for jobs -- the jobs growth plan.

ACTING COMMISSIONER HENDRICKS: Correct.

ASSEMBLYMAN GREENWALD: And that's as simple as checking off a box. I would assume somebody's going to make sure we check the right box and send that in eventually, but that's \$268 million.

ACTING COMMISSIONER HENDRICKS: Well, to your point: I think it's conjecture as to whether had we not decided to go bold and we went with a different version of an MOU, how many--

ASSEMBLYMAN GREENWALD: Commissioner, here's why I don't think it is conjecture. We have 10 applications that were approved. We have one that was denied. We should--

ACTING COMMISSIONER HENDRICKS: (Indiscernible)

ASSEMBLYMAN GREENWALD: We should compare the original application that we put in to those states that received up to -- Ohio -- up to \$400 million, and we should do a comparison so that we know whether or not -- where our mistakes were -- which I suspect, out of the number of points that you outlined before, it's more than-- There were other areas we could have made up the gap other than just that one numerical number.

ACTING COMMISSIONER HENDRICKS: (Indiscernible)

ASSEMBLYMAN GREENWALD: And again, I come back to: That's sexy, and that's the divide, it's us against them, it's-- You know, it was Corzine, it was this. There's a process. We ought to figure out the process so that we get it right, because this is about \$400 million to the taxpayers and the children of the State of New Jersey that we are now going to have to make up.

So my question is: Has anyone looked at the application and said, "Boy, here we could have picked up 4 points here, 7 points here, 10 to 15 points with the support of these organizations, the stakeholders." Why did we choose not to keep the stakeholders in place? Have you done that analysis?

ACTING COMMISSIONER HENDRICKS: We have looked at every aspect of the application.

ASSEMBLYMAN GREENWALD: Okay, so--

ACTING COMMISSIONER HENDRICKS: And the scoring.

ASSEMBLYMAN GREENWALD: --in the review of every aspect, where did we come up short?

ACTING COMMISSIONER HENDRICKS: Well, those are some of the things that I was pointing out to you. But I think the other piece of that is being true to your plan and your vision, and being able to articulate that in such a way that we were able to gain points. I keep-- And the reason I keep coming back to that, I think part of what made our presentation compelling is because we were willing to take bold action. Now, one of the things-- If you look at the analysis -- and I'm looking at the team -- you will see even in Section A, which really talks about this capacity piece which includes the engagements of the LEAs, we were able to actually gain points over where we were in round one.

I wish that I could sit here and tell you that we submitted a perfect application. Obviously, to everyone, that was not the case. What I am saying is that we did submit an application that was comprehensive, that was well thought out, that made every effort to engage as many stakeholders as possible, both in the process and then, ultimately, in the MOU. We did have -- I think it was 364 LEAs that signed on. We had over 59 percent of those, of the districts, sign on. We had a high representation of the districts that serve our students in poverty. So we could go back and forth on this, but there's questions-- To your point, we certainly lost points there, and there were other places that we lost points.

And I think you're right to look at that financial data piece as a sexy point, and it stirs the pot. And that was one of the reasons I wanted to make a broader statement to contextualize what actually took place.

ASSEMBLYMAN GREENWALD: Commissioner, I would like you to tell me-- But I would like you to answer my question as to where we came up short, because it's about the fourth time I've asked it and I'm not getting the answer. But to your point that we did a bold presentation which gained us points: I would think that if that was our mission, if our mission was to be bold and think outside the box, come hell or high water, whether or not we were successful in getting \$400 million, we would be applauding this Department. We're not doing that. We fired a Commissioner. We're in a state of flux, with no direction right now. We are behind on the next application for the jobs growth bill, which is merely checking off a box, which is going to put the education, locally, behind. That if we don't get that application in soon we're going to be further behind going into next fiscal year. So while we were bold, I would not put the price of being bold at \$400 million. I would not do that. So my point is, again: I understand you have a job to do, and you're pointing out all the positives that went in. The positives were not enough to save-- We didn't save a Commissioner -- we lost a Commissioner. We fired a Commissioner, and my point is that we lost an application worth \$400 million that the taxpayers are now responsible for. I want to know that in any business -- and this is, I think, what Assemblyman Peterson and myself and others talk about all the time in the private sector -- when we lose out on a business opportunity, successful businesses look at where they went wrong and what they could do better. And I want-- This hearing, for me, and I know for

the Chairwoman, is very simply about-- It's not about pointing blame, it's not about whether or not the stakeholders were not involved, because I know they were involved, and I know they worked with your Department -- and I would ask you to acknowledge that today. The reality is: We've got to stop pointing the finger at each other and we, as a group, have to figure out where this application was short so that we don't make those shortcomings again.

So again, I'm going to ask you: Where was the application-- In spite of all the bold steps we took, we came up 3 points short. Where was our application failing?

ACTING COMMISSIONER HENDRICKS: To your point: Let me agree with your overall sentiment, in terms of--

ASSEMBLYMAN GREENWALD: That's a great step. Thank you.

ACTING COMMISSIONER HENDRICKS: We all want to fix the problem. We don't want to repeat.

ASSEMBLYMAN GREENWALD: Thank you.

ACTING COMMISSIONER HENDRICKS: And I don't think anybody wanted that \$400 million more than any member of the staff of the Department of Education, to be able to do this work.

I think I did attempt to indicate some of the places where we were missing points, but I'm also going to allow and encourage, in fact, members of the team to share some details around that analysis with you as well. And one very specific thing that you referenced as far as the *edujobs* bill -- please be assured that we will meet the deadline, and that application

will be reviewed many, many times, and it will be accurate, and we do plan to secure those funds for the State of New Jersey.

ASSEMBLYMAN GREENWALD: Commissioner, and in that regard, I would ask that you communicate through the Chairwoman as Appropriations Chair and myself as Budget Chair what our status is on that application. Because at this point, I have lost a level of confidence -- not a level of confidence in your desire, but I want to make sure it's done right, and I know the Chairwoman does as well. I would ask you to keep us in the loop in that process as we go forward.

ACTING COMMISSIONER HENDRICKS: I'd be happy to do so.

ASSEMBLYWOMAN POU: I think, Commissioner, let me just-- Now that the entire team is up, let me just ask some follow-up questions that I had with regards to your opening statement as well as some of the responses that you provided to my questions.

I think you made reference to Assistant Commissioner Willa Spicer as being the person who might help to identify who, in fact, were part of the process. So I'd like to ask Assistant Commissioner Spicer-- If you can please help us to understand. Because really, once we have an understanding of the actual process that took place, we then might be able to understand what were some of the things -- or perhaps even understand what the thought of the Department was going forward, and why they felt the need to make those particular changes in the bold-like manner as you've described, Acting Commissioner. So perhaps Willa, could you please just help to identify: What happened? Who was there? Who was responsible?

ASSEMBLYWOMAN WATSON COLEMAN: Chairwoman, could we ask each one to identify--

ASSEMBLYWOMAN POU: Oh, I'm sorry.

ASSEMBLYWOMAN WATSON COLEMAN: --by name and title and responsibility in the Department, so we know who we're looking at?

UNIDENTIFIED MEMBER OF PANEL: Please.

ASSEMBLYWOMAN POU: That's fine -- upon the time that they're speaking, they can certainly identify themselves at that point. I know that when I mentioned their name, they acknowledged their presence here.

Willa Spicer, would you please--

ASSISTANT COMMISSIONER WILLA SPICER:
I'm Willa Spicer. I'm Assistant Commissioner for Standards and Program.

I was a part of the development of this application from the outset until the end. In this case, as in the application for the first round, we had to move fairly fast. There wasn't a lot of time given us to review and revise our application, so we moved fairly fast. We had, as you know, a set of consultants from Wireless Generation who were a continuation--

UNIDENTIFIED MEMBER OF AUDIENCE: (indiscernible)
problem.

ASSISTANT COMMISSIONER SPICER: Excuse me?

ASSEMBLYWOMAN POU: Go ahead. No, I didn't say anything. Go ahead.

ASSISTANT COMMISSIONER SPICER: --who were a continuation of the consultants we used for the first application. All the

states that won, and even those that didn't, most of them used consultants. We are no different than them in our application.

In terms of this revision, we began to look at the points that -- we began by looking at the points that we lost and gained. And on the first application we spent a great deal of time in analysis, and then we divided it up so that various people were working on various parts. The Commissioner already told you that she worked on certain parts that were sent to her because she had expertise in the Department. I think Jessani also worked on certain parts that were sent, because these people in the Department had expertise. And as soon as a piece was written, they were sent -- the consultants worked with the people in those departments in writing, deciding what would go into the application; and then the consultants wrote and sent the applications back. The comments came back to consultants; the consultants revised and sent them back. And this back-and-forth thing went on sometimes for four, five, six times.

ASSEMBLYWOMAN POU: Willa, before-- So that we're following you, you just mentioned that the consultants were making those changes, submitting them back to you. Who are they submitting it back to?

ASSISTANT COMMISSIONER SPICER: In the first--

ASSEMBLYWOMAN POU: Who are these individuals?

ASSISTANT COMMISSIONER SPICER: In the first instance, the first round, they were submitting them to those people within the Department that held expertise. There's a section--

ASSEMBLYWOMAN POU: Who? Who?

ASSISTANT COMMISSIONER SPICER: There's a section on charter schools that went to the now-Acting Commissioner--

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: There's a section on -- and I guess Jessani also saw that section. There's a section on colleges and universities that went to the people in the Department who were experts on those pieces. Each section, I-- The person in charge of Standards worked with those consultants on that section. And each of those sections were read, and worked with, with those people who had expertise within the Department.

ASSEMBLYWOMAN POU: Are any of those individuals here in the room right now?

ASSISTANT COMMISSIONER SPICER: No, I do not believe they are, except for Jessani and, to some degree, the Commissioner. I don't think-- No, no one else was here.

UNIDENTIFIED MEMBER OF COMMITTEE: Excuse me, Madam Chair.

ASSEMBLYWOMAN POU: Give me just-- Let me finish, please.

UNIDENTIFIED MEMBER OF COMMITTEE: But we haven't had a chance to speak on this side.

ASSEMBLYWOMAN POU: You will, you will. We just got started.

UNIDENTIFIED MEMBER OF COMMITTEE: Okay.

ASSEMBLYWOMAN POU: Assemblyman, you just made me forget.

Willa, what happened then? Once they completed and submitted those changes to those particular subparts to those specific individuals -- and right now, I think you've only named four people.

ASSISTANT COMMISSIONER SPICER: Well, there's lots more. I think almost everybody in the Department was involved. Bari Erlichson did the sections on data and databases; Eileen Aviss-Spedding did the sections on professional development; Barbara Gantwerk did the sections on schools in need of improvement -- low-performing schools. I think everybody in the top management of this Department was involved--

ASSEMBLYWOMAN POU: Everyone?

ASSISTANT COMMISSIONER SPICER: --in (indiscernible).

ASSEMBLYWOMAN POU: Okay, everyone, did you say?

ASSISTANT COMMISSIONER SPICER: I think just about everybody in management--

ASSEMBLYWOMAN POU: Okay. Who was--

ASSISTANT COMMISSIONER SPICER: --read their sections, worked with the consultants on what should be said--

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: --reviewed, rewrote, edited, went back and forth with the consultant until that section was completed.

ASSEMBLYWOMAN POU: Okay.

Willa, who was responsible for the Section F that we've been talking -- or that I've been trying to speak about?

ASSISTANT COMMISSIONER SPICER: Well, truthfully, Section F-- We got all the points on Section F at the beginning.

ASSEMBLYWOMAN POU: At the beginning?

ASSISTANT COMMISSIONER SPICER: From the last application.

ASSEMBLYWOMAN POU: Okay. But who was then responsible for the editing of what you had in the first application, that was changed in the second phase of the application?

ASSISTANT COMMISSIONER SPICER: All the people got their sections back and reviewed them again. But the Commissioner made the final decision on all of those sections. He read the whole thing; I mean, worked night and day. So when it was finished and over with, before the consultants put them to bed, he sent them to the Commissioner (*sic*)-- I read just about every section. I did not read Section F, but I read all the educational sections, and I-- After the people, the other people in the Department, read them, I reread them; and the Commissioner read after me, and sometimes after me again. Because every time there was an edit, there was another rereading. And that went on--

ASSEMBLYWOMAN POU: Was that done during the Memorial Day weekend? Is that the time that you're describing?

ASSISTANT COMMISSIONER SPICER: During the Memorial Day weekend almost all of that work was done by e-mail.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: The information I read in present, there, for the Memorial Day weekend. I was there--

ASSEMBLYWOMAN POU: So the changes were sent to you by e-mail by the consultants.

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYWOMAN POU: You would review them, and everybody else who had a part in that would review them?

ASSISTANT COMMISSIONER SPICER: No. When the things came in Memorial Day weekend, they had already been reviewed by all the consulting people. It was not a brand-new application. There were changes over Memorial Day weekend. So those changes were read by me; and I believe, Andy, you read some of them, no? He says he wasn't there. But we had four rooms running. So they would come in -- there would be a consultant and a person in there rereading the changes. Then I reread Section A, B, C, D; and those sections were reread again by me. And finally they were reread by the Commissioner, and then they went back into the consultants. And they were reread by the consultants. And actually, the last people to actually read them was the Attorney General's Office--

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: --who had to sign off that everything in there was legal and read at the last minute.

ASSEMBLYWOMAN POU: Well, were they only looking to see for the legal part of that?

ASSISTANT COMMISSIONER SPICER: That's correct. They were--

ASSEMBLYWOMAN POU: But for the educational--

ASSISTANT COMMISSIONER SPICER: The educational part was the Commissioner and me.

ASSEMBLYWOMAN POU: --component-- Who was the final person approving the edited version on the education -- for the Department of Education?

ASSISTANT COMMISSIONER SPICER: Well--

ASSEMBLYWOMAN POU: Not from the legal aspect of it; I understand the AG's Office.

ASSISTANT COMMISSIONER SPICER: The only two people who were reading all of it was the Commissioner and me. Whether we all saw all parts -- we did not. We saw -- I saw most of it; I did not see all of it. And I assume that he saw most of it, and I don't know, I honestly do not know, if he saw all of it. But he signed off on all of it, because that was the final agreement to let it go.

ASSEMBLYWOMAN POU: I guess what I'm trying to understand-- Because I know that the final-- I thought that the reason why it was being pulled and part of the editing came as a result of it not falling within the policy -- the public policy of the Department or the Administration, which is why the Governor asked that that be pulled. Is that-- That was my understanding -- is that not the case?

ASSISTANT COMMISSIONER SPICER: On sections of the application.

ASSEMBLYWOMAN POU: Right.

ASSISTANT COMMISSIONER SPICER: Yes, I think that the Governor's Office did see sections of the application. We sent it over.

ASSEMBLYWOMAN POU: Who did? Who in the Governor's Office--

ASSISTANT COMMISSIONER SPICER: I don't know. I was not-- I did not make that relationship at all. I do not know.

ASSEMBLYWOMAN POU: Is this--

ASSISTANT COMMISSIONER SPICER: I only know the parts that were sent to me -- I read them; if there were mistakes in them, I sent them back. If there were concerns, I asked that it be reopened. And that went on for the entire weekend.

ASSEMBLYWOMAN POU: Was there-- Mostly because these are policy decisions--

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYWOMAN POU: --and policy changes. Would you agree to that?

ASSISTANT COMMISSIONER SPICER: Yes, there were a lot of policy decisions in there, and those policies were discussed with the Governor's Office and the Commissioner.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: Not me.

ASSEMBLYWOMAN POU: Did those policy questions or discussions take place with the front office or, in that case, the Director of Public Policy, Mr. Edwards?

ASSISTANT COMMISSIONER SPICER: Not to my experience. There was nobody there in the rooms during that period of time. Where the-- The drafts were sent out for people to read, but they were not -- those people were not sitting there.

UNIDENTIFIED MEMBER OF COMMITTEE: I guess--

ASSEMBLYWOMAN POU: Were they sent out through an e-mail, is that how you communicated?

ASSISTANT COMMISSIONER SPICER: I have no idea. I assume so, but I do not know.

ASSEMBLYWOMAN POU: I thought that's how you said that you--

ASSISTANT COMMISSIONER SPICER: Well, they--

ASSEMBLYWOMAN POU: You said all of your editing, or all of your questions--

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYWOMAN POU: --through e-mail.

ASSISTANT COMMISSIONER SPICER: They were sent-- the materials that were sent out for editing at the end, over the Memorial Day weekend, were done by e-mail.

ASSEMBLYWOMAN POU: Okay. There are a number of questions, but because I know there-- I have everyone on both sides trying to raise the question, let me just stop here. I may come back, Assistant Commissioner.

Mr. Ramos.

ASSEMBLYMAN RAMOS: I'll just pick up where you were stating-- You said there were four rooms.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN RAMOS: Who were in those four rooms, and when were the four rooms gathered together? Were they gathering together before the May 28, before that Friday?

ASSISTANT COMMISSIONER SPICER: Yes, we were using--

ASSEMBLYMAN RAMOS: Or were--

ASSISTANT COMMISSIONER SPICER: --yes. The Governor's Office-- There were people working in the Commissioner's Office--

ASSEMBLYMAN RAMOS: What date did they start working?
What was the date?

ASSISTANT COMMISSIONER SPICER: Well, it depends--
This is a long operation. This didn't happen in four days. This began from
the beginning. We used -- Wireless used two empty offices that were empty
at the beginning, and then they moved into a fairly large office on the side,
and they moved everything in there. We used my office.

ASSEMBLYMAN RAMOS: Yes, when did they do that?

ASSISTANT COMMISSIONER SPICER: When?

ASSEMBLYMAN RAMOS: Yes, when did the contract with
Wireless get entered into -- I guess that's the question. When did they
come onboard in the Phase 2 process?

ASSISTANT COMMISSIONER SPICER: In Phase 2?

ASSEMBLYMAN RAMOS: Yes.

ASSISTANT COMMISSIONER SPICER: The date? During
the week that we got the information that we were a finalist. Now, I don't
know what week that was.

ASSEMBLYMAN RAMOS: What week was that? Was that--

ASSISTANT COMMISSIONER SPICER: (off mike) What
date was that?

UNIDENTIFIED MEMBER OF PANEL: It had to be when--

ASSISTANT COMMISSIONER SPICER: (off mike) Yes,
when was that?

UNIDENTIFIED MEMBER OF PANEL: When we were a
finalist.

ASSISTANT COMMISSIONER SPICER: (off mike) What date was it?

UNIDENTIFIED MEMBER OF PANEL: Probably in March--

ASSISTANT COMMISSIONER SPICER: Yes, it had to be very late. It had to be in March or April. I don't know the exact date. But when the announcement occurred that all the states -- the states that were finalists were announced, we consulted and decided that it would be best for us to extend the contract we had with Wireless, because they already knew this application and were able to adjust it. And that was done right at the beginning. They came in immediately, and they moved into an office that was empty at the time and they set up their shop there. They also used my office when it was needed, and every once in awhile, of course, they'd work in the Commissioner's office. And sometimes they would work in the conference room when it took a larger group of people. So those rooms were used in one way or another during this process of putting together this application.

ASSEMBLYMAN RAMOS: How many people did they provide to fill those rooms? And who were they filling them with from the DOE? Who were they working with?

ASSISTANT COMMISSIONER SPICER: Excuse me?

ASSEMBLYMAN RAMOS: There were those four rooms, right? You said you had the four rooms -- conference room, and other types of rooms

ASSISTANT COMMISSIONER SPICER: Yes, where it was needed.

ASSEMBLYMAN RAMOS: What personnel did Wireless Generation provide to fill those four rooms; and who, from the Department of Education, were they working with within those four rooms?

ASSISTANT COMMISSIONER SPICER: Well, when they were together and working alone, they were working in a single room. They had a consultant who worked with me on the educational issues. And then she went out and worked with Rochelle, and at times she worked with Jessani, and she worked in their rooms when they came, or they came up to her in the big room. The people who worked with the Commissioner came in and out of his room, as was needed, or he came into their rooms -- back and forth. This was a reactive, interactive operation. We read, we typed, we changed, we edited, we removed it again, and we worked sometimes-- Wireless was in our offices until 11:00 and 12:00 at night, and worked again--

ASSEMBLYMAN RAMOS: Okay.

ASSISTANT COMMISSIONER SPICER: --sometimes back in their hotel room at the Trenton Marriott. Because it was very much interactive. And so--

ASSEMBLYMAN RAMOS: All the timeframe when was all this was taking place--

ASSISTANT COMMISSIONER SPICER: Well, it started -- must have been the beginning of April -- sometime in April, when the announcement occurred. And then as we got closer and closer to the end, it became more intense, and we had from two to four people there regularly, and sometimes we had a fifth person who worked with us on this matter.

ASSEMBLYWOMAN POU: Let me-- I'm sorry, Assemblyman, were you done?

ASSEMBLYMAN RAMOS: No problem.

ASSEMBLYWOMAN POU: Okay, thank you.

I'm trying to get to every member. As you can well see, for those of you who are here, there's a great deal of anxiety or tension because everyone wants to ask questions. I am going to get to every single person, and we can be here as long as you like and as long as we need to be. Obviously, we have a number of questions that we are just starting to ask. So I'm going to ask everyone to please be patient. You will be recognized. Your time will come up. And so as not to continue to feel as though this side of the room is not being properly recognized, Assemblyman Thompson, let me recognize you at this moment.

ASSEMBLYMAN THOMPSON: Thank you, Madam Chair, I did appreciate your opening statement.

ASSEMBLYWOMAN POU: Pardon me?

ASSEMBLYMAN THOMPSON: I did appreciate your opening statement.

ASSEMBLYWOMAN POU: You did?

ASSEMBLYMAN THOMPSON: Yes.

ASSEMBLYWOMAN POU: Oh, thank you.

ASSEMBLYMAN THOMPSON: It did lay out what the purpose here was, and so on, very well. There was a lot of concern beforehand that it would be dog-and-pony show -- partisan -- but the objectives as you laid out certainly are appropriate for this hearing.

Of course, I would wonder first why a similar hearing wasn't heard after round one. That would have really been the appropriate time. Thus, at that time, we had lost out. And then once we knew there was a round two, if we had investigated why it failed then, perhaps we would have been in better shape for round two. Of course, round two is now over. Whether there will or will not be a round three, we don't know. But it is still important to ascertain what were the problems here. And, of course, a great deal of the emphasis appears to be upon the 4.8 points that we lost because of the error in Section F -- category F.

This is easily identified when people are justified in saying, "this is why we lost the application," because, again, we finished between 3.0 and 3.1 behind position 10 -- 3.0 would have tied; 3.1, we would have beat them. However, of course, we did lose a total of 62.2 out of the total possible points. So while we can assign definite responsibility to this one factor, there were other significant areas where we lost points that also, in fact, could have made this loss insignificant -- it would have meant nothing. We could have finished well up the ladder with some other areas.

Commissioner, I would ask you: What other areas of the State's Race to the Top application were significantly deficient or negatively impacted, and what were the specific reasons?

ACTING COMMISSIONER HENDRICKS: I've actually attempted to address some of that, and I do want some of the members of the team to have an opportunity to speak, as well, on some of those same concerns. And I'm actually going to look to Andrew Smarick, perhaps; and then, perhaps, Dan Gohl would also have some comments.

ASSEMBLYWOMAN POU: Mr. Smarick, if you would please identify yourself with both your name, as well as your title and your function within the Department.

ASST. COMMISSIONER ANDREW SMARICK: Sure. My name is Andy Smarick, and I'm currently serving as a Special Assistant to the Commissioner of Education.

So the biggest section -- the biggest loss in a section -- came in Section C. That's our data systems section. And the Acting Commissioner had alluded to this. And stop me if this is getting too wonky. But there's-- We lost 10 points straight off the bat because we have a data system that doesn't have five data elements required under the U.S.A Competes Act. So 10 points from the beginning -- there's nothing we could do about it. We lost points there. Further on in that section, we lost some points because the evaluators decided that we weren't using data in the ways that we might. For example: educating educators, or, for example, using it in the classroom, and so forth. But--

ASSEMBLYMAN THOMPSON: In fact, haven't we, for six years, been speaking of instituting a New Jersey SMART data management system that would have addressed this deficiency? Have we done anything over the last six years?

UNIDENTIFIED MEMBER OF PANEL: That's correct.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYWOMAN POU: Can you speak to that? Can you speak to that, Andy?

ASSISTANT COMMISSIONER SMARICK: I probably--

ASSEMBLYMAN THOMPSON: (indiscernible) hear you, so perhaps--

ACTING COMMISSIONER HENDRICKS: Yes. If we had-- We have put in several applications, which we lost, for long-term data -- long-range data systems. And we have not put enough moneys into the database to be able to build the 12 elements that are required by State law. I mean, not by State law, by the Federal law.

ASSEMBLYMAN THOMPSON: One of the things that kind of puzzles me about this is we were looking for money here to create such a data system, and they penalize us in the application asking for the money because we don't have the system.

ACTING COMMISSIONER HENDRICKS: Exactly.

ASSEMBLYMAN THOMPSON: If we had the system, we wouldn't ask for the money. But, go ahead; I'm sorry I interrupted you.

ASSISTANT COMMISSIONER SMARICK: So Section C is one where we lost the biggest percentage of our points. We lost points in Section A, largely in two to three areas. One, because of the smaller number of LEAs who signed on; another one because of stakeholder support issues, including unions; and then how you -- the vision of the reviewers of how you can carry out your plan, because you have these stakeholders. We lost points in that area.

ASSEMBLYMAN THOMPSON: In fact, let's see: I think we lost 3.2 points because of translating partnership of LEA participation in the statewide impact; 2.6 points because of losing broad stakeholder support; 11.2 points for, again, securing LEA commitment for the project -- so a total of about 17 points that we lost in that area, didn't we?

ASSISTANT COMMISSIONER SMARICK: That's right, and if you read the reviewer comments, you realize that that 17 should probably be bumped up several points. Because in other sections of the application, the reviewers would say things such as, "well, because they don't have more NJEA support, or more district support, we're not so sure they're going to be able to carry out this thing as well as they might otherwise."

ASSEMBLYMAN THOMPSON: Frankly, why we lost a great deal of points here: Did you notice there was one reviewer in particular that cost us a tremendous amount of points in this area?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN THOMPSON: Reviewer Number 5 scored us 20 points lower than the average of the other four reviewers in this area.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN THOMPSON: The Reviewer 5, in the-- Right at the end of it, he had an option of giving the State 0 points or 15 points related to competitive preference, Priority 2, emphasis on STEM. He gave us zero. So 35 points he took away from us, between that one area -- of LEA support -- and this compliance with whatever that latter thing means. Consequently, his scoring for New Jersey was 40 points below the average of the other four reviewers, and he seemed to exhibit a significant bias here, relative to union support. Were you aware of that?

ASSISTANT COMMISSIONER SMARICK: We noticed.

ASSEMBLYMAN THOMPSON: And he alone--

ASSEMBLYWOMAN POU: I'm sorry, did you know that going in? Did you know that going into the application, upon the filing of

the application, that there would be a reduction of support for the lack of that? Did you not know that prior to submitting to the application?

ASSISTANT COMMISSIONER SMARICK: Did we not know that we would lose points for what?

ASSEMBLYWOMAN POU: For submitting an application when you did not have the support of all the LEAs.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYWOMAN POU: So you were aware of that?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN THOMPSON: You were aware that union support, education association support, would add points for you. But you were also aware that if you did not address subjects raised by the Federal government -- merit pay, tenure, ability to replace ineffective teachers, and so on -- you would lose even more points in those areas if you didn't address it -- is that not correct?

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSISTANT COMMISSIONER SMARICK: The Race to the Top -- if you can take a step back -- is the ultimate balancing act. You're trying to get as many bold reforms as possible, at the same time you're trying to get your stakeholders to buy in.

ASSEMBLYMAN THOMPSON: They want you to address issues that they know the stakeholders would oppose, in order to get points there; but at the same time, if you address them adequately, then the stakeholders are not going to support you. So it's really a balancing act you've got in the two areas.

ASSISTANT COMMISSIONER SMARICK: Yes, for example: There were states in the first round, like Florida, that had a very, very bold plan, but they could only get 8 percent of their unions to sign on. Rhode Island only got 4 percent of their unions to sign on. Then there were other states that had to balance the other way, where they could have a lot of stakeholder support, but their reforms weren't that bold.

ASSEMBLYMAN THOMPSON: I do commend you for the very high areas that you did attain in several areas that were mentioned by the Commissioner there earlier: standards and assessments, 69.2 out of 70 points; 49 out of 50, turning around the lowest achieving skills -- that's something that we really have to feel proud of here in New Jersey. I mean, that we scored 49 out of 50 in that area.

If we had won this money, it was mentioned earlier about how the schools are struggling with having to lay off employees, teachers and so on. How the budgets are strained, and so on. What would this money have been available for, had we won it? Thus, would it have prevented teacher layoffs? Would it have helped the local districts with their budgets, and so on?

ACTING COMMISSIONER HENDRICKS: The money was designed to support the reform initiatives. Indirectly, it may have helped some of those things, but that was not the purpose of the Race to the Top funding. And the funding would really allow us to advance the kinds of initiatives that we had been talking about, with teacher evaluations, with data systems, upgrades -- those kinds of initiatives are the only things that those moneys were targeted to fund.

ASSEMBLYMAN THOMPSON: I would like to return to a question that the Chair has asked several times.

ACTING COMMISSIONER HENDRICKS: I think Willa wants to add a comment.

ASSISTANT COMMISSIONER SPICER: I would just like to make sure that it's clear that half of the money was always set for the local districts. This money was to be divided in half. Half of it was to come to the State Department to help us build the various reforms that we have. And the other half was to be divided in the local districts that signed on for this -- to be part of this application. And that money was to be sent to them on the basis of their Title I position.

ASSEMBLYMAN THOMPSON: Okay--

ASSISTANT COMMISSIONER SPICER: So of the \$400 million, \$200 million of it was to be divided to local districts.

ASSEMBLYMAN THOMPSON: And how-- Was there any limitation on how they could utilize that money?

ASSISTANT COMMISSIONER SPICER: It had to-- Each district had to build a plan for reform. And the money that was sent to them was to help them to carry out the plan for reform that is part of this application. So it wasn't open money that you could just spend any way you wanted. It was meant to allow the local district to participate fully in the plans for reform.

ASSEMBLYMAN THOMPSON: To address a question the Chair has raised several times here: First, to refer to some comments that Commissioner Schundler made in his chronological presentation. He said, "I had remembered that three months earlier, when I reviewed our draft

language for that section of the application, I thought it should include current budget information, not just old budget information.” Which is, he’s saying, at least three months before the application, he was already thinking this change should be made. We don’t know just when it was made, but further down he says, “All we could pinpoint was the date the error occurred,” which seems to imply somewhere there was a pinpointing as to when the date occurred. Does anybody here know what that date was? Although, again, he was thinking about it at least three months in advance. (no response)

Nobody knows? Okay.

ASSEMBLYWOMAN POU: Assistant Commissioner, wasn’t that already in the first draft before it was stopped on the Memorial Day weekend? Was that number, or the old data, in that application at the time?

ASSISTANT COMMISSIONER SPICER: The old data was in the first application.

ASSEMBLYWOMAN POU: Not the first -- the second Phase.

ASSISTANT COMMISSIONER SPICER: No; I don’t know. I don’t know what date that was.

ASSEMBLYWOMAN POU: You don’t know, or it was not there?

ASSISTANT COMMISSIONER SPICER: Well, we were using the first application as the base for all the changes. So when we started, it was there, because it was--

ASSEMBLYWOMAN POU: Okay. So it was there at the time of the second Phase application, up until the time it was edited.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYMAN THOMPSON: But we don't know when it was edited.

ASSISTANT COMMISSIONER SPICER: But I don't know when it was edited, no.

ASSEMBLYWOMAN POU: Was it edited any time before?

ASSISTANT COMMISSIONER SMARICK: It--

ASSEMBLYWOMAN POU: You were reviewing it back and forth, you were saying. Was it edited any time before the actual change of May 27? Before May 27?

ASSISTANT COMMISSIONER SPICER: I really don't know -- do you know?

UNIDENTIFIED MEMBER OF PANEL: Andy, Andy--

ASSEMBLYWOMAN POU: Does anyone know the answer to that?

ASSISTANT COMMISSIONER SMARICK: So I have to go back and look at the exact iterations of these documents, but I think this change occurred around May 26, May 27.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SMARICK: So there are documents that we have leading up to that that had the information, and then that don't.

ASSEMBLYWOMAN POU: Right.

ASSISTANT COMMISSIONER SMARICK: And I believe it's this May 26, May 27--

ASSEMBLYMAN THOMPSON: Again, you say three months before--

ASSEMBLYWOMAN POU: That's why I'm asking, because I know that the Assemblyman is talking about three months before, but the editing didn't occur until May 27.

ASSEMBLYMAN THOMPSON: Commissioner Schundler is the one who (indiscernible).

ASSISTANT COMMISSIONER SMARICK: I'll have to get that exact date for you, but it's about that time.

ASSEMBLYWOMAN POU: Assemblyman, I'm not making that statement; it's the statement of the date that's being referred to and stated by the Department of Education, which was responsible for the completion of the application.

ASSEMBLYMAN THOMPSON: Yes.

ASSEMBLYWOMAN POU: I just wanted to make sure that it was properly clarified, in terms of when that change was done.

ASSEMBLYMAN THOMPSON: I'm trying to figure it out, too.

ASSEMBLYWOMAN POU: Well, you don't have to figure it out. He just indicated when it was -- it was May 27, 28, or whatever-- But it wasn't three months before that, because it was already included as a continuation, up until the time that it was edited. Is that correct? I don't want to put words in your mouth, but is that not what you've just said?

ASSEMBLYMAN THOMPSON: Are you saying definitively it was done May 25, 26, or 27? Or conjecturing?

ASSEMBLYWOMAN POU: Or any one of those dates within those days -- but not three months before?

ASSISTANT COMMISSIONER SMARICK: I've lost track of the question here.

My understanding is that if you were to look at an iteration of the draft document on, say, May 20, the correct information was in there. If you were to look at it on the 23rd, it was in there.

ASSEMBLYWOMAN POU: That was my point. Thank you very much.

ASSEMBLYMAN THOMPSON: Thank you.

ACTING COMMISSIONER HENDRICKS: And if you recall, that was one of the things I did point out early on.

I don't know -- there's a discrepancy between the two statements: On the one hand, former Commissioner Schundler saying he was thinking about this several months ago to bring it current; and when, in fact, the change was made. So I don't think there's a difference between--

ASSEMBLYMAN THOMPSON: Okay, my next question is related to the consultant. Again, the consultant was initially employed by the previous administration in the submission for round one and paid roughly \$380,000 at that time. So when it comes to round two, it was decided this person already has knowledge with regards to the application, and so on, and consequently it was felt it was best to keep them on to go ahead to round two, because they were paid \$130,000 or something this time around? Based on press reports, it's my understanding that in the consultants contract it stated they were responsible for the technical accuracy of the submission. Is that correct?

ACTING COMMISSIONER HENDRICKS: I believe so.

ASSEMBLYMAN THOMPSON: Thus, and again, this edit went through the consultant, and to the best of everybody's knowledge the consultant never came back and said, "Hey, that's wrong; you can't do that. It would be technically erroneous." Is that, to the best of your knowledge, accurate? (no response)

One more question: Were any of the presenters aware of the shortcomings in this answer, regarding school funding in '08 and '09, prior to presenting in Washington, D.C.? And how was this deficiency handled at your end? Was there anyone aware of it?

ASSISTANT COMMISSIONER SMARICK: I was not aware.

DANIEL GOHL: Sir, my name is Daniel Gohl.

Madam Chair, may I introduce myself?

ASSEMBLYWOMAN POU: Yes, please.

MR. GOHL: I am not an employee of the Department of Education. I'm employed by Newark Public Schools. My title is Executive Officer for Innovation and Change.

I received a call, I believe it was August 3 -- if I would consider joining the team if the team from the Department of Education, for presentation in Washington, D.C., were to include a local education agency official. The decision had been made that in addition to a State perspective, it was very important to emphasize that the local schools in New Jersey are also committed to reform. I was honored to receive this invitation and to join the team for preparations.

On Thursday, August 5, I arrived at the Department of Education in the afternoon after completing some work business in Newark,

and joined the team that was busily preparing for a formal presentation on August 11 in Washington, D.C.

ASSEMBLYMAN CONAWAY: Permission, Madam Chair.

Does this gentleman speaking now have a role to play in making the application before it was presented to the Federal government? Because if he didn't, and if he doesn't have any information on that point which is the subject here, why are we listening to this gentleman now?

ASSEMBLYWOMAN POU: I--

ASSEMBLYMAN THOMPSON: The question was, was anybody--

UNIDENTIFIED MEMBER OF COMMITTEE: That's where he's going.

ASSEMBLYWOMAN POU: Wait, wait.

Please continue, because I do think his role is about to be identified. We're about to find out what his specific role is. We can make that determination once we've given him the opportunity to do that. And if you were going to present yourself as someone having been part of the team, Mr. Gohl-- And please make sure you clarify that. Because there will be some follow-up questions as to what was your involvement with the application and the preparation of that if, in fact, you were going to be representing the State of New Jersey in the final interview process.

MR. GOHL: Understood, Chair; understood, Assemblyman.

On August 5, I had the opportunity to clarify what my role in the presentation would be on August 11, and it would be in particular to talk about how we would turn around low-performing schools.

There was some discussion about whether or not we would need to present on Section F. At that time, it was an open question; subsequently, it was decided that based on our high point value, we would not need to. The presentation itself was strictly governed. There was a countdown clock that we would have 30 minutes. At the conclusion of our presentation, any remaining time, and 60 minutes, would be spent in a question-and-answer session.

In reviewing Sections E and F, which dealt with the general conditions in Section F in turning around low-performing sections (*sic*) in section 8, I detected a variance between the question for Section F1 and the response which was contained in the PDF file available at the U.S. Department of Education web site. I raised this variance with a consultant with Wireless Generation and said, "This does not seem to match." By that I mean that FY '08 and '09 data was requested and '10 and '11 data was supplied.

ASSEMBLYWOMAN POU: Mr. Gohl, did you raise that point to anyone in the Administration, or in the Department of Education?

MR. GOHL: I did not.

ASSEMBLYWOMAN POU: Why would you not do that?

MR. GOHL: Because when I asked the question, I received the following response: Anything that was submitted on June 1 time stamps a final document, and that is all we can speak to.

ASSEMBLYWOMAN POU: So what was your point of raising it to the consultant without notifying the Administration of your findings?

MR. GOHL: Unfortunately, I was playing catch-up. Preparations had been clearly ongoing within the Department, both within

the employees as well as the consultants, to prepare. I was a late addition, and was going to do my best to prepare myself.

ASSEMBLYWOMAN POU: What's your expertise, sir? Why were you invited? Forgive me, again, you may have stated this. What's your expertise in helping the Department making these presentations?

MR. GOHL: I believe that there were two areas of experience that made me relevant. One is in focusing on low-achieving schools and how to raise student achievement within them. Another is that I was a participant, as were hundreds of other local officials, in the preparation for both rounds one and two. I have an expertise in STEM education -- science, technology, engineering, and mathematics. I also understand data systems and have put on the ground a number of reforms to turn around the performance of schools within Newark.

ASSEMBLYMAN THOMPSON: So you did advise the consultant six days prior to the hearing that this information was not in the application -- is that correct?

MR. GOHL: Correct.

ASSEMBLYMAN THOMPSON: And what was--

ACTING COMMISSIONER HENDRICKS: Not the Administration.

ASSEMBLYMAN THOMPSON: And what was the consultant's response?

MR. GOHL: That it was too late to alter anything in the application and that we could not change what we presented from what had been submitted.

ASSEMBLYMAN THOMPSON: Why didn't you tell the--

ASSEMBLYWOMAN POU: Wait, Assemblyman -- then that would mean if you said it six days -- to the consultant -- wouldn't the consultant or you have an obligation, since you've been a party to this, to tell the Administration six days before the interview in Washington, which then would have not-- A different statement from the Governor would have been made then that he was -- that the information had not been sent in.

ASSEMBLYMAN THOMPSON: Well, that's my question, but more direct. Why did you not tell the Commissioner?

ASSEMBLYWOMAN POU: But the Administration--

ASSEMBLYMAN THOMPSON: Why did you not tell the Commissioner?

ASSEMBLYWOMAN POU: Herb, thank you.

ASSEMBLYMAN THOMPSON: (indiscernible) working directly with the Commissioner's Office.

MR. GOHL: At this point, the Commissioner was not present, on Thursday or Friday, August 5 or 6.

ASSEMBLYMAN THOMPSON: Wasn't he on two-week vacation in Peru at the time?

MR. GOHL: I have subsequently been told yes, he was. What I knew is that he would be joining the team on Monday, August 9.

ASSEMBLYWOMAN POU: Who was there then? Who was in charge?

MR. GOHL: That is the day that I first met Mr. Smarick, and I had already been aware of Ms. Hendricks and Ms. Spicer.

ASSEMBLYWOMAN POU: Did you inform them?

MR. GOHL: I did not.

ASSEMBLYWOMAN POU: This makes no sense.

ASSEMBLYMAN THOMPSON: But again, the consultant was responsible for the technical accuracy of the report. You brought this to his attention, and his response, "Well, I say that's it."

ASSEMBLYWOMAN POU: Assemblyman, are you done? Because I want to--

ASSEMBLYMAN THOMPSON: I thank you, Madam Chair.

ASSEMBLYWOMAN POU: Thank you so very much.

I'm sorry, Mr. Gohl, I really don't understand how an important piece of information such as that, which actually led to the significance of whether or not we had \$400 million or -- were awarded \$400 million -- that you would not share such information with the Administration, especially when you had them within your presence during that period of time; and this was six days prior to your going to Washington, D.C. That just makes absolutely no sense to me whatsoever.

Assemblyman Conaway.

ASSEMBLYMAN CONAWAY: Yes, Madam Chair. Thank you for recognizing me.

I just want to get back to a couple of points that have been raised. And I guess would stipulate that we know this is a human document, made by human beings. We don't expect that one will get the full marks on every particular item. It wouldn't be possible to do that. But we do expect, I think -- it is reasonable to expect -- that the simple ones, the easy ones, ought to be done right. We have documents that suggest on Section F -- and I'm going to read this, because it's also amazing to me that

this kind of mistake could be made, particularly in light of the fact that the Department has paid upwards of \$180,000 to consultants to help make sure that these kinds of details are completed appropriately in an application before it's submitted.

The question in Section F: Extent to which percentage of the total revenues available to the State, as defined in this notice, were used to support elementary, secondary, and public higher education for FY 2009 was greater than or equal to the percentage of the total revenues to the State, as defined in this notice, that were used to support elementary, secondary, and public higher education for FY 2008. Now, I see your reference in here -- it's not a very long question -- there's a reference to 2008 and a reference to 2009. It is hard for me to understand, in that context of this question, how you get an answer that deals with budget questions in 2011. And in all these things that have mentioned about these other deficiencies, all that's well and true. But here we're out by 3 points, and this is a question that is answerable by anybody, I think, with a high school education. It references 2008, 2009 and we have data on 2011 in there, that apparently was in an iteration that was presented -- we have documentation -- on the 25th -- that somehow goes awry, somehow gets out.

And I wonder, given the context of this Administration and how it's behaved on many fronts, how this kind of mistake happens. I think the question should be raised: Was there a concern about the fact that the Corzine Administration did spend more on education? Here, the Christie Administration only increased support by 2.2 percent. Corzine did better than that -- over 3 percent in education. Was that the issue?

Was there an attempt to sort of make this Administration appear better compared to the last one? Because it's hard to believe that something as simple as, "This is wrong"-- And let me say, when you look from Phase 1 to Phase 2, we got here -- and this is -- I'm reading from Ms. Fleisher's article here -- Statehouse Bureau -- that in the first round we got 3.4 points on that question. And we only got 0.2 in the second round. By my calculation, that's a difference of 3.2. If we had simply answered that question right, we're now over the top. We're ahead of Ohio, and we have \$400 million to put in the Title I education -- education for poor students, by the way -- and all these things on data, on curriculum -- so it is important. It's not just that there are other sections where they're deficient, this is a simple question that went awry, and the question is why? I think that's why we're here. Does it have to do with the way that the Corzine Administration compared to the Christie Administration, or was it something to do with the consulting contract? I'm going to get to that in a minute.

But go ahead -- anybody can take that. Who wants it?

ACTING COMMISSIONER HENDRICKS: Well, from all that we can detect, it was an error made of omission in editing. I think, clearly, whoever the editor was, intended to have a better response, not a lesser response. It's too bad that that very specific information was redlined out. It could have simply stayed, and the other edits included. How that happened is, as I said, from best we can detect -- it wasn't tracked, therefore, it wasn't picked up. And I think any number of other people, had they seen that red tracked -- had it been tracked, redlined -- I think it would have been picked up. It would have been restored, and we wouldn't be sitting here having this conversation, and we'd have \$400 million.

ASSEMBLYMAN CONAWAY: (indiscernible) before we move on.

Okay, now, Wireless Generations -- they are paid, they arrive on the scene. Now, I see there was some sort of training for states on the 21st of April -- there's a training for states and New Jersey was not there. We know there's a June 1 deadline coming. When did the office start to-- When did offices get filled up? When did the staff organize itself around getting this application done? And then when did Wireless Generation come to the scene to help with this process, please?

ACTING COMMISSIONER HENDRICKS: We started immediately after the announcement came. I'm sorry I don't know the date of the announcement.

ASSEMBLYMAN CONAWAY: Was it in April?

ACTING COMMISSIONER HENDRICKS: April, certainly.

ASSEMBLYMAN CONAWAY: Okay.

ACTING COMMISSIONER HENDRICKS: And we discussed the issue of who would help us, probably for a week, and immediately upon the conclusion of that discussion, we had the first people from Wireless join us. And then more came as--

ASSEMBLYMAN CONAWAY: Then probably in April.

ACTING COMMISSIONER HENDRICKS: In April, yes.

ASSEMBLYMAN CONAWAY: They joined the team.

Now tell me: How many persons -- \$180,000 contract. Tell me, how many persons -- \$180,000 contract -- how many persons were involved from Wireless? How big are they? I mean, do you know-- How big are they? How many persons from that corporation, company, LLC --

whatever it is -- were actually involved on the ground working with the Department, getting this application correct?

ACTING COMMISSIONER HENDRICKS: We had three people who were with us all the time. The head of Wireless came regularly, but he wasn't there all the time. Three of the people, the three people stayed at the Marriott in Trenton and worked with us all day and all night, and then they--

ASSEMBLYMAN CONAWAY: From April? All day and all night from April?

ACTING COMMISSIONER HENDRICKS: Well, two of them stayed starting in the middle of April. I'm sorry I don't have the dates with me.

ASSEMBLYMAN CONAWAY: That's okay. I mean, I'm just trying to get an idea of that money we spent what the commitment in personnel was. Because this is an error of enormous magnitude that is, really, when you read the question and the response -- we had it right, then we got it wrong -- their job, as you describe it in an earlier question, was editing this thing. And I think we have their ask here as to what they were -- in one of these documents -- as to what they were supposed to do. It was to make technical corrections, to make sure the submissions were correct. And clearly here, that did not happen. And a lot of money was spent. And so I'm trying to figure out whether or not the contractor itself -- did they have enough personnel in? Did they have one person reading the whole document, which is why this guy missed it? I mean, what went on here that caused this really tragic error, and cost taxpayers a bundle -- teachers, schools, the whole thing.

ACTING COMMISSIONER HENDRICKS: The intensity in this application process got greater as the time went on.

ASSEMBLYMAN CONAWAY: Deadline's coming.

ACTING COMMISSIONER HENDRICKS: As it got closer to the end, it became more and more difficult. At the end, they would have four or five people -- I guess four is the most that they-- No, they've had five. They also brought in consultants to help us in areas that were difficult. And what we considered to be difficult -- as you suggest, this is not one of the difficult areas -- but the areas of how you change the classroom is a difficult area. And they brought in consultants in that area, they brought in--

ASSEMBLYMAN CONAWAY: Well, let's just focus on-- So there were about four or five people, at most, on the ground.

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYMAN CONAWAY: This one question would have had one person looking at it to make sure that it was right?

ACTING COMMISSIONER HENDRICKS: I believe that one person-- I believe that that editing process went through a single consultant.

ASSEMBLYMAN CONAWAY: Went through a single consultant. Any idea how often this went back and forth, to see-- As I say, we have a document that has the right number on the 25th.

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYMAN CONAWAY: And then it's changed as we're heading to the due date here. One person, you say-- Any idea how much it went back and forth?

ACTING COMMISSIONER HENDRICKS: No, I do not know. I do not know, because I wasn't involved with Section F. But I do not know how often the-- Traditionally, in practice, those sections went back and forth two, three, and sometimes even four times.

ASSEMBLYMAN CONAWAY: Okay.

ACTING COMMISSIONER HENDRICKS: But in this case, I have no idea how many times it went through.

ASSEMBLYMAN CONAWAY: Okay.

Now, anybody else on that? (no response)

Now, one of the things that -- reading the press over this over the weekend and trying to prepare for the hearing today -- is that at some point along the process, and I take-- I understand what you've said about wanting to push the envelope, but \$400 million is at stake here. And when-- It seems that in the run-up to the weekend prior to June 1 -- I think that was a Monday or Tuesday, June 1 -- the Governor said that he was throwing out a portion of the application. And what I'm trying to understand is, what was the reaction, what was going on in the Department when -- after months of collaboration, of working with teachers and those local authorities to get them onboard supporting this application, knowing that that would enhance the number of points that we had -- all of a sudden-- We have this arrangement, agreement, through collaboration that, as I understand, the Commissioner -- the former Commissioner is doing -- we had that ready to go. Then, all of a sudden, the Governor's Office gets involved and this consensus that's developed with teachers is thrown out the window. What happens, what's going on in the Department at that time? And what were the thoughts about the impact on the points? What

did it cause in terms of having to read through the document and do further edits and run the papers back and forth? Describe that for me, will you?

ACTING COMMISSIONER HENDRICKS: It was a tough time, because we had to first decide whether we would go on. And then once we decided--

ASSEMBLYMAN CONAWAY: Whether you'd go on?

ACTING COMMISSIONER HENDRICKS: Well, it was Thursday afternoon that we started to change this, and we had to consider the work that needed to be done between then and Tuesday. So we gave it consideration, and we began to do the work. I believe Wireless Generation was up all night, every night. I stayed until about 10, maybe 11, but I certainly wasn't up all night with it. (laughter)

ASSEMBLYMAN CONAWAY: Understood. (Indiscernible)

ACTING COMMISSIONER HENDRICKS: Old days, when I was a lot younger.

But that work continued, and it went on regularly from there until the application left our house on Tuesday.

ASSEMBLYMAN CONAWAY: And somebody had to drive it down there, I understand. Is that right?

ACTING COMMISSIONER HENDRICKS: It was sent electronically--

ASSEMBLYMAN CONAWAY: Oh.

ACTING COMMISSIONER HENDRICKS: --to Washington, and it was done on Tuesday afternoon. It was due on Tuesday. Monday was Memorial Day, and we changed it right through until the end.

ASSEMBLYMAN CONAWAY: Let's sort of focus on that for a moment.

Interesting -- and just to put a point on it -- you actually considered whether or not the Department could move forward the application at all.

ACTING COMMISSIONER HENDRICKS: We considered how it could possibly be done, yes.

ASSEMBLYMAN CONAWAY: Because the changes that the Governor was demanding at the time, in the view of the Department, jeopardized the application being submitted at all.

ACTING COMMISSIONER HENDRICKS: The Commissioner wanted it done, and we heard that, and we worked at it as well as we could to get it done. There was no--

ASSEMBLYMAN CONAWAY: So it's good that you got it done. We should congratulate you for that.

ACTING COMMISSIONER HENDRICKS: Yes, that's right. It was done.

ASSEMBLYMAN CONAWAY: Okay.

ACTING COMMISSIONER HENDRICKS: And it required reediting certain sections -- just obvious.

ASSEMBLYMAN CONAWAY: Well, let's get to that.

ACTING COMMISSIONER HENDRICKS: F was not one of them.

ASSEMBLYMAN CONAWAY: F was not one of them.

ACTING COMMISSIONER HENDRICKS: No.

ASSEMBLYMAN CONAWAY: Okay, that's good to know.

Now tell me: What was-- It sounds like the changes, then -- if you were considering not putting in the application at all -- it sounds like the changes that the front office was -- for the Governor, in this case -- he was asking for changes that were rather substantial then. I mean, if you're up working all night, and scrambling to get this thing done, and considering not even putting it in, it sounds like at the 11th hour -- or the 10th hour, if you want, probably the 11th hour -- that a number of changes were made. Can you, sort of, give us a synopsis of those things? Clearly merit pay was an issue -- that was reported in the paper. There might have-- Were there other things that were -- other sections that were involved here, so we can get to that?

ACTING COMMISSIONER HENDRICKS: The major issue dealt with the ability to let people go at times of RIF on the basis of effectiveness, rather than the number of years they had been in the district. The code stands now that if you let people go in your district, you do it on the basis of the number of years they've been working in that district. And the issue was, do we-- Is it possible that we do it not on that basis, but we do it simply on the basis of effectiveness? And the Governor and the Commissioner, more importantly, said no, we would not remove that section. We would not compromise on that section. So we--

ASSEMBLYMAN CONAWAY: You would not compromise?

ACTING COMMISSIONER HENDRICKS: No, we would not compromise on that section.

ASSEMBLYMAN CONAWAY: You would not compromise on that section. And did that section cause us to lose-- We would not

compromise. We know we're in a race with other states. And did that section, and those changes, cause us to lose points?

ACTING COMMISSIONER HENDRICKS: I have no idea. It's part of a big section, and it can't be isolated. The issue was that we were ordered to be bold, and that is--

ASSEMBLYMAN CONAWAY: Fine.

ACTING COMMISSIONER HENDRICKS: --a bold reform. So whether it-- The degree to which it caused us to lose points, I can't answer. I know that the major issue of what we had to do in those two days had to do with the fact that the districts had sent us responses that said they wanted to join, and we had to go back into our set of districts and find the ones where the union had sent them before the decision and after. We had to look at all of our memorandums of agreement that the districts had sent us to make sure that if they were sending it to us because of the union, that we remove those -- because the union no longer, of course, would support the application as it stood. So that was really the most difficult part of the issues.

ASSEMBLYMAN CONAWAY: We had, because of the press, the Governor reported that -- I think, as this quote is saying, that the report had to be driven to D.C. You said it was sent electronically, actually it didn't have to be driven?

ACTING COMMISSIONER HENDRICKS: I believe it was sent electronically -- is that correct? I'm the only one, I guess, who knows. But as far as I know, it was sent electronically. I did not send it, however, so I'm not the right one--

ASSEMBLYMAN CONAWAY: I know the Chair wants to move on.

ACTING COMMISSIONER HENDRICKS: Somebody might have--

ASSEMBLYWOMAN POU: Assemblyman--

ASSEMBLYMAN CONAWAY: Can he answer this question?

ACTING COMMISSIONER HENDRICKS: They took it down-- Sorry, they took it down on CD.

ASSEMBLYMAN CONAWAY: Okay, they took it down.

ACTING COMMISSIONER HENDRICKS: And then they used it electronically (indiscernible).

ASSEMBLYMAN CONAWAY: Any of you have thoughts on the impact of this sort of scrapping of this consensus that was achieved between the Department and the Commissioner, in particular, and teachers? I mean, what the impact of that was on the point total, our total point total? And clearly those points were important to whether we got \$400 million or not. I mean, anybody else on that?

Mr. Smarick?

ASSISTANT COMMISSIONER SMARICK: I'd answer in two ways: The first is, the Race to the Top application, it serves both as an application for money, but also is a vision, a blueprint for what your State is going to do, moving forward.

ASSEMBLYMAN CONAWAY: Which wouldn't need to be in the document, because we'd do vision inside of that document or outside of it, right?

ASSISTANT COMMISSIONER SMARICK: I think the -- I don't want to speak for the Governor -- but my belief is the decision that he made was based on what he thought was in the best interest of the State, moving forward. That we needed-- That RIF had to change, that compensation had to change, and so forth. So the vision, what he wanted to do with education reform, was better represented in the edited version than in the previous version. Answer number two is -- to your question about the points: The final plan, the final proposal, is extraordinarily bold. I mean, the points that we got in Section D for the bold proposals in Section A and Section F-- I mean, these are the things that the reviewers themselves had huge compliments for. Those things may not have been in there had this final change not happened. So trying to get in the minds of reviewers and say, "What would they have scored before and after?" is impossible. What I can tell you is this is an extremely bold plan, and the Governor decided, I believe, to do that because he thought that was in the best interest, long term, of the State.

ASSEMBLYMAN CONAWAY: It's a big cost -- \$400 million for boldness, as Assemblyman Greenwald pointed out. I agree with him on that point.

ASSEMBLYWOMAN POU: Thank you, Assemblyman.

Assemblywoman Addiego.

ASSEMBLYWOMAN ADDIEGO: Thank you.

Herb, I have to agree with you, that that mistake was egregious and inexcusable, and I believe that the Governor did do what he should have done and fired the Commissioner. But I think I heard talk about round three, and if we really want to get the best out of this hearing, I

think, and not make it a witch hunt, we need to look at what we need to do to get -- with regard to what has happened not just in round two, but in round one -- which we had the same consultants, or I believe. Is that correct, we had the same consultants? And what reforms that we had put forward in round two will get us in round three. I've been clearer (laughter).

So I think what we need to do, and I think the entire Legislature has indicated its willingness to work on reforms-- What I would like to know, Chairwoman, is, do we have a commitment to work--

ASSEMBLYWOMAN POU: Assemblywoman--

ASSEMBLYWOMAN ADDIEGO: --on these reforms?

ASSEMBLYWOMAN POU: We're not aware of any round three, just so you know.

ASSEMBLYWOMAN ADDIEGO: I know, but I'm just-- I believe there is talks.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYWOMAN ADDIEGO: I think that if you want to get the most out of what we're doing today--

ASSEMBLYWOMAN POU: But it's important for us to find out.

ASSEMBLYWOMAN ADDIEGO: Right.

ASSEMBLYWOMAN POU: Absolutely.

ASSEMBLYWOMAN ADDIEGO: Right. We need to talk about round one, and the fact that the consultants were part of round one, therefore they wrote Section F. So we need to-- The consultants aren't here, I believe, right? The consultants are not here?

UNIDENTIFIED MEMBER OF PANEL: The consultants are not here.

ASSEMBLYWOMAN ADDIEGO: Okay.

But to that end-- I'll get back to the consultants in a minute. We have-- I think, our Democratic leaders are here, our Republican leader is here. I think we need to make a commitment; and can we have a commitment, to work on these reforms? I see our Democratic leader, Sheila Oliver, nodding her head. Do we have that commitment to work on them?

ASSEMBLYWOMAN POU: Assemblywoman, let me just make a point here. You talked about whether or not there was information-- I just want you to know that in the first application, the correct answer was, in fact, there. So when it was changed in Phase 2, the second application, that's where--

ASSEMBLYWOMAN ADDIEGO: And that's what was so egregious about what happened.

ASSEMBLYWOMAN POU: Just so that you're aware of--

ASSEMBLYWOMAN ADDIEGO: Absolutely.

ASSEMBLYWOMAN POU: --the right information was--

ASSEMBLYWOMAN ADDIEGO: And I think the Commissioner was fired, and I believe the consultants need to answer for this, too.

ASSEMBLYWOMAN POU: I don't know that we've actually identified who was the final editor of this particular-- Who did the final editing? I'm not sure if that question has yet been clearly identified and disclosed, because members of the team here either know some, but not all

information. And by all means, correct me if I am saying something that does not reflect the statement that I've just made.

ASSEMBLYWOMAN ADDIEGO: Does somebody know how Wireless tracked edits? How would Wireless track changes? If somebody made a change, how would you know that a change was made, or how would they know that a change was made? Do you know what they would do?

ACTING COMMISSIONER HENDRICKS: We read with track changes, we read with changing the color of the font. Some of the things were handwritten that went to them, and then they would type it in with changes.

ASSEMBLYWOMAN POU: Information was handwritten?

ACTING COMMISSIONER HENDRICKS: Well, some-- People were reading hard copy, and they would often scribble in it, make changes, saying take this out, draw lines through out. I mean, we were editing with some intensity. It would not-- We would hand them hard copy at times.

ASSEMBLYWOMAN ADDEGIO: In Section F, specifically, since we're talking about that: Did Wireless put those highlighted or underlined or whatever-- I think it's Microsoft Word does it -- did they do that in Section F?

ACTING COMMISSIONER HENDRICKS: In the last version that was sent back, it appears to us -- and it's something that they would corroborate -- that they did not track or redline the edit out of the answer that would have gained us the points that we're discussing now.

And while I have the microphone, if I may: I do want to announce that President Obama indicated his plans to, in fact, pursue another Race to the Top opportunity. I think to the tune of about \$1.3 billion.

ASSEMBLYWOMAN ADDIEGO: So that makes this even more important.

ACTING COMMISSIONER HENDRICKS: That would give us another opportunity. And I think that, certainly Andy Smarick gave the answer that I would have given, with respect to going bold. But one of the things I want you to look at: The points from round one -- the available points in the area that deals with State success factors, and that includes getting the LEAs to sign on -- the available points were 125 points in round one. We got 83.6 points. And in round two, even with those changes, we had 104 points. And I'm pointing that out to say, this hearing, and I think other opportunities going forward, would allow us to do both -- to be bold and to gather additional support. And we would need your cooperation, and your partnership, to make that happen.

ASSEMBLYWOMAN ADDIEGO: If I may go back to Section F one more time, because I think it's critically important, with regard to this tracking. If they did not bold or highlight or indicate, like they normally did, there was no way, am I correct, that any of you would have known or realized that those changes were made?

ASSEMBLYWOMAN POU: Mr. Gohl just indicated earlier that he tracked it, and he identified--

ASSEMBLYWOMAN ADDIEGO: I'm talking about before the--

ASSEMBLYWOMAN POU: --and mentioned it--

ASSEMBLYWOMAN ADDIEGO: --application was--

ASSEMBLYWOMAN POU: Right. But certainly not before the application was--

ASSEMBLYWOMAN ADDIEGO: Before the application.

ASSEMBLYWOMAN POU: Prior to going to the Washington interview, that information was disclosed by Mr. Gohl. And Mr. Gohl mentioned it to Wireless Generation but not, according to Mr. Gohl's statement -- not anyone on the team or the Administration.

ASSEMBLYWOMAN ADDIEGO: Let me get back to that, exactly. But I just want to go back to when this could have been fixed -- before the application was submitted.

ASSISTANT COMMISSIONER SMARICK: So I received the version -- well, I think it's called version 8 of Section F -- I think that's right. Version 7 was the one where the bad change got made, or the good information got taken out and additional superfluous information got put in. When I saw Section F's version 8 for the first time, after the changes were made, none of those track changes were reflected in F1-1. So it wasn't as though I could see that the important first sentence, which is something along the lines of "it had been 36.9 percent, and is now 39.6" --that wasn't redlined out. It wasn't anything--

ASSEMBLYWOMAN ADDIEGO: So you didn't know, then.

ASSISTANT COMMISSIONER SMARICK: Correct. There were other small changes in there, like track changes, like an apostrophe or something like that. But the substantive change was not.

ASSEMBLYWOMAN ADDIEGO: You mean a comma was tracked, but the important fact, like changing the other information, was not tracked?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYWOMAN ADDIEGO: Oh, okay.

ASSEMBLYWOMAN POU: While Assemblywoman is getting her next thought together, Mr. Smarick: Was there any time that you looked at the document and saw that there was-- I thought I heard you say that you did not look at anything other than those things that were changed. Now this was a change, was it not?

ASSISTANT COMMISSIONER SMARICK: I don't think I said that earlier.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SMARICK: I didn't mean to say that.

ASSEMBLYWOMAN POU: All right. How was this information tracked at any time prior to any of the editing? It was a change, and if you went through that Microsoft editing highlights that you've talked about -- did you?

ASSISTANT COMMISSIONER SMARICK: I spent-- I hope this answer is responsive. I spent a lot of time working on Section D. And so when I would receive a document from Wireless for me to put my suggestions in there, often there would be previous track changes in there that other people had made, and then I would use track changes as well. So then when it would go back to Wireless and then ideally to go to the

Commissioner or to Willa, they could see the changes that had been suggested so they could either give it a thumbs up or thumbs down.

ASSEMBLYWOMAN POU: So you only reviewed the changes that were being proposed. You did not review it during the final process, the final-- Just prior to submission, just prior to pushing down that button to e-mail it out, you did not review the entire application to make sure that everything was in place. Is that what you're telling me?

ASSISTANT COMMISSIONER SMARICK: I was not even on staff at that time. So I wasn't in the room, or so forth.

UNIDENTIFIED MEMBER OF AUDIENCE: (indiscernible)

ACTING COMMISSIONER HENDRICKS: The final day of this application, and probably most of the day before, was engaged in two things: one, making sure it properly reflected the decisions in regard to the Association, unions; and two, to make sure that the Attorney General's ideas and changes, and required changes, were made. The Attorney General worked on it all day on-- Well, they worked on it a little bit on Memorial Day, and they were there until we sent it out on Tuesday. And they signed off on it at the last minute. So the whole of the last reading was done by the Attorney General and the consultant, working together, line by line.

ASSEMBLYWOMAN POU: Did you say you were not an employee?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYWOMAN POU: When did you become an employee of the Department?

ASSISTANT COMMISSIONER SMARICK: I accepted a job with the Department sometime in May, and then officially came aboard in the beginning of August. So I've only been officially on--

ASSEMBLYWOMAN POU: So why were you being e-mailed or given information about the application if you were not an official employee of the Department or the Administration?

ASSISTANT COMMISSIONER SMARICK: Commissioner Schundler knew I was coming on board, and knew that I knew a lot about Race to the Top, and asked me for advice on various sections.

ASSEMBLYWOMAN POU: Were you brought on as a consultant?

ASSISTANT COMMISSIONER SMARICK: I wasn't being paid; I was doing this gratis.

ASSEMBLYWOMAN POU: So before-- So you were doing this, and you came on board, and you were part of the application process prior to -- at the time when you were making all the changes and editing. Is that correct?

ASSISTANT COMMISSIONER SMARICK: About May 23 to about May 29--

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SMARICK: --I commented on 8, 10, 12 different versions of things.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SMARICK: Sending them in.

ASSEMBLYWOMAN POU: All right. But officially, you did not become an employee of the Administration until August--

ASSISTANT COMMISSIONER SMARICK: Two. August 2.

ASSEMBLYWOMAN POU: August 2.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYWOMAN ADDIEGO: If I may-- I just have a couple more questions.

About how many pages is this application?

ACTING COMMISSIONER HENDRICKS: About 1,000.

ASSEMBLYWOMAN ADDIEGO: How many?

ACTING COMMISSIONER HENDRICKS: About 1,000 pages.

ASSEMBLYWOMAN ADDIEGO: About 1,000 pages. So tracking, I would guess, is extremely important in a document of that size -- am I correct?

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSEMBLYWOMAN ADDIEGO: Yes?

What was the number -- what was the version -- what number version was the final one that went to D.C.?

ASSISTANT COMMISSIONER SPICER: Well, some sections are more than others.

ACTING COMMISSIONER HENDRICKS: Section F we had 12 versions, I do know.

ASSEMBLYWOMAN ADDIEGO: Okay. Well, let's start with that. Section F had 12 versions. And I believe that the change was made in the seventh. Is that correct?

ASSITANT COMMISSIONER SMARICK: Seventh, I think.

ASSEMBLYWOMAN ADDIEGO: So we could have had a number of chances had it been tracked.

ASSEMBLYWOMAN POU: But we'd like to find out who followed up on track -- on change 8, on change 9, on change 10, 11, and 12. Obviously there were four other editing opportunities for the Administration and the Department to have identified that.

ACTING COMMISSIONER HENDRICKS: Number one, the consultant didn't track it from 7 to 8, and it was never picked up right through 12.

I have somebody in the audience who's agreeing.

ASSEMBLYWOMAN ADDIEGO: Was that what happened? The consultant didn't track it between 7 and 8, and it never got picked up until 12?

ASSEMBLYWOMAN POU: That doesn't make sense though, Assemblywoman.

ASSEMBLYWOMAN ADDIEGO: Well, they're the ones who tracked it.

ASSEMBLYWOMAN POU: Because the consultants weren't doing it by themselves. They were engaged--

ASSEMBLYWOMAN ADDIEGO: But the consultants were the ones who did the track--

ASSEMBLYWOMAN POU: No, no, no.

ASSEMBLYWOMAN ADDIEGO: Oh, that's a good question. Actually, that was a good question.

ASSEMBLYWOMAN POU: No, they were in the room with the staff. They were in this room the whole time with the staff for four days.

ASSEMBLYWOMAN ADDIEGO: What I'm saying is, the consultants -- just so I have an understanding. I'm sorry. The consultants would be the ones typing in the track. So if there was a change, and there was a tracking, the consultants did that.

ASSEMBLYWOMAN POU: Yes.

ASSISTANT COMMISSIONER SPICER: Exactly.

ASSEMBLYWOMAN ADDIEGO: Is there any way for you to have known there was a change unless that was done -- the staff? Was there any way for the staff to have known that a change occurred unless it was tracked?

ASSISTANT COMMISSIONER SPICER: It depends. If you were responsible, you might be sitting right there when it's changed. So the Attorney General sitting right next to you -- you're typing off, and that person is saying, "Change this, change this -- that won't work."

ASSEMBLYWOMAN ADDIEGO: Who is responsible for F?

ASSISTANT COMMISSIONER SPICER: What?

ASSEMBLYWOMAN ADDIEGO: Who was responsible for F? Who would have been sitting, if possible? Is there anybody in particular who would be responsible for F? Was that purely a product of the consultant, that they would have answered that question? I don't know, who was?

ASSEMBLYWOMAN POU: It's a great question. Why don't we try to get an answer for that one?

ASSISTANT COMMISSIONER SPICER: The changes to F were made by the Commissioner. They were sent to the consultant, and I believe that that was then sent to you -- or maybe to other people, too, who were reading outside. But I don't know if it was marked, so I can't answer it.

ASSEMBLYWOMAN ADDIEGO: But the original information was in the original round one document, which was the prior Administration, correct?

ASSISTANT COMMISSIONER SPICER: Right.

ASSEMBLYWOMAN ADDIEGO: Who gave that information?

ASSISTANT COMMISSIONER SPICER: Oh, without a doubt, it was probably the former Commissioner with the original one.

ASSEMBLYWOMAN ADDIEGO: And so then it would be-- So now that same information, which had gotten five points -- correct?

ASSISTANT COMMISSIONER SPICER: Right. I think it's 5. It may be 4.

ASSEMBLYWOMAN ADDIEGO: And it was the same question for round two, correct?

ASSEMBLYWOMAN POU: Correct.

ASSISTANT COMMISSIONER SPICER: Yes. All the questions were the same -- round one and round two.

ASSEMBLYWOMAN POU: Except that it was answered differently.

ASSEMBLYWOMAN ADDIEGO: Somebody changed it.

ASSEMBLYWOMAN POU: The right answer was removed to give the wrong answer, or not answer the question.

ASSEMBLYWOMAN ADDIEGO: They changed it.

ASSEMBLYWOMAN POU: And that's where the problem lies.

ASSEMBLYWOMAN ADDIEGO: Who is Wireless saying changed it? Did anybody ask them? Because we can only ask you guys sitting here. Did anybody ask Wireless who made those changes? And what did they say if you--

ASSEMBLYWOMAN POU: Someone has to shut their light off in order-- Commissioner, you're good now.

ACTING COMMISSIONER HENDRICKS: The information we have from Wireless indicates, as I said, that they believe that the handwritten change that they received was from Commissioner -- former Commissioner Schundler. That's the only piece of information that we have with respect to that. It would have to be confirmed by the former Commissioner and confirmed, I guess, additionally by Wireless. That's all that I can say with respect to that issue.

ASSEMBLYWOMAN ADDIEGO: Were there any other similar mistakes made in the document? Were there technical--

J E S S A N I G O R D O N: Hi, my name is Jessani Gordon. I'm the Director of Research at the Department of Education. And I can respond to that question.

There was an error that was made following the submission of the application in the number of MOUs that were designated in the application. There is an inconsistency between the number of MOUs in the

appendix, where there was a big chart, and the number that was presented in the document itself. And that mistake was-- The inconsistency was identified by the NJEA. And I believe that they called the Commissioner -- I'm not sure exactly who they called at the Department, but they left-- After we had posted it on the Web site-- After the submission, we posted the entire application with the appendices on the Web site. The NJEA -- someone from the NJEA had called to notify us that there was an inconsistency in the number of signed MOUs by local union presidents. So we took it off the Web site, and we called Wireless to find out what the correct number was. And once we figured out -- once they figured out what that correct number was, we wrote a note -- a letter to the U.S. Department of Education explaining that there was an error -- there was an inconsistency between the -- what was in the appendix and what was in the body of the application, and explaining that this had happened and that we wanted to correct it.

We then got a response back. I wrote a draft, and then the Commissioner ultimately fine-tuned the draft of the letter that was submitted to the Department of Education. So it ultimately was his wording. We got-- I think a couple of weeks later we got a response back from the Federal government saying, "Thank you very much. We got your request to correct this information, but we have to deny that request because we will not make any changes to the application once it has been submitted." So any correction in information, even if it's an inconsistency, or if it's new information, or whatever, is not going to be reflected, not going -- that information will not be given to the review team.

ASSEMBLYWOMAN ADDIEGO: Who advised you to do that letter? Was that Wireless? Did the consultants advise you to do that?

MS. GORDON: They advised us to send a letter, yes.

ASSEMBLYWOMAN ADDIEGO: They did.

MS. GORDON: And we wanted to send it because it was an inconsistency, and we wanted to make sure that we had the proper information.

ASSEMBLYWOMAN ADDIEGO: Did they advise you to send a letter in Section F when they were told? Did Wireless-- That's one mistake. Now, we found a second mistake. Did Wireless advise you to send a letter indicating that that was a mistake as well?

MS. GORDON: If I could just reiterate, the letter that we received back from the Department of Education -- the U.S. Department of Education -- said that any correction of information or any inconsistency that is noted after we submitted the application will not be used and will not be shared with the review team.

ASSEMBLYWOMAN ADDIEGO: Did you have the opportunity-- Did it indicate whether you would have an opportunity to explain it at your face-to-face interview?

MS. GORDON: They said in the letter that should we make it to the -- as a finalist, that the finalist -- or the review panel may ask a question and may identify an inconsistency. But they also said-- Basically they said that the review team may ask a question about it but that no new information could be provided.

ASSEMBLYWOMAN ADDIEGO: All right, knowing that they may ask a question, were you prepared for -- were you advised to be

prepared to answer that question if it was asked? Did you have any coaching, or any bullet points, or anything in case you were asked that question?

MS. GORDON: Well, I have-- We got very specific direction about how the presentation -- the finalist presentation was to proceed. And it was very clear in that document -- in the notice of the guidelines for that -- for the finalists presentation -- that there was to be no additional information provided, that you could only refer to the application itself that was already submitted.

ASSEMBLYWOMAN ADDIEGO: In other words, you were all told that you could get asked a question on that. Were you prepared to answer that question--

MS. GORDON: Yes.

ASSEMBLYWOMAN ADDIEGO: --regarding the mistake of 292, or whatever it was?

MS. GORDON: Yes, we had talked about that as a team.

ASSEMBLYWOMAN ADDIEGO: Okay. What about with regard to Section F, knowing there was a mistake? Were you given guidance on how to answer that question if you were asked it during the interview?

ASSISTANT COMMISSIONER SMARICK: No.

MS. GORDON: My understanding is that we didn't -- we weren't aware that there was an omission.

ASSEMBLYWOMAN ADDIEGO: The consultants didn't-- Was that a no or a yes?

ASSISTANT COMMISSIONER SMARICK: No.

MS. GORDON: No.

ASSEMBLYWOMAN ADDIEGO: Oh, you weren't given guidance on Section F, but you were given guidance on the other mistake.

ASSEMBLYWOMAN POU: I think Ms. Gordon's response was that they were not aware that there was any inconsistency on that particular question.

Did I phrase that correctly, Ms. Gordon?

MS. GORDON: That's correct. We didn't know that there was -- that that question had been answered incorrectly.

ASSEMBLYWOMAN ADDIEGO: But the consultants--

I'm sorry, Mr. Gohl, you told the consultants before you went down there. Is that correct?

MR. GOHL: That's correct.

ASSEMBLYWOMAN ADDIEGO: And who was responsible for talking about Section F if there were any questions? Was anybody responsible for--

ASSEMBLYWOMAN POU: Mr. Gohl, you were there in Washington at the interview when the question came up and asked of the Administration -- to ask if there was -- if that particular information was anywhere within the document? And I believe Assistant Commissioner Willa Spicer was asked by the Commissioner then -- former Commissioner Schundler -- is that information -- or to look for it. You looked for it, and you indicated that it was not in the application. Why did you not speak up at that moment, Mr. Gohl, that that information had not been -- was changed, pardon me, and that information no longer was the same?

MR. GOHL: So I informed Wireless Generation on the 5th that I, in just my own personal preparation -- there was a difference. I was told there was nothing we could do. We go to Washington, D.C. For each section, Wireless Generation had prepared -- or had provided preparatory material saying, "This is highlights. This is how you can add verbiage to the written document in order to represent the State of New Jersey better in the intention for reform."

The documentation prepared for Section F -- and in particular, Section F1, which is the section under question at the moment -- refers to the FY 2010-'11 comparison data. In the video, you will see that when the question is asked, "Where in the document is the '08-'09 data," I do respond to the questioner, and I say, "You mean the baseline 2010 data." Because that is what we can speak to, for that is what had been provided in writing.

ASSEMBLYWOMAN POU: That was not the question.

MR. GOHL: That's correct.

ASSEMBLYWOMAN POU: So how could you speak to something that was not the-- How could you answer the question with something that-- How could you provide an answer to a different question?

MR. GOHL: All I would be allowed to speak to is what was in the application. And I wanted to provide a response, if allowed to.

ASSEMBLYWOMAN POU: Okay.

MR. GOHL: We were not allowed to. Remember that at this time, there is a countdown clock -- that we are losing minutes if we get distracted by something we cannot gain 1 percent of the points for -- when, in fact, there were 97 points on the table at the time.

ASSEMBLYWOMAN ADDIEGO: Who told you what to say? Who guided you as to what you could and could not say?

MR. GOHL: I would say that in the week of preparation that I had, beginning on August 5 until the actual presentation on August 11, it was a joint coaching session of the panelists, Department of Education employees, Wireless Generation, and a number of various constituencies who came in to critique our formal appearance and our technical experts.

ASSEMBLYWOMAN ADDIEGO: Was then Commissioner Schundler there?

ASSEMBLYWOMAN POU: (indiscernible)

ASSEMBLYWOMAN ADDIEGO: Oh, I'm sorry.

ASSEMBLYWOMAN POU: Who were those other individuals? This is the first that we hear of other individuals in the room. Who were there?

MR. GOHL: Let me answer this two ways: one, directly. I do not have a roster. Secondly, it was very important that the team practice fitting our presentation into 30 minutes and our question and answer into 60 -- for when those times expired, we were done.

ASSEMBLYWOMAN POU: Acting Commissioner, you were there; and Willa Spicer, you were there. Who were these other individuals that you would know were present in that room?

MS. GORDON: I can respond to some of the individuals who were there. I don't recall all of them. We had, I believe, two practice sessions with outside people who came in, and we had staff from the--

ASSEMBLYWOMAN POU: Who are they, Ms. Gordon? Just give us who they are.

MS. GORDON: Oh, what their names are. Keith White was there, Debbie Bradley was there, Janellen Duffy was there. I'm trying to think of who else. Those are the only names that come quickly to my memory.

ASSEMBLYWOMAN POU: Willa, do you have any additional people that you would add?

ASSISTANT COMMISSIONER SPICER: No, I don't. There were a group of people who came in from New York, and a person from Pennsylvania also. But I don't know their names. Some of them stayed for several days.

ASSEMBLYWOMAN POU: (indiscernible)

ASSISTANT COMMISSIONER SPICER: I assume that they were invited by Wireless, because Wireless was doing the preparation of us. And so (indiscernible).

Andy knows.

ASSEMBLYWOMAN ADDIEGO: When you addressed Section F, what did-- Did you practice Section F if you were asked a question on it? Did you practice that?

MR. GOHL: In short, no, for in round one we had full points. What we were focused on is the gaps in what was possible to get.

ASSEMBLYWOMAN ADDIEGO: During the practice, you knew that there was a mistake, correct? Wireless knew -- the consultants knew there was a mistake. Did they tell you during the practice how to answer a question on that?

MS. GORDON: No.

ASSEMBLYWOMAN ADDIEGO: They knew it was a mistake. So how did you know that you could only -- you should only mention 2010 information?

MR. GOHL: Well, the written materials that they provided us spoke to 2010 data. And across the board, patently, on every question, the rules of engagement were extremely clear. We could only address that which had been done prior to June 1, whether it be legislatively or in the regulations. We could only talk to what had been submitted on the June 1 written documentation, for if New Jersey had come to complete agreement on tenure reform in July, we could not have spoken to it.

ASSEMBLYWOMAN POU: Assemblywoman.

MR. GOHL: It was a firm June 1 deadline.

ASSEMBLYWOMAN POU: Assemblywoman, if you would just -- if you can just wrap it up and make this your last question. I'd be happy to give you a second round if we--

ASSEMBLYWOMAN ADDIEGO: Just so I'm clear, you didn't mention that-- Was Commissioner Schundler part of any of this preparation?

ASSISTANT COMMISSIONER SMARICK: Yes, we started our-- I want to make sure that we reflect what we were doing accurately so you get a sense-- What we wanted to do is practice as closely to what the real-life situation, when we got to Washington, D.C., was. So the five of us who were presenting were sitting at a table, just like we would be in Washington, D.C. We had a clock just where it would be. We would have a panel of experts grilling us, just like it would be. So we actually began this probably the Thursday or Friday before, and probably went through five or

six days of this. And then the Commissioner came on that Monday and was with us non-stop through the time we went to Washington.

ASSEMBLYWOMAN ADDIEGO: Monday. What was the date on Monday? When did you go, Monday -- and then Washington was--

ASSISTANT COMMISSIONER SMARICK: The 11th.

ASSEMBLYWOMAN ADDIEGO: And Monday was the what, 9th?

ASSISTANT COMMISSIONER SMARICK: The 9th.

ASSEMBLYWOMAN POU: Assemblywoman, I will come back--

ASSEMBLYWOMAN ADDIEGO: One quick one: Did they practice the other mistake? Was that brought out during your practice session -- how to answer that?

ASSISTANT COMMISSIONER SMARICK: No, it never came up.

ACTING COMMISSIONER HENDRICKS: Just, again, the focus of that -- the only thing I add is that we were very clear that the purpose of the interview was to gain points. So we paid attention to the timing, we paid attention to our responses -- that they were focused and they were sharp. If there was something to add, we added it. If there was nothing to be gained, we just let it go so that more questions could come our way. The more questions we were able to address, the more the likelihood was that we would be gaining points from the presentation. So things that were omitted obviously were not going to be addressed.

ASSEMBLYWOMAN POU: Thank you so very much.

And I will be happy to come back around if we have to. I just want to give everybody an opportunity.

Assemblyman McKeon.

ASSEMBLYMAN McKEON: Thank you, Madam Chairperson.

And based on what I think is pretty extraordinary testimony, I hope that we could get a copy of the roster of attendees as it relates to the prep. Because it would be incredible to me that Mr. Gohl would be the only person, as a part of these sessions, who would have known of the mistake going into the August 11 hearings. That's just hard to believe that the consultant would just choose him to be the person to impart that information to -- notwithstanding if I believe your testimony, as I would, that you were the one who raised it. That you'd go through these meticulous prep sessions, having to keep meticulous time about the 30 minutes, and this issue doesn't come until the entire team gathered -- that, "By the way, everybody, we made a mistake here." At least that's what we've been led to believe -- that nobody knew about this mistake until today; with the exception of you, until the August 11 hearing. So I hope that we can get that roster and maybe continue to explore who knew what and when.

The other comment I have, with the greatest of respect to my colleague, is I heard that the Governor fired the Commissioner because of this mistake. The Governor, to my understanding, did not fire the Commissioner because of this mistake in Section F. But the Governor fired him because you "can't lie to the Governor." Now, if Commissioner Schundler was here -- as he's put out in statements under his name, he'll say

he was fired because he refused to be the fall guy or that he refused to -- I won't use the word *conspire* -- but to acquiesce to keep the truth from the public.

And I commend all of you for being here, particularly -- and I'm not exactly certain of the two of your precise status -- but I've got three very dedicated professionals with the Department of Education who might just be a little intimidated being before us, worrying about what they said that could be spun through the Chief of Staff or whoever else as to -- "You didn't tell us that before, and now you're fired." Whistle-blowing statutes are in place for a beginning, as is the New Jersey Conscientious Employee Protection Act, and you will be protected. So I appreciate you being here.

I also note, with due respect, understanding the intimidation that you might feel-- Maybe I'm just reflecting it, trying to put myself in your shoes. Understanding that on May 28, after months and months, and countless hours and late nights of putting a plan together that had, quite frankly, the teachers on board-- When that rug got pulled out, knowing the significance of the points that go with adding to stakeholders, when stakeholders are buying in-- When that rug got pulled, to say that in two days -- that's when we went to the bold maneuvers? I just can't believe that. I know-- You tell me. I can't imagine that the Governor's policy people were not interacting with your Department over the months, from April up until May 28, to be able to come up with, ultimately, the framework of what Commissioner Schundler and the major stakeholders agreed to up to that point. Are you saying it got bold in two days?

ASSISTANT COMMISSIONER SPICER: I think we're saying we don't know.

ASSEMBLYMAN McKEON: What you're saying is you don't -- I think. I don't mean to say what you're saying. What I'm getting the gist of everybody's questioning is, "We know why we lost 5 points." You're saying, "Hey maybe we gained those 5 points back because of the tweaks, if you will, into the application that came after the Governor pulled the rug out of the agreement -- of the negotiated agreement between the Commissioner and the major stakeholders." And I guess we'll never know that.

What I do want to know-- And to share with you, we just got these documents late yesterday. God bless all of our staffs, again, for working through holidays -- which it sounds like you've all been very used to. We got-- The consultant signed their agreement on May 18. And I raise this because from May 18 to June 1-- I don't care how hard they were working, or what hotel they were staying in. That's \$180,000 beyond -- in that relatively short period of time -- two weeks.

The other section that I just still can't understand-- The Commissioner, presuming that's his handwriting -- I know none of you can attest to that -- did what he did on May 25 on a rather perfunctory section of an application that should have been ready to go, if it's due on June 1. A lot of us probably spent our summers yelling at our kids to make sure -- "Don't wait until the last minute for your summer projects." I can't believe the data section was getting edited by the Commissioner on the 25th. So let me accept that as true for a moment. Who types it? Did the Commissioner type it too? I see what purports to be his handwritten changes. Who at that point makes the change? Does the consultant do

that? Does someone out of the Department of Education actually make the change? How does that happen?

ASSISTANT COMMISSIONER SPICER: People made their changes in different ways. And I think the Commissioner made his in more than one way. When he could, he would type, because he would sit at his desk and try to compose. And at other times he would move quickly and just handwrite. I think we all did that. I think we all made our changes -- sometimes orally. The person sitting next to him -- saying, "No, that doesn't work. You have to make the changes here." And it was just done on that base.

ASSEMBLYMAN McKEON: So you're saying what purports to be the Commissioner's handwritten change, changing '08-'09 to '10-'11 -- you don't know whether or not, beyond the fact that it's in writing -- whether he might have made that change clerically himself, typing it in.

ASSISTANT COMMISSIONER SPICER: I do not.

ASSEMBLYMAN McKEON: You don't.

Was there a particular team? You mentioned about all the teams put together before that was responsible for the data section, which is what we're talking about here. The Commissioner obviously is one person who was, because he took that responsibility for the whole thousand pages, God bless him.

ASSISTANT COMMISSIONER SPICER: The data system was overseen by the person in the district -- excuse me, I'm still on the district -- in the office responsible for data, Bari Erlichson.

ASSEMBLYMAN McKEON: Who is that person? I'm sorry.

ASSISTANT COMMISSIONER SPICER: Bari Erlichson.

ASSEMBLYMAN McKEON: Bari Erlichson. And would it be Mr. Erlichson -- I don't know if that's a Mr. or Ms. I think you said Bari. So it would be a sir -- a person.

ASSISTANT COMMISSIONER SPICER: It's a she.

ASSEMBLYMAN McKEON: It is a she. There you go.

Would that person have directly handled the data section, or would it have been a team of her subordinates also?

ASSISTANT COMMISSIONER SPICER: No, she would work with the consultants on that section. She's sit with them and talk about what we have, and what the question is, and what should be. They would type it, she would read it, they would go back. She might have somebody in her department look at some portion of it where they have expertise. But essentially she would read back and forth.

ASSEMBLYMAN McKEON: Okay. So, again, through the Chair, we've learned of another very key witness to put together this puzzle as to precisely what--

MS. GORDON: Excuse me. I'd like to make a comment. I'm sorry.

I think there's confusion between--

ASSEMBLYWOMAN POU: Just a moment, Ms. Gordon.

MS. GORDON: I'm sorry.

ASSEMBLYWOMAN POU: Let me just hear the statement. Then, if you'd like to clarify that, that would be fine.

ASSEMBLYMAN McKEON: That's okay. I'm happy to listen to what the witness said. I just asked for this Bari to eventually come

before this Committee so we can find out the facts. This is to the nub of what we're talking about.

ASSEMBLYWOMAN POU: (indiscernible)

Ms. Gordon, did you want to add to that?

ASSISTANT COMMISSIONER SPICER: She just said to me that I might have made a mistake. I thought you were asking about the data section of the application, which is Section C, not F.

ASSEMBLYMAN McKEON: Then I misspoke. I assumed that the data section -- it just seemed to make sense to me -- would have included Section F.

ASSISTANT COMMISSIONER SPICER: No, it didn't not.

ASSEMBLYMAN McKEON: Thank you very much for clarifying that. Poor Bari would have been -- had a rough couple of weeks. (laughter)

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYMAN McKEON: Bless her soul.

Section F then would be in what section of the application? What would that be called? If the data section is C, F is in what section? Give me a name.

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYMAN McKEON: So it's just called Section F. All right. That's a general section.

So then let me go back, Commissioner or Deputy Commissioner. Then if the -- Schundler took responsibility for the entire 100 pages at some point -- 1,000 pages. Who would have-- And we've gone through-- I assume his changes would have still been the same. He

would have done it either electronically or-- Who would have been, within the Department, the person to have worked on that team, on Section F?

ASSISTANT COMMISSIONER SPICER: This section really was done originally by the Director of Finance working with the Commissioner. And I don't know who did the editing on it the second time around. I know who did it originally.

ASSEMBLYWOMAN POU: Who is the Director of Finance?

ASSISTANT COMMISSIONER SPICER: There isn't one right now.

ASSEMBLYWOMAN POU: I thought you said that it would have--

ASSISTANT COMMISSIONER SPICER: Originally. On the original application.

ASSEMBLYWOMAN POU: No, on this application.

ASSISTANT COMMISSIONER SPICER: Oh, I don't know who did the rewrite on this or whether there -- what other rewrites there were. I mean, this section is a section that deals with the Funding Formula and various things of that sort. And most of this stayed the same between the first and second application. So there is not a new person to do it over again.

ASSEMBLYMAN McKEON: So when the Commissioner made his -- again, presuming they were his handwritten -- and I think he said publicly that he hasn't seen them, but he thinks the edits were his -- nobody else would have looked at them? And we're not sure how they would have gone from handwritten to a typewritten form, assuming it was

in a typewritten form given to the State Department of Education -- or the Federal Department of Education?

ASSISTANT COMMISSIONER SPICER: The typewritten form would have gone to-- The handwritten form would have gone to Wireless, and Wireless would have made those changes, sent them back to him for agreement, and then brought them back again. And then they would have been read just as a general agreement if there is no other--

ASSEMBLYMAN McKEON: Somebody at Wireless, or multiple persons, would have seen them at least twice before they were submitted to Washington.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN McKEON: And, again--

ASSISTANT COMMISSIONER SPICER: Yes, I would think so. They would see them in handwritten form, and then they certainly would see them in typewritten form.

ASSEMBLYMAN McKEON: Okay. Three times, that's right.

Let me go on to August 11. Besides Mr. Gohl, were any of the rest of you a part -- I think so, but I just want to be clear. Who else was there? I think I'm right on the date. August 11 was the presentation before the Feds, correct?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYMAN McKEON: Were all five of you there?

ASSISTANT COMMISSIONER SMARICK: All four.

ASSEMBLYMAN McKEON: All four.

ASSISTANT COMMISSIONER SPICER: Jessani was not there.

ACTING COMMISSIONER HENDRICKS: The four of us and, obviously, Commissioner Schundler.

ASSEMBLYMAN McKEON: I'm going to start just to the left -- my left -- Commissioner. What, if anything, do you remember was said by the questioners about the missing information?

ASSISTANT COMMISSIONER SPICER: I have it purely in memory, since they show that little tape over and over on the news. They asked if we knew if the '08-'09 information -- could we find the '08-'09 information in the book? Because we had the book--

ACTING COMMISSIONER HENDRICKS: The application.

ASSISTANT COMMISSIONER SPICER: Between Andy and I, we were holding the book -- and was it in that application?

ASSEMBLYMAN McKEON: And when you went, as it related to that area of inquiry where your memory was refreshed through the videotape, were you expecting that question? Had you known up to that point that this was a flaw in the application, going back to June 1?

ASSISTANT COMMISSIONER SPICER: I did not know, but I was not expecting to find it, because they had read this application with a fine-toothed comb. So when they asked if it was there, I was surprised.

ASSEMBLYMAN McKEON: *They* meaning the Federal government?

ASSISTANT COMMISSIONER SPICER: The reviewers. When the reviewers asked us, it seemed strange to me since they had been -- they had really reflected knowing this application very well. So when we didn't find it, I wasn't -- I had no idea. I mean, I just had no idea why it couldn't be found, but it could not be.

ASSEMBLYMAN McKEON: From your experience, when the question was asked, it was kind of, “Uh-oh, they wouldn’t be asking this if it were here.”

ASSISTANT COMMISSIONER SPICER: That’s correct. In my mind that’s exactly what I thought.

ASSEMBLYMAN McKEON: Okay. Were you privy to any conversation that’s averred to have happened after the videotape was off, before you left the premises that day, regarding that piece of information?

ASSISTANT COMMISSIONER SPICER: I was not.

ASSEMBLYMAN McKEON: Deputy -- or Commissioner -- I’m sorry if I’m not stating your title -- it’s really the same questions. Were you familiar-- You were at the hearing on the 11th.

ACTING COMMISSIONER HENDRICKS: Correct.

ASSEMBLYMAN McKEON: And were you familiar, up to that hearing, that there was a flaw in our application?

ACTING COMMISSIONER HENDRICKS: No, I was not.

ASSEMBLYMAN McKEON: Okay. And what is your memory of what happened that day as it relates to that particular issue?

ACTING COMMISSIONER HENDRICKS: That the question was posed by one of the panelists: “Can you tell us where in the application is the budget information from 2008-2009?” The immediate response -- mental response -- was “why that narrow, specific question unless the information is not there?” I then remember turning to Dan to say, “I wonder if I should be looking for this.” We did have a version of the application. I remembered some ’08-’09 information, but it was really about struggling schools data, Title I data, but it wasn’t finance data. And

so we kind of knew that was not a point that we were going to gain. The hope was that it was very few points that would be at risk.

ASSEMBLYMAN McKEON: Whatever your efforts were in going back -- also to -- I'm sorry, Commissioner--

ACTING COMMISSIONER HENDRICKS: Willa.

ASSEMBLYMAN McKEON: Did you ever provide that information verbally or otherwise on August 11 to the questioners?

ASSISTANT COMMISSIONER SPICER: No. I understood that we could not add anything that was not in there. So I didn't--

ASSEMBLYMAN McKEON: Whatever you understood, did you provide it to-- But you didn't provide it to them?

ASSISTANT COMMISSIONER SPICER: No.

ACTING COMMISSIONER HENDRICKS: No.

ASSEMBLYMAN McKEON: And the same?

ACTING COMMISSIONER HENDRICKS: The same, because the question was: Where in the application? Not, do you know the answer -- where in the application? So unless you could give a specific reference to a place in the application, there was nothing to be gained. And the point was to move on.

ASSEMBLYMAN McKEON: Now, Mr. Gohl, you did know that this was a mistake going into it, correct?

MR. GOHL: What I knew was that the written narrative was not a response to the question that had been posed. The question we were asked verbally in the question and answer session asked where in the information '08-'09 was. I did not have the appendices to the application

with me. Of the 1,000 pages, there was about half text and half appendices. I only had the text with me on that day.

ASSEMBLYMAN McKEON: Okay. And believe me, I'm not being critical. I'm really not. But notwithstanding that you knew that it was missing, and maybe hope springing eternal, you didn't bother -- I hate to even use that word -- but you didn't bring with you that information just in case.

MR. GOHL: Correct.

ASSEMBLYMAN McKEON: Okay. And as it relates to the question I asked the other panelists -- other witnesses -- do you remember that information being requested during the hearing?

MR. GOHL: The information was requested twice in the question and answer session. I think the first time was maybe about a third of the way through, at which point the questioner said, "Look for it. I'll come back later and see if you have found it."

Shortly before the conclusion of the 60-minute question and answer session, she returned and said, "Did you have luck finding it," or, "Were you able to find it," something along that line of questioning; at which point we said, "No."

ASSEMBLYMAN McKEON: So your testimony, consistent with the other two witnesses, is that that information was never provided during that oral session to the questioners.

MR. GOHL: Correct.

ASSEMBLYMAN McKEON: Okay. Were you privy to any private -- when I say *private* -- outside of the video conversation thereafter, before you left the premises, on this topic?

MR. GOHL: What I can state is this: At the conclusion, the Commissioner got up, as we all did, for now our 90-minute performance and our effort to gain points was concluded. We then went and shook hands, as is appropriate, with each of the people. He approached the questioner who had asked this question, thanked her, and said, "We can get you anything you need." It was nonspecific, for there were other questions that came up where our responses were not as spot-on as I wished they had been. But we did our best, and I think the rise in score shows we did a great job but, in the end, an insufficient job.

ASSEMBLYMAN McKEON: I appreciate you saying that. And I think you did a very good job too in light of the data showing how we scored against other states in the competition, notwithstanding the clerical error that is the subject of our discussions.

Sir, same questions to you. Did you have any idea going into this that this was an open-ended issue?

ASSISTANT COMMISSIONER SMARICK: I didn't know that this error was there.

ASSEMBLYMAN McKEON: Okay. And is your memory any different than the other witnesses regarding this being raised during the hearing?

ASSISTANT COMMISSIONER SMARICK: No, exact same. It was raised. We couldn't find it. I think *uh-oh* is-- When the question was asked the way it was asked, it immediately suggested it's not in there. They gave us a chance to look for the data. They came back to us at the end, and we hadn't found it.

ASSEMBLYMAN McKEON: And then subsequent -- and you never provided the information.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN McKEON: And subsequent thereto, and private -- when I say *private* -- outside of the video conversations on this topic before you left the premises?

ASSISTANT COMMISSIONER SMARICK: Not that I was aware of.

ASSEMBLYMAN McKEON: Okay. Now, you knew that the *uh-oh*, if you will, goes to we lost 5 points. Did you report this, as part of the Governor's policy team, to anyone outside of the -- someone directly employed by the Department of Education? Did you talk to Mr. Bagger about it? Did you talk to Mr. -- Wayne? Did you talk to--

ASSISTANT COMMISSIONER SMARICK: I don't remember doing that. I don't think I did that. Nothing is coming to my mind.

Are you saying, after this happened, did we have a conversation with the front office or people outside of the DOE?

ASSEMBLYMAN McKEON: With anyone from the front office -- that definition meaning anybody who works with the Governor and his staff.

ASSISTANT COMMISSIONER SMARICK: I do not remember doing that.

ASSEMBLYMAN McKEON: Okay.

ASSISTANT COMMISSIONER SMARICK: I do not think I did.

ASSEMBLYMAN McKEON: And no conversation with anyone up until the 25th of August when we found out -- was that the date, right, the 25th? -- when we found out that we didn't get the grant?

ASSISTANT COMMISSIONER SMARICK: So your question is: During that period, did we discuss this with anyone in the front office -- this 5 point issue?

ASSEMBLYMAN McKEON: Yes.

ASSISTANT COMMISSIONER SMARICK: I don't recall having done that.

ASSEMBLYWOMAN POU: Did you have any conversation at all with anyone in the front office with regard to the application -- in any part of it or of any sort?

ASSISTANT COMMISSIONER SMARICK: I can't speak for what Commissioner Schundler was--

ASSEMBLYWOMAN POU: No, I'm asking you sir. No, no, no, not the Commissioner, you. Did you have any conversation with anyone on any particular part of this application, whether it's on Section F or any portion thereof?

ASSISTANT COMMISSIONER SMARICK: It's completely possible in a meeting that we discussed various parts. We saw them a lot.

ASSEMBLYWOMAN POU: You were in meetings with the front office on--

ASSISTANT COMMISSIONER SMARICK: I did not with the Chief of Staff, often; but Gregg Edwards I would see on occasion, and others. I just don't remember which of these issues came up.

What I should say is, although we're discussing a lot, right here, the 4.8-point issue -- coming out of the interview, I think we all would agree that there were 10 other issues on our mind as well. So, for example, did we get the points for STEM, or did we sufficiently answer those tough questions in the D Section, or do you think we got as much as we needed in the D Section?

ASSEMBLYWOMAN POU: Was Mr. Edwards working on any part of the application during any of this time?

ASSISTANT COMMISSIONER SMARICK: Not that I know of.

ASSEMBLYWOMAN POU: You didn't have any conversation with him?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYWOMAN POU: No? Okay.

Did any of you ladies-- Acting Commissioner or Assistant Commission, did you have any conversation with anybody in the front office with regard to what Assemblyman McKeon is talking about?

ACTING COMMISSIONER HENDRICKS: I did not.

ASSEMBLYWOMAN POU: Anything?

ACTING COMMISSIONER HENDRICKS: I did not.

ASSEMBLYWOMAN POU: I'm sorry, Assemblyman.

ASSEMBLYMAN McKEON: Thank you.

When you do communicate with the front office, it's done sometimes through e-mail, I would imagine? (affirmative responses)

Again, through the Chair, that might be one of the things we could see, if it's appropriate -- that we could just check the e-mails to see if

that in any way refreshes the witnesses recollection on conversations that may have happened.

Mr. Gohl, you were in a different position as not an employee, per se. Any conversations that you know, verbal, electronically, or otherwise, with the front office -- we keep using that term, we're all kind of scary-enough familiar with what that means -- after the 11th up until the 25th?

MR. GOHL: No. My involvement with the State's Race to the Top effort concluded at the end of the presentation on the 11th. And I, along with the rest of the residents of the Garden State, eagerly awaited to hear what would happen. And when the Federal government posted the final scores, we learned.

ASSEMBLYMAN McKEON: Fair enough. Thank you.

And either of our two Deputy Commissioners, Commissioners, Acting Commissioners. I want to give everybody the right title.

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYMAN McKEON: No, no conversations.

Did you think it was important? I mean, it was-- As benign as you might have thought -- I don't even want to use -- that's a terrible word. It is what it is. I'm not finding fault. Again, the Governor himself told the Commissioner, "No one is getting fired over this. This happens." But did anything seem important enough for us -- for you to communicate on a different level as to, "Hey, this is what happened"?

ACTING COMMISSIONER HENDRICKS: I think given at least my position, and perhaps Willa's as well at that time, our conversations were among ourselves. We felt very strongly about any loss

of points, since obviously our whole focus and effort was winning this grant for the State of New Jersey. So we did dissect it, of course, as much as we could. But for myself, there were no conversations with the front office about any of this at that point in time.

ASSEMBLYMAN McKEON: I--

ACTING COMMISSIONER HENDRICKS: Willa.

ASSEMBLYMAN McKEON: Please go ahead. Please finish.

ASSISTANT COMMISSIONER SPICER: Nor with me.

ASSEMBLYMAN McKEON: Okay. I'm just going-- I do, with the indulgence of the Chair -- and I will have respect for my colleagues who might have other questions of these witnesses -- I have some significant issues I'd like to raise as to what occurred after the time when we found out we did win, as far as the interaction between the Chief of Staff, with the Governor, with the Commissioner.

ASSEMBLYWOMAN POU: (indiscernible) in the next few minutes, why don't you just go right ahead. Otherwise, what I can do is come back to you.

ASSEMBLYMAN McKEON: If you'd come back to me, that would be just fine.

ASSEMBLYWOMAN POU: That would be fine. Okay.

ASSEMBLYMAN McKEON: And, again, I want to reiterate I greatly personally appreciate all of your respective efforts. I'm sad for all of you, because I know you've all given a lot of effort for the betterment of our kids in this state. And with lessons learned, and people's credibility on a going-forward basis maybe put in check, you'll get us there to where we need to go for the best interest of all of our children.

Thank you.

ASSEMBLYWOMAN POU: Thank you, Assemblyman.

Before I go on to Assemblywoman Bonnie Watson Coleman -- and then I'm going to Assemblyman DiMaio. I know that you are -- you have some questions, right? (affirmative response) Okay. Then follow Assemblywoman Watson Coleman.

Let me just ask: How many days was Wireless Generation prepping you for the Washington interview? Did I hear you say a couple of days or several? How many days was it?

MR. GOHL: I will begin with my experience, which was beginning on Thursday the 5th, Friday the 6th, and then we reconvened on Monday the 9th, Tuesday the 10th.

ASSEMBLYWOMAN POU: Okay.

MR. GOHL: So I'm aware of four days.

ASSEMBLYWOMAN POU: Okay. Four days.

ASSISTANT COMMISSIONER SMARICK: They were there earlier.

ASSEMBLYWOMAN POU: I'm sorry. Did you want to add something?

ASSISTANT COMMISSIONER SMARICK: I think they were there for days before that. We'll have to check though.

ASSEMBLYWOMAN POU: I'm sorry. Say that again, please.

ASSISTANT COMMISSIONER SMARICK: I think it was more than just those four days. I think they came in not long after we were finalists. But I'd have to check on that. But even that period of time wasn't all that long.

ASSEMBLYWOMAN POU: I'm sorry, Mr. Smarick, you were part of that prep, although you didn't start -- you weren't there officially as an employee. But you were part of that discussion, and those meetings, and preparation?

ASSISTANT COMMISSIONER SMARICK: I think we found out we were finalists at the very end of July -- like July 20-something -- which was right before I started. And then come--

ASSEMBLYWOMAN POU: Were you in all of those meetings prior to your starting?

ASSISTANT COMMISSIONER SMARICK: No, I was still at home. I would be on phone calls on occasion though.

ASSEMBLYWOMAN POU: Okay. But to my point, whether it's 4 days or 12 days -- whatever the number of days, it was obviously -- we now know it's not less than 4 days.

ASSISTANT COMMISSIONER SMARICK: Right.

ASSEMBLYWOMAN POU: It wasn't less than four days, and it may very well be a lot more. But to the point of my question--

Mr. Gohl, I come back to you, because I think that's what marvels my curiosity. If you were in the room, and they were preparing everyone -- and everyone here on this panel says that they did not know that the information was incorrect or that it had been changed and the incorrect information was sent -- why would you not bring something out to Wireless Generation when they were, themselves -- they, themselves, were the ones to do the actual preparation and prepping you for this hearing? You're in the room for maybe -- definitely 4, possibly 12 days, but you learned of it 6 days before you actually left -- 6 days before the actual

interview. So you had at least six days of an opportunity to present that information to anyone and everyone, but that was never disclosed. That's based on your statement. That's the part that I still do not understand.

MR. GOHL: My testimony earlier -- which I will state again now -- is that I did tell Wireless Generation that I--

ASSEMBLYWOMAN POU: No, no, no, I'm there. But now you're in the room with Wireless Generation, you're in the room with all of your other teammates, you're now being prepared and prepped for the Washington presentation. I imagine this is a change. This is something that is part of that application process. Why then, at that moment, would you not disclose -- "Oh, by the way, Wireless Generation folks, I said to you that that was a change"? We should-- That would have given everyone the opportunity -- the Assistant -- the Commissioner then, the Acting Commissioner now, the Assistant Commission. Why would there be no information whatsoever?

MR. GOHL: My response is that in round one we got 51 of 55 points in Section F. And as we could not modify anything after June 1, our focus and attention was on the areas where we could gain--

ASSEMBLYWOMAN POU: That's not my question though, sir.

MR. GOHL: I apologize.

ASSEMBLYWOMAN POU: Obviously there's difficulty with answering the question. You're trying to answer a question that doesn't exist. I'm asking a different question.

I'm going to leave it at that point, but it just absolutely disturbs me that there were multiple opportunities to inform other key individuals in all of this, and that wasn't done.

Assemblywoman Watson.

ASSEMBLYWOMAN WATSON COLEMAN: Thank you, Chairwoman.

Good afternoon.

I have a couple of questions, and I think that I want to start with--

I want to say your name correctly. Please say it for me.

ASSISTANT COMMISSIONER SMARICK: Smarick (indicating pronunciation), Andy.

ASSEMBLYWOMAN WATSON COLEMAN: Smarick. (indicating pronunciation)

ASSISTANT COMMISSIONER SMARICK: Yes, that's right.

ASSEMBLYWOMAN WATSON COLEMAN: Mr. Smarick, then Mr. Gohl -- no, Mr. Gohl first, then Mr. Smarick, then Assistant Commissioner Spicer, because I think that you're the connecting thread from the very beginning here.

Mr. Gohl, who invited you to be a part of this process, and at what point were you invited?

MR. GOHL: The initial call, to my recollection, came from Michael Blaustein, who was Commissioner Schundler's Chief of Staff. I had not met him previously. He called and asked that if I were asked, would I be able to attend.

ASSEMBLYWOMAN WATSON COLEMAN: So then who asked you -- after Mr. Blaustein called and asked, hypothetically, if you were asked would you become a part of this -- who did actually invite you?

MR. GOHL: So that would have been Tuesday the 3rd, I believe.

Ms. Hendricks called me later that day and asked the same question Mr. Blaustein did: Would I be interested? The following day, Wednesday, Mr. Blaustein called me back and said they had confirmed the final membership of the committee. They wanted me to represent LEAs, and would I be available to come to Trenton the next day, which was Thursday the 5th.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. And this is a yes or no. And then having been specifically invited by one or two individuals -- having had them reach out to you and have a discussion about your interest and your desire to be part of this team, or your willingness to be a part of this team, you never, ever once gave them a heads-up that we had a red flag in this application?

MR. GOHL: That is correct.

ASSEMBLYWOMAN WATSON COLEMAN: Okay.

Mr. Smarick, right -- am I right?

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYWOMAN WATSON COLEMAN: Thank you, Mr. Gohl.

Where were you working before you became an employee of the Department of Education?

ASSISTANT COMMISSIONER SMARICK: I was working for two different think tanks in Washington, D.C., part-time; and I was, on the side, writing a book.

ASSEMBLYWOMAN WATSON COLEMAN: And at the time you were collaborating with the Department about the Race to the Top application, were you employed someplace else?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYWOMAN WATSON COLEMAN: Where was that?

ASSISTANT COMMISSIONER SMARICK: Aren't those the same questions?

ASSEMBLYWOMAN WATSON COLEMAN: At the time when you were-- You said you were someplace, but then you were ready to book. So I want to know if you were in the booking--

UNIDENTIFIED MEMBER OF COMMITTEE: Writing a book.

ASSEMBLYWOMAN WATSON COLEMAN: Oh, writing a book. I'm sorry, I thought you said ready to book. (laughter) Oh, writing a book.

ASSISTANT COMMISSIONER SMARICK: Writing a book.

ASSEMBLYWOMAN WATSON COLEMAN: So you were not employed at the time; you were just writing a book.

ASSISTANT COMMISSIONER SMARICK: No, I was part-time with two different think tanks doing work for them; but then on my own, about 50 percent of the time, being an author.

ASSEMBLYWOMAN WATSON COLEMAN: So what were the think tanks that you were working for?

ASSISTANT COMMISSIONER SMARICK: The Thomas B. Fordham Institute.

ASSEMBLYWOMAN WATSON COLEMAN: I'm sorry.

ASSISTANT COMMISSIONER SMARICK: The Thomas B. Fordham Institute and the American Enterprise Institute.

ASSEMBLYWOMAN WATSON COLEMAN: And are they think tanks that are focused on certain areas? Are they focused on education, are they focused on--

ASSISTANT COMMISSIONER SMARICK: The Thomas B. Fordham Institute is exclusively education; and the American Enterprise Institute does a wide range of issues, education being part of those.

ASSEMBLYWOMAN WATSON COLEMAN: So while you were employed by them, you were actually collaborating with our Department on the Race to the Top application. So were you engaged from April, when our Department started exploring this?

DEPUTY COMMISSIONER SMARICK: When I began-- I think I had my first conversation with Commissioner Schundler when he was recruiting me to come here to New Jersey in April. But I don't think I really substantively started talking-- I think the first time I really engaged in trying to help with the application was after I had accepted the job. And I think it's May 23 when that happened.

ASSEMBLYWOMAN WATSON COLEMAN: So you actually really weren't engaged in the discussions, or the content, or the bold

initiatives, or any of that nature -- or the policy direction, or any of that nature prior to May 25?

ASSISTANT COMMISSIONER SMARICK: No, there were-- I have a handful of e-mails that the Commissioner would send me when he was thinking about his sort of bold policy agendas -- like pre-Race to the Top things, as he would just (indiscernible) about what is my vision moving forward. And he would bounce ideas off of me in that way. But right when it got really to the action of helping on Race to the Top, I think it's May 23.

ASSEMBLYWOMAN WATSON COLEMAN: Did you have a relationship with Commissioner Schundler before he found you for purposes of collaborating on Race to the Top and then becoming an employee? Is that how you became known to the State of New Jersey?

ASSISTANT COMMISSIONER SMARICK: He and I had met maybe once or twice years ago. But then when he was looking for people come work with him at the Department, he found me through various sources, and I think we began having conversations. It could have been March; maybe it was in April. But then those conversations continued.

ASSEMBLYWOMAN WATSON COLEMAN: So at the point that you were not an employee, were you being e-mailed copies of the application to give input on?

ASSISTANT COMMISSIONER SMARICK: Yes, beginning, I think, May 23 was when I got the first one from--

ASSEMBLYWOMAN WATSON COLEMAN: The first one, okay.

ASSISTANT COMMISSIONER SMARICK: --a consultant.

ASSEMBLYWOMAN WATSON COLEMAN: Now, moving to Assistant Commissioner--

Good to see you. You started this process in April, right? There was a decision-- There was a technical conference that was held for individuals -- for states that are interested in applying for the Race to the Top. Is that true -- in April?

ASSISTANT COMMISSIONER SPICER: I think it was for the winners. I'm not positive.

ASSEMBLYWOMAN WATSON COLEMAN: The information that I have is that there was -- as part of the process, on April 21, the Department held a technical assistance planning workshop for applicants to Phase 2. New Jersey declined attendance. New Jersey was also given -- other states were given the opportunity to participate via telephone, but New Jersey didn't do that either. Are you familiar with that?

ASSISTANT COMMISSIONER SPICER: We participated in several phone conferences and video conferences. I don't know. We never went anywhere, we never traveled. But in several of the video conferences, we were able to ask our questions and get answers.

ASSEMBLYWOMAN WATSON COLEMAN: So you actually did become part of the--

ASSISTANT COMMISSIONER SPICER: Oh, yes.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. When you all were deciding what was going to be a part of the application -- what sort of reforms -- and you were collaborating with outside stakeholders, were these all DOE's ideas? Or did we have to at least communicate with

the Governor, who has very strong feelings about education, what he'd like to see as the direction of the Department should it be successful in getting--

ASSISTANT COMMISSIONER SPICER: I don't know. All that conversation went through the Commissioner. And I discussed it only with the Commissioner.

ASSEMBLYWOMAN WATSON COLEMAN: Early on you said that there was a time when there was a back and forth between the Department and the Governor's Office. And I was curious as to know, therefore, why did you know that if you didn't -- if you're saying that you didn't?

ASSISTANT COMMISSIONER SPICER: I think the Commissioner told me. Any kind of conversation that went on that involved something that I was doing, I was told by the Commissioner that this was needed, or we needed to do that.

ASSEMBLYWOMAN WATSON COLEMAN: What is your title -- Assistant Commissioner of--

ASSISTANT COMMISSIONER SPICER: At that time I was Deputy Commissioner.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. So were you the second point person in the process?

ASSISTANT COMMISSIONER SPICER: I was.

ASSEMBLYWOMAN WATSON COLEMAN: So if the Governor's Office and the Commissioner-- When I say the *Governor's Office*, I am speaking of the Office of Policy and anybody else that works out of the Executive Branch -- the Governor's Office. If you were discussing what was going to be included in that application -- what kinds of policy initiatives,

innovations, boldness, whatever -- the Commissioner would talk to you about it because you were the second-point person and the highest-ranking person other than him? And are you telling me that you didn't know that he was talking to the Governor's Office or getting any direction from the Governor's Office?

ASSISTANT COMMISSIONER SPICER: No, I never talked to him about-- I mean, he'd tell me sometimes that, "We're doing that," because somebody wanted it to be done. But no--

If you remember correctly, I've been in the office now through two Administrations. So while I was the highest-ranking person there, I really was not connected at all with the Governor's Office.

ASSEMBLYWOMAN WATSON COLEMAN: I would kind of like to know this: In April, the first phase of the Phase 2 application was worked on. And at some point there was a finished product, or so you thought. That would be May 24 and May 25. Is that right?

ASSISTANT COMMISSIONER SPICER: Well, it was just about finished by then. I mean, that was the last weekend, Memorial Day weekend.

ASSEMBLYWOMAN WATSON COLEMAN: And during that period of time, there was the involvement of the consultant--

ASSISTANT COMMISSIONER SPICER: Right.

ASSEMBLYWOMAN WATSON COLEMAN: --the involvement of Mr. Smarick.

ASSISTANT COMMISSIONER SPICER: Well, I wasn't really privy to Mr. Smarick's involvement at that time.

ASSEMBLYWOMAN WATSON COLEMAN: Did you know whether or not the Office of Policy was involved at all up to that point?

ASSISTANT COMMISSIONER SPICER: Office of Policy?

ASSEMBLYWOMAN WATSON COLEMAN: Gregg Edwards' office?

ASSISTANT COMMISSIONER SPICER: Oh, I did not, no.

ASSEMBLYWOMAN WATSON COLEMAN: Let me know what the process is.

ASSISTANT COMMISSIONER SPICER: I was working--

ASSEMBLYWOMAN WATSON COLEMAN: When you're--

ASSISTANT COMMISSIONER SPICER: I was working directly with the consultants on the language in the application. I was not working with any of the--

ASSEMBLYWOMAN WATSON COLEMAN: When the Department submits a proposal of this magnitude, what is the process? At some point does it go to the Governor's Office?

ASSISTANT COMMISSIONER SPICER: Absolutely.

ASSEMBLYWOMAN WATSON COLEMAN: At what point would that be?

ASSISTANT COMMISSIONER SPICER: I believe that the Commissioner was sending it over. I don't know when he sent it over. I honestly do not. I shouldn't even conjecture.

ASSEMBLYWOMAN WATSON COLEMAN: But something--

ASSISTANT COMMISSIONER SPICER: But certainly it would be part of the process.

ASSEMBLYWOMAN WATSON COLEMAN: Something happened on the 25th. Is that the 25th -- is that the right date? Was that the yank date? What's the yank date, the 28th?

UNIDENTIFIED SPEAKER FROM AUDIENCE: The 28th was the day he said we're making changes to the application.

ASSEMBLYWOMAN WATSON COLEMAN: Is that the change date?

ASSISTANT COMMISSIONER SPICER: I thought it was Memorial Day, but I could be wrong. It could be the day before.

ASSEMBLYWOMAN WATSON COLEMAN: It could have been the celebration of Memorial Day--

ASSISTANT COMMISSIONER SPICER: I was there.

ASSEMBLYWOMAN WATSON COLEMAN: --which can conceivably be the 28th.

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYWOMAN WATSON COLEMAN: Do you know what happened, what was said at that point?

ASSISTANT COMMISSIONER SPICER: No, I know the Commissioner called and said, "We are going to go with the boldest possible scheme." And then we got to work in dealing with what this would mean for NJEA.

ASSEMBLYWOMAN WATSON COLEMAN: What actually constituted revisions? What was so comprehensive, substantive that created such chaos in three days with a 1,000-page application? Specifically, what were the revisions?

ASSISTANT COMMISSIONER SPICER: We put the RIF sections, the Reduction in Force-- We put them -- we kept them in.

ASSEMBLYWOMAN WATSON COLEMAN: Well, that's not a revision, because you kept it.

ASSISTANT COMMISSIONER SPICER: Well, it was a revision. We-- Well, if you're taking them out-- No, we made sure they were in. We took-- We made sure that all the MOUs that came in from the 400 districts were reviewed. And each of them was reviewed for date as to which date it came in, whether it was before or after we announced the addition of NJEA.

There was a date when NJEA announced that it was going to be party to this application. That was a Thursday. Between Thursday and Friday, numerous MOUs, memos of understanding, with the local districts came into the system.

ASSEMBLYWOMAN WATSON COLEMAN: I know what an MOU is. I know that you would be trying to count how many. I know that you may even be interested in what were the 400 districts. But I want to know what are the substantive changes -- policy changes that were so bold that necessitated this sort of activity over the holiday. And then I want to know specifically what it was about F1-1-3 -- is it -- that needed to be touched at all. Because what did it have to do with the revisions?

ASSISTANT COMMISSIONER SPICER: I can't answer the question about F1. But I can answer the question about the changes that occurred on Memorial Day weekend.

The RIF information that we had taken out, we put back in.

ASSEMBLYWOMAN WATSON COLEMAN: When did you take it out?

ASSISTANT COMMISSIONER SPICER: We took it out during the period on Thursday when we announced that there was a compromise with NJEA. We took it all out. We put it back in so that the--

ASSEMBLYMAN CONAWAY: The 27th.

ASSEMBLYWOMAN WATSON COLEMAN: That would be the 27th?

ASSEMBLYMAN CONAWAY: The 27th.

ASSISTANT COMMISSIONER SPICER: It was the decision that this plan would be bolder than we thought.

ASSEMBLYWOMAN WATSON COLEMAN: So all you did was agreed with NJEA or the teachers to take it out.

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYWOMAN WATSON COLEMAN: So your revision was to put it back in.

ASSISTANT COMMISSIONER SPICER: Well, we put that back in, and then we took out the references that we had within the application to cooperation with NJEA, because obviously that was no longer there. And it was spread through, so we had to go back in and deal with it. It had nothing to do with F, and we did not touch F.

ASSEMBLYWOMAN WATSON COLEMAN: So you had to delete any sort of reference in this document to agreement with the NJEA.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN WATSON COLEMAN: So you could do word searches, actually.

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYWOMAN WATSON COLEMAN: And what else was--

ASSISTANT COMMISSIONER SPICER: I think those were the only things that we actually--

ASSEMBLYWOMAN WATSON COLEMAN: Those were the only revisions?

ASSISTANT COMMISSIONER SPICER: We may have made some additional changes to the bonuses because it had been questioned. But I think most of the bonus material was still in.

ASSEMBLYWOMAN WATSON COLEMAN: So the only boldness-- Let me understand this. The only boldness we're talking about is that you put in the information regarding the letting go of people for performance purposes as opposed to longevity purposes -- something that you already had in there, but then taken out as an agreement. So you put it back in. And then you had to delete all references to approval with NJEA.

ASSISTANT COMMISSIONER SPICER: Yes, and then we reexamined the tenure issues and pretty much kept them the way they were. I don't think we made much changes.

ASSEMBLYWOMAN WATSON COLEMAN: Are you familiar--

ASSISTANT COMMISSIONER SPICER: Well, merit pay was in there with the bonus pieces, but it was increased I think -- some changes in the bonus issues.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. Well, with the exception of doing a word search to find out -- to eliminate all

references to NJEA cooperation and collaboration -- did the changes involve five pages, three pages, or was it just to be putting back in that other information?

ASSISTANT COMMISSIONER SPICER: There were two areas that were involved: part A, which was the overview and the introductory stuff that made it clear what we were doing in the State. And part D, which was the Great Teachers and Great Schools section, was also reviewed and revised fairly well.

There was nothing in F, nothing in--

ASSEMBLYWOMAN WATSON COLEMAN: There was actually no reason to touch F.

ASSISTANT COMMISSIONER SPICER: There was no-- That's right, F had no -- there was no reason to look at F. And there might have been some small discussion about underperforming schools, because there might have been some issues of the relationship between the union. But I don't remember a lot of pieces in that area.

ASSEMBLYWOMAN WATSON COLEMAN: I'm trying to figure out the volume of changes that were made, to try to get a handle on why mistakes -- this particular mistake wasn't covered. So during that period of time-- On the 25th you had a document, on the 27th you had a document. From the 28th to the 31st you were making these changes, right?

ASSISTANT COMMISSIONER SPICER: Well, first we made them in, and then we made them out.

ASSEMBLYWOMAN WATSON COLEMAN: But from this four-day period.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYWOMAN WATSON COLEMAN: The 28th, 29th, 30th, and 31st.

ASSISTANT COMMISSIONER SPICER: Yes, until the 1st of June.

ASSEMBLYWOMAN WATSON COLEMAN: During that period of time, where were you all working?

ASSISTANT COMMISSIONER SPICER: Well, we were working in the -- at the DOE, but Wireless was working at the DOE and the Marriott.

ASSEMBLYWOMAN WATSON COLEMAN: And so what was the process? You'd make the changes, hand them to Wireless, Wireless would key them in?

ASSISTANT COMMISSIONER SPICER: And Wireless would also do word searches. And then she'd -- they'd ask, "What about this? How do we do this? Is this okay? Is that okay?" Those kinds of interactive processes that you need when you--

ASSEMBLYWOMAN WATSON COLEMAN: Okay. At some point you had a document that was going to be handed to the Commissioner and say, "This is the final document. All the changes have been made. Sign off."

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYWOMAN WATSON COLEMAN: Who made the editing on that?

ASSISTANT COMMISSIONER SPICER: Well, Wireless made the editing at the Commissioner's request, at mine. Everybody had a hand in it at that time.

ASSEMBLYWOMAN WATSON COLEMAN: Well, I'm trying to understand why would you make-- Why would there have been an edit (indiscernible)--

ASSISTANT COMMISSIONER SPICER: Oh, the F piece I don't believe had anything to do with this.

ASSEMBLYWOMAN WATSON COLEMAN: Pardon?

ASSISTANT COMMISSIONER SPICER: The F piece had nothing to do with the union or the changes that we made that had dealt with the union relationship.

ASSEMBLYWOMAN WATSON COLEMAN: So do you have any idea why F was even touched?

ASSISTANT COMMISSIONER SPICER: No, I have none. No, I cannot -- I do not know.

ASSEMBLYWOMAN WATSON COLEMAN: Who would have been the Department of Education's person who would have reviewed that particular Section F -- F in its entirety?

ASSISTANT COMMISSIONER SPICER: I don't know.

ASSEMBLYWOMAN WATSON COLEMAN: Who made the assignments to people?

ASSISTANT COMMISSIONER SPICER: I don't think anybody was assigned to F. It was just a-- There were no changes. We gained all the -- almost all the points. So it did not seem like a place where we were going to gain anymore. So the likelihood is that we just left F

alone. And then the Commissioner -- or whoever -- whoever was reading it decided to make changes and to make it better.

ASSEMBLYWOMAN WATSON COLEMAN: Just a few more questions. I'm just about done.

When the final product took -- when you had this final product on the 31st--

ASSISTANT COMMISSIONER SPICER: The 1st.

ASSEMBLYWOMAN WATSON COLEMAN: Well, you had to submit it on the first, right? So did the Governor's Office, or its representative, okay the final document too?

ASSISTANT COMMISSIONER SPICER: I don't know. I assume so, but I had nothing to do with it.

ASSEMBLYWOMAN WATSON COLEMAN: All right. I want to go to the interview day -- the interview day. Were you with Commissioner Schundler from the time he entered the room until the time he left?

ASSISTANT COMMISSIONER SPICER: Yes, I think so.

ASSEMBLYWOMAN WATSON COLEMAN: At any time did you hear Commissioner Schundler attempt to give the interviewer the corrected 2008-2009 data?

ASSISTANT COMMISSIONER SPICER: I did not, but I was pulled to the side. So they came forward.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. Thank you.

ASSISTANT COMMISSIONER SPICER: So I didn't hear him say anything.

ASSEMBLYWOMAN WATSON COLEMAN: Commissioner, were you with Commissioner Schundler from the time he entered the room until the time he left?

ACTING COMMISSIONER HENDRICKS: From the time he entered the room. I actually left the room, however, before the Commissioner.

ASSEMBLYWOMAN WATSON COLEMAN: You left before the Commissioner?

ACTING COMMISSIONER HENDRICKS: Yes.

ASSEMBLYWOMAN WATSON COLEMAN: Well, in the time that you were with him, did you hear him attempt to offer the corrected information?

ACTING COMMISSIONER HENDRICKS: I did not.

ASSEMBLYWOMAN WATSON COLEMAN: Okay.

Mr. Smarick, were you in the room?

ASSISTANT COMMISSIONER SMARICK: I was, yes.

ASSEMBLYWOMAN WATSON COLEMAN: Were you -- in which capacity at that time -- his special assistant?

ASSISTANT COMMISSIONER SMARICK: He had hired me to be his Deputy Commissioner.

ASSEMBLYWOMAN WATSON COLEMAN: Deputy Commissioner. Okay.

Were you there with him from the beginning to the end?

ASSISTANT COMMISSIONER SMARICK: I definitely walked in with him, and I think I left before him as well.

ASSEMBLYWOMAN WATSON COLEMAN: So did you ever hear him offer the corrected information?

ASSISTANT COMMISSIONER SMARICK: I did not.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. Thank you.

Mr. Gohl, were you there the entire time?

MR. GOHL: I came in with the Commissioner, I left -- I think I was actually the first one out of the room. So I was not there at the conclusion with him.

ASSEMBLYWOMAN WATSON COLEMAN: So the Commissioner was left there with only the Assistant Commissioner. Right, guys?

MR. GOHL: We're talking 30 seconds, 60 seconds at most, in the gaps between the departures.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. And during that period of time, you, who knew the information didn't exist in its proper form-- Did you hear the Commissioner at all offer the proper information?

MR. GOHL: As I testified earlier, at the conclusion of the formal, 60-minute testimony, the Commissioner got up, approached the lead questioner -- who I will call the *Chair* -- of the panel, and offered thanks, and then said, "We can provide any information."

ASSEMBLYWOMAN WATSON COLEMAN: "That you would need."

MR. GOHL: Because there were a number of questions, including about gender equity around the state.

ASSEMBLYWOMAN WATSON COLEMAN: So you never heard him say, "I can provide you the 2008-2009 data specifically requested here that wasn't here?"

MR. GOHL: Explicitly, no.

ASSEMBLYWOMAN WATSON COLEMAN: And the date of that meeting was August 11?

MR. GOHL: Correct.

ASSEMBLYWOMAN WATSON COLEMAN: From August 12 until the 24th of August, did anybody at this table have a conversation with anybody in the Office of Policy, or anybody in the Governor's Administration say, "We know that we submitted an application that had the wrong data; that we weren't able to answer the specific 2008-2009 data question"? Did anybody sitting at this table -- one at a time.

Did you, Assistant Commissioner?

ASSISTANT COMMISSIONER SPICER: No.

ASSEMBLYWOMAN WATSON COLEMAN: Did you, Commissioner.

ACTING COMMISSIONER HENDRICKS: No.

ASSEMBLYWOMAN WATSON COLEMAN: Did you, Mr. Gohl?

MR. GOHL: No.

ASSEMBLYWOMAN WATSON COLEMAN: Did you, as the hopeful Deputy Commissioner, have that conversation?

ASSISTANT COMMISSIONER SMARICK: I do not think I did. I'm only hedging because in a conversation with someone in some

meeting I may have said it. I certainly don't have the direct recollection of that.

ASSEMBLYWOMAN WATSON COLEMAN: Were you ever in a meeting with the Commissioner when he was having a conversation -- be it on speakerphone or otherwise -- with any member of the Governor's staff or the Governor regarding this issue?

ASSISTANT COMMISSIONER SMARICK: Regarding the FI issue? Not that I recall.

ASSEMBLYWOMAN WATSON COLEMAN: Does anyone else?

Assistant Commissioner, were you ever in any of the rooms or the meetings when the Commissioner was having a discussion with anyone from the Governor's Office regarding this issue?

ASSISTANT COMMISSIONER SPICER: (indiscernible)
(away from microphone)

ASSEMBLYWOMAN WATSON COLEMAN: Were you, Commissioner?

ACTING COMMISSIONER HENDRICKS: No.

ASSEMBLYWOMAN WATSON COLEMAN: Thank you very much.

Thank you.

ASSEMBLYWOMAN POU: Thank you, Assemblywoman.

I want to just pause for a moment. I see that we have Mr. Harvey Johnson (phonetic spelling), the Attorney for Wireless Generation, who is in the room.

I was wondering, since you're here, Mr. Johnson, would you like to step forward and share any viewpoints or comments with respect to what you've heard thus far?

H A R V E Y J O H N S O N, ESQ. (phonetic spelling): No, not at this time. But thank you.

ASSEMBLYWOMAN POU: Well, thank you very much for being here. I didn't realize that you were here, actually. As you can well imagine, there has been a great deal of reference.

We hope to hear from you soon. We hope to have you before this Committee so that we'll have an opportunity to certainly raise all the questions that undoubtedly you've heard -- many of that reference your client.

MR. JOHNSON: (indiscernible) (speaking from audience)

ASSEMBLYWOMAN POU: Thank you, Mr. Johnson.

I just want to make sure that -- we hope to hear from you soon. Thank you.

UNIDENTIFIED MEMBER FROM COMMITTEE: May I follow up with a debriefing question?

ASSEMBLYWOMAN POU: Just a second. I want to make sure everyone has an opportunity.

Assemblyman DiMaio.

ASSEMBLYMAN DiMAIO: Thank you, Madam Chair.

Before I start, I'd just like to say that I'd like to compliment the Speaker and yourself for holding these hearings to look into the matter of the applications. It's become apparent to me during this process -- other than Section F -- that perhaps we're an application late on the hearings. It

would have been helpful to have them at the end of round one so maybe we could have been helpful to push this last one over the top.

But going forward: For the good of all of the students and people in New Jersey, hopefully we'll be able to find areas that we can improve upon to make the next round application successful.

Director of Research, Ms. Gordon, I believe earlier you mentioned that the night before going to D.C. -- that you had a meeting at NJDOE, and there were members of partisan staff at that meeting.

MS. GORDON: Yes, that's correct. We had a couple of meetings. They were practice sessions for the team that was going down.

ASSEMBLYMAN DiMAIO: So there was partisan staff there. I believe Mr. Keith White, from the Assembly Democrats, was there.

MS. GORDON: Yes, and Jackie from the Senate Dems was there as well.

ASSEMBLYMAN DiMAIO: Okay. Was the Section F problem discussed at that meeting at all?

MS. GORDON: No, it was not.

ASSEMBLYMAN DiMAIO: It was not. What was the discussion with the partisan staff while they were there? What did it have to do with?

MS. GORDON: It was actually a run-through of-- It was a practice session. So we -- the team that was presenting presented as if they were presenting before the panel in D.C. And then there was a -- and they were timed. And then I believe after that we had a Q and A session. And so the DOE staff, as well as the people who were invited in to participate, were allowed to ask questions.

ASSEMBLYMAN DiMAIO: So it was a mock session to try and--

MS. GORDON: That's right.

ASSEMBLYMAN DiMAIO: --get different viewpoints.

Okay. Obviously other than Section F -- which obviously we got an *F* on -- will be corrected in the next round application, I would assume, after we drill it into the ground here.

But the State's application also lost 15.6 points due to the lack of implementation of NJ SMART -- data tracking system -- 10 points of which were due to a lack of longitudinal data system that previous administrations have known about since 2004. And year after year, those needs were not funded. Is this not correct?

Other than that, what other areas of the State's Race to the Top application were significantly deficient or negatively impacted? And what are the specific reasons why? Where do you think we can do better? I'm trying to turn this to go more forward, positive.

MS. GORDON: Well, I think even with NJ SMART, we're making tremendous strides. And we think we can be at a very different place and be far more competitive in that arena.

I think the other place where we actually did quite well, but we'd certainly like to be able to do better, has to do with great teachers and leaders. We were competitive. And I think we got higher scores, if I'm correct, than any other state in that area.

Is the correct? Pretty close?

ASSISTANT COMMISSIONER SMARICK: Only three states did better than us.

MS. GORDON: Only three states did better?

So if three states did better, than we can do better. And that's certainly the heart of the reform agenda. So we would put tremendous focus there.

And I think the other place where we lost points, which is what we've alluded to, is that the State's assessed success factors -- and that specifically deals with the extent to which we have stakeholder engagement and involvement. We are moving forward with the Committee to engage our practitioners, in particular, with other stakeholders in New Jersey to talk specifically about effectiveness measures for educators. I think we will be in a better position going forward with a high-quality application, still supporting an agenda that's very aggressive.

ASSEMBLYMAN DiMAIO: Originally the State engaged Wireless Generation for round one, which was not a successful application. I believe there was a similar amount of money that would possibly have been awarded to the State of New Jersey if we were successful on that grant.

What was the process like whereby we engaged Wireless Generation as the consultant for round one?

MS. GORDON: I'm going to ask Willa to respond to that since she was involved in both round one and round two.

ASSISTANT COMMISSIONER SPICER: We used a competitive contract process. We first identified those people or companies who were engaged in this business. We sent out 15 letters to the various companies that were there. We had to get a waiver because we weren't doing a full request for proposals. We had no time to do it.

But we took all the companies we knew, collectively, and we sent them out to the 15 companies. We received applications for -- from five, I believe. I'm not positive of the number. But there were five or six -- there might have been more -- a few more -- but from several companies. And we read them using the competitive protocol that's used by the State for any kind of competitive grant. So five people were on the Committee. We read them each individually; we scored them individually; then using the criteria that we set up in the waiver application -- then we discussed them. We actually wrote back to four of the companies asking for further data -- Wireless being one. And then we brought that information in and finally made the decision on the basis of those -- of the comparisons of those applications.

ASSEMBLYMAN DiMAIO: And when were they engaged? Do you remember what date, around?

ASSISTANT COMMISSIONER SPICER: That was the first application. Well, it was after the election but before the inauguration.

ASSEMBLYMAN DiMAIO: Okay.

ASSISTANT COMMISSIONER SPICER: I'm sorry I don't have dates, but I have some sense of the timing. So the election was in November, so it must have been probably -- it must have been November. I mean, it was very close to the question of whether this -- the last Administration should apply or should not.

ASSEMBLYMAN DiMAIO: And do you remember how much money the first part of the consult cost?

ASSISTANT COMMISSIONER SPICER: No I don't, but I'm sure it's easy enough to find out.

ASSEMBLYMAN DiMAIO: It's over \$300,000.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN DiMAIO: And were they the low bidder, middle bidder, or the high?

ASSISTANT COMMISSIONER SPICER: They were not the low bidder.

ASSEMBLYMAN DiMAIO: Were they the highest bidder?

ASSISTANT COMMISSIONER SPICER: There was no question in our mind that they, however, offered us talent that we could not get from other places. We particularly asked for the services of an educator to be a part of the company. And they offered us one of the best known educators in the country.

ASSEMBLYMAN DiMAIO: (indiscernible)

ASSISTANT COMMISSIONER SPICER: So we thought they offered us services that the other groups did not.

ASSEMBLYMAN DiMAIO: And after we weren't successful in round one, we decided to retain them for round two.

ASSISTANT COMMISSIONER SPICER: Yes, we thought that they--

ASSEMBLYMAN DiMAIO: What was the thought process there?

ASSISTANT COMMISSIONER SPICER: Well, we talked about what would make a -- would produce the best results for our State. And we decided that the most important thing was somebody who knew round one -- some group of people who knew round one -- could act immediately on their knowledge and could -- knew the application process

well enough to come forward. They knew the application process and they knew what every other state had done, we found out through conversation with them. So they were extremely knowledgeable not only about our State and what we've done, but they held the information from the other 18 states -- or no -- yes, 18 states -- that were finalists the last time. And they knew where the strengths were and the weaknesses were. And those things were the most important pieces to us in trying to find somebody for the new application.

ASSEMBLYMAN DiMAIO: I'm sure there was some weight given to the fact that they had a lot of this data already set and done, and it could be recreated easily.

ASSISTANT COMMISSIONER SPICER: Yes, they had the experience. They knew the people.

ASSEMBLYMAN DiMAIO: And it would save a lot of time, I'm sure.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN DiMAIO: Getting back to you, Acting Commissioner. In your estimation, if we were to try and look for things that were the most important reform measures, would you say that tenure reform and merit pay reform are two things that we should be working on, as the Assembly, to make our application stronger in the future?

ACTING COMMISSIONER HENDRICKS: Without a doubt. I could elaborate, but that -- I really do feel that those are critical elements. They're outlined specifically by the Federal government as linchpins for the work going forward. And I think we in New Jersey understand the

importance of doing that. How we get there will require your assistance and help.

ASSEMBLYMAN DiMAIO: Well, I understand that. That's why I want to raise the question.

ACTING COMMISSIONER HENDRICKS: Yes, I do appreciate that.

ASSEMBLYMAN DiMAIO: So we all understand at the table that it will enhance our application in the future should there be another round. It sounds like there will be.

ACTING COMMISSIONER HENDRICKS: Thank you.

ASSEMBLYMAN DiMAIO: Thank you very much.

That's all I have.

ASSEMBLYWOMAN POU: Thank you, Assemblyman.

ASSEMBLYMAN DiMAIO: Thank you.

ASSEMBLYWOMAN POU: Thank you very much.

I know that Assemblyman Ramos was in the room at the time and wanted to just point out-- I think it was in response to one of the statements, Assemblyman DiMaio, that you made reference to: the former application on Phase 1. He just wanted to let everyone know that as a-- Assemblyman Ramos, as a member of the Education Committee, does, in fact, recall holding a hearing, with respect to the former Administration, with regard to the Phase 1 and what occurred, and what happened -- what did they not do, what were some of the strengths and weaknesses of that application. So there was, in fact, an inquiry and a hearing held, and it was held through the Education Committee -- the Assembly Education Committee.

I just want--

There he is.

ASSEMBLYMAN DiMAIO: I guess that begs the question for me then.

ASSEMBLYWOMAN POU: Excuse me.

ASSEMBLYMAN DiMAIO: Why are we hearing this here and not in Education?

ASSEMBLYWOMAN POU: Assemblyman, I was--

ASSEMBLYMAN DiMAIO: I'd just like to-- You're talking to me; I'm answering you.

ASSEMBLYWOMAN POU: All right. Let me--

ASSEMBLYMAN DiMAIO: Why are we hearing this here and not Education.

ASSEMBLYWOMAN POU: Assemblyman, please allow me-- I don't want to have to interject--

ASSEMBLYMAN DiMAIO: I understand that. But you--

ASSEMBLYWOMAN POU: --the courtesy of having to say to you that I'm not going to recognize you if you don't let me -- allow me to do that. We're not-- I'm not going to engage in this back and forth. I was trying to respond to the fact that you had made reference--

ASSEMBLYMAN DiMAIO: And I was trying to respond to you.

ASSEMBLYWOMAN POU: --that there was no hearing. I was trying to clarify, in Mr. Ramos' absence, that there was, in fact, such a hearing.

ASSEMBLYMAN DiMAIO: (indiscernible)

ASSEMBLYWOMAN POU: Why it was done then in Education, and here-- We're now talking about the dollar amount with the mistake. So that -- it's a decision that, as the Chair of the Appropriations Committee and that of the Speaker -- is to determine as to who holds the hearing.

But thank you very much. I just wanted to clarify that.

Mr. Ramos, I'm sorry, I didn't know if you wanted to add.

ASSEMBLYMAN RAMOS: No, I will clarify. On May 13 the Education Committee had a meeting that day -- on May 13 -- where we discussed -- of 2010, this past May -- to lend our support to the Phase 2 application, where part -- where all different types of aspects were discussed at that May 13 meeting going forward with the application process. So I don't want to say we've gone through the specifics of all of the Phase 1 items, but it was basically lending the Education Committee's support to the Phase 2 application process.

ASSEMBLYWOMAN POU: Thank you. Thank you for that clarification.

Another point of clarification that I think Assemblyman Greenwald wanted to make in reference to Assemblyman DiMaio -- that you made reference to.

Go ahead, Assemblyman Greenwald.

ASSEMBLYMAN GREENWALD: Chairwoman, thank you.

And I saw the Assemblyman again -- why this Committee this time? I think the first hearing in the Assembly in May and the hearing in the Senate Education Committee in December was a question of: Why was the application not originally applied for under the Corzine Administration;

and the miscommunication, again, which we've seen a lot of, really. Quite frankly, I think that's what this hearing is pointing out. I see you nodding your head. I mean, that should be a frustration for all of us.

The reality is that that hearing was about: Why was the first application not filed under the Corzine Administration? Why did it then get put in under the Christie Administration? And this hearing is about: What were the mistakes that were made, and why we lost out on the \$400 million grant for the State of New Jersey, and how can we improve upon that going forward?

My concern is, you talk about the Phase I-- The former Education Commissioner, Lucille Davy, testified before the Senate Education Committee that in initial discussions in November with the Christie transition team -- indicated that the Governor did not want the Corzine Administration to file that application. They chose-- They did not want us to do so. This led the Corzine Administration to stop working on the application, even though they had been meeting with stakeholders and had already begun the process. And I see the Assistant Commissioner remembers that clearly, nodding her head in agreement.

The reality is that, at the end, Commissioner Davy testified that the Christie transition team had changed its mind and then wanted the Department of Ed to proceed with the application. On December 9, it was disclosed in the press that an e-mail was sent from Susan Kohl, who is the head of the Governor's transition team, to Commissioner Davy stating it makes more sense to leave to the new Administration the development of the application for the second round of proposals in June of 2010, rather than have you try to rush through and make a January deadline.

So that kind of led to where we are now. And it's that type of miscommunication.

And I have to tell you, in all honesty-- The other point that the Assemblyman raised -- which is interesting -- about whether partisan staff was at the prep hearings-- We know partisan staff worked hand-in-hand with your Department up until May 25. We know that somewhere between May 25 and May 28 there was something that changed that led the Governor to state that there would be changes to the application. What this body, as an equal branch of government, does not know is what led to that change.

Now, we received this partisan staff -- on June 1, the day the filing was due--

Because, Mr. Gohl, you said you had to meet that hard deadline of June 1. That was your goal.

What partisan staff received was a memo from Jeff Chiesa, who I've enjoyed working with immensely and have tremendous respect for. But that memo referenced two things: pilot programs and merit pay. It never once mentioned the change to this mysterious F filing in the application that no one seems to want to take credit for or who has any idea who was a part of.

So I wouldn't expect Republican partisan staff or Democratic partisan staff to do your job for you and review that, and say, "Why was this changed" to the F portion of the application. But I will tell you, from the 28th to the 1st, when I started this questioning hours ago, we were told the changes were made to be bold. If our bold changes were to put in some things that were already in the first application, and to divorce ourselves

from teachers, that's not bold. That's a sense of bitterness, I think, that came out of negotiations during pension reform; and that we were not going to go down this road together to spite ourselves.

I would like to know what change the application-- Because that's not bold. If that's all we did, that's an embarrassment. I would like to know what led to the changes between the 28th and 1st. Because it is absolutely appropriate for the Administration to want to weigh in on merit pay and those pilot programs. But if the major change was divorcing ourselves from teachers, and that led to a \$400 million mistake, we should all be ashamed of ourselves, and we're better than that.

Here is my problem: You all worked hand-in-hand with the Commissioner. I'm a little concerned that nobody rushed to his defense when it was clear that every one of you answered questions -- that he never clarified that in that interview. Not one of you rushed to his defense to go to the front office and say, "The question wasn't asked, and he didn't answer it."

But there is something that clearly led to the change on that application. Did any of you make changes to the application on your own without consulting with anybody else? Did any of you make changes to that application?

ASSISTANT COMMISSIONER SPICER: I made changes in the application -- it's part of the interactive process. But on my own, absolutely not.

ASSEMBLYMAN GREENWALD: Commissioner?

ACTING COMMISSIONER HENDRICKS: Not on my own.

ASSEMBLYMAN GREENWALD: Mr. Gohl?

MR. GOHL: No, I was not involved in the actual writing of the application.

ASSEMBLYMAN GREENWALD: So on this date between the 28th and the 1st, when we were making these changes--

ASSEMBLYWOMAN POU: Mr. Smarick.

ASSEMBLYMAN GREENWALD: Mr. Smarick.

ASSEMBLYWOMAN POU: I'm saying it wrong.

ASSISTANT COMMISSIONER SMARICK: All of my changes since I was on that side either went right to one of the-- I think they all went right to the consultants.

ASSEMBLYMAN GREENWALD: Right. So you were using your consultants properly.

It stretches the bounds of credibility to suggest that Commissioner Schundler, on his own, made a change to this F application without verifying it with anybody else or checking it with anybody else. It just doesn't ring true.

Because in the letter that we got from Chief Counsel Jeff Chiesa, he talks about pilot programs and merit pay. And they obviously reviewed this up and down. They would have caught the change, or they authorized the change for some reason. Whether that's because they didn't want the numbers to look -- and they didn't want to credit the previous Administration for funding higher education at a higher number. Something changed that number to the point where they did not include that in the materials back to the partisan offices to reference that change, for some reason or another. There was something that transpired between the 28th and the 1st that somebody at this dais knows. And the reality is

that that would not be changed by any Commissioner. None of you as Assistant Commissioners, as Commissioners-in-waiting -- none of you would have made that change on your own. In policy decisions, perfectly appropriate. This was not a policy decision. This is a part of the application that should have never been touched. It was factual. So why the Commissioner, on his own, would go into a thousand-page application, find this one page, look at this number and say, "You know what? I'm going to change this number, and I'm not going to tell a soul." Is there anybody in this room who believes that?

ASSISTANT COMMISSIONER SPICER: He couldn't have changed it by himself.

ASSEMBLYMAN GREENWALD: Couldn't have changed it by himself.

ASSISTANT COMMISSIONER SPICER: He would have had to work with the consultant to make the change, because the final draft was being held in a single set of computers.

ASSEMBLYMAN GREENWALD: And they would have never handed that application in without reviewing it with the front office first because the Governor said, "We're going to make changes to this application." Is that not correct?

UNIDENTIFIED SPEAKER FROM AUDIENCE: I really can't answer any questions. If you (indiscernible), I have no comment.

ASSEMBLYMAN GREENWALD: Does any-- I mean, at any point-- When the Governor said, "We're going to make changes to this application," did anyone think that that meant going into the thousand-page document, finding this number, and saying, "We're going to change

it?” And if they made the presentation through the consultants -- because you were using the consultants, as you said, properly -- this would have been reviewed with by the consultants. And somebody would have had to brief the Governor on this to say, “We’re making this change, and this is why.” I mean, why would that-- If that didn’t happen, why would the Commissioner make this change on his own?

Andy, can you answer that?

ASSISTANT COMMISSIONER SMARICK: If I understand the timing -- the timeline of these things--

ASSEMBLYMAN GREENWALD: Let’s go through it. On May 25 you were still at the previous application with that number. Sometime between the 25th and the 28th -- there’s no change yet, but there’s a bold statement, “We’re going to make changes to this application.”

We’ve heard today the only changes were putting some information back in that Assemblywoman Watson Coleman referred to, and divorcing ourselves from any reference to teachers. Those were the major changes. And this mysterious F filing--

Either the Commissioner made this change on his own-- Now, we heard from the Assistant Commissioner. They would talk about it with the vendors. Somebody had to have spoken to the Governor’s Office and the front office, or this vendor-- We should be suing the vendor for \$400 million. Somewhere along the line there is a break in the command.

So, Andy, that’s -- those are the chain of events. The 25th to 28th, and then the major change is the 28th to the 1st, which we’ve identified -- putting some things back in, divorcing ourselves from teachers. And somebody -- the Commissioner apparently -- no one is confirming it,

but they're saying he went into a thousand-page document -- his handwriting says -- on his own. I find that hard to believe -- that he would think to go into a thousand-page document, find this one page, and say, "Boy, I'm going to change this number."

But that's what had to have happened. Why would the Commissioner change that number?

ASSISTANT COMMISSIONER SMARICK: Of course I can't speak for the Commissioner. I don't know what was in his mind at the time. My understanding though is that at that point, when he was doing his editing, he was editing Section F, and that happened sometime in the 25, 26, 27 range. Maybe that was one page worth of edits, and there were other ones on top of that.

ASSEMBLYMAN GREENWALD: But, Andy, there were-- You looked at this 25, 26, 27 times, and no one ever changed this number?

ASSISTANT COMMISSIONER SMARICK: No, I was just saying in the 25, 26, 27 -- like the dates of May -- sometime in that range.

ASSEMBLYMAN GREENWALD: Okay. But from Phase 1 to Phase 2, everybody reviewed this application -- all the changes that were made to the application. Your Department's work with the stakeholders, as well as the Republican and Democratic offices -- nobody touches this number. And then out of the blue-- That had to be numerous revisions and reviews. And every time there was a review, you guys testified earlier that you would double check it, you would talk to the vendor. You go through this entire process, no one ever touches this one page in the entire document, and then all of a sudden the Commissioner takes it upon himself and decides, "I'm going to change--" I mean, that's what you want us to

believe. The Commissioner took this upon himself and decided, "I'm going to cross this out, and I'm going to pick a number out of the air." I mean, that doesn't even make sense. He would have had to go to somebody to get the number to put in. And I would think that one of you -- somebody -- would have said, "Why are you changing that number?" Did any of that happen?

ASSISTANT COMMISSIONER SMARICK: I can completely agree with you. I think everyone here would say the same thing -- that there was no need to change F1.

ASSEMBLYMAN GREENWALD: So why was it changed?

ASSISTANT COMMISSIONER SMARICK: Assuming that it was Commissioner Schundler who did it, we would have to ask him.

ASSEMBLYMAN GREENWALD: Assume it wasn't him, it was the Department, why would the number be changed? Whether it's him or not, the Department changed it. Why would it be changed, why was it approved by the front office, and why did the vendor not raise a fuss about it?

ASSISTANT COMMISSIONER SMARICK: Sir, those are, I think, three different questions. Why was it changed? I can give you no good reason why anyone would take good information, that is not only true but responsive, and take it out.

ASSEMBLYMAN GREENWALD: So we don't know why it would be changed.

ASSISTANT COMMISSIONER SMARICK: Whether it's Commissioner Schundler or anyone else, that shouldn't have been done.

ASSEMBLYMAN GREENWALD: How could it be changed without anybody knowing it?

ASSISTANT COMMISSIONER SMARICK: There's a hardcopy version of someone changing it. And as Willa said, it would have gone to the consultants to do the edits.

ASSEMBLYWOMAN ADDIEGO: I believe-- If I may.

ASSEMBLYMAN GREENWALD: Assemblywoman Addiego has the answer to it. This is earth-shattering.

ASSEMBLYWOMAN ADDIEGO: I agree with you.

ASSEMBLYMAN GREENWALD: Go ahead.

ASSEMBLYWOMAN ADDIEGO: On *Politicker*, apparently--

ASSEMBLYMAN GREENWALD: Oh, here, now we've got-- This is a source of information. Okay.

ASSEMBLYWOMAN ADDIEGO: Well, Mr. Schundler says, "It turns out that I had crossed out the key words while hand-editing text. I haven't seen the page with my hand edits, and I don't know why my error wasn't caught. But I now feel worse about things than ever. My stupid error contributed to New Jersey not winning \$400 million in Federal grant funds." So whether you want to believe *Politicker* or not, they claim he said that.

UNIDENTIFIED SPEAKER FROM AUDIENCE:
(indiscernible)

ASSEMBLYWOMAN ADDIEGO: I'm sorry, what was this?

UNIDENTIFIED SPEAKER FROM AUDIENCE:
(indiscernible)

ASSEMBLYMAN GREENWALD: Yes, my problem with quoting--

ASSEMBLYWOMAN ADDIEGO: Oh, Schundler--

ASSEMBLYMAN GREENWALD: --*Politicker* -- it's in a larger document of which we have, where he says, "I do not remember deleting the information, and I could not imagine I would have done so since the question seeks it. They would have told me that they looked over my edits." He says, "I also concluded that if the consultants were hired to put our application together and had given me draft text to review, and I edited out critical information, they would have told me when they looked over my edits." That's my point.

So if he would have crossed this out, he would have handed it back. Now, why he would have never touched this in all the previous edits, why he would have never crossed this out up until the final hour-- Maybe it was exhaustion, maybe it was working through Memorial Day weekend, who the hell knows. But he sends it to the vendor, and the vendor misses it too.

And all of you who were reviewing every edit along the way missed it. I would think that would be a material change. I mean, I would think that-- When we make changes to legislation, we underline it, we bracket it, we-- You see it. And somebody would have said, "Why are we changing it?"

Back to the point raised earlier: I don't think the Commissioner took it and typed it in. Somebody had to have typed it in. And I can't believe that no one said, "Why are we making this change?"

Anybody?

ASSISTANT COMMISSIONER SMARICK: To answer your first question: As I said earlier, I did get a version of the -- I think it's F, version 8, something like that -- after he had -- after this change had been made. And there were no track changes there. It was not obvious. It was the first time I had ever seen F. And I was looking at F1, and it was just the normal (indiscernible).

ASSEMBLYMAN GREENWALD: But you picked up commas that moved, but you didn't pick up a number change of that significance?

ASSISTANT COMMISSIONER SMARICK: What do you mean I picked up comma--

ASSEMBLYMAN GREENWALD: Previously in testimony, you indicated that you were reviewing this and noticing commas that changed places.

ASSISTANT COMMISSIONER SMARICK: On the version that I got, there were track changes of small natures made by somebody else. But there were not the big line edits of the important sentence of this 36, 39 percent that was the material thing that was needed.

ASSEMBLYMAN GREENWALD: Well, let me say to you, in reviewing how we track-- The purpose of this is to make sure that we don't make these mistakes again. There needs to be a process, much like we change legislation, that shows the changes in material -- in any piece of this information. Because what you realize now is, we don't know what is material and what is not material when you're reviewing that.

Commissioner, I appreciate you saying that today.

ASSEMBLYWOMAN POU: Assemblyman, we need to move on to the next speaker.

I'm sorry, Commissioner, did you want to respond to that? And then I really need to make sure-- Because we still have several other members that have not spoken for the round one, and there are several for round two.

ASSISTANT COMMISSIONER SPICER: I just wanted to answer the question as to what would make somebody look at it the last time. I'm sure that as part of the final look the Commissioner was going through the whole thing, because that's the time when the reading of the whole thing was there. I don't know why he changed it, but I know why he was looking at it. So that's about all I can offer.

ASSEMBLYWOMAN POU: To Assemblyman Greenwald's point, it would not have been the final reviewer or the person who finally -- who has the sign-off on the application.

ASSISTANT COMMISSIONER SPICER: Right.

ASSEMBLYWOMAN POU: It would have had to been more than just the Commissioner. Is that not true?

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN POU: Okay.

Assemblywoman Stender.

ASSEMBLYWOMAN STENDER: Thank you, Madam Chair.

Mr. Gohl, you had testified that you brought it to the attention of the consultant in early August that there was a mistake made. And when you questioned them about it, they basically said, "Well, this can't be fixed because it was submitted that way." There was no additional discussion. And apparently it was not brought to anybody else's attention at that point, because it was almost as if it was being ignored. Because since it couldn't be

fixed, there was no reason to discuss the fact that this is wrong. Is that a-- I mean, that's how it sounds to me.

MR. GOHL: That is an accurate summary of my testimony. The only thing I would add is that we had to focus on how to spend our effort.

ASSEMBLYWOMAN STENDER: Okay. Because you were (indiscernible)

MR. GOHL: And this was an area where no amount of effort could change the outcome.

ASSEMBLYWOMAN STENDER: Okay. Going back to the issue of the consultant: On this no-bid contract -- it was explained why it was done as a no-bid, but nonetheless a no-bid contract -- the consultant was paid almost \$200,000 in the end. And when I looked at the details of it, they were paid for technical accuracy. I'd like to hear from, I guess, the panel members what that technical accuracy actually meant in your dealings with them.

ASSISTANT COMMISSIONER SPICER: They literally served that purpose. When we tried to put in things that seemed to be nonresponsive or inaccurate, they would pick it up and give it back. They would say, "No, that's too much. You can't -- you don't -- it's not needed," or, "Yes, we should put that in, or find out about this." They really served us in exactly that capacity -- to lead us to believe that we were getting good responses. And on the whole I think we did, on technical accuracy of this application.

ASSEMBLYWOMAN STENDER: So they were-- I mean, it would seem to me that answering the question that was asked would be considered a technical--

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN STENDER: --accurately -- need.

ASSISTANT COMMISSIONER SPICER: Exactly.

ASSEMBLYWOMAN STENDER: And in other areas, you're saying that they, in fact, were providing that technical accuracy.

ASSISTANT COMMISSIONER SPICER: Yes, and we would give them data. They would work it through so it was presented properly, all of that.

ASSEMBLYWOMAN STENDER: When this change was somehow mysteriously made -- because it seems to have been mysteriously made. We have some hand-written notes of -- that nobody knows really who they came from. But we're assuming certain things -- and that's never a good way to go with these things, I've found. Anyway, certain assumptions have been made. But their job was to review for technical accuracy prior to submission, correct?

ASSISTANT COMMISSIONER SPICER: Yes, they did that job.

ASSEMBLYWOMAN STENDER: So it sounds to me as if when it came down to it, this technical piece was not reviewed, but yet it was their job to provide that technical review.

ASSISTANT COMMISSIONER SPICER: It certainly wasn't picked up. I'm sure it was reviewed, because it had -- they had the final document in their hands. So for some reason it wasn't identified.

ASSEMBLYWOMAN STENDER: Because clearly there was a process going forward, there was an understanding of where the weaknesses were going to be.

ASSISTANT COMMISSIONER SPICER: Right.

ASSEMBLYWOMAN STENDER: That had been addressed. You had worked hard on making that application until the Governor pulled the plug. And that sort of threw the process into chaos.

ASSISTANT COMMISSIONER SPICER: But we continued.

ASSEMBLYWOMAN STENDER: And then the -- this change was made, somehow, by somebody who -- we don't know who it was -- and then they sent it off, but yet they didn't want to discuss it later. That's apparently -- because nobody seemed to know until you got into that meeting that this technical issue was incorrect and missing.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN STENDER: So you didn't know until you got to the panel.

ASSISTANT COMMISSIONER SPICER: I did not.

ASSEMBLYWOMAN STENDER: And, Mr. Gohl, you had never brought it to the Commissioner's attention, so he apparently didn't know it either.

MR. GOHL: That is correct. The Commissioner was not there on Thursday the 5th.

ASSEMBLYWOMAN STENDER: So I can only assume that there is one of two things going on: that the firm that was hired did, in fact, not fulfill the obligations of their contract, which ended up costing us \$400 million; or there was some change made -- I can only guess from the

Governor's Office -- that overrode whatever it was the consultant was deciding before that was submitted. Because there was connection between the Commissioner and the Governor's Office. So there were conversations going on to make sure that all the policy pieces were consistent with what the Governor wanted. But in the end, this change was made, and it had to have been made with knowledge of somebody who was signing off on the final piece. Yes?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYWOMAN POU: Thank you.

Assemblyman Peterson, followed by Assemblyman Barnes.

ASSEMBLYMAN PETERSON: Thank you, Madam Chairwoman.

I just want to start out by saying that I'm hoping that we just don't fixate on Section F. My father, who gave me some sage advice when I was swimming and would get touched out at a meet -- instead of getting mad and getting upset-- What he would always tell me was: When those situations happen, if I go back and I work harder to do better the next time -- so I win by enough so there's no doubt in anybody's mind that I was better than the other guy -- then I won't have these situations where I know I out-touched a guy, but because somebody made a judgement call on the deck -- instead, I came in second. Now, that didn't happen very often. But his advice was good, and it was sound then, it's sound in everything that I've done in life, and it's sound here today.

So I want to focus in on some of the other aspects of the application. And one of the things we've heard discussed here today is the changes -- that there were certain policy measures in the application, then

there was negotiating, then there was negotiating with the NJEA, and those policies were changed. And then, when the Governor found out that his policies had been changed, he demanded that they be re-put in. Is that an accurate statement?

UNIDENTIFIED SPEAKER FROM PANEL: Yes, it is.

ASSEMBLYMAN PETERSON: And we also heard that the revisions, that were made so much of today -- those revisions were really putting the application back the way that it had originally been, correct?

UNIDENTIFIED SPEAKER FROM PANEL: It was a restoration process. That's correct.

ASSEMBLYMAN PETERSON: So it was not a wholesale change of the application. It was a matter of putting it back the way it had originally been prior to those negotiations.

UNIDENTIFIED SPEAKER FROM PANEL: That's an accurate statement.

ASSEMBLYMAN PETERSON: And what was put back in -- if I understand it correctly, because this isn't the Education Committee, so I'm not -- I'm getting real versed in education issues, something that I didn't think I would be doing in this Committee. But if I understand this correctly, it was merit pay, and tracking children's performance over their education career, and seeing how different teachers performed within there. Is that accurate?

UNIDENTIFIED SPEAKER FROM PANEL: Yes.

ASSEMBLYMAN PETERSON: And these are the very changes that the education establishment didn't want in the application?

UNIDENTIFIED SPEAKER FROM PANEL: Well, there would be-- I'm going to ask Willa to comment on that one, because she was part of that process once the change took place, but also to make sure that we're really accurate in terms of what was restored.

In terms of the policy pieces, certainly the areas of contention were merit pay and tenure reform. But beyond that--

Willa, if you want to speak to the specific aspects of the process.

ASSISTANT COMMISSIONER SPICER: Well, the issue that you raise, of the performance of students being a part of the evaluation of teachers, had been agreed to between the NJEA and the Commissioner before this -- at the time that it was still being agreed. It was not changed. I mean, it stayed. It was agreed to. It was the very heart of this application -- that the effectiveness of teachers would be measured 50 percent on the basis of the performance of students and 50 percent on the practices in the classroom. And that would be true with both teachers and teacher leaders, including principals. And that did not change. It didn't change from the beginning, it didn't change with NJEA. It stayed the same and still rests as the foundation of this application.

What did change had to do with any considerations of tenure and having to do with the rifting of teachers. And the *rifting* means the reduction in force of teachers as they -- when a district has to let teachers go. And the issue was: Would the teachers be let go on the basis of effectiveness, the least effective going first; and then the next? Or would they be let go on the basis of seniority -- how long they were in the job? And the decision -- the change was to move away from effectiveness, at the

time of the negotiations with the union. And when the decision was to not go with the union, that was put back in -- that we would judge teachers on effectiveness, not on the seniority that they were in the district. That was the major negotiations point in this.

There was a question of whether there would be pilot programs of merit -- in merit pay, or whether everybody would just get them. And it was decided to change that so there would no longer be pilot programs, but that merit pay would become a practice in the State of New Jersey. And that was changed. Those were the major changes in the -- at the time that the decision was to not go with the union.

ASSEMBLYMAN PETERSON: Let me see if I understand this. So one of the main issues that prevented the NJEA from supporting this application was that they wanted to use a tenure system. So as long as you had been there longer than somebody else, you couldn't be terminated.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYMAN PETERSON: And the Governor's position -- he wanted to do it based on merit, who had the best performance as it would be tracked through these programs.

ASSISTANT COMMISSIONER SPICER: Right.

ASSEMBLYMAN PETERSON: So when there had to be -- was downsizing of staff, that we would keep the best teachers, regardless of their seniority, correct?

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYMAN PETERSON: And so this is a philosophical difference. Is that correct?

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN PETERSON: And it has been portrayed that this was some -- just some trying to get even with the unions. But this is truly a philosophical difference in how we should educate our children, correct?

ASSISTANT COMMISSIONER SPICER: Certainly on how we would manage the schools.

ASSEMBLYMAN PETERSON: And then the pilot program-- And I didn't really understand this when you were speaking about it. So if you could explain it a little to me. In one application it was to have the merit pay be a pilot program in some schools; and in another version of it, it was going to be put out to all schools.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN PETERSON: Can you-- Which application had which?

ASSISTANT COMMISSIONER SPICER: The preapplication that included the Association had in it the pilot schools -- the chance to operate in pilots on the whole issue of merit. And in the final application, merit was concluded for all schools.

ASSISTANT COMMISSIONER SMARICK: There were actually three different performance merit pay programs in the final application: one based on whole school gains. So all teachers who were doing well would get merit pay. Another for individual, particularly excellent teachers who were doing a great job with disadvantaged kids. And the third one -- we would try to get our most effective teachers into the lowest-performing classrooms. So that's what was in the final application.

ASSEMBLYMAN PETERSON: Okay. And the final application had this to be a statewide program instead of pilot programs?

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN PETERSON: So it would have an immediate impact on the low-performing schools, and it would also benefit the high-performing schools as well.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSISTANT COMMISSIONER SMARICK: And high-performing teachers.

ASSISTANT COMMISSIONER SPICER: The Association agreed to the merit piece before this started. So there was a question of how much merit and where it would exist that was talked about in the middle. So there were some changes in concept of merit. But merit had been in the application before and after.

ASSEMBLYMAN PETERSON: Okay. So if I understand this correctly, the original application prior to the negotiations with the NJEA had the original Section F in it with the original funding numbers. Is that correct?

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSISTANT COMMISSIONER SPICER: That's right.

ASSEMBLYMAN PETERSON: And were those funding numbers changed as a result of the negotiations with the NJEA?

ACTING COMMISSIONER HENDRICKS: No.

ASSISTANT COMMISSIONER SPICER: No.

ASSEMBLYMAN PETERSON: So it would suffice to say that if the Governor's only change after the negotiations were these issues on

effectiveness and a pilot program, and the original had the original numbers in F, that you didn't go back and change F as a result of him saying, "Those negotiations -- I'm not accepting them." Is that correct?

ASSISTANT COMMISSIONER SPICER: That's correct. To my experience, there was no discussion of F at that time.

ASSEMBLYMAN PETERSON: At no time was there a discussion when the Governor said, "I don't like the changes that you've negotiated. I want mine. I want it the way I had it back"? At no time was there any discussion about changing Section F?

ASSISTANT COMMISSIONER SPICER: No, not to my experience.

ASSEMBLYMAN PETERSON: Okay. And I wasn't originally going to get too much into this Section F, but I do have some interesting questions I'd like to ask on Section F, only in that it's been said here today that -- or at least it's been stated as if a fact -- that every change made to the application was -- "had to be approved by the front office." Is that an accurate representation?

ACTING COMMISSIONER HENDRICKS: Not to my knowledge. I don't know of other people's experience, but that was not an experience I had.

But I don't know if Willa--

ASSISTANT COMMISSIONER SPICER: I don't know at all.

ASSEMBLYMAN PETERSON: Okay.

ASSEMBLYWOMAN POU: I'm sorry. Could you explain that again? Was the question that you don't know whether or not the final approval of an application would not go to the front office?

ASSISTANT COMMISSIONER SPICER: I do not know. I wasn't involved in that, so I really do not know.

ASSEMBLYWOMAN POU: Is that the protocol for any and all of your grant applications? Who has the final approval of any application that is put forward?

ACTING COMMISSIONER HENDRICKS: Many of our applications that are forwarded to the Federal government are signed off by the Commissioner.

ASSEMBLYWOMAN POU: No, I understand that. So the policy-- So the Administration, the front office, the Governor's Office, anyone -- they don't have to review, and approve, and make sure that you're conforming to the public policy of his Administration?

ASSISTANT COMMISSIONER SPICER: This is a relationship between the Commissioner and the Governor's Office.

ASSEMBLYWOMAN POU: Okay.

ASSISTANT COMMISSIONER SPICER: And we don't have the Commissioner here that was in--

ASSEMBLYWOMAN POU: No, no, no. I understand. I'm not asking whether -- either you -- either the Acting Commissioner or you, Willa, were the ones. But I would imagine any and every one of his departments, not just the Department of Education -- that any department that would submit an application to the Federal government, especially something of this magnitude -- it would not fall or rest -- those final steps or that final decision would not rest upon that of the Commissioner of that particular department. I would think that the front office would either be

in agreement with and approval with whatever is being submitted and what the final application looks like.

ACTING COMMISSIONER HENDRICKS: Let me say, particularly in terms of this grant application-- Given the nature of the reform agenda, and given the fact that it's clear that the Governor wanted us to restore those things that were omitted from the application-- Clearly there was a review and a commitment to that reform agenda -- that that's -- he did not want to step away from that reform agenda.

Beyond that, once that takes place, the idea that they would be in the weeds and the edit is a whole other issue. I just-- And that's about all I think I want to say with respect to that.

ASSEMBLYWOMAN POU: Assemblyman, if you can continue.

ASSEMBLYMAN PETERSON: Thank you.

I want to understand this edit process. It is believed that there are some handwritten edits that were delivered. The testimony was that they were delivered to the consultants, correct? And the consultants then took those handwritten edits and made the changes to Section F based on those handwritten edits. Is that correct?

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSEMBLYMAN PETERSON: And I also believe that it was testified to today that those edits were not shown on any -- after they were made, they were not shown as you would get with using Microsoft Word, where you can track the changes. Those edits did not appear as a track -- the crossing-out, the changing of the numbers, the material terms were not

tracked on any copies that any of you received showing that those changes had been made, correct?

ACTING COMMISSIONER HENDRICKS: That is correct.

ASSEMBLYMAN PETERSON: Is that correct? (affirmative response)

I have a question. I don't know if anyone ever -- if anyone testified to this, and if anyone can. Do we know when the changes -- the date or a round-about time period that the changes to Section F were made?

ACTING COMMISSIONER HENDRICKS: It appears to be around May 27, 28, somewhere in that time period.

ASSEMBLYMAN PETERSON: Okay. So we have some information here that says that it was probably May 26. Is that possible?

ACTING COMMISSIONER HENDRICKS: That's possible.

ASSEMBLYMAN PETERSON: And you said the 27th. And I have here that the Governor-- You had testified, I believe, earlier that when the Governor asked for his changes -- his original application to be what was submitted to the Federal government, that took place on May 28.

ACTING COMMISSIONER HENDRICKS: I believe that's correct.

Willa.

ASSISTANT COMMISSIONER SPICER: Yes, I think so. I'm sorry I don't have a calendar in front of me.

ASSEMBLYMAN PETERSON: That's all right.

ASSISTANT COMMISSIONER SPICER: But I think that's correct.

ACTING COMMISSIONER HENDRICKS: Do you recall?

UNIDENTIFIED SPEAKER FROM PANEL: Later?

ACTING COMMISSIONER HENDRICKS: It was very close to Memorial Day weekend.

ASSISTANT COMMISSIONER SPICER: What was the question again?

ACTING COMMISSIONER HENDRICKS: At what point did the Governor direct the changes back to restore what was in--

ASSISTANT COMMISSIONER SPICER: I don't know when the Governor did it, but the--

ASSEMBLYWOMAN POU: Put your light on. Put your mike on.

ASSISTANT COMMISSIONER SPICER: I don't know what the date was that involved the Governor, but I spoke -- or a group of us spoke to the Commissioner on Memorial Day. And those changes were made from Memorial Day to the day that it was due. It was done overnight.

ASSEMBLYMAN PETERSON: Okay. So if I understand the timing correctly, the actual changes to Section F occurred prior to the Governor wanting his original application to be the one submitted to the Federal government. Therefore, those changes back to the original application were made after Section F had been changed, correct?

ASSEMBLYWOMAN POU: I thought it was the opposite. I thought it was the reverse that Willa just said.

ASSISTANT COMMISSIONER SPICER: I can't answer the question about Section F, because I just don't have any information. But I do know that the decision to change the application was done between 1:00

on Monday, Memorial Day, and the delivery of that application to Washington on Tuesday. So anything that happened before that happened-- Almost anything happened before that, because that was the full attention those two days.

ASSISTANT COMMISSIONER SMARICK: So Memorial Day was the 31st of May.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSISTANT COMMISSIONER SMARICK: And you're saying that your timeline shows that the F change happened on the 26th.

ASSEMBLYMAN PETERSON: I have an e-mail -- it looks like Tuesday, May 25.

ASSEMBLYWOMAN POU: Who is it from, Assemblyman?

ASSEMBLYMAN PETERSON: J.G. Manise, M-A-N-I-S-E.

ASSEMBLYWOMAN POU: And the e-mail is to whom -- the question or-- Who is it sent to?

ASSISTANT COMMISSIONER SMARICK: To me?

ASSEMBLYMAN PETERSON: It says Dee and Michael -- Michael Blaustein and Dee Migliaccio.

ASSEMBLYWOMAN POU: And who are they?

ACTING COMMISSIONER HENDRICKS: Dee is a secretary in the Department of Education, and Michael Blaustein is the Executive Assistant to the Commissioner.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYMAN PETERSON: And it was an e-mail for the Commissioner's review regarding changes to Section F. And that occurred

on May 25. You made the changes either May 30 or -- is there 31 days in May -- 31st.

ASSISTANT COMMISSIONER SPICER: Thirty-first.

ASSEMBLYMAN PETERSON: I'm lost without a calendar.

So sometime after it had been changed you were making the Governor's request that changes back to the original application.

Now, I just wanted to go back to the actual application itself. Assemblyman Greenwald earlier talked about -- had anyone gone and compared our application with the other application? I'm assuming he was implying to the 10 applications that received funding. Have any of you gone back and done any review on -- comparison on the scoring?

ACTING COMMISSIONER HENDRICKS: I think many of us have. And I'm actually looking at Andy because we actually asked him to do an analysis of the scoring. And I know he had already looked at what some of the other states have done, and that's been part of our discussion.

Andy.

ASSEMBLYMAN PETERSON: I, in preparation of today, had asked for that information as well, and I did my own comparison. Although we're focused on Section F, Andy, I'm going to -- since you're the one who did it, I'm going to just go through some information here.

Now, I was looking at the final numbers for tier 2.

ASSISTANT COMMISSIONER SMARICK: Tier 2.

ASSEMBLYMAN PETERSON: Which is whether we got the money or didn't get the money. So I think that's the most pertinent.

ASSISTANT COMMISSIONER SMARICK: Right.

ASSEMBLYMAN PETERSON: And what I noticed was on-- You have Sections A through F. And what I noticed was on Section C, we came in dead last. Is that accurate?

ASSISTANT COMMISSIONER SMARICK: Among the finalists?

ASSEMBLYMAN PETERSON: Among the finalists.

ASSISTANT COMMISSIONER SMARICK: It's possible. I can't completely confirm that, but it's possible.

ASSEMBLYMAN PETERSON: Okay. Can you describe--

ASSEMBLYWOMAN POU: Assemblyman Peterson, I just want to -- I'm sorry to interrupt you. I just want to make sure-- I'm going to ask you to make this your last point. I can come back to you. I know that you're on for a second round if you want to. But let's move it up. You've been going on for a while now.

ASSEMBLYMAN PETERSON: I'm just asking my questions like everyone else had an opportunity to do.

ASSEMBLYWOMAN POU: I'm happy to let that happen. I'm just saying let's try to conclude -- to come to a conclusion on this one, and then you can come back if you'd like.

ASSEMBLYMAN PETERSON: Okay. Can you just describe Section C and what factors we were so deficient on that we came in dead last out of the 11 -- top 11?

ASSISTANT COMMISSIONER SMARICK: Yes. The big flaw in Section C relates to 12 elements that are required under the U.S.A. COMPETES Act. So you get two points for each of these 12 elements. We only have seven of them. So instead of getting a maximum of 24 points, we

get 14 points. So right off the top of the bat -- even before we write anything in our application -- just by virtue of our data system, we lost 10 points there.

ASSEMBLYMAN PETERSON: And that's the New Jersey SMART system, if I understand it correctly.

ASSISTANT COMMISSIONER SMARICK: That's NJ SMART, correct.

ASSEMBLYMAN PETERSON: And so our lack of technology lost us 14 points right out of the start.

ASSISTANT COMMISSIONER SMARICK: Well, definitely 10 points, and we lost a couple points here or there in C Section for other somewhat related things. But as far as the database, the data system and all the things it's supposed to do, we lost 10 points straight away.

ASSEMBLYMAN PETERSON: Now, it's my understanding that the New Jersey SMART has been a program that we've been working on for six years.

ASSISTANT COMMISSIONER SPICER: Correct.

ASSEMBLYMAN PETERSON: And why have we not been able to get it up to a level of efficiency and working in six years? I'm new to the Legislature, so this is all new to me. Why does it take us six years on something that's this critical?

ACTING COMMISSIONER HENDRICKS: Willa, do you want to start?

ASSISTANT COMMISSIONER SPICER: No, go ahead.

ACTING COMMISSIONER HENDRICKS: I think there are a couple of reasons. One, I think we've had at least four attempts to get

funding in order to upgrade the system, and we have not been successful in pursuing those funds.

ASSISTANT COMMISSIONER SMARICK: Federal funds.

ACTING COMMISSIONER HENDRICKS: Federal funds -- I'm sorry, yes, Federal funds.

And in addition to that, there's been a lot of fits and starts in terms of the priority given to implementing NJ SMART. I'm actually going to ask Willa, who has been working very, very closely to help us move past what has been a very slow progress towards what is really critical for us to be able to do this work. We really should have had something in place, as you indicated, several years ago. And I know in the last iteration, there's been some much more dramatic, aggressive attack on getting NJ SMART up and running.

Some of it has been having personnel within the Department really focused on that work. I think early on -- I would say in 2002-2003 -- there was a tremendous lift in the Department to try to get this done. And then, quite honestly, we slowed that commitment. It just no longer was the number one priority. It was a priority, but it wasn't a top priority. And I don't think people fully understood the ways in which we're jeopardizing ourselves going forward in a variety of critical areas with respect to, certainly, access to Federal funds; but, more importantly, being able to implement our own programs in the most effective, meaningful ways. But I know Willa probably has a lot more to say with respect to that.

ASSISTANT COMMISSIONER SPICER: No, I think that's fine. We have not had the resources devoted to this application over time. We use some moneys that are earmarked for this. And we've been hoping

for Federal help. We have not gotten the Federal help, and that's unfortunate; and therefore we're behind other states.

ASSEMBLYMAN PETERSON: Just a follow-up question, real quickly: Did I understand you correctly that we've lost other opportunities for Federal aid as a result of not getting this program in place -- at least up to an adequate level in the last six years?

ASSISTANT COMMISSIONER SPICER: Well, it's a chicken and egg argument. The other states-- We're missing things in our program, and so we're not eligible to get new money, and then the money goes out to other states. The last one -- the last application we have was rejected because we used vendors, and there was nothing in the application that indicated that we couldn't. So it's been a very frustrating area for growth for the State of New Jersey's Education Department, despite the great efforts of a lot of people to try to bring our systems up to par.

ASSEMBLYMAN PETERSON: So there was another application that would have helped improve -- we would have got funding to improve this. But because of a mistake, we lost that funding and, hence, we lose this funding?

ASSISTANT COMMISSIONER SPICER: Well, I don't think there were any mistakes in the original application. It's just that we didn't win. I mean, it wasn't that we made a mistake. We just didn't win it. And we haven't won it twice. And maybe we're not writing it well -- I mean, obviously, we are not writing it well enough to pick up the additional moneys. But we certainly are trying very hard to bring up our computer and technology sections. And we've been getting some real improvement in this area, but not fast enough to keep up with this application. And

obviously, as you can see, not fast enough to keep up with the other states who are moving much faster in the area of technological backup for their educational system.

ACTING COMMISSIONER HENDRICKS: It's almost the more we fall behind, the harder it is for us to catch up. We're being penalized.

The only advantage at this point, in talking with Dr. Erlichson, is that perhaps we have learned from the other states' failures. So even though they're ahead of us, once we get our system in place, we believe our system will be as good as, if not better, than everyone else's. So we've tried to take what has been a lemon for all of us here in New Jersey and turn it into a little bit of a lemonade going forward.

ASSEMBLYWOMAN POU: Thank you.

Assemblyman, I'm going to--

ASSEMBLYMAN PETERSON: Madam Chairwoman, I just want to say that it's indicative on us to move forward on this NJ SMART.

ASSEMBLYWOMAN POU: I agree.

ASSEMBLYMAN PETERSON: It seems to be the biggest problem here. And I hope that we--

ASSEMBLYWOMAN POU: Actually, Assemblyman, I wanted to point out to you that it's taken -- and it actually took, like, 19 years for the Office of Technology here in the State of New Jersey to really finally get some real change and significant change in the DYFS system. So we understand that technology -- the improvement of technology has certainly not been an area that has been well prepared and moved as quickly or as well as we'd like to see it happen. So there's no secret that we have had

problems for the last 19 years in that. And clearly you've heard today, and demonstrated, that the last six years is evident of what happened. The difference is that the first one was -- the first Phase, as it was pointed out, was -- there was not a mistake, as evident in the statement made by the Department members. Phase 2: there was a mistake made. And that's why we're trying to get to that.

With that point, I'm going to -- I'll be happy to recognize you afterwards if you have any further question.

I'm now going to move on to round two and recognize--

ASSEMBLYMAN BARNES: We're still on round one.
(laughter)

ASSEMBLYWOMAN POU: I'm sorry.

Assemblyman Barnes, I forgot that you have yet not spoken. I'm going to-- Go right ahead, Assemblyman.

ASSEMBLYMAN BARNES: Thank you very much, Madam Chair.

I'd like you to recognize, as I'm sure you -- this is round one. I have not asked any questions at all. I will try to take my round one and round two together, if I may, and expedite.

The first several questions are for Mr. Smarick, if I may. What's your official state of residence, sir?

ASSISTANT COMMISSIONER SMARICK: New Jersey.

ASSEMBLYMAN BARNES: And who first reached out to you when you-- You worked at the two think tanks, and you were writing -- you were an author of a book before you came to New Jersey. Is that correct?

ASSISTANT COMMISSIONER SMARICK: That's right. I was living in Maryland.

ASSEMBLYMAN BARNES: In Maryland?

ASSISTANT COMMISSIONER SMARICK: I was.

ASSEMBLYMAN BARNES: And who first reached out to you from New Jersey?

ASSISTANT COMMISSIONER SMARICK: Mr. Schundler.

ASSEMBLYMAN BARNES: And had you known Mr. Schundler before? Had you interacted with him before that?

ASSISTANT COMMISSIONER SMARICK: I think I had met him once or twice, but we weren't very close.

ASSEMBLYMAN BARNES: And when was that? When did he first reach out to you?

ASSISTANT COMMISSIONER SMARICK: I'd have to go back and check my calendar, but I believe it was March or April -- probably March.

ASSEMBLYMAN BARNES: And at the time, you were a resident of Maryland.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: And the book that you were writing -- was that something on the topic of education or something in that range?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: Is the book now published?

ASSISTANT COMMISSIONER SMARICK: It's in manuscript form.

ASSEMBLYMAN BARNES: Do you anticipate a date when it's going to be released?

ASSISTANT COMMISSIONER SMARICK: No.

ASSEMBLYMAN BARNES: Just out of curiosity, what is the book titled? Do you have a title?

ASSISTANT COMMISSIONER SMARICK: There's a working title, but the idea is I'm trying to figure out how to rebuild urban school systems.

ASSEMBLYMAN BARNES: Okay. Urban school systems.

And when did you first actually come from Maryland into New Jersey?

ASSISTANT COMMISSIONER SMARICK: When did I move?

ASSEMBLYMAN BARNES: Yes, when did you move into New Jersey?

ASSISTANT COMMISSIONER SMARICK: I think we closed on our house the middle of my first week of working here officially, so maybe August 4 or 5.

ASSEMBLYMAN BARNES: Thank you. Did you have an opportunity, from the time the Commissioner reached out to you in March until the end of the budget process-- Did you sit through any of the budget hearings?

ASSISTANT COMMISSIONER SMARICK: I did not.

ASSEMBLYMAN BARNES: Did you review the budget?

ASSISTANT COMMISSIONER SMARICK: I did not.

ASSEMBLYMAN BARNES: Did you review any of the budget documents?

ASSISTANT COMMISSIONER SMARICK: Of the State's budget?

ASSEMBLYMAN BARNES: Yes.

ASSISTANT COMMISSIONER SMARICK: No.

ASSEMBLYMAN BARNES: Did you review the budget documents that pertained to the Department of Education?

ASSISTANT COMMISSIONER SMARICK: There were some that I looked at, yes.

ASSEMBLYMAN BARNES: What was your actual status when you moved from Maryland to New Jersey? Did you have a title?

ASSISTANT COMMISSIONER SMARICK: I was a fellow at both of the organizations that I was working for.

ASSEMBLYMAN BARNES: From what you're-- And I'm trying to just-- We all took notes as all of you were testifying. So just bear with me. At one point during the questioning, I believe the term -- you were an *unpaid consultant*. Is that a fair characterization?

ASSISTANT COMMISSIONER SMARICK: Yes, I was not getting paid by New Jersey.

ASSEMBLYMAN BARNES: And are you getting paid by New Jersey now?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: Do you recall when you went on the payroll for the State of New Jersey?

ASSISTANT COMMISSIONER SMARICK: Beginning on my first day of work.

ASSEMBLYMAN BARNES: And when was that?

ASSISTANT COMMISSIONER SMARICK: August 2, I believe.

ASSEMBLYMAN BARNES: Okay. So from August 2 through today, you've been employed by the State of New Jersey.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: Have you been employed by any other entity?

ASSISTANT COMMISSIONER SMARICK: No, I have not.

ASSEMBLYMAN BARNES: Part-time or full-time?

ASSISTANT COMMISSIONER SMARICK: I have not.

ASSEMBLYMAN BARNES: Do you recall when you terminated your affiliation with the two think tanks?

ASSISTANT COMMISSIONER SMARICK: I'd have to go back and look at my records. I mean, I'm still listed as adjuncts with them, but I'm not getting paid by either one of them.

ASSEMBLYMAN BARNES: When you first began your job officially in August, were you instructed as to what your responsibilities and duties were going to be?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: In your own words, what were they?

ASSISTANT COMMISSIONER SMARICK: To help lead the Department, to work with Bret Schundler to help manage many of the most important divisions in the Department.

ASSEMBLYMAN BARNES: Were you given any more specific duties than that?

ASSISTANT COMMISSIONER SMARICK: I'd have to go back and look at paperwork, but that's what I remember.

ASSEMBLYMAN BARNES: Well, what I'm asking, sir, is, did you have a sense of what your charges would be? When you came in, in August, did you have a sense of, "These are going to be my duties, these are my charges" -- specific charges?

ASSISTANT COMMISSIONER SMARICK: Yes, pretty much what I just said: help improve the work of the Department, help drive the agenda of the Governor and the Commissioner.

ASSEMBLYMAN BARNES: Who did you report to?

ASSISTANT COMMISSIONER SMARICK: The Commissioner.

ASSEMBLYMAN BARNES: And did you have any subordinates beneath you that reported directly to you?

ASSISTANT COMMISSIONER SMARICK: I had an assistant; and then I had, just beginning, some of the division heads. We were just beginning though.

ASSEMBLYMAN BARNES: So you had one person who reported to you?

ASSISTANT COMMISSIONER SMARICK: Right.

ASSEMBLYMAN BARNES: One assistant. Respectfully, what was that person's name -- or what is that person's name?

ASSISTANT COMMISSIONER SMARICK: Ginger.

ASSEMBLYMAN BARNES: Ginger what?

ASSISTANT COMMISSIONER SMARICK: Klosinski.

ASSEMBLYMAN BARNES: And what were her duties?

ASSISTANT COMMISSIONER SMARICK: She was my assistant.

ASSEMBLYMAN BARNES: In what way, administrative?

ASSISTANT COMMISSIONER SMARICK: Administrative.

ASSEMBLYMAN BARNES: We've heard a lot about the application. Is that correct, sir?

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN BARNES: A lot of questions were asked today about the application. The application was due on June 1, 2010.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: And, of course, you didn't start until August. Is that right?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: Nevertheless, have you had a chance to -- through your testimony today, listening to the various questions today-- Do you read a daily newspaper? I presume that you would.

ASSISTANT COMMISSIONER SMARICK: I try to.

ASSEMBLYMAN BARNES: Do you have a handle on the events that have taken place in this -- the controversy that brings us here

today? Do you have a pretty full understanding of the various events, and the dates, and the times involved?

ASSISTANT COMMISSIONER SMARICK: I do.

ASSEMBLYMAN BARNES: Did you review any documents before coming here today?

ASSISTANT COMMISSIONER SMARICK: What types of documents?

ASSEMBLYMAN BARNES: Any documents at all. In your preparation -- you knew that you were going to prepare for today, correct?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: Did you review any documents over the weekend to prepare for today?

ASSISTANT COMMISSIONER SMARICK: Yes, I looked at the application, I looked at old e-mails that I had sent, things like that.

ASSEMBLYMAN BARNES: Did you have a chance to review the contract from the vendor?

ASSISTANT COMMISSIONER SMARICK: I did not do that this weekend.

ASSEMBLYMAN BARNES: Have you ever had a chance to review it?

ASSISTANT COMMISSIONER SMARICK: I believe there are two or three different contracts with the vendor, and I think I looked at them for the first time two weeks ago or so.

ASSEMBLYMAN BARNES: Did you have a chance to review all three contracts?

ASSISTANT COMMISSIONER SMARICK: I think I saw two of them. I don't think I saw the third.

ASSEMBLYMAN BARNES: And so you're not going to be -- and I respectfully say this to you -- you're not going to be quizzed on it. I'm just trying to get a feel for your level of the documents that you reviewed. So at some point when you started in August, did you have a chance -- right through today -- to review the various contracts from the vendor?

ASSISTANT COMMISSIONER SMARICK: Is your question: Did I go through them in great depth?

ASSEMBLYMAN BARNES: Yes. Did you go through them in any kind of detail or depth?

ASSISTANT COMMISSIONER SMARICK: The ones with Wireless for this contract?

ASSEMBLYMAN BARNES: Yes, sir.

ASSISTANT COMMISSIONER SMARICK: I wouldn't say in great depth, but two weeks ago or 10 days ago, when I looked for the first time, I went through them and tried to figure out how they came about.

ASSEMBLYMAN BARNES: Well, we were advised by the Chairman about an hour ago that the vendor's -- I'm going to use the term *vendor* if you don't mind. You know what I'm talking about, right?

ASSISTANT COMMISSIONER SMARICK: Vendor?

ASSEMBLYMAN BARNES: Wireless.

ASSISTANT COMMISSIONER SMARICK: The consultants, yes.

ASSEMBLYMAN BARNES: So I'm going to use the term *vendor*. Is that okay?

ASSISTANT COMMISSIONER SMARICK: That's fine.

ASSEMBLYMAN BARNES: We've been advised that the vendor's attorney is sitting in the back on the left hand -- all the way in the back row. Do you see that gentleman?

ASSISTANT COMMISSIONER SMARICK: I do.

ASSEMBLYMAN BARNES: Have you ever spoken with that gentleman before today?

ASSISTANT COMMISSIONER SMARICK: I don't think so.

ASSEMBLYMAN BARNES: You don't recognize the gentleman?

ASSISTANT COMMISSIONER SMARICK: I don't think so.

ASSEMBLYMAN BARNES: Okay.

ASSISTANT COMMISSIONER SMARICK: May I ask his name?

ASSEMBLYMAN BARNES: It's not necessary, sir. It's a very simple question. Before today, have you ever met with the gentleman sitting in the back of the room?

ASSISTANT COMMISSIONER SMARICK: I don't think so.

ASSEMBLYMAN BARNES: Thank you.

Do you recall, when reviewing the contracts -- and, again, if you don't know, it's fine. Do you recall whether or not the vendor guaranteed the technical proficiency of the contract?

ASSISTANT COMMISSIONER SMARICK: Yes, I do remember seeing that.

ASSEMBLYMAN BARNES: And, indeed, did the vendor guarantee the technical accuracy of the contract?

ASSISTANT COMMISSIONER SMARICK: Could you ask that again?

ASSEMBLYMAN BARNES: Certainly. I believe my colleague sitting to my right asked the question as well, and I believe so did several of my colleagues on both sides -- have asked. Do you recall whether or not, in reviewing the contracts, that the vendor guaranteed or warranted the technical proficiency of the application?

ASSISTANT COMMISSIONER SMARICK: I do believe that's part of it.

ASSEMBLYMAN BARNES: And do you agree that they did?

ASSISTANT COMMISSIONER SMARICK: Do I believe that they did everything that they--

ASSEMBLYMAN BARNES: No, was there a covenant in the contract that the vendor guaranteed the technical proficiency of the application?

ASSISTANT COMMISSIONER SMARICK: Yes, I think that's in there.

ASSEMBLYMAN BARNES: Okay. We can go back and forth on the meaning of today's hearing. We can go back and forth on the ultimate outcome of today's hearing. But would you also agree that one of the controversies that brings us here today are the points that New Jersey lost because of a mistake that was made? Do you agree with that.

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: That that's one of the issues that we're discussing today?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: And I agree with Mr. Peterson, I agree with Ms. Addiego, that there are other issues that can also be discussed and that should be. But one of the issues that brings us here is that New Jersey lost 3.8 or 4 points in the final application. Is that a fair statement?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: And you also agree that one of the reasons why the points were lost-- And by the way, the section of the contract -- or the application that we're talking about dealt with data that pertained to years 2008 and 2009. Am I correct?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: So a mistake was made in the manner in which that data was placed on the application.

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: And if I understand the stories that have been written and the testimony today, as well, from you and others, the nature of the mistake -- or part of the mistake was that the Department -- whoever made the mistake -- and it is a clerical mistake. Mistakes happen, as Herb Conaway said. But one of the mistakes that was made was that the data that was requested by the Federal government was not included in the application.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: And you have said, and I believe Mr. Gohl and others have said -- the Commissioner -- that once the application went in on June 1 -- correct me if I'm wrong -- New Jersey was not allowed to make any further official clarifications of the application.

ASSISTANT COMMISSIONER SMARICK: Those were the Federal rules.

ASSEMBLYMAN BARNES: Those were the rules. So New Jersey was locked in.

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: And by the way -- because I want to be fair and candid -- I happen to think that those rules are very rigid. And I would appreciate those who would say -- and my colleagues may not agree -- but I think an application of this magnitude should be looked at on its merits, not necessarily on whether or not a technical mistake was made. But nevertheless, those were the rules. Am I correct?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: The application was electronically sent, according to one of the witnesses today. It was e-mailed, correct?

ASSISTANT COMMISSIONER SMARICK: I'm not completely sure that that's right. It may have been-- For some reason, I think it was delivered.

ASSEMBLYMAN BARNES: And you weren't here. I don't expect you to have that information at your fingertips. You were not here on June 1. But have you since learned whether or not the application was electronically mailed, electronically sent?

ASSISTANT COMMISSIONER SPICER: I think that I made the mistake. I think it was delivered. The disks were delivered, and then it was run in Washington.

ASSEMBLYMAN BARNES: So it was delivered in two fashions: by electronic e-mail and also was hand-delivered by courier or by car. Is that correct?

ASSISTANT COMMISSIONER SPICER: I should really let this question go. I'm not positive of the right answer.

ASSEMBLYMAN BARNES: It's okay. It's not a *gotcha* question. I'm just trying to understand the manner in which-- Does anybody know the manner in which the actual application was tendered?

ASSISTANT COMMISSIONER SMARICK: For some -- even though I wasn't here -- for some reason I thought the story I heard was it was put on CD and then several people, including some of the consultants, actually delivered it to the U.S. Department of Education.

ACTING COMMISSIONER HENDRICKS: That we can confirm. We can at least confirm that it was delivered on disk. Whether it was submitted electronically we can't confirm.

ASSEMBLYMAN BARNES: That's fine. But it was hand-delivered on disk. Is that correct?

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSEMBLYMAN BARNES: And it was hand-delivered on disk on the last day it was due.

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYMAN BARNES: Was it to be hand-delivered by a certain time deadline -- like 5:00 p.m. Washington time?

ASSISTANT COMMISSIONER SPICER: Probably close of business.

ASSEMBLYMAN BARNES: Close of business day Washington time -- something to that effect.

ASSISTANT COMMISSIONER SMARICK: Yes, I think so.

ASSEMBLYMAN BARNES: So New Jersey cut it very short. Would that be a fair statement?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: Not a lot of room left on the actual deadline.

ASSISTANT COMMISSIONER SMARICK: No.

ASSEMBLYMAN BARNES: Before-- Does anybody here know--

And, sir, this may be now outside of your area, so I ask it to the panel. Was there any attempt made -- or was an effort made to actually sit down with four or five sets of eyes, the day before or two days before, in one room and go through the application line by line?

ASSISTANT COMMISSIONER SPICER: The only person who did that was the Attorney General and the consultant working together. They went through it line by line.

ASSEMBLYMAN BARNES: The consultant and who else?

ASSISTANT COMMISSIONER SPICER: The Attorney General -- Deputy Attorney General who was assigned to sign off on it.

ASSEMBLYMAN BARNES: Do you recall who the Deputy Attorney General was?

ASSISTANT COMMISSIONER SPICER: Yes, Michael Walters.

ASSEMBLYMAN BARNES: Was there anyone from the Department of Education also in the room when that was done?

ASSISTANT COMMISSIONER SPICER: Not that I know of, not for the--

ASSEMBLYMAN BARNES: Mr. Smarick, back to you on a question about the application. You were first approached in March of some time, by the Commissioner, to come to work for New Jersey.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: You didn't start until August. You've testified to that, correct?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: Nevertheless, before you actually moved into New Jersey from Maryland, did you work on the application in any fashion?

ASSISTANT COMMISSIONER SMARICK: I gave suggestions on documents that were sent to me.

ASSEMBLYMAN BARNES: Did you, yourself, have an opportunity to review the application, anticipating your arrival in New Jersey in August, before June 1?

ASSISTANT COMMISSIONER SMARICK: I'm sorry, say that again.

ASSEMBLYMAN BARNES: Yes, certainly. Anticipating your arrival as a paid employee of the State of New Jersey, which you now are--

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: Did you, yourself, review the final application, even though you were not working for the State of New Jersey on June 1?

ASSISTANT COMMISSIONER SMARICK: I did not see the complete, full version before it was submitted on June 1.

ASSEMBLYMAN BARNES: Did you review any part of the application at all before June 1?

ASSISTANT COMMISSIONER SMARICK: Well, review to the extent that I would get a section of something, and I would send recommendations in. I just want to make sure I'm getting your word *review* right.

ASSEMBLYMAN BARNES: I'll re-ask it. That's a fair question. Did you realize the utter and absolute significance of this \$400 million application when you were first approached or at some point after March of 2010?

ASSISTANT COMMISSIONER SMARICK: I had been spending probably the past six, eight, nine months of my life studying, thinking about Race to the Top. And I had this commitment, that I wanted to make sure that my next job was in a state that was dedicated to education reform. And I thought Race to the Top was a tool for doing that. So my view was, coming to New Jersey, that Race to the Top had to be done absolutely, perfectly right.

ASSEMBLYMAN BARNES: I appreciate the candor of that answer.

Did you review the final application before it was filed on June 1, line by line, the entire application?

ASSISTANT COMMISSIONER SMARICK: I did not.

ASSEMBLYMAN BARNES: Do we agree that despite our best efforts, Mr. Smarick -- and I think best efforts were made. And I'm gratified to hear that we did so well in the presentation. It doesn't surprise me that we did do well. And we've heard a lot about the great efforts that we've made. But in any event, would you still agree with me that New Jersey missed -- New Jersey came in 11th place. Am I correct?

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN BARNES: And despite our best efforts, we finished 4 points behind the state of Ohio.

ASSISTANT COMMISSIONER SMARICK: I thought it was 3 or 4.

ASSEMBLYMAN BARNES: Three or four. I think it's a little bit more than 3.

ASSISTANT COMMISSIONER SMARICK: Okay.

ASSEMBLYMAN BARNES: And do you also agree that, unfortunately, only the top 10 receive funding?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: Do you agree that if New Jersey had been awarded the 4 points, we would have catapulted ahead of the state of Ohio?

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN BARNES: And if we had catapulted ahead of the state of Ohio, we indeed would have received the \$400 million?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN BARNES: Do you also agree -- and I think you, yourself, had testified to it -- that if we had been awarded the \$400 million, a portion of that money would have gone back to the districts in the State of New Jersey?

ASSISTANT COMMISSIONER SMARICK: I don't think I testified to it, but that's part of the rules.

ASSEMBLYMAN BARNES: Do you agree that that's what it would have been?

ASSISTANT COMMISSIONER SMARICK: Half of the money automatically goes down to LEAs -- participating LEAs.

ASSEMBLYMAN BARNES: And do you also agree that the balance of the \$200 million would have gone into a lot of the programs that Mr. Peterson asked about a few moments ago?

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN BARNES: And New Jersey, now, is going to lose out on that -- those benefits and those programs.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYWOMAN POU: Assemblyman, I'm going to ask you to please wrap it up.

ASSEMBLYMAN BARNES: That's fine.

ASSEMBLYWOMAN POU: Thank you.

We're now officially on the second round here. I just want to make sure I have not ignored any member who has not had an opportunity to speak once.

I'm going to recognize Assemblyman McKeon.

UNIDENTIFIED MEMBER OF COMMITTEE: Before you do -- we go into round two -- these poor people have not had a break. Do they need a break?

ASSEMBLYWOMAN POU: Do you?

UNIDENTIFIED MEMBER OF COMMITTEE: It's up to you.

ASSEMBLYWOMAN POU: Let me just say, I'm going to-- As soon as Assemblyman McKeon concludes, then maybe we can-- Well, we can do-- My fear is that if we break, it's only going to take us longer to get together. So if anyone needs to stand up, and excuse yourself, and use any of the facilities, please feel free to do so. Let's just try to stretch out and do what you have to do. If we have a question specifically for you, we will come back and address it at that point.

Assemblyman McKeon.

ASSEMBLYMAN McKEON: Thank you, Madam Chairperson. I'm not going to have any questions directly for the panelists. But I do want to take five minutes of everybody's time after this long day to just focus on something that I have a real issue with. And I'm sorry that Commissioner Schundler isn't here, because a lot of my areas of inquiry are raised through the statement that he issued that -- I assume, although it wasn't attested to in an affidavit form, is facts as he best remembers them.

And that goes to something I raised before. There's something in the State known as the Conscientious Employee Protection Act, known

as the whistle-blower statute. And it's specifically there to make certain particularly those in government who are subordinate to an individual don't feel intimidated as it relates to what it is that they might raise that's contrary to the truth and contrary to public policy.

By the very essence of what we know, at least from the Governor, he indicated that no one was losing their job over this mistake, but ultimately fired the Commissioner -- to paraphrase the Governor's words -- because you can't lie to the Governor; obviously, by inference, raising the fact that Commissioner Schundler lied.

Commissioner Schundler, as gleaned from the evidence that I think, taking a few minutes for us to go through, has raised that he was being set up to be a fall guy. And secondly, he just refused to acquiesce -- and, again, I hate to use the word *conspire* -- I don't know that's productive, but you can put whatever words you want in there -- to keep the truth from the public.

And I think it just bears, if we can take a few minutes, to take a look at the timeline that Commissioner Schundler set for us; and any objective evidence in the form of e-mails as it relates to the information that was imparted to the Governor and to the front office at the highest levels during this -- the issue. So we all know the first part of it -- that we lost by 3, 4 points due to the error that we've gone over painstakingly today.

And I guess there was a question raised by a *Star-Ledger* reporter that was directed, appropriately so, through the Governor's Communications Director, Maria Comella; and she raised this issue to the Commissioner -- you can read it -- "Did we notify the Department of

Education of the error before we did, in our person, make the presentation?”

ASSEMBLYMAN THOMPSON: Madam Chair, I'd raise the question: what bearing this has on the failure of the application.

ASSEMBLYMAN McKEON: Well, it goes right to the very essence of--

ASSEMBLYWOMAN POU: I think we're about to hear that from Assemblyman McKeon.

ASSEMBLYMAN THOMPSON: This all transpired after the application had failed. So I don't see how it bears on the failure of the application.

UNIDENTIFIED MEMBER OF COMMITTEE:
(indiscernible)

ASSEMBLYWOMAN POU: I understand. Thank you.
Continue, Assemblyman.

ASSEMBLYMAN McKEON: Again, thank you, Chairperson.

I'm just laying out the facts as presented by a member of this Administration to this body, to the public in general. And I'm raising something that we as the Legislature, as, in part, guardians of the law -- particularly the statute to protect conscientious employees, that we in this Legislature have passed -- have a duty to uphold. And I think they are questions that are very fair and that we, if we really want to know what happened here, should be asking.

As it relates to the e-mail exchange -- again, objective evidence -- back and forth with the Director of Communications on August 24, on the day we found out we didn't get the grant -- for reasons that we've gone

through. It's clear, again in plain English, that the Commissioner indicated that that data -- consistent with all four of these witnesses who were there -- stated that the application was not supplemented in any way, nor verbally was the information imparted upon the questioners regarding the 2008-2009 levels of funding.

Per Commissioner Schundler, on the next day, on August 24 -- in his chronology of events -- he has a call -- not a conference call, but a call directly with Chief of Staff Rich Bagger and Maria Comella on the speakerphone -- where they, again, raise issues on this missing information. And Mr. Schundler purports that his statement was he could not find the information in the application. It was not there. Again, objectively accentuating the point that the information was not provided to the questioners.

ASSEMBLYMAN THOMPSON: If we're going to have
(indiscernible)

ASSEMBLYMAN McKEON: Excuse me, may I finish? I'm sure the Chairperson will give you anything you'd like.

ASSEMBLYWOMAN POU: Assemblyman, you're not going to be interrupting--

ASSEMBLYMAN THOMPSON: --one side of an argument. You're just turning this into a political discourse that is not appropriate for this hearing.

(malfunction in recording)

ASSEMBLYMAN McKEON: -- where he was then told no one was going to lose their job over this error. And I'm sure that that was some relief to the Commissioner, as guilty as maybe it was that he felt.

And it was at that juncture that the Governor, according to Mr. Schundler, stated that he was going to basically go at the Federal reviewers looking at the-- This was a technical error, and that we provided the information -- meaning Schundler provided the information at the hearing, and they wouldn't accept it. And I'm using Mr. Schundler's words: He interrupted the Governor not to make any such claims, stressing he had not provided the missing information because he did not have it. That comes directly from the Commissioner of Education.

I'm just going to do a tiny sidebar here. Every day thousands of contracts -- public contracts are awarded in this state, whether it's municipalities, boards of education, through the Department of the Treasury, whoever it is. And technically somebody might forget to put a certificate of insurance in there. And it might be that you know they have insurance; you've used them 20 times before. But at the end of the day, if you don't comply, when there's a competitive bid with exactly what the specifications are, then it has significant legal ramifications to those who will get knocked out of the box who were living under the same rules that you did. So as technical as you want to call it, that's the way it works in government every day, on every level.

The same day after the Governor was interrupted by Mr. Schundler and told, "Don't say that. That's not what happened," at a public news conference held in the early afternoon -- you can read the quote -- and this is precise -- from the Governor: that the issue was raised, and Commissioner Schundler gave them, in the interview, the numbers for '08 and '09, because the mistake was raised. Now, the Commissioner, who didn't see that conference live, looked at a transcript of it thereafter and,

frankly, was mortified that that statement, in opposite of the facts and the truth, occurred.

Having raised in that earlier telephone call with the Governor and his Chief of Staff that he thought it would be -- meaning the Commissioner -- a good idea trying to at least pick up the surplus -- I think there was another \$100 million that remained in the Race to the Top round two -- the Governor thought that was a good idea, Bagger thought it was a good idea. And after the conference -- and you can see by the timing -- at 4:10 p.m., in the afternoon, Schundler sent the proposed section of the e-mail -- or the letter to go to Secretary Duncan, setting forth the facts of what happened, and setting forth a good reasoned argument as to why this \$100 million remaining would be well-spent in the State of New Jersey.

Within an hour and twenty minutes, from the Chief of Staff of the Governor, you can see the amended language -- again, objectively, these e-mails exist -- posed by the Chief of Staff which, quite frankly, are in opposite of, according to Schundler, what he knew the truth to be -- specifically where it says, "Verbally confirmed during our August 11 presentation."

I wish Commissioner Schundler was here to articulate what he put forth in writing, saying how he felt he was being set up and that there was just nothing that he could do to be comfortable with making a statement that he knew to be facts -- that telling the truth was the best policy.

And so what happened is, on the next day, on August 26, 3:00 in the afternoon, the Department of Ed releases its video. The video evidence is before the world denoting that the information was requested

and confirming -- as Schundler said he told the Chief of Staff and the Governor -- that, "We didn't provide it." And at 5:00 that afternoon, Bret Schundler is fired. He's told by the Chief of Staff that he's gone.

And then you can follow the next level of timelines as it relates to Bret Schundler, frankly, being maligned -- quotes from the chief spokesman indicating, "He's sullyng his own image by engaging in revisionist history," that, "He was the only source of information to the Administration," and that, "All of what the government said was based on Mr. Schundler's account" -- notwithstanding Mr. Schundler's objective evidence through those e-mails that would weigh to the contrary, as well as his specific statements that he has told us he has made to the Governor. And there we are on August 31 with the Governor saying it's time to move on. The message is: Don't lie to the Governor.

I am just incredibly troubled by this. I don't expect that the Governor is going to come before this Committee, although I know he'd be welcome to, to set the record straight as to what he remembers. I've been around long enough to know sometimes people, without purposely concocting a story, can remember things in a different way. And I would love to hear, as I'm sure we all would, what the Governor would have to say.

Clearly it's appropriate for the Chief of Staff to be here before this Appropriations Committee -- who the context of \$400 million--

I feel bad saying it in front of all of you, because I know how bad you feel.

That's \$50 for every man, woman, and child in this state that we're not going to get. The Chief of Staff should be here. We should hear from him on this issue. Let him set the record straight. Let him qualify the

e-mails, that we see that we now have, as objective evidence of what occurred. Have the Director of Communications here to speak with us as it relates to those e-mails, to reiterate or to share with us what her recollection is of the conversation that occurred according to the Commissioner. Let them provide to us their e-mails internally over those 48 hours as this was vetted back and forth, not between they and Schundler, but between themselves.

ASSEMBLYMAN PETERSON: Madam Chair, what's the relevance of this to the actual application being filed? This is after the fact (malfunction in recording). (speaking off microphone) I thought we were here today to find out how we can have an application and move forward, instead of whatever transpired after the application had already been denied -- about who is saying what about what. I thought we were here to talk about the application. I know we want to talk in depth about Section F. But I think it's pretty clear from the testimony here today--

ASSEMBLYWOMAN POU: Mr. Peterson, I've allowed it to go on. I've allowed your interruption.

You know, when you were speaking, and other members were speaking, we were trying very hard not to interfere or interrupt. Let us-- Allow that. When Assemblywoman Addiego wanted to read a statement out of Politics (*sic*) NJ, we didn't interrupt her, and we didn't tell her that it wasn't relevant or otherwise.

I'm not going-- I'm going to ask you to please not interrupt. That's it. I'm just going to-- Pointedly, we're tired; it's been a long day; there are lots of questions that we had. There are still several other people who want to have a second round. With the interruption--

And let me just say, it's unacceptable, and I'm not going to allow it any longer. I'm going to ask you to wait your turn. You'll have an opportunity to make your statement. And that will be it.

ASSEMBLYMAN THOMPSON: Point of order--

ASSEMBLYWOMAN POU: No, Assemblyman Thompson, absolutely not.

ASSEMBLYMAN McKEON: If I could just finish, through the Chair -- and I don't want to engage colleagues I respect in any discourse -- but you should care, I imagine, as much as I do. Don't you want to know the truth? The last I looked, Bret Schundler is a dyed-in-the-wool Republican. And that's who it is that I am looking to understand -- through what he has presented -- as to what the facts are. This isn't partisan. This is a fact-finding Committee as it relates to the overall circumstances. Don't we want to know if there's credibility and integrity as to what happened with this application? This goes right to that issue.

Thank you. And I would hope that this Committee is entitled to answers to all of this.

ASSEMBLYWOMAN POU: Thank you very much.

Now, Mr. Thompson -- now I will recognize you, and now you can have your word.

I'm going to ask that everyone please wait for their turn.

ASSEMBLYMAN THOMPSON: Thank you, Madam Chair.

I am extremely disappointed that you permitted -- planned this presentation. I mean, it was clearly planned because we didn't suddenly, magically have this slide show available without your knowledge, belying what you said was the purpose of this Committee. The purpose of this

Committee was to examine why the application failed in order that we might plan better, that we don't have those problems in the future.

What he is discussing here has nothing to do with why the application failed. It's dealing with a "he said, she said" situation, and it's presenting one side of an argument. In fact, Commissioner Schundler has presented a number of different stories, depending on what day he is speaking, etc. So I think it was totally inappropriate.

But returning to the matter at hand here, I would like to ask Assistant Commissioner Spicer, you were Deputy Commissioner in the previous Administration. Is that correct?

ASSISTANT COMMISSIONER SPICER: I was.

ASSEMBLYMAN THOMPSON: How long have you been there?

ASSISTANT COMMISSIONER SPICER: It seems forever, but it's only been -- this is only my -- I think this is my fifth year.

ASSEMBLYMAN THOMPSON: Fifth year in the Department of Education.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN THOMPSON: So you came in with the McGreevey Administration, I guess.

ASSISTANT COMMISSIONER SPICER: No, after that. I came in with Lucille Davy.

ASSEMBLYMAN THOMPSON: Oh, okay.

Do you consider yourself to have been kept in the loop with regards to this application?

ASSISTANT COMMISSIONER SPICER: Yes, in terms of the application itself. Yes. I was very much involved in the application.

ASSEMBLYMAN THOMPSON: We had the Phase I or first round. Was there a lot of difference between how much involvement you had now and then in the two rounds?

ASSISTANT COMMISSIONER SPICER: No. Actually I worked closely with the Commissioner under both -- and the consultants -- in both cases. I did not--

ASSEMBLYMAN THOMPSON: So you don't feel that you were left out of the loop on this thing.

ASSISTANT COMMISSIONER SPICER: No, mainly because I didn't know anything else. I think I was told what needed to be told.

ASSEMBLYMAN THOMPSON: It was said earlier-- A question was asked earlier relative to: When the changes were made -- when the changes that the Governor indicated that he wanted. One of the changes was to modify it so that layoffs would be based on the effectiveness versus seniority. And the question was asked: Did that cost us points?

Now, there was a section, of course, where the (indiscernible), in essence, asked how you will assure the effectiveness of teachers; how you will be able to get rid of ineffective teachers, and principals, and so on. And that was a section which this was addressing. Would you say in that section it cost us points as opposed to adding points?

ASSISTANT COMMISSIONER SPICER: It appears that we added points during that section. That's Section D: Great Teachers, Great Leaders. And we gained points from the first to the second application.

ASSEMBLYMAN THOMPSON: Again, questions have also been raised with regards to the consultants. Now, the consultants were first brought on during round one -- Wireless was brought on during round one. Is that correct?

ASSISTANT COMMISSIONER SPICER: I'm sorry, you have to repeat it.

ASSEMBLYMAN THOMPSON: Wireless -- the consultants.

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN THOMPSON: Wireless -- they were initially brought on during round one.

ASSISTANT COMMISSIONER SPICER: They were.

ASSEMBLYMAN THOMPSON: And they were paid some \$380,000, or something to that nature, at that time.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYMAN THOMPSON: And they were brought back on under a no-bid contract to continue doing the work that they had previously been doing in round one, because they were totally familiar with this, etc.

ASSISTANT COMMISSIONER SPICER: Correct.

ASSEMBLYMAN THOMPSON: I think it's been said that they were paid something like \$130,000 this time.

ASSISTANT COMMISSIONER SPICER: For round two.

ASSEMBLYMAN THOMPSON: And is it accurate to suggest the only work they did was maybe four, five, or six days of work for \$130,000?

ASSISTANT COMMISSIONER SPICER: Well, at the base of round two is round one. It was already -- that part was already done. And everything that went on during round two was to redo it. Some pieces of it were done totally again, and some pieces were just adjusted. So it wasn't exactly the same work. It was--

ASSEMBLYMAN THOMPSON: No, but I mean-- Testimony seems to suggest they were paid \$130,000 for doing about four days of work.

ASSISTANT COMMISSIONER SPICER: Oh, no, no.

ASSEMBLYMAN THOMPSON: Could you give some idea of the extent of the work they did provide for that money?

ASSISTANT COMMISSIONER SPICER: They did, for round two, two types of work. They did the application for round two, as they did with round one. It was not as extensive. We didn't have to start from scratch, but we did have to review every piece of it, and go through it, and review and revise it, as we did originally. And then they came in at the end and they helped us prepare for the presentation. And that was a pretty good month also. It wasn't just four days.

ASSEMBLYMAN THOMPSON: Okay. That was not made clear earlier.

ASSISTANT COMMISSIONER SPICER: No.

ASSEMBLYMAN THOMPSON: It was suggested they did four days or six days of work for \$130,000.

ASSISTANT COMMISSIONER SPICER: No, Dan was there for only four days, but the rest of us were preparing for many days before that.

ASSEMBLYMAN THOMPSON: Oh, okay.

A number of things have been said about the modifications to Section F. And it has been stated that apparently-- The suggestion has been made that Commissioner Schundler handwrote modifications to Section F, that he hand-crossed out sections, and so on. There have been questions raised whether it was really Commissioner Schundler who did that. You were questioned and I was questioned whether we can recognize his handwriting. And, of course, neither of us are handwriting experts.

I have, here in my hand, what is alleged to be that document in which he allegedly lined out various sections and in which he wrote handwritten notes. I note that specifically lined out is: "New Jersey increased its State percentage of spending on education from 36.9 percent in 2008 to 39.6 percent in 2009." And there's much more line outs. In fact, there's only about three lines that aren't lined out. And there are handwritten notes. For those who question whether this was, indeed, done by Commissioner Schundler, I -- although I'm not sure I'm authorized to do it, I will take it on myself -- I will offer them a copy that they can get their own handwriting analysts to analyze it and determine if it is, indeed, his or not. Because since Commissioner Schundler has, himself, acknowledged it was probably his, I'm willing to get the Commissioner's word on that.

We've spent a great deal of time today -- approaching five hours now -- virtually all of it devoted to what happened that cost us 4.8 points -- the modification to Section F. We actually lost 57.4 points besides that. Only a small amount of attention has been placed to that 57.4 points. And, of course, any of these points could have taken care of that.

Incidentally, I'm correct that it was not a no-bid contract for the vendor; it was a supplemental needs contract.

But, again, we have 57.4--

ASSEMBLYWOMAN POU: Where did you get that from?

ASSEMBLYMAN THOMPSON: I'm very close to finishing.

ASSEMBLYWOMAN POU: No, where did you get that from? I thought it was a no-bid contract. Where did you get a supplemental--

ASSEMBLYMAN THOMPSON: I was just handed a note here. It was a supplemental needs contract, which was supplied to all the offices, is what I am told.

ASSEMBLYWOMAN POU: Is that what happened?

Let's hear from the Acting Commissioner and the Assistant Commissioner.

ASSISTANT COMMISSIONER SPICER: I'm sorry. I don't know. I haven't got that information in my hand. I can't affirm it.

ASSEMBLYWOMAN POU: Are you using--

ASSEMBLYMAN THOMPSON: That the additional work for Wireless was a supplemental needs contract.

ASSISTANT COMMISSIONER SPICER: Oh, yes.

ACTING COMMISSIONER HENDRICKS: That would be true.

ASSISTANT COMMISSIONER SPICER: That I can do.

ACTING COMMISSIONER HENDRICKS: That would be true.

ASSEMBLYWOMAN POU: Was the supplemental-- The first round went out through a formal RFP process.

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN POU: They submitted their bid, and they met the requirements of that particular specification.

ASSEMBLYMAN THOMPSON: They were the highest bidder.

ASSEMBLYWOMAN POU: But it was the bid that was awarded. Then the one that -- the subsequent one -- the one that now follows-- That did not receive any bid. Is that correct?

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYWOMAN POU: It was a no-bid award.

ASSEMBLYMAN THOMPSON: Supplemental needs contract.

ASSISTANT COMMISSIONER SPICER: That's right. Looked upon as supplemental.

ASSEMBLYWOMAN POU: Is that the normal procedure? Do you normally do it that way?

ACTING COMMISSIONER HENDRICKS: That is a legitimate option that could be exercised.

ASSEMBLYWOMAN POU: Thank you.

ACTING COMMISSIONER HENDRICKS: Considered more cost-efficient.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYMAN THOMPSON: Okay. If I may continue, again, we had 57.4 points that we lost, aside from the 4.8. There has been slight mention of a number of these areas where we easily could have scored

far more than the 4.8 points that were lost. We've given very little attention to that.

But I think we have well-covered how it came that we lost this 4.8 points. Thus, a modification was made in F1. The Commissioner has indicated he accepts full responsibility. He makes a statement in the same paper, that he's projected up there but did not cover, that apparently his handwritten notes are there. He made line outs and so on. So we have an individual who says, "I am responsible. I did it. I personally did it."

So we know where the responsibility lies. But there's one more step to it. We did have-- A lot of questions have been raised: Why didn't somebody catch this? And maybe we don't have all the answers -- whether there was somebody else out there who might have. But we do know there is one party who definitely had responsibility for the technical accuracy of this, and that this was passed through that party. We have heard no indication that that party subsequently came back and said, "No. If you do this, it's nonresponsive. We will lose points." So if there is a matter to be investigated further, it is to ascertain whether or not the vendor fulfilled their obligations under this contract. Thus, everything seems to indicate they should have -- when the request was made to make this change -- and they're the ones who take the requests and enter them. Is that correct? The vendor actually makes the changes? They come from somebody else, but they enter them.

ASSISTANT COMMISSIONER SPICER: They actually did the typing. Yes, the vendor did all the typing.

ASSEMBLYMAN THOMPSON: So everything, to me, seems to indicate the vendor should have come back shouting to the

Commissioner. I mean, to go to you, or any one of you, wouldn't mean anything, because the Commissioner is your boss. They have to tell the Commissioner, since he made the change, "No, you can't do that." And there's no -- nothing that has been presented today to indicate they did. So that's something that may bear further looking.

But beyond that, I think we have thoroughly covered what did occur for those 4.8 points. Unless we want to focus on the other 57 points, I think it is time that we move on. Thus, there are many other things of more significant matter that haven't (malfunction in recording).

For example, we haven't looked into the \$9 billion Schools Construction contract. But the (indiscernible) there, all the money that disappeared. The rampant waste in educational spending, the abuse of Homeland Security funds that are used to purchase air conditioned garbage trucks in Newark that weren't investigated by this Committee; the Governor's tool kit. I mean, this is something that really has meaning with our 2.0 cap. We need to be doing something to take care of this instead of--

The Speaker -- I heard her say she intends more hearings on this. (malfunction in recording) information we can get. We know where the 4.8 points went to, how it happened. If you wonder what the 57 points -- okay, spend more time. But we're wasting our time. We're spinning our wheels. We're going to be beating a dead horse if we keep chasing after where -- "Oh, how did those 4.8 points get lost?"

Thank you.

ASSEMBLYWOMAN POU: Thank you.

Assemblyman Conaway.

ASSEMBLYMAN CONAWAY: Well, Assemblyman Thompson, I have to say -- and to the other side -- you cannot sit at a hearing and raise points of order about being off-topic and then get way off-topic by talking about garbage trucks in Newark and all of this other stuff. I mean, it seems to me--

ASSEMBLYMAN THOMPSON: (indiscernible)

ASSEMBLYMAN CONAWAY: Just a little consistency there, I'd ask.

Just another point of reference or information on the question of what Schundler said he did: Reading further and understanding his statement further, I think he indicated that he was not sure. He had not seen the document with his handwriting edits. I think his statement says that he believes that he made those edits by hand, but he has not seen it, and was not absolutely sure, and that he was going by what he was told. Perhaps he has seen it now. "It turns out I crossed out key words by editing text. I haven't seen the page with my hand edits." So we don't know precisely what's going on there. And perhaps we'll get an opportunity to see and get some more light on the Greenwald question -- which he made several times, which I'm going to come back to in a moment -- as to how this happened.

But let me get to one of the things that Assemblyman Thompson raised with our guests. How many points-- The winning application, the top state -- how many points out of 500 did they receive? Because I'm sure no one is perfect, I'm guessing. Maybe somebody was perfect. But I'm guessing that perhaps 500 wasn't the winning bid.

UNIDENTIFIED MEMBER OF COMMITTEE:
Assemblyman, the top scoring state in round two was 471 points, that state being the Commonwealth of Massachusetts.

ASSEMBLYMAN CONAWAY: Uh-huh, 471; so we were 438 -- 30-some points.

And so no one is going to be perfect on that -- so just to bring the magnitude into question.

Now, Ms. Spicer -- because I think you indicated earlier on that you had been through most of the document. How many references to the Corzine Administration was contained in that document? Clearly, one of the interesting things about FI was that it was a direct reference to the spending by the prior Administration. Were there other areas in the document that referenced the Corzine Administration, either directly or indirectly, to your knowledge?

ASSISTANT COMMISSIONER SPICER: Fifty-two percent of this application dealt with things that we had done in this State -- had done.

ASSEMBLYMAN CONAWAY: Had done.

ASSISTANT COMMISSIONER SPICER: And that was true originally, and it remains so. Forty-eight percent were things that we were going to do. So there was a great deal of reference to the past as well as a great deal of reference to the future. Whether it was the Corzine-- Many of those things went even before that. I mean, there was a great requirement that those things that we had done in the past be outlined and supported within this application.

ASSEMBLYMAN CONAWAY: And you had to show, I guess, a maintenance of effort going forward, as well. That's one of the reasons I think the budget question -- F1, Sub I -- was in there in the first place, wasn't it -- to try to indicate that there was an ongoing commitment financially by the State?

ASSISTANT COMMISSIONER SPICER: There was no changes in the questioning at all between the first and the second round. So all of it had to do with the past. The tests were a year later also.

ASSEMBLYMAN CONAWAY: Ms. Hendricks.

ACTING COMMISSIONER HENDRICKS: I was just simply going to add that, with respect to references to prior administrations-- I mean, part of the strength were some of the regulations in laws that go back as far as Governor Kean's Administration -- going back to the Alternate Route and State takeover, and then moving forward to charter schools, and then certainly to the work that we've been doing on standards and assessment.

ASSEMBLYMAN CONAWAY: And I'll come back to this.

Let me just-- Let's go to Mr.-- Oh, by the way-- Let me get to what Mr. Smarick had said, because I do want to be clear about this. I think early on, in answering one of the questions -- I don't remember from whom -- you mentioned that on or about the 25th of May you -- before you started you were in as a consultant.

Now, you mentioned that you had been working for -- I guess it's AI -- the American Enterprise Institute. That's a Conservative think tank, isn't it -- regarded as such?

ASSISTANT COMMISSIONER SMARICK: It is.

ASSEMBLYMAN CONAWAY: And then this Fordham Institute, or whatever it is--

ASSISTANT COMMISSIONER SMARICK: They do education policy research.

ASSEMBLYMAN CONAWAY: But they have a political bent, do they?

ASSISTANT COMMISSIONER SMARICK: They like to call themselves *Independent*, but most people think they're to the right of center.

ASSEMBLYMAN CONAWAY: Oh, that's right.

And so it's not a stretch to say-- I mean, we have a right of center administration, certainly. I'll leave it to others to say to what degree. But that's one of the reasons why you're in New Jersey now. And that is because you have been doing work which is to the right of center in education policy, right -- and bringing that sensibility to the Administration and, I guess, even to this document that was going to be submitted to the government. Is that fair or unfair?

ASSISTANT COMMISSIONER SMARICK: I'd like to think that I was brought here because I cared deeply about low-income kids and equality.

ASSEMBLYMAN CONAWAY: Sure, but you're not a Liberal out here. You're not an educational Liberal.

ASSISTANT COMMISSIONER SMARICK: I'm not trying to be coy with you, but I believe that right now, in America, these distinctions between Progressive, Liberal, Conservative, so forth -- when it comes to education policy -- are meaningless. Most of us deeply believe that parents deserve choice, and all teachers should be excellent, and all kids should be

in high-performing schools, and that we need to get serious about teacher preparation programs and the use of data. And if that's Conservative, I'm Conservative; if that's Liberal, I'm Liberal.

ASSEMBLYMAN CONAWAY: Now, certainly school choice tends to be a Conservative theme, I think. But anyway, I don't want to quibble over that.

The point I wanted to get to was this: You indicated that on the 25th you -- one of the things you reviewed was the F1, Sub I that dealt with these funding things, and that you actually looked at that. And I think you made the point to say, "The document I got--" in version, I guess it was, 8 -- "did not include previous edits." So that you -- would not have been highlighted or made aware that there were changes that had been made. But as it was, you did see the answer that was eventually submitted to the Federal government on June 1.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN CONAWAY: And that answer-- You said you reviewed it, so that's why I raised the question, particularly since you -- I guess you're going to -- you may have more responsibility in the Administration. You looked at that question, presumably saw the answer. I read it here out loud. Clearly it asked for '08-'09 data. You looked at it and saw 2011 before it got submitted. And yet even -- your review and in your position as a policy advisor -- I guess that's fair to say. You were sort of in there advising on policy and looking at the-- I mean, there's a reason you looked at the application, presumably.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN CONAWAY: You were helping out. You looked at this question F1, Sub I. You said you reviewed it. Those were your words, correct?

ASSISTANT COMMISSIONER SMARICK: I absolutely reviewed it.

ASSEMBLYMAN CONAWAY: And they referenced this 2011. And here it was -- the question asked specifically for '08-'09 numbers. What's your explanation for your review and the fact that your review -- clearly wrong -- again, I said, I think I used the words: "a high-schooler could have figured this out." It didn't get around to anybody before the application was submitted to the Federal government. What's your-- Schundler's not here to describe what he did. But you are here. You referenced it. So that's why I'm raising the question. Why do you suppose, even after your review, the application still went to Washington and was clearly wrong? And it cost us \$400 million.

ASSISTANT COMMISSIONER SMARICK: I take full responsibility for it.

ASSEMBLYMAN CONAWAY: What were you thinking when you looked at that? Let's get to that.

ASSISTANT COMMISSIONER SMARICK: I read it and saw that it was -- what I thought to be factually accurate. And as a non--

ASSEMBLYMAN CONAWAY: But nonresponsive.

ASSISTANT COMMISSIONER SMARICK: So what-- I didn't take that second step and go to responsive. The truth of the matter is, I've read lots of Race to the Top applications in round one and now in

round two. And this might be the only nonresponsive answer I've come across.

ASSEMBLYMAN CONAWAY: Okay. So it's nonresponsive. You're helping with the application. And presumably the reason why you're reviewing the application is because you're helping this government submit this application. I mean, that's a fair statement, isn't it? And so you've looked at something that's clearly wrong.

ASSISTANT COMMISSIONER SMARICK: That's exactly right.

ASSEMBLYMAN CONAWAY: And it didn't get to the folks who are now submitting this application to the Federal government. And we lose. We fall short and lose \$400 million.

ASSISTANT COMMISSIONER SMARICK: I absolutely missed this mistake.

ASSEMBLYMAN CONAWAY: All right, let's move on from that point.

Now, Wireless was clearly involved--

ASSEMBLYWOMAN POU: Assemblyman, I'm sorry.

Did I hear you say that you identified and saw the mistake prior to the submission of the application?

ASSEMBLYMAN CONAWAY: (indiscernible)

ASSISTANT COMMISSIONER SMARICK: No, no.

ASSEMBLYMAN CONAWAY: Okay, now I'm confused.

ASSEMBLYWOMAN POU: I thought that's what I understood. That's why I'm asking.

ASSEMBLYMAN CONAWAY: I heard you say-- Okay. Let me (indiscernible) that. I heard you say that on May 25 you received the sections -- you were reviewing parts of the document. And one of the things you said here two hours ago was that you reviewed Section F.

ASSISTANT COMMISSIONER SMARICK: I reviewed Section F, correct.

ASSEMBLYMAN CONAWAY: Okay. And you said at the time that you reviewed it not with the prior edits in it, so you couldn't see that there were changes made. You saw version eight that presumably was the answer that we sent down to Washington.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN CONAWAY: And then I went through and said that was nonresponsive to the question, because in there -- and it's not very long. I mean, it's only a few typewritten pages here. It's like six lines, seven lines. And the question itself -- because I read it -- was four lines. So you reviewed that; 2011 data was there.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN CONAWAY: And the question clearly referenced '08-'09 data.

ASSISTANT COMMISSIONER SMARICK: That's right.

ASSEMBLYMAN CONAWAY: And my question to you was: Didn't you recognize that as an error?

ASSISTANT COMMISSIONER SMARICK: I did not recognize that as an error.

ASSEMBLYMAN CONAWAY: You did not recognize it as an error. So you read the answer and didn't read the question then.

ASSISTANT COMMISSIONER SMARICK: I think that's right.

ASSEMBLYMAN CONAWAY: You think that's what happened. Okay.

You read the answer and not the question. Well, never mind. So you read the answer. You wouldn't think to look at the question? (laughter) I mean, was the answer removed from the question? Was the answer on Page 11 and the question was on Page 10 or something? I mean, I--

ASSISTANT COMMISSIONER SMARICK: Yes, they were removed from one another. And honestly, I'm taking full responsibility. I should have caught this. But the reason I brought up this nonresponsive thing is, if this application had been through six weeks worth of iterations and it was still nonresponsive at this point, that's something that was -- that's what was absolutely surprising to me, I think surprising to us all.

ASSEMBLYMAN CONAWAY: Well, now, you were reviewing the document. What was your role in reviewing the document then? Were you checking for typos or were you looking at content? I mean, it's one thing if you read through the thing, read the questions -- okay, the punctuation is right, there are no spelling errors. That's one level of review, clearly. And perhaps that's why you were there. But my sense is that's not why you were there.

And this-- Now, I guess the explanation is: the question was elsewhere, was removed from the answer, and so you didn't put two and two together that they were not asking for 2011 data, when really it was '08 and '09 data. That's your answer?

ASSISTANT COMMISSIONER SMARICK: Right. And to get to your first question, what I was really asked to do is to provide advice, suggestions on matters of policy and substance -- like how to make the D Section stronger when it came to issues of teacher evaluations and teacher compensation, or on the charter school section later on, stuff like that.

ASSEMBLYMAN CONAWAY: And so F came up why? Why did you get F? It was just happenstance that it got under your nose to review?

ASSISTANT COMMISSIONER SMARICK: The charter school section is part of F.

ASSEMBLYMAN CONAWAY: It's in F?

ASSISTANT COMMISSIONER SMARICK: Charter schools are in F.

ASSEMBLYMAN CONAWAY: Okay.

ASSEMBLYWOMAN POU: I'm sorry, Assemblyman, I just want to--

So you reviewed the edited version, but you didn't know the question that was being asked -- to match it to the edited answer?

ASSISTANT COMMISSIONER SMARICK: I didn't think to-- My recollection is, I read this paragraph, and it was factually accurate, and it gave contemporary information. What I didn't think was -- whoever wrote that thing wasn't responding to the question.

ASSEMBLYMAN CONAWAY: Now, again, one of the reasons why you're involved in this -- I think you said it again -- that you're an expert in these Race to the Top applications. Now, is that right? Is that what you said? I mean, at least you've spent a lot of time on it. Expert --

we'll leave somebody else to say if you're an expert or not. You may wish to call yourself an expert. It's not important to me. But you have looked at these applications before.

ASSISTANT COMMISSIONER SMARICK: Correct.

ASSEMBLYMAN CONAWAY: I guess in other states or whatever else. So we are dealing with-- In dealing with something other than '08-'09 numbers, would that be a surprise to you given your work with these applications in other states and other jurisdictions -- that it didn't stand out as something odd in the context of your own -- of your background work in this area?

ASSISTANT COMMISSIONER SMARICK: F1 is -- I'm sorry to be so blunt about this -- is almost a no-brainer section.

ASSEMBLYMAN CONAWAY: It is. That's what makes this so sad, frankly.

ASSISTANT COMMISSIONER SMARICK: I mean, those are easy points that should have been had. And I don't know why it was changed from a previous version.

ASSEMBLYMAN CONAWAY: Now, I'm going to move on.

Now Wireless -- their first contract was north of \$300,000, was it? And they were working, I guess, after the election and going forward, I imagine? Yes, because Corzine put them in. Then the \$180,000.

Did they provide-- Had they worked in other jurisdictions other than New Jersey on this type of thing? Are you aware?

ASSISTANT COMMISSIONER SPICER: Yes, they have a long history of working in the area, particularly of technology improvement across the country.

ASSEMBLYMAN CONAWAY: Across the country.

And so the-- Filling out these forms in preparation for submission for the Federal government is certainly something -- is one of the reasons why I guess they won the competitive bid for the contract -- because they had -- they were an experienced firm.

ASSISTANT COMMISSIONER SPICER: Oh, without a doubt.

ASSEMBLYMAN CONAWAY: Now, in their capacity and advising on the form, did they give advice as to, presumably, the kinds of things that ought to go in the application in order to enhance it?

ASSISTANT COMMISSIONER SPICER: Yes.

ASSEMBLYMAN CONAWAY: They're in here to help us win the money.

ASSISTANT COMMISSIONER SPICER: Without a doubt.

ASSEMBLYMAN CONAWAY: As the Acting Commissioner pointed out, it is about winning the money. I mean, looking forward, with a forward lean. But at the end of the day, it's winning the money. I mean, all of this falderal about all these wonderful ideas counts for nothing if you don't win the money. So you put any of these ideas in place. Isn't that a fair statement?

So did they provide any estimates, or did they say, "Well, if we do X, Y, and Z on merit pay or--" Let me put it this way. When the change came, when the Governor said, "I don't like these--" -- I guess he might use the word -- "-- *compromises* that were made," with the Commissioner, getting teachers on board behind this application-- And, again, it wasn't that merit

pay wasn't in there. It was just not in there the way he thought it should be, right? That's fair?

ASSISTANT COMMISSIONER SPICER: That's correct.

ASSEMBLYMAN CONAWAY: It wasn't that we weren't going to deal with -- how to deal with a reduction in force, I guess, in some way. Well, maybe that was. But there were-- Some of these things were shadings. It wasn't that merit pay was out and then it was in. Merit pay was always there in some form.

ASSISTANT COMMISSIONER SPICER: Yes, there were changes in it.

ASSEMBLYMAN CONAWAY: Which is a big deal for teachers. I don't care if it's any merit pay. Isn't that right? I mean, I don't care how many (indiscernible) you go back, this kind of thing comes up.

Isn't it fair to say that the changes the Governor made caused you all to undertake, at the end of the process -- after this collaborative process that then Commissioner Schundler engaged in to get buy-in from teachers, the people who are taking care of our children and educating them -- that the changes that would -- that he wanted to make-- Isn't it predictable that those changes were going to cause an erosion of support among teachers for the application? Is that a fair statement or not?

ASSISTANT COMMISSIONER SPICER: We did not discuss it at all. We immediately moved-- It was 2:00, the day before it was going to go; we immediately moved to action. There was no discussion. The only discussion was: Could we do it? Was it humanly possible to do it?

ASSEMBLYMAN CONAWAY: Hold it.

ASSISTANT COMMISSIONER SPICER: That was it.

ASSEMBLYMAN CONAWAY: So this change--

Do you have a comment on this, Mr. Smarick?

ASSISTANT COMMISSIONER SMARIK: I'm sorry?

ASSEMBLYMAN CONAWAY: Do you have a comment on this question of--

ASSISTANT COMMISSIONER SPICER: He wasn't there.

ASSEMBLYMAN CONAWAY: --whether or not the changes that the Governor imposed -- I don't want to use the word *imposed* -- but asked you to make -- he is the Governor after all -- asked you to make -- policy choices to make, and have that reflected in the document. Isn't it fair to say that those changes would cause -- necessarily cause an erosion of the support by and among teachers?

ASSISTANT COMMISSIONER SMARICK: No, I don't think that's accurate.

ASSEMBLYMAN CONAWAY: It's not fair.

ASSISTANT COMMISSIONER SMARICK: Yes, I don't think that's fair.

ASSEMBLYMAN CONAWAY: So teachers generally love merit pay? I mean, this is something they go out and fight for. "We want merit pay. We want to get rid of seniority. We want to be fired on effectiveness questions because in spite of whatever the child brings into the classroom -- a house that's broken up, parents with little or no education themselves--" They want to be-- They want to have their livelihood determined by these things, and they campaigned -- hasn't been the subject of national debate for decades even. So it's not predictable that the support

for this might erode when these changes were made among teachers. Is that your position?

ASSISTANT COMMISSIONER SMARICK: It's absolutely true that there are organizations that represent teachers that are adamantly opposed to such things as compensation reform, or tenure reform, or changes in ruff. But a lot of teachers that I talked to will say--

ASSEMBLYMAN CONAWAY: Of course a lot of teachers.

ASSISTANT COMMISSIONER SMARICK: --will say that, "I know the low-performing teachers in my building, and I think it's unfair, when we do terminations based on reductions in force because of layoffs, that the low-performing teachers, just because they're senior, get to stay; and the high-performing teachers who are young have to get out of the door." So I think that a lot of these ideas that the Governor has been pushing have a lot of support from--

ASSEMBLYMAN CONAWAY: The majority of support?

ASSISTANT COMMISSIONER SMARICK: I haven't done a poll.

ASSEMBLYMAN CONAWAY: Probably not. You're not going to say that to me, are you?

Did you want to add to this -- something on this, Ms. Spicer?

ASSISTANT COMMISSIONER SPICER: No, except to point out to you that this -- that the issues you raise about teachers are correct, except that there are teachers -- and the Association itself -- who really want us desperately to be able to manage the release of bad teachers, especially in the cities and places where there is difficulty. So no matter how you speak about it, it's clearly a decision on the part of a great many of the teaching

staff, and most people I know, to ask that administrators try to get bad teachers out of those classrooms. So while that's true, I don't think any member of the discussion on this, and the structure of it is a different matter. There was compromise all the way along on this.

ASSEMBLYMAN CONAWAY: Compromise -- that's an interesting word you use -- *compromise*.

ASSEMBLYWOMAN POU: Assemblyman, we have to--

ASSEMBLYMAN CONAWAY: I'm going to close with a statement and get out.

Do you--

ASSISTANT COMMISSIONER SMARICK: I just want to add-- We know, in America, that we could close the achievement gap for minority students if we made sure that they had three to four high-performing teachers in a row.

ASSEMBLYMAN CONAWAY: You know that. You say that-- Please send the studies along to support that.

Go ahead.

ASSISTANT COMMISSIONER SMARICK: We know that a high-quality teacher matters more than anything else. One of the base programs within our Race to the Top application was something called the Answering the Call Program, where we were going to find that most highly effective--

ASSEMBLYMAN CONAWAY: Is this answering my question, by the way? Because I'm running out of time.

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN CONAWAY: You're talking about the changes that were made. Because I'm positing that the changes that were made caused lost points that were -- and it was predictable -- I shouldn't say, because you won't say, *loss of points* -- it was predictable that the change that came at the end, that caused so much work at the end of the day by your staff in getting this application done on time, would have-- It was predictable that you were going to lose the support of teachers and that was going to have a negative impact on the points. That's the point that I want to--

I am going to get to my statement. If you wanted to send something -- evidence -- I'd be glad to have it in my office.

But, what happened? Lou asked -- Mr. Greenwald asked several times in his -- what was the thing that happened? Does it make sense? I think the-- And I'm trying to figure out what the context -- what ties all of this together. I think things about '08-'09 get struck out because politics entered the process at that time. Those numbers had to come out there because it showed the Corzine Administration making a commitment to education that was not going to be followed through by this Administration.

I think the reason why this -- we lost is because of a policy decision that said, "You know what? After bashing teachers over the head for months, and months, and months at a time -- through the campaign and the Administration -- the thought that we're now going to compromise with them to make sure that we gain sufficient points to make sure this application gets over the top--" I think the imperative of being right, and continue along to draw money out of education -- as we've heard over and

over again: We spend too much money on inner-city schools, we have to change this formula, we have a charter school guy coming in here to run the Department. All of these things are much more about a political statement made in that document -- \$400 million, be darned. I think they cleaned that up enough. And that's why we're here wondering where this \$400 million went.

ASSEMBLYWOMAN POU: Thank you.

ASSEMBLYMAN CONAWAY: Thank you very much.

ASSEMBLYWOMAN POU: And on that note, I'm going to move on very quickly to Assemblywoman Addiego.

Did you--

ASSEMBLYWOMAN ADDIEGO: Thank you.

Actually, to follow up with what Herb was just talking about and what Assemblyman Thompson had spoken about, I think we can agree that I am correct -- that we lost points for not getting the LEA support. I'm correct. But am I also correct in that we gained points in putting in reforms that they were opposed to? Is that a correct statement as well?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)
(speaking off microphone)

ASSEMBLYWOMAN ADDIEGO: I'm sorry. Could you put your microphone on? I couldn't quite hear you.

ACTING COMMISSIONER HENDRICKS: You are correct. They sort of balanced -- canceled each other out, is another way of putting it. But we actually gained points -- and probably gained more points as a result of the reform initiatives. Certainly in the area of teachers and leaders,

we gained points as a result of the work that was done. And I think that's probably the essential place in which we saw real progress.

Would you agree, Willa.

ASSISTANT COMMISSIONER SPICER: I can't tell. I really don't know.

ACTING COMMISSIONER HENDRICKS: At least looking at an analysis of the scores.

ASSISTANT COMMISSIONER SPICER: Points are there. Why? I don't know.

ASSEMBLYWOMAN ADDIEGO: Would we have gained even more points had these reforms been law at the time?

ACTING COMMISSIONER HENDRICKS: Oh, I'm sure they would have gained us some more points. There's no question.

ASSISTANT COMMISSIONER SPICER: Absolutely.

ASSEMBLYWOMAN ADDIEGO: A quick question, because somebody brought that out -- or someone brought it out. Is there a reason why the questions were separated from the answers?

ACTING COMMISSIONER HENDRICKS: I think that's just the way--

ASSISTANT COMMISSIONER SPICER: I think F1 was one of the few places where it ended up just in the copy on the page. On one page was the question, on the next page was the answer. Simply the fall-out of the questioning.

ASSEMBLYWOMAN ADDIEGO: Okay. In the days after the presentation -- after you went down and you presented it, you realized there

were some issues that you had to deal with. Was there any -- when you came back -- any debriefing or discussions with regard to that?

ASSISTANT COMMISSIONER SPICER: I think we-- Everybody in the world asked us how we did. We thought we did pretty well. If it was somebody I knew, I'd tell them the only question we didn't know the answer to was the one on the--

ASSEMBLYWOMAN ADDIEGO: Did you have a formal discussion, debriefing?

ASSISTANT COMMISSIONER SPICER: No.

ASSEMBLYWOMAN ADDIEGO: Did you all get together and discuss what went wrong, what went right?

ASSISTANT COMMISSIONER SMARICK: On the train.

ACTING COMMISSIONER HENDRICKS: Well, some of us did.

ASSISTANT COMMISSIONER SPICER: Well, we spent a lot of time talking about it.

ACTING COMMISSIONER HENDRICKS: I know on the train, particularly Andy and I spent quite a bit of time talking about the presentation itself -- not about the application, obviously, but about the presentation -- where we thought we did well, where we thought the responses were soft. And obviously we were sort of stymied by the one question. I wouldn't say we were stymied. We were frustrated by the question to which we had no answer, because it was simply not in the application -- not that we didn't know it, but it was not in the application.

But aside from that, we reviewed everything that we did. What could we have done better?

I mean, was that a fair assessment?

ASSISTANT COMMISSIONER SMARICK: Yes. I think I eluded to this earlier. I mean, coming out of that interview, there were a lot of questions that we were -- that we hoped we had answered well that were really at the top of our mind -- things about data, and teacher quality, and our former NAPE scores, and what our charter school law looks like. So FI was part of this just wide array of issues that we were wrestling with.

ASSEMBLYWOMAN ADDIEGO: Did you have these discussions-- Was the consultant involved in those discussions?

ASSISTANT COMMISSIONER SMARICK: I'm sorry, who?

ASSEMBLYWOMAN ADDIEGO: Was the consultant involved in those discussions?

ACTING COMMISSIONER HENDRICKS: Well, I can only speak for myself. My discussions about that -- my sort of version of the debriefing was primarily done with Andy. I did not speak with the consultants about it except one time, and that was -- we were still at the hotel, and I did ask -- I specifically went to the question about the data set -- the financial data set. I got no response.

ASSEMBLYWOMAN ADDIEGO: How about with the Commissioner? Did anybody have--

ACTING COMMISSIONER HENDRICKS: I did not.

ASSISTANT COMMISSIONER SPICER: No.

ASSEMBLYWOMAN ADDIEGO: I'm sorry, you had -- you talked with the consultant?

ASSISTANT COMMISSIONER SPICER: One of the consultants rode back on the train with us. So there was discussion in

general about how we did. The consultants could not be in the room with us, so they were curious.

ASSEMBLYWOMAN ADDIEGO: Did somebody say to them, “Look, the information in F was--”

ASSISTANT COMMISSIONER SPICER: I don’t know.

ASSISTANT COMMISSIONER SMARICK: I definitely said something to them about that.

ASSEMBLYWOMAN ADDIEGO: And what was their response?

ASSISTANT COMMISSIONER SMARICK: We had to go from our interview back into a secondary meeting about budget stuff. And so they were in that meeting too, and they had pulled out the binder of all the different documents and stuff. And they confirmed, at that point, yes, there was a mistake. But apparently they knew that there was a mistake beforehand.

ACTING COMMISSIONER HENDRICKS: So we both asked that same question.

ASSEMBLYWOMAN ADDIEGO: I’m sorry, there was a secondary meeting afterwards?

ASSISTANT COMMISSIONER SMARICK: After we did our interview in Washington, D.C., all of the states got together with the Federal government, and they explained, “If you win, here are various budget rules you have to follow.”

ASSEMBLYWOMAN ADDIEGO: And these were with Federal DOE people?

ACTING COMMISSIONER HENDRICKS: Yes.

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYWOMAN ADDIEGO: And this mistaken in Section F came up with them as well?

ASSISTANT COMMISSIONER SMARICK: No, no, no.

ACTING COMMISSIONER HENDRICKS: No. What he's referring to is some of the consultants remained behind. And at that point -- at least in Andy's case -- he asked the question then. I asked the question at a later date of the consultants.

ASSISTANT COMMISSIONER SMARICK: I'm sorry I wasn't clear about that.

ASSEMBLYWOMAN ADDIEGO: After the actual awards came out for the grants, was there any debriefing, any discussions with the Commissioner as a group, or individually, or with the consultant as to what happened, what we can do?

ASSISTANT COMMISSIONER SMARICK: When the awards were announced?

ASSEMBLYWOMAN ADDIEGO: After they were announced.

ASSISTANT COMMISSIONER SMARICK: I remember that the Commissioner was actually on the road at an event right when the awards were -- when we got word of who had won and who had lost. We were all terribly disappointed not only that we lost, but that we lost and came so close. And then once the score cards came out, we could start to then just do what we've done here: figure out where we gained, where we lost, what we could have done better, and so forth. I mean, at that point, a big part of our debriefing was saying, "Wow, we, better than anyone else, made huge gains during the interviews. Look, we convinced them of our

ability to pull off this plan. Look, they agreed that our teachers' plan is excellent." So we were getting great feedback on the plan itself. So that was a big part of what we talked about straight away.

ASSEMBLYWOMAN ADDIEGO: Quick question: Were any of the Federal DOE people asked to come down here?

ASSEMBLYWOMAN POU: I'm sorry?

ASSEMBLYWOMAN ADDIEGO: Were any of the Federal DOE people asked to come?

ASSEMBLYWOMAN POU: No. Why would they be? What was your point of that question?

ASSEMBLYWOMAN ADDIEGO: I thought that-- Well, some of the questions seem to revolve around what they're saying and what they're--

ASSEMBLYWOMAN POU: But what was--

ASSEMBLYWOMAN ADDIEGO: No, I was just asking.

ASSEMBLYWOMAN POU: Oh, okay.

While Assemblywoman Addiego is getting her next thought, let me just ask you a question, Andy. You were mentioning earlier that after the-- You have all now left the hotel. You're back -- you're now on the train. You're talking among yourselves. You notice -- and, Andy, these were your words -- correct me if I'm wrong, please -- you notice that there was a mistake made. You said, "That's when I realized that we had -- there was a mistake made, and that information was not correct," with respect to the figure -- to the F -- with Section F.

ASSISTANT COMMISSIONER SMARICK: No, I realized we made a mistake when the question was asked.

ASSEMBLYWOMAN POU: That's what I'm saying. But what I'm saying is, you learned then -- you had further discussion on that train. Is that true?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYWOMAN POU: And earlier I mentioned -- was there any discussion? When did you all learn about it? And you said it was after the fact. But what happened then? When you got back to the office, how is it that no one spoke to anyone in the front office with respect to what you've learned?

ASSISTANT COMMISSIONER SPICER: Probably there's no -- the normal communication with the front office would not go through us, it would go through the Commissioner.

ASSEMBLYWOMAN POU: I'm actually directing my question to Andy, because I--

Andy, you said that you had had some conversations every now and then on a series of things -- not -- perhaps none of them being too specific, but just on the general part. There were certain things you were reviewing back and forth. Why would you not have mentioned it then, at that point in time, to the front office that there was, in fact -- the wrong information was included in the application? You had learned it at the hearing.

ASSISTANT COMMISSIONER SMARICK: That's right. And on the train, when we were discussing sort of next steps and so forth, Bret, the Commissioner, was the one who was going to talk to the front office about anything that happened there. So I didn't feel like I needed to--

ASSEMBLYWOMAN POU: So the Commissioner did go to the front office and discuss the results of the application.

ASSISTANT COMMISSIONER SMARICK: He said he was going to-- I don't-- I can't guarantee that that happened.

ASSEMBLYWOMAN POU: No one ever asked the Commissioner? And you never had another conversation with regard to whether or not the Administration was made aware of this?

ASSEMBLYMAN THOMPSON: Madam Chair, the press reports do indicate there was some conversation between Schundler and the Governor. That's part of what the dispute has been in the paper, as to what was said at that time.

ASSEMBLYWOMAN POU: No, no, I'm well-aware of that, Assemblyman. But I'm asking-- It's clear that it's not just that there is a conversation. But now Andy and everyone here who is in front of us is aware of the mistake and the problem. Why was that not part of the discussion? I just don't understand how you withhold something -- not withhold -- but how do you not share that information with the Administration?

ASSEMBLYWOMAN ADDIEGO: Madam Chair, if I could follow that up-- Unless they--

ASSEMBLYWOMAN POU: Andy is trying to think of whether or not--

ASSISTANT COMMISSIONER SMARICK: No, I mean, I eluded to various answers earlier. There were-- This was one big mistake that we made. I was hoping that it was only going to cost us maybe 2 points. I didn't think it was going to cost us as many as 5. There were

other things on there, like STEM -- I was worried we were about to lose 15 points. I was worried about the data elements part. And there's nothing we could do about it. We lost those points, and we couldn't fix it.

ASSEMBLYWOMAN POU: Assemblywoman, did you want to continue?

Thank you, Andy.

ASSEMBLYWOMAN ADDIEGO: After we -- after you found out the news that we lost those 5 points, did anyone sitting here have any conversations with the Commissioner -- then Commissioner -- about this?

ACTING COMMISSIONER HENDRICKS: Specific to F1? I did not.

ASSISTANT COMMISSIONER SMARICK: I don't remember having that, but the media reports started happening so quickly after we heard about it. As a matter of fact, they heard about it just about the same time we got our score cards. So probably any conversation we had was wrapped up in that larger conversation.

MS. GORDON: I recall, after the team came back from D.C., we all gathered in the conference room to find out exactly what happened and hear what went well, what didn't go well. And I recall the Commissioner saying that there was one question that they weren't able to respond to and that, in fact, the wrong information had been provided in the application. And I couldn't remember exactly what the question was or what he was referring to. But I remember that he did make that comment and that he did say, "In the future, I want to make sure that when Wireless refuses (*sic*) an application or helps with a proposal, that they look and make sure that they've responded appropriately to every question."

ASSEMBLYWOMAN POU: It's apparent that you've put a value to every question. Was there--

UNIDENTIFIED MEMBER OF PANEL: Yes.

ASSEMBLYWOMAN POU: Oh, no. Well, that was stated earlier about whether or not you had some scoring knowledge. Was that part of your preparation with Wireless Generation?

UNIDENTIFIED SPEAKER FROM PANEL: Yes.

ASSEMBLYWOMAN POU: Okay. So was there-- Did you not think there was a value to that question if it was incorrectly answered?

ACTING COMMISSIONER HENDRICKS: There's no question. I mean, we obviously thought there would be value to it or they wouldn't have posed it. But what-- We had imagined that it was of lesser value, because it was a very narrow, specific question, particularly in comparison to the other questions that were being posed and the overall value of Section F as compared to other sections of the application.

ASSEMBLYWOMAN ADDIEGO: After the media reports came out with the "he said, she said" stuff-- Any conversations after that with the Commissioner about what happened?

All right, the burning question: When is round three due?
(laughter)

MR. GOHL: What has been proposed by the Obama Administration is the inclusion of \$1.35 billion for round three funding. It is contingent upon the passing of the Federal FY '11 budget. So we would anticipate a timeframe similar to round two if it gets approved. It could be as early as January. So it would be early in 2011, is what we're hoping.

ASSEMBLYWOMAN ADDIEGO: So I guess we have our work cut out for us.

ASSEMBLYWOMAN POU: Thank you, Assemblywoman.
Assemblyman DiMaio.

ASSEMBLYMAN DiMAIO: Thank you, Madam Chair.
I just have one question and a brief statement.

Going back to the contract with Wireless Generation -- round one, round two -- there was a time between the two rounds. And I'm going to ask this two ways: You kept them on because of a time constraint, or you were pleased with their work?

ASSISTANT COMMISSIONER SPICER: We were pleased with their work, and the time piece worked out well.

ASSEMBLYMAN DiMAIO: If you did go out and requote this thing, and take new applications for the contract, it would have made it very difficult to meet the timeline work to get the application in time.

ASSISTANT COMMISSIONER SPICER: Yes, it would have been almost impossible to catch somebody up. And to go out for bid again would be almost impossible.

ASSEMBLYMAN DiMAIO: Okay. And overall, you were satisfied with the work they did in the first round.

ASSISTANT COMMISSIONER SPICER: Exactly.

ASSEMBLYMAN DiMAIO: Even though we weren't successful in round one and we lost out on a similar amount of money.

ASSISTANT COMMISSIONER SPICER: Exactly.

ASSEMBLYMAN DiMAIO: I sit through this thing today, and I feel like we've certainly killed one horse and worked on a couple of others.

While we've improved our score by more than 50 points with our recent submission, the fact still remains that, as in the past, we were not successful in obtaining this competitive grant. It's unfortunate that, like our Phase 1 Race to the Top application -- which was submitted by the Corzine Administration -- we were not successful with our Phase 2 application.

My opinion: To blame the loss of the grant solely on a clerical error is disingenuous, to say the least, when clearly we lost more than 14 points because the NJEA refused to endorse our reform plan which drew praise from Federal reviewers, it had bipartisan legislative support.

I'm a bit curious, though, why other greater events that have cost New Jersey taxpayers far more money than this -- we didn't hold hearings or great investigations. For example: Why weren't legislative hearings called for to investigate the Schools Construction Corporation debacle, where maybe \$2 billion out of \$8.6 billion actually made it to bricks and mortar schools? To date, no one has been held accountable for this money that's been squandered. And in my district -- in our district, I should say, today we have high school children attending a high school in 35 trailers. And they were supposed to have their school built out of that \$8.6 billion that vanished. Where were the hearings? Why aren't we looking at real New Jersey taxpayer dollars that were borrowed, that we're on the hook for, that we have to pay back? Silence.

We should also be holding hearings on the tool kit bills that will ultimately save property taxpayers billions of dollars. While our colleagues in the Senate have worked throughout the summer to move these

important issues along, the best we can do is, in my opinion, hold a hearing to grandstand.

In the end, if we move forward and do our job -- make the needed reforms -- we will be assured success in the future grants that we make if we make the reforms with regard to merit pay and the questions I asked you earlier.

It's sad. I listen to the radio and read people's comments to news reports. It's pretty sad and unfortunate that our good citizens have to watch this political mayhem, grandstanding, whatever you want to call it. That's my opinion. They have the right to go to work every day with the comfort to know that their elected officials are working with the Governor to achieve the vital structural reforms he has proposed in an effort to alleviate the property tax burden that continues to plague so many of our residents, and all of us for that matter.

I think that we have work to do ourselves to put forth some reforms that will help us in the future; but, more importantly, help the young people of our state achieve greatness for themselves.

Thank you for your time, Madam Chairwoman.

ASSEMBLYWOMAN POU: Thank you.

Assemblyman Peterson.

ASSEMBLYMAN PETERSON: Thank you.

I want to just go back. I know it's getting late, and you're probably all exhausted at this point in time.

I just want to go back to the entire application. I'm not going to go through the entire thing. Time just doesn't permit it since we spent

such an inordinate amount of time on Section F -- on one particular item in it.

But as I looked at the 10 states that received funding and compared it to ours-- As I stated earlier, Section C -- we were -- we had the lowest score out of all of those 10. And then on Section A, we only beat one other state. And interestingly enough, in Section F, which we have focused in on inordinately-- And we're talking about 4 points out of 62 that we didn't receive -- which is 7 percent, less than 7 percent of all the points that we missed-- So we focused in-- We spent almost -- going on six hours on 7 percent of the application that we did not get full points for. And I think that's not a good use of our time, and we're not serving the people of New Jersey well by doing that.

So I'd like to focus back in. Since we did do better than two of the states that received funding-- And I have to point out that Ohio only beat us by .2 on that particular section as well, even with that mistake. That shows that those programs are done well. What I did notice is that we excelled in Sections D and E, where we beat seven states in D and nine in E. If one of you would speak to Section D, and what it entails, and why we did so well.

ASSISTANT COMMISSIONER SMARICK: You see me smiling because I'm so proud of what the State did in their D Section. As I've eluded to, I've only been in this state for a month. And one reason I decided to come here is because of what this Governor and Commissioner wanted to do to improve teacher quality. So Section D, I think, is a real -- it's a path to get to where we need to go for teacher effectiveness.

What we said is, we're going to take teacher evaluation seriously, really for the first time in America, and do big things here, which is make sure we're going to take a look at every single teacher, see how they're affecting every single student, and then really do a rigorous job of figuring out how good their practice, their art is. And then we're going to take those evaluations and make sure that they inform personnel decisions. So we're going to figure out: If a teacher is great, what should that mean for compensation? What should that mean for tenure? What should that mean for professional development? What should that mean for licensing, and terminations, and on, and on, and on? So Section D was really our way of saying: What is the best way that we can lift up this great profession even higher? And I think the peer reviewers pretty much showed in their comments that we set a high standard for it. And I think-- I mean, one of your colleagues earlier was asking about our application and what it means for teachers. I think what we were trying to do in Section D would do amazing things for the teachers of the state.

ASSEMBLYMAN PETERSON: Is it fair to say that Section D was part of the change from -- back to the Governor's original application?

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYMAN PETERSON: So that was a big part of the change back -- was Section D. Is that accurate? (affirmative responses)

And so the section that we did second best on, and we beat seven of the states that received funding, was the Governor's change back to what he originally put forth.

ACTING COMMISSIONER HENDRICKS: That's correct.

ASSEMBLYMAN PETERSON: Now, we heard some statements today implying that Section D -- I guess it's the section they're referring to -- whether it was Liberal or Conservative, correct?

Now, when we say that we made this application to the Federal government, we're really talking about the Obama Administration. Is that correct?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYMAN PETERSON: And the way that we were judged, the evaluation of this section, is actually based on their criteria and their vision for reform of education throughout the entire United States. Is that correct?

ACTING COMMISSIONER HENDRICKS: That is also correct.

ASSEMBLYMAN PETERSON: And I think it's fair to say that the Obama Administration is not Conservative.

ACTING COMMISSIONER HENDRICKS: I think that's fair to say.

ASSEMBLYMAN PETERSON: So it's interesting that the Administration and the Obama Administration seem -- the Governor here and the President seem to be in lockstep on reforming education, through these changes, in the way we evaluate and reward teachers. Is that accurate?

ACTING COMMISSIONER HENDRICKS: That is accurate.

ASSEMBLYMAN PETERSON: So this really-- If the Governor is assaulting teachers, then so is the Obama Administration by -- because it's their grading system that thought that our part -- this part of

this was so great, that we move forward on it. And I just find it striking that it's being portrayed that the Governor is anti-teacher. I don't think the Governor is anti-teacher. Because I don't think the Obama Administration is anti-teacher. I think they're about reforming. Because I think-- In the end, I think the Obama Administration and this Administration here -- the Christie Administration -- are about putting children first, not unions. And I think that's the clear part about this application, the way that it was graded, is that's the intent. And I just note that in that section, Section D -- where we scored 124.4 in round two -- that under the first time that we submitted this application back under the prior Administration we got 101.2. So we actually increased 23.2 points on that particular thing. So that's an amazing jump -- 25 percent -- almost 25 percent increase. And I have to commend you and the Governor for that vision to bring us forward and to take us to a point where we actually were competitive where we had not been before.

I'd also like to go into Section E. I fear we've kind of drilled down on this one section where there was a mistake, and we haven't said anything nice. So I'm going to do the nice toward the end here. And I'm going to just finish up on Section E.

Could you explain to us Section E? There was only one state -- and I believe it was Massachusetts -- that did better than us, by .6. Can you tell us why we excelled so much in Section E?

ACTING COMMISSIONER HENDRICKS: It's interesting, because I'm very pleased that Dan Gohl is here with us, because the work that we're doing in Newark showcases how significant is the turning around of schools that have been persistently failing. And in that section we had

already begun, through the use of our Title I funds, to set up -- and I'm looking at Willa, because she's been enormously entrenched and intensively involved with that. We set up an academy -- a leadership academy -- to work with those schools that we have identified -- the 32 persistently lowest-performing schools in the State of New Jersey. We've also identified and trained network turnaround offices to work with them so they are imbedded in that work. We've created innovation zones so they can work in clusters and share not only effective practices, but also some of the challenges that they have.

And one of the things that I'm particularly excited about is the way in which we have recognized that struggling schools are also in struggling communities. And our approach then is to look at comprehensive services to bring to bear, so that as you touch the school, you're touching the community. And that connectivity is transformative in ways no other approach has demonstrated.

And it does a couple of things: It engages the local stakeholders in the reform agenda, it empowers them to be part of that change. And that is one of the reasons we think this particular model has a sustainability that other efforts in turning around low-performing schools in struggling communities has not had the same impact.

To that end, I'm going to ask Dan if he would talk about some of the very specific work that's taking place in the City of Newark, and our partnership efforts.

MR. GOHL: Thank you, Commissioner.

Thank you, Assemblyman.

Newark has disproportionately too many of the failing schools and too many of the failed students. We are looking for -- not partisan or even bipartisan -- I'll make up a word for you today: *transpartisan*, something which is above the call of what divides us. For it is our youth who should unite us. And what we have the opportunity to do by throwing out all the rules-- Any calcified system should be open for reform and change. We've got to ask hard questions of each other and with each other if we are to make -- bring about dramatic things.

So I will highlight three things. One is: In partnership with the State, the local education agency is focused on five of the lowest-performing schools in the state. We have shut down a failed alternative education program and turned it into an autonomous, self-governing pair of schools. We are looking at our vocational career choices in a completely new way so we can compete with the superb Essex County vocational programs. It is with guidance and oversight from the State that those State Improvement Grant schools will be turned around.

Unfortunately, we have another five that did not get SIG grants, and another 24, bringing almost half the schools in Newark to the bottom 12 percent. We've got to change that. So we have already undertaken two other independent reform efforts, both of which have received coverage either in the *Wall Street Journal* or the *New York Times* in the last month. The *Star-Ledger* and obviously *NJ.com* and other New Jersey-based press are covering these. But I want to draw these two to your attention.

One is saying: Let teachers define a school.

ASSEMBLYWOMAN POU: Mr. Gohl, I'm sorry, are you now talking about what's happening right now in Newark?

MR. GOHL: Yes.

ASSEMBLYWOMAN POU: Is that what you're doing?

MR. GOHL: What I'm doing is, I'm giving you a flavor of what was given to the Federal government in our oral presentation.

ASSEMBLYWOMAN POU: Okay. I would think-- I just want to point out-- Because I think what we can do is have an entire other meeting, if necessary, on what would have been the benefit of all 1,000 pages of that application and the benefit of all of the districts throughout, in terms of who would have benefited.

For example: What we should be-- What you're talking about also now, it reminds me -- or it reflects closely the \$25 million that is at loss by Newark now as a result of that. So what you're about to say -- that talks about all the reforms -- well, the \$25 million that Newark would have gotten from this application is now at a loss.

MR. GOHL: Absolutely.

ASSEMBLYWOMAN POU: And that's only a very small section. I just want to make a point-- It's not just Newark by the way. Mr. DiMaio was speaking earlier with regard to--

ACTING COMMISSIONER HENDRICKS: Can I just--

ASSEMBLYWOMAN POU: Mr. DiMaio was speaking earlier with regard to the importance and the significance of this, and why-- He called it -- I think he called it theater -- that we are wasting the taxpayers or the people's time for -- who are listening to this. I would say that I know my constituents in my district who would have benefited and are now at a

loss of close to \$17.2 million -- \$15 million of that just for Paterson, but I'm going to use the entire district.

Mr. Peterson, your district is at a loss of -- approximately \$4 million would have gone to your district.

DiMaio's district -- Assemblyman DiMaio would have -- which is the same district -- is also in that. I would think that your constituents would want to make sure that we have done everything within our power to try to find out what happened to us to prevent that.

And, Assemblywoman Addiego, I think the \$1.7 million that would have gone to your district, along with the \$2.5 million to Assemblyman Thompson's, is an important-enough reason for us to respond to our constituents as to why we're holding this hearing.

And with all due respect, Mr. Gohl, I don't know that we will be spending the next couple of hours to discuss who would have benefited or what are some of the reforms in this application. Because there are a lot of -- a lot that needs to be covered, and we would not -- and we don't have the ability to do that.

So I'm going to ask Assemblyman Peterson to direct any further comments that he may have with respect to that.

Acting Commissioner, you've been very patient waiting to make a statement. If it has anything to do with what I said, by all means, please go right ahead.

ACTING COMMISSIONER HENDRICKS: Well, it's to reiterate just a simple point. I think the value in sharing it is not only to demonstrate where we were strong, but to indicate that these kinds of reform initiatives are underway in advance of the Race to the Top money --

that we were able to leverage the resources we have in the State to advance this level of reform agenda where it's needed most.

ASSEMBLYWOMAN POU: I understand.

ACTING COMMISSIONER HENDRICKS: There's no question, had we won the money we'd be able to do it in more places. And quite honestly, I'd like us to position ourselves to win the next round of those moneys. But with or without those particular moneys -- the \$400 million -- I'm here to say on behalf of this team -- and I hope I'm speaking on behalf of the Governor and, honestly, our other elected officials -- that we will commit to this kind of dramatic reform. Because our children cannot wait for us to waste another minute to act on their behalf.

ASSEMBLYWOMAN POU: I cannot agree more.

ACTING COMMISSIONER HENDRICKS: I believe every practitioner in the State of New Jersey believes that.

We will find common ground, because, ultimately, our economic system depends on it, our social justice system depends on it, our very way of life depends on it. There is nothing more urgent for us to do than this work, and we have to do it together if it's going to be done at all.

ASSEMBLYWOMAN POU: Thank you very much.

ASSEMBLYMAN PETERSON: Can I ask one last question?

ASSEMBLYWOMAN POU: One last one. Go ahead.

ASSEMBLYMAN PETERSON: I just have a question. Did any of you go to then Commissioner Schundler when you heard the Governor's statements about providing the additional information to the reviewers, after the review when the -- the statement that was made by the Governor that he had been told by then Commissioner Schundler that he'd

given-- Did any of you go to Commissioner Schundler and ask him about those statements? And what did he--

ASSEMBLYWOMAN POU: Could you put your mike on?

ASSISTANT COMMISSIONER SMARICK: I'm sorry. Sure. I did on Thursday.

Just so I understand your question, so I'm being responsive-- Actually, you might want to ask it again just so I--

ASSEMBLYWOMAN POU: Did you go -- did you speak to former Commissioner Schundler prior to the Governor going out on the press conference?

ASSEMBLYMAN PETERSON: No, after he had made the statements that they had -- you had--

ASSEMBLYWOMAN POU: After he made the statement.

ASSEMBLYMAN PETERSON: --attempted to provide the information at the -- to the reviewers, did you go to him and have a conversation regarding that statement?

ASSISTANT COMMISSIONER SMARICK: Yes. On Thursday morning I went into his office and asked him about this thing -- that, from my recollection, from that meeting, we hadn't given the answer.

ASSEMBLYWOMAN POU: You went into whose office, the Governor's Office?

ASSISTANT COMMISSIONER SMARICK: Commissioner Schundler's office and said-- I was concerned that the Governor was saying something that was untrue -- that there was this message out there. So I went to Commissioner Schundler, and I said, "My recollection of this -- of what happened, and trying to give this additional information, didn't

happen.” And he told me that, yes, he thought that he had at some point tried to give additional information within that meeting. So that was his recollection of the situation.

ASSEMBLYMAN PETERSON: That was after the Governor made the statement -- you went because that wasn't your recollection of the events. And he told you that it was his recollection that he had actually done that.

ASSISTANT COMMISSIONER SMARICK: Yes, that he had -- that verbally he had provided additional information.

ASSEMBLYMAN PETERSON: Okay.

ASSEMBLYWOMAN POU: Okay. Thank you.

ASSEMBLYMAN PETERSON: I'd just like to say, Madam Chairman -- Chairwoman -- I keep saying that -- I apologize -- that I am concerned about the \$4 million that didn't come to my district, as you rightly pointed out. And it's not just the Section F, which was 7 percent of all the points that we did not get that is -- should be our focus. We should be looking at the entire application and focus on what our strengths are, what our weaknesses are, so that if there is a round three, that we do move forward.

I am very concerned about education and the welfare of the children of this state -- not only because I have four young children: two who are in school, two who are yet of age to go to school -- and their futures. But I also am concerned about the future of other people's children. And I agree that it's -- that the health and well-being of our state and our country depends on a good education.

I am the product of a good education, all public education. And I have benefited greatly from that. And I support public education, but I recognize the fact that change sometimes has to come, and change isn't always bad. Sometimes change is what you need to get ahead and to make things into the 21st century, in which we live.

And I also just want to say that I hope that these reforms -- that are not just the Governor's ideas of what reforms need to be done, but the Obama Administration as well -- that these aren't anti-teacher reforms. They're reforms for education for our children and the future. And I hope that the education establishment will see that as it is and embrace it so that the next time-- Because I think if-- Reading these reviews, if we did that this time, we would have been well at the top of the numbers. We might have even been able to beat Massachusetts.

ASSEMBLYWOMAN POU: Thank you.

ASSEMBLYMAN PETERSON: And I think we can do it the next time.

Thank you.

ASSEMBLYWOMAN POU: Thank you very much. Thank you.

Assemblyman Greenwald.

ASSEMBLYMAN GREENWALD: Madam Chairwoman, thank you.

I just think it's important, one-- At 11:00 I asked: What were the other weaknesses in this application? I don't know that that ever really came out. So I would encourage you, Commissioner, to reach out to me or any of the members on the panel. Because, like Mr. Peterson, I think it is

important. We should focus on where improvements were made in this application, which is critically important so that we don't lose ground. But we also need to know where our shortcomings were. I think it's critically important.

One of the things that is obvious to me, going throughout this today, is that we did not have a good process in place to review the application and dot our *i's* and cross our *t's*, as they say. The fact that--

You know, Andy, as you said, it was a no-brainer question, and we just missed it. It doesn't matter how many points we gained in the others. While that sets a phenomenal tone from a policy standpoint on education going forward, we're \$400 million to the negative because our checks and balance system was obviously seriously flawed. And four of the top five people -- or five of the top six who were involved in this process-- The only one missing is the former Commissioner. No one really knows how that mistake took place, or at least you're not willing to share it here today. That's a concern, and that should be a concern to every person sitting up here and every member of this Legislature as an equal branch of government.

How it was missed, who changed it, why it was overlooked, why it was in six or seven of the first screenings of the application and was changed on the eighth and nobody knew. It is a serious flaw in whatever is going on bureaucratically within that Department, and it has to be fixed. It just has to be fixed. We can't afford those types of mistakes.

I'm sorry Mr. DiMaio is not here anymore. But maybe, Mr. Peterson, you can relay to him-- We heard from a couple members -- Mr. Thompson and Mr. DiMaio -- why aren't we investigating the Schools

Development Authority? Well, the Budget Committee, every year, has asked those questions. And I assume the 38 trailers that you're talking about is Philipsburg. You should know, sir, that that question has come up at the Budget hearing. We have asked and pointed out the atrocities that those children go to school in and that they are succeeding in spite of that.

But this is no longer a new Administration. It's nine months in. And the gentleman who runs the Schools Development Authority--

Do you know his name?

UNIDENTIFIED SPEAKER FROM PANEL: (indiscernible)

ASSEMBLYMAN GREENWALD: Let me just say to you it's Mr. Larkins. And the fact that you don't know his name-- I'd be living at his doorstep. So if you want to call an investigation as to why schools haven't been built in the last nine months-- We've been doing it on the Budget Committee. I will tell you, I'm impressed with Mr. Larkins in the few meetings I've had with him. I think his heart is in the right place.

But that's the type of grandstanding that's not necessary. So you can launch an investigation if you want, but that is an evolution of a change. And that's in your district. And I don't represent those kids, but as you said, we represent kids all across this state. And it's an atrocity that a generation of children have gone to school in a trailer and not a classroom. And we're nine months in, and it's no different today than it was nine months ago or in previous administrations. So we can talk all about that, but actions speak louder than words. So let's get to the point of that.

And at the end of the day, my concern in this hearing is that those children that we're so concerned about-- The number one lesson they should know is that they can trust what their elected officials and their

government officials say. I don't know where the trust is in this, and I don't know where the truth is.

Because I can't imagine all of you here -- no one knows how that change was made. We missed a no-brainer. You, yourself, sir, reviewed that. You didn't check it against the previous document. And I know everybody is pointing at Mr. Schundler, but Mr. Schundler's own words say he doesn't remember making that change. But if he did, he thought that the vendor would have checked it, or the fact-check group -- of which I assume you were all a part of. Clearly it was in your section, maybe someone else's section as well. Someone would have caught it. And the fact that one person is taking the blame for this, when he clearly has a different recollection of this, says to me that we have major flaws.

And finally, for all the benefit and all the growth in this application, Mr. Schundler deserves credit for that as well. He deserves credit for the changes that increased the number, and not just the blame for the one piece that got missed in a group effort with an outside vendor that was supposed to check it.

So I don't understand why people aren't jumping up to that point and trying to figure out what went wrong. Because we spent seven hours here today trying to figure out where the mistake was. And I don't know that we got any closer to that today. I think we've made some progress on the application. I think we're making progress on education. And I do believe people are working together.

And as to teachers-- When the teachers were working with us on the application, they worked with us on a form of merit pay. And there was a merit pay component to that phase that went in. But what they said

is, “Don’t give me, the teacher-- Don’t give me, the individual teacher, the merit pay. It’s not going to make a difference in my paycheck. If we receive the merit pay, put it into the school district and let that be shared so we can save programs in this tough economy.” Because I want it to be pointed out that those very same teachers that we have beaten up in this process did come to the table with answers and alternatives.

The very same teachers, I think, Andy, that you’re talking about -- that said, “We’re open to change.”

So it’s time for us to stop pointing fingers at each other and get to the final solution on this.

Madam Chairwoman, thank you. I appreciate your time.

ASSEMBLYWOMAN POU: Thank you so very much.

First, let me just thank the members of the panel who have really endured a very long, difficult-- And I know that many of you, just as I, have stayed sitting at your chairs answering and responding to questions. I want to express my sincere appreciation to each of you for your straightforwardness and your willingness to meet with us, talk to us, look to see and find ways on how we can make this process better.

Contrary to what some of the members of this Committee have indicated, in terms of calling it anything other than what I believe is the intent of this -- is to really try to find out what actually happened. While I think we talked about it at some length now -- and this is a good start -- it-- But that’s all that it is, as I’ve mentioned in my earlier statement.

I want to make reference to something that-- There was a question asked of Assemblyman McKeon earlier in the discussion. And his comment was that what is relevant about all of what he was talking about

was establishing the credibility and the integrity. I would add -- as well as the accountability in terms of what took place and why we were doing that.

For all those reasons I think it's important for us to move forward. And I don't believe that this was a waste of time. Some of the press releases that I've been looking -- as I'm looking at here and some of the press releases that are going out-- I'm happy to say that it's clear-- And quite honestly, to my colleagues on the other side, I would say -- it indicates here that the Assembly Republican Appropriations Committee members are calling on the Attorney General to examine the role of Wireless Generation to the Race to the Top. So it's clear that as a result of the first discussion in this particular hearing -- led them to feel as though something was being said, something was being done. And it's important for this meeting to be had. So we would welcome and we would join you in that inquiry and discussion, as well as looking to make sure that we have that particular -- those particular answers as well.

But, again, I want to thank the members of the panel for being here and making yourselves available.

ASSEMBLYWOMAN WATSON COLEMAN: Madam Chair, I have one burning clarification that I need -- just one burning yes or no.

ASSEMBLYWOMAN POU: Okay.

ASSEMBLYWOMAN WATSON COLEMAN: And this goes to Assemblyman Peterson's question to the Deputy Commissioner, Mr. Smarick.

Is this what I heard -- yes or no -- that after the Governor made the statement that Commissioner Schundler had tried to give the information to the Feds, and the Feds wouldn't take it, that you went into

Commissioner Schundler's office and said -- and talked to him about it, because you thought perhaps the Governor had misspoken, and that Commissioner Schundler said, "I may have said that to the Governor"? Is that was your answer was to Mr. Peterson?

ASSISTANT COMMISSIONER SMARICK: No, not that he said that to the Governor, that he said that to -- that he tried to give additional information to the panel that we were before -- the reviewers.

ASSEMBLYWOMAN WATSON COLEMAN: Did Commissioner Schundler and you have a conversation at which time -- after the Governor made the comment that Schundler had tried to get additional information to them but was not allowed to-- Did Commissioner Schundler ever say to you, "I may have said that," because that's what I heard you say? What did you say to Mr. Peterson?

ASSISTANT COMMISSIONER SMARICK: Okay. So maybe the question he asked was not what I was hearing. What I did say was that after I heard that the Governor was saying that we tried to provide additional information on this question -- on F1-1 and the situation -- the Governor was saying that. I went-- That was not my recollection -- that we had actually done that. I thought that we had said, "No, we didn't do that." I was concerned that the Governor was saying that, so I went to Commissioner Schundler on Thursday and said, "Listen, it's not my recollection that this happened." And Commissioner Schundler said that he thought that he had -- he -- Commissioner Schundler, during that meeting had tried to provide additional information on that point.

ASSEMBLYWOMAN WATSON COLEMAN: Okay. So then Commissioner Schundler told you exactly the opposite of what he's been

telling the people of the State of New Jersey -- that he did not try to give them that additional information, that he could not give them that additional information -- that he told the Governor he didn't give them that additional information, that he asked the Governor not to say that he did it. So you're telling me that Mr. Schundler says he may have said that -- tried to give them information?

ASSISTANT COMMISSIONER SMARICK: No, I think there are public statements where he--

ASSEMBLYWOMAN WATSON COLEMAN: What?

ASSISTANT COMMISSIONER SMARICK: I think there are public statements where he does say that he tried to give additional information on this point.

ASSEMBLYWOMAN WATSON COLEMAN: Different information. We're talking about the information that the Governor was pointing to as the cause for not getting the grant, which was the F1-1.3 something information -- 2008-'09 -- that information there. Did you ever have a conversation with the Commissioner about that particular issue after the Governor made that statement?

ASSISTANT COMMISSIONER SMARICK: Yes, I went to--

ASSEMBLYWOMAN WATSON COLEMAN: Okay. Did you ever have any understanding from your discussion with the Commissioner regarding that piece that he indicated, "I did try to give them something," or, "I may have said it?"

ASSISTANT COMMISSIONER SMARICK: Yes.

ASSEMBLYWOMAN WATSON COLEMAN: Is that not contrary to what the Commissioner has said?

ASSISTANT COMMISSIONER SMARICK: No, I think there-- I've read recently that he has said that he tried to provide that information.

ASSEMBLYWOMAN WATSON COLEMAN: Right. The things that we've read from Commissioner Schundler was that he indicated he tried to explain to the Federal people that New Jersey meets the criteria.

ASSISTANT COMMISSIONER SMARICK: Okay.

ASSEMBLYWOMAN WATSON COLEMAN: Not that he tried to give them the information that he knew at that point he couldn't give. So are we talking about the very same thing?

ASSISTANT COMMISSIONER SMARICK: I think we're talking about the same thing.

ASSEMBLYWOMAN WATSON COLEMAN: So he did or he didn't say to you, "I tried to give them the 2008-2009 information; but they wouldn't accept it. And I told the--"

ASSISTANT COMMISSIONER SMARICK: No, no, no, no.

ASSEMBLYWOMAN WATSON COLEMAN: "And I told the Governor that."

ASSISTANT COMMISSIONER SMARICK: He did not say that, "I tried to give them 2008-2009." What I remember him saying is that he tried to talk to them, and he tried to give additional information; and maybe it was along the lines that you're talking about, which is that we met the criteria or something.

ASSEMBLYWOMAN WATSON COLEMAN: Thank you.

ASSISTANT COMMISSIONER SMARICK: Sure.

ASSEMBLYWOMAN POU: Thank you, again, ladies and gentleman.

ACTING COMMISSIONER HENDRICKS: Assemblywoman Pou and Committee members, if I could just thank you. It has been grueling for all of us, no question about it.

I do want to go on record as saying we look forward to working with you all. I wish, for some of us, our first encounter was a little bit different than this one, but it is what it is. And may we look forward to working well together on behalf of the children of New Jersey.

Thank you.

ASSEMBLYWOMAN POU: Thank you.

(MEETING CONCLUDED)