
Public Hearing

before

ASSEMBLY FEDERAL RELATIONS COMMITTEE
ASSEMBLY EDUCATION COMMITTEE

“Testimony concerning the State and local impact of the Federal No Child Left Behind Act”

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

DATE: September 27, 2004
2:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Assemblyman Reed Gusciora, Co-Chair
Assemblyman Craig A. Stanley, Co-Chair
Assemblywoman Linda R. Greenstein, Co-Vice Chair
Assemblyman Patrick J. Diegnan Jr., Co-Vice Chair
Assemblyman William D. Payne
Assemblywoman Mary T. Previte
Assemblyman John S. Wisniewski
Assemblyman Guy R. Gregg
Assemblyman Joseph Pennacchio
Assemblyman David R. Mayer
Assemblyman Robert Lewis Morgan
Assemblywoman Nellie Pou
Assemblyman Joseph Vas
Assemblywoman Joan M. Voss
Assemblyman Bill Baroni
Assemblyman Joseph R. Malone III
Assemblyman David W. Wolfe



ALSO PRESENT:

Catherine Z. Brennan
Theodore C. Settle
*Office of Legislative Services
Committee Aides*

Jessica Perl
Andrew Hendry
*Assembly Majority
Committee Aides*

Thea M. Sheridan
Tasha M. Kersey
*Assembly Republican
Committee Aides*

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ASSEMBLYMAN CRAIG A. STANLEY (Co-Chair): Good afternoon.

I'd like to call this Joint Committee meeting to order.

I'm Assemblyman Craig Stanley. I Chair the Assembly Education Committee, and the Co-Chair of this Joint Committee.

The Chairman of the Assembly Federal Relations Committee, Assemblyman Reed Gusciora.

And we're going to try to accommodate everyone's desire to present their testimony. We have a number of requests.

But just to give an overview, on January 8, 2002, President Bush signed the No Child Left Behind Act into law. And in the two-and-a-half years since its enactment, the law has had a profound impact on education, not only in this state, but around the country -- where this impact will be positive-- Whether it will be positive or negative remains to be seen. Certainly, there have been many legitimate concerns raised about the law in the education community. The goal of getting all of our children to 100 percent proficiency by 2014 is an important and laudable goal.

I appreciate the law's focus on making sure that all kids get ahead, including disadvantaged and challenged groups of kids. But it's how No Child Left Behind says we must reach those goals that most concerns myself and many of my colleagues. Are all the new tests required under this law really going to accurately measure students' success? Are we going to be focused more on tests and test results than the education of the child? And are the extreme consequences of failing to make progress according to these tests, such as State takeover or conversion into a charter school, productive or necessary? How is

this State, and it's 600 school districts, supposed to keep up with the ever-increasing requirements under this law?

The Federal government shortchanges us in providing needed resources. For example, in Fiscal Year 2005, Federal funding for No Child Left Behind is expected to increase (*sic*) for our state for the second year in a row. That is simply unacceptable, especially when considering how Federal government has shortchanged us in the area of special education for so many years.

It's our goal here, today, to get a better understanding of how No Child Left Behind is impacting New Jersey and how it will impact us in the future. While the power to create a solution lies with the Federal government, we hope that we can influence this, as State legislators, and our legislatures throughout the country, to ease the impact and to give the Federal government direction.

We welcome your thoughts, your observations, your ideas as we tackle this great challenge in New Jersey.

Now I'd like to turn it over to our Chairman of the Federal Regulations Committee, Reed Gusciora.

ASSEMBLYMAN REED GUSCIORA (Co-Chair): Thank you, Mr. Chair.

I'm honored to be here. And on behalf of all our colleagues, I think this is a very important issue. Whether we make the educational opportunities for all our students better in New Jersey-- And I think that's the goal, on a bi-partisan basis.

This is, actually, the tale of two school districts: one that are the highest performing, and one that are not so high performing. And whether they're measured equally, whether there's adequate funding to implement No Child Left Behind, and whether the punitive measures are too excessive and that they aren't -- they become counterproductive.

So I'm interested in hearing the testimony. I'm pleased that our Congressman Rush Holt is here, from the Education Committee, and Commissioner Librera. And I also personally invited the U.S. Department of Education. I believe a representative is from there, as well. So, like Fox News, this will be fair and balanced. (laughter) We hope to get some good testimony.

I'm also--

ASSEMBLYMAN PENNACCHIO: Is that an admission?
(laughter)

ASSEMBLYMAN WISNIEWSKI: I think the Chairman meant *unlike* Fox News. (laughter)

ASSEMBLYMAN GREGG: I want it to be clear for the record.

ASSEMBLYMAN GUSCIORA: We want to be fair and balanced.

But as my good friend Guy Gregg knows, we give everybody an opportunity and let the chips fall where they may. I know that's on our Committee, and I'm sure that's on the Education Committee, as well.

We look forward to the testimony. And I know we have a lot of great witnesses. And I'm pleased that my Superintendent from Trenton and a board member from Trenton schools are here to testify, as well. Because, particularly in the urban areas, there are some great challenges under No Child

Left Behind. And we want to make sure we have adequate funding and resources from the Federal government.

Thank you.

ASSEMBLYMAN STANLEY: Also, I've been made aware that I might have erroneously said that the funding has been increased for the second year, but in fact it has been decreased. I want to make that perfectly clear, as well.

At this point, we'd like to call on the Congressman, who's come before us and agreed to share testimony regarding the act. The Honorable Rush Holt.

Thank you so much for joining us, Congressman. We appreciate your being with us today.

C O N G R E S S M A N R U S H H O L T: Thank you very much.

This is certainly an important subject, and it's appropriate that this be done in a Joint Committee hearing. I'm honored and pleased to be here. I'm pleased to be here with so many members of the Assembly who have devoted so much attention to education.

I'd like to speak as a member of the Committee on Education and the Workforce in the House of Representatives. I should point out that Representative Don Payne and Representative Rob Andrews also sit on the Education Committee. We have-- New Jersey has good representation on that Committee.

And I thank you for the opportunity to testify.

As our schools work to improve our educational system, significant attention has to be directed to No Child Left Behind. The law was passed two

years ago, with bi-partisan support -- strong bi-partisan support. It was primarily the initiative of the President. It was his first major piece of legislation. And he worked closely with Democrats and Republicans in the House and Senate. It seeks to ensure that all children, regardless of income, background, have access to high-quality education. The goals are good: to eliminate the achievement gap between different groups of students. This is something that has been troubling educators for years.

It requires school systems to look not only at how its students are doing, as a whole, but how particular groups of students are doing. In other words, it is intended to force schools, or encourage schools -- depending on your point of view -- to make sure that no students are lost in the averages. So a school can't say, "On average, we're doing well, but there are some students who aren't." Schools that are succeeding for some students will no longer be considered successful if it is only for some students, even if it is for a majority of the students.

Now, I should hasten to point out that here in New Jersey, as in the United States at large, more than 90 percent of funding for education does not come from the Federal government. However, when the Federal government gets involved in those areas where it makes sense for the Federal government to help -- in special education, for example, and so forth -- it's important that the Federal government make good on its promises. Because if we don't, it is the local taxpayer and, of course, the students who end up suffering.

No Child Left Behind helps by targeting resources to the schools that face the greatest challenges, schools that have trouble meeting the needs of some students. Unfortunately, the Bush administration has not put forward the

funding. And I'm quick to say this is not intended to be a gratuitous partisan bash. The point is, that the funding that has been requested by the administration, and incorporated into the House budget -- and then resulting in House and Senate appropriations -- falls short by many billions of dollars, what was authorized in the bill.

Now, it's not uncommon that appropriations fall short of authorization. You've experienced that, I imagine, in many areas. But for the program that was touted as the signature program, the first major piece of legislation, the area of focus of the administration, to be so drastically underfunded, I think, requires that we state it bluntly and say that "President Bush, in the '04 and '05 fiscal year budgets -- are short." In the '05 budget, for example, the President's request is \$9.4 billion short.

So, for New Jersey, that means we have missed out -- here in New Jersey -- on about \$209 million in public school funding. It includes more than \$120 million that would have gone for Title I, low income students; \$15 million for after-school programs; \$7 million for teacher quality.

Something that is of importance to me, and many people, has to do with teacher professional development. Let me give an example. Before No Child Left Behind was passed, the Federal government devoted nearly \$400 million a year to what was known as the Eisenhower program for teacher professional development, primarily in the areas of science and math education.

The Eisenhower program was replaced by the Science and Math Partnership program. It was funded at, first, \$50 million, and then \$100 million, and then \$150 million. So, currently, it is being funded at about a third of what the funding was before No Child Left Behind was passed. And yet, No

Child Left Behind was supposed to result in increase in funding for teacher professional development.

So it is partly because of the expectations that this under-funding is so hard to swallow. But it is also because the schools have been given higher goals and bigger sticks looming over them that the funding is such a sensitive issue, also. It is not just expectations, it is-- And I hear this from schools all over central New Jersey. They feel that they have incurred new expenses because of No Child Left Behind.

Funding is not the only failure. Rather than focusing on improving public schools, I would say that the administration's Department of Education has issued some confusing and contradictory regulations. Let me give you a few quick examples.

The students who have multiple disabilities and, therefore, should be eligible for alternative assessment were, first, limited to half of 1 percent in a school district. Later, that was increased to, I believe, 1 percent. But if the school was failing under the previous more -- the first year's more stringent conditions-- When they calculate how they're doing over time, they can't go back and recalculate, in their first year, using the more lenient or more inclusive calculation.

Rural districts, for example, at first were given only one year to comply with the highly qualified teacher requirement. Later, that was relaxed to three years to comply. But if, in the first year -- actually, the second year -- you weren't in compliance, you couldn't go back and retroactively apply the three-year allowance, time allowance, to come into compliance. So you were considered out of compliance. And there are a number of other examples that

have to do with how many students are tested -- the 95 percent participation rate, for example.

Similarly with English proficiency. It is not possible to go back-- Well, this is an interesting example. Students who were in the limited English proficiency classes were moved into the regular group as soon as they moved out of the limited proficiency classes. In other words, they were tested along with everyone else. And new students, a new cohort, then filled the limited proficiency English class. Well, those students will always be doing badly, because you're always moving, into that cohort, students who aren't yet up to speed. So the regulations were changed to ameliorate that somewhat. I would say not fully. But, again, there is no retroactivity. So students that were failing at first, because of that really kind of silly initial regulation, have this year of -- or year or more of -- lack of compliance.

We want states to be able to allow that the new regulations -- be allowed to apply the new regulations in assessing the school's performance from the previous year. And had the Department of Education issued regulations on time, many schools would have met the No Child Left Behind's accountability goals, rather than appearing on the State's list of non-performing schools. And this is not just a matter of whether you're on a list or not. It begins to have serious consequences, monetary consequences, not to mention the anger of parents.

Over the long-term, we should look at making some changes in No Child Left Behind. We should be able to preserve the goals of this legislation. I think the consortium of organizations here in New Jersey, in the name of leadership for education excellence -- which include organizations of principals,

school boards, administrators, teachers, and so forth -- has taken, I think, a positive approach to this, a constructive approach. I don't agree with all of their recommendations. Some of them would, really, I think, undermine some of the fundamental parts of the law. But many of their recommendations, I think, should be accepted by the Department of Education, where possible, in making regulations. And if not subject to regulatory improvement, it should be -- these should be taken by the Congress, with legislative amendment, to No Child Left Behind, ensuring that, for example, supplemental education providers are certified and safe harbor provisions are revised, things of that sort.

Members of Congress are serious about this bill. But we've been hindered by the budget requests, and we've been hindered by a mentality of the bill's authors, that -- "Well, we've got to let it work." There are some things that we already know should be amended. The data are coming in, and there's enough yelling and screaming around the country, that I'm actually surprised that my colleagues haven't responded yet. I thought it would be an election-year issue. It does not appear, yet, to be an election-year issue. So those amendments might not come -- the legislative amendments might not come until the five-year -- typical five-year renewal cycle comes around again.

So what that means is, I think, as onerous as some of these regulations are, we're going to have to live with them here in New Jersey. And as short as we are in the funding -- couple hundred million dollars this year, as I said -- I think we're going to have to face it. This year, and next year, we will probably be short that much.

I'm sorry to come with that -- to end on that low note, but that's my report from Washington.

And thank you very much for allowing me to come.

ASSEMBLYMAN STANLEY: Thank you very much, Congressman. And we certainly do not feel that we're in a position, here in the State of New Jersey, to sit idly by and see Washington just not act on the changes that are necessary in this act. And we will continue to lobby our representatives here, as well as within the National Conference of State Legislatures, which is dealing with this issue as a national issue of the states. We'll lobby Washington to make sure that these changes are done. Because I don't believe that any of us here -- and I'm sure we'll see, we'll hear testimony -- can live with these regulations the way they are and the act the way it is, right now.

Assemblyman Payne.

ASSEMBLYMAN PAYNE: Thank you very much.

I suppose the Congressman will have to leave after a period of time.

But I would just like to, first of all, thank you for your continuing effort to highlight the shortcomings in this area. One of the things I do know is that during the time when this legislation was being discussed, it was difficult for the -- George Miller, I believe, who is the ranking member of the Education Committee -- a strong proponent of this -- was attempting to get the Democrats, at least, to support this legislation so that, as you point out, it would be bipartisan. And, in fact, he did that. And I know George well, for the last decade or so.

CONGRESSMAN HOLT: Yes, the President called him Big George. That was the nickname.

ASSEMBLYMAN PAYNE: That's right. Big George rode on Air Force I around the country promoting this.

I've since seen George, and he is holding his head down and very, very regretful that he was able to get you, and my brother, and others to support this legislation. And I know that Congressman Payne was -- supported it, kicking and screaming all the way, knowing that there were a lot of holes in this legislation.

But you did say there was bipartisan support. And you're concerned that this issue -- which is really, probably, the most important thing -- and that is to prepare our youngsters for the future, the youngsters who are being deprived of a decent education. Nothing is more important that impacts on the future of this nation. But there is no bipartisan support to bring these changes about. I mean, people like Marion Wright Edelman -- who is a person who has fought for justice for our children for years -- has expressed, very eloquently, the disappointment that she has, and others have, in this legislation. Yet, we're not able to get this issue elevated to the point where we can, in fact, bring out the solution.

We're talking about the Federal government mandating things -- unfunded mandates. We're talking about having made these glorious statements about where it should go, and etc., but then taking moneys and not funding it. Whereas -- and we were not going to bring in other issues here -- but, certainly, moneys are being found to fight a war. The war that we should be fighting is a war within our cities to provide a decent education for our children.

I wonder whether or not there is anything going on within both the Republican and Democratic Congress to try to elevate this issue to the point

where these children, who are forgotten children -- whether or not-- We talk about No Child Left Behind, and as you point out, we're putting less money into teacher training in some areas than we did in the past. What's being done, and what can be done, on our part, and with your colleagues, to really elevate this to where it should be?

CONGRESSMAN HOLT: Well, in each of the last couple of years, there have been amendments brought to the floor, both to the budget, before the appropriations process went forward -- the budget resolution -- and to specific appropriations for the Department of Health, Human Services, Education, and Labor. And it was voted down in each case. There have been amendments that called for a lump-sum increase or for increases to specific programs such as teacher professional development or Title I. And because the increased funding does not fit in the budget, it fails at the time of the appropriations consideration.

So, surely, there are some members of Congress who are very vocal on this and continue to try to increase it. But I would stick with my earlier assessment that you shouldn't hold your breath this year to see that funding restored.

I would hasten to say that the intention of No Child Left Behind to have-- It is probably a revolutionary -- a dramatic, at least -- step in the Federal government that involves the Federal government in the local schools, more than ever before. It's based on the premise that we shouldn't let schools say that because it is difficult to assess adequate progress and proficiency, therefore we won't do it. We are saying, "You must find a way to assess adequate progress and proficiency."

ASSEMBLYMAN PAYNE: And also, find--

CONGRESSMAN HOLT: And that's a dramatic change.

ASSEMBLYMAN PAYNE: Yes, but they have to-- The Federal government has to find a way to fund these. I mean, we must test them, etc. But we cannot shirk -- we, the Federal government, this administration -- cannot shirk its responsibilities to pay for this additional burden that's placed upon our schools. If we can build schools in Iraq, it seems to me that we should be able to support schools here in our country. And our children are the ones that are suffering here. And I'm hoping that there might be some way that we can influence this administration to come up with the kinds of resources that are necessary. It's wonderful-- It's one thing to have these great platitudes. But on the other hand, the facts show, as you pointed out, that the amount of money that's being funded for teacher development is decreasing. I mean, that seems to be--

CONGRESSMAN HOLT: It's been increasing year by year over the past three years. But it's now come to about a third of where it--

ASSEMBLYMAN PAYNE: Where it was proposed to be initially.

CONGRESSMAN HOLT: --would have been. No, where it actually was before.

All I can say is that because this is a dramatic Federal change, the Federal government has a larger responsibility than in the past to help with the funding. And there has been, indeed, some more funding than in the past, but nowhere proportionate to the increased burden that's being placed on the schools, or nowhere proportionate to the size of this Federal initiative, the extent to which the Federal government has changed its role in the local school.

ASSEMBLYMAN PAYNE: It's hypocritical and despicable that we are not able to get the kind of support for this legislation. We have raised the hopes of people, and then we, behind the scenes, are not funding those kinds of hopes that we put out there.

Thank you very much for your being here. And I hope that we'll be able to correct the situation.

CONGRESSMAN HOLT: Thank you, Assemblyman.

ASSEMBLYMAN STANLEY: Thank you, Congressman.

And I -- very difficult for me to restrain Assemblyman Payne, for very obvious reasons. But I would like to ask that all the members -- and Assemblyman Payne, if you would be so kind -- limit our personal remarks and try to ask specific questions to the people testifying. And also, if we can limit the questions to two.

I think you only had two questions there. I'm grateful of that, Assemblyman.

But if we can limit it to two questions apiece. And if you can pass on a particular witness, that would be great.

And I know Commissioner Librera has to leave. Perhaps we can give Commissioner Librera a chance to give his testimony and then continue on.

Thank you.

Thank you very much, Congressman.

ASSEMBLYMAN MALONE: Mr. Chairman, I think we have some questions of the Congressman.

ASSEMBLYMAN STANLEY: Well, can we go back to the--

CONGRESSMAN HOLT: The Commissioner must leave. I'm willing to stay a bit longer, with the Chairman's permission.

ASSEMBLYMAN STANLEY: Absolutely.

CONGRESSMAN HOLT: And stand for questions shortly.

ASSEMBLYMAN STANLEY: Very good. Thank you very much, Commissioner.

COMMISSIONER WILLIAM L. LIBRERA: Thank you, Congressman.

And thank you, Chairman Stanley. It's always an honor to be at these hearings, and to talk with you about such pressing issues, and to engage in a dialogue with you, and to have you continue to support the efforts that we're making on behalf of 1.3 million children in the State of New Jersey.

What I would like to do today is just make some introductory remarks. As Chairman Stanley said, I need to go to another meeting that was scheduled on an emergency basis earlier today. But there are people who are representing the Department who are with me today: Assistant Commissioner, to my right, Isaac Bryant -- Assistant Commissioner for Specialized Population, the person who deals primarily with the meaning of NCLB, in terms of a lot of our populations. And to my left, sitting next to Congressman Holt, is Dwight Pfennig, Deputy Commissioner. He will remain to answer questions that you will have. And Richard Ten Eyck, who is Assistant Commissioner for Educational Programs, is also with us. He is sitting immediately adjacent to Deputy Commissioner Pfennig.

We are fortunate in one respect in the State, and that is that we are very ably represented by a Congressional delegate, and you've seen an example

of that, in terms of Congressman Holt. Our Congressional delegates are very well informed about the gap between the intent and the reality of this law. And we struggle with that daily.

Because, as Congressman Holt said, the goals of this legislation are more than good, they're admirable, they're long overdue. The idea that we pay attention to the progress of all kids is something that hasn't happened, with the kind of regularity in this country that it needed to, for a long time. We should have been, and we haven't been, reporting the progress of all of our children, regardless of whether our children are special needs or second language learners. There are differences, dramatically so, of the achievement level of students in this state and in this country.

Now, having said that, the Federal government established these laws, established these goals, and we support them completely. The implementation falls far short of what the goals had promised, and they fall short for a number of very fundamental reasons. It is one thing for a policy making group, like the Federal government, to establish what the goals are. It's quite another for a group of people, not so accustomed to what it's like to teach and what it's like to run public schools in a state, for them to begin to identify the ways in which you're going to do this. And that's the trouble here. It is in the implementation side of this that we have great problems, funding being one part of it. Let me give you a couple of examples of what it is that I've described.

By any measure, we believe, that any Federal government official would use to measure quality of public education in this country, New Jersey ranks among the highest -- by any measure. There's only one test that's given to every state in this country, and that's the NAPE test. And on the NAPE test,

New Jersey students consistently perform in the top five of all of the states. Our position is -- and I think it's been acknowledged by the Federal government -- that we have the highest standards in the country; and we do, and we're raising them. And we're not going to lower them because of any inconvenience of any poorly designed aspect of the implementation. Not everything in this legislation is poorly implemented, but a lot of the things, in the very public ways, are. We spend too much time talking about who's on what list and not enough time talking about what places are doing real good work and important work to elevate the achievement of all kids.

I have said that the Federal government should have stopped on the public disclosure part of this and should have left it to states -- particularly states who have high standards -- to figure out the ways that we would insist on reasonable progress. That's more than reasonable. It is not reasonable to put a system together that has 80 percent of the schools in New Jersey identified as needing improvement, because they have not met four out of 40 indicators. According to basic arithmetic, four out of 40 is 90 percent success. Ninety percent success, in any walk of life, is not considered in need of improvement anywhere. And that's the kind of trouble that we have.

We have petitioned the Federal government, and they have responded in some ways. And I need to acknowledge that. The responses, however, are slower than they need to be. We've asked to be given flexibility, we've asked to be given the opportunity to demonstrate that we can meet these outcomes, we can meet these in very responsible ways. We've done it in the past. We'll do it again. And we've asked them to let us do that so that we can show our way of reaching high-achieving goals for all of our kids. We're not

there yet, no state is. We're making a lot of progress. We want that opportunity. I don't want -- nor are you going to hear from anybody else here -- an opportunity to continue to quarrel with why we have so many schools on needs-improvement lists. We have them because our standards are higher.

The Federal government has the incentives in the wrong place here. What we should be doing is rewarding the places with high standards that have delivered. We think we have.

The Congressman has talked about the problems with funding. They are there.

We believe that students ought to be tested every year. We believe that we should be able to communicate, in very simple terms, to every parent, how well we're doing. We believe that we should be able to say to school districts, "You must improve. And if you don't improve, there will be some sanctions." We support that completely. We don't think that artificially designed implementations are the way for us to get there.

This year we have fewer schools on the list than we had last year, but that misses the point. I don't want that to be the central point of the discussion. The central point of the discussion ought to be: How do we change the implementation so that we all can be talking about what funding is necessary and how we're going to go about providing well for all of our children? Because as well as we are doing, we have plenty still to do. There are gaps in performances of students that are completely unacceptable in this state.

That they are smaller than other states is of little consolation to us. It is of little consolation to parents whose children are in that category. We understand that. Those children, those schools, those teachers deserve all of our

attention. It shouldn't be diverted because of some flawed aspects of implementation.

The changes have happened so far -- they're slower than they need to be. We appreciate the changes that have been made. We want to work to accelerate them and to provide funding that's necessary to reach these goals.

I apologize for not being able to stay and answer your questions. But I have complete confidence in the Assistant Commissioners who are here. And, certainly, I wanted to thank Congressman Holt for the great work that he's doing advocating on our part.

Thank you very much, Congressman.

And thank you for your support in holding this very important hearing today.

Thank you.

ASSEMBLYMAN STANLEY: Thank you very much, Commissioner. We appreciate you joining us. We know you have to leave.

Thank you.

I believe, at this point, we can go back to the testimony from Rush Holt. I know I had a couple of colleagues who wanted to ask some questions.

Assemblyman Malone and Assemblyman Wolfe.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

Congressman, welcome.

You spent a great deal of time talking about the last three years. Can you remember-- I've been in education, now, for 32 years. Can you tell

me the last time the Federal government ever funded education in New Jersey to the level it was required to fund it at?

CONGRESSMAN HOLT: Or anywhere in the country. I mean--

ASSEMBLYMAN MALONE: Well, just worry about New Jersey.

CONGRESSMAN HOLT: I guess I would say it's almost impossible to put too much effort and too many resources into education. It is that valuable.

ASSEMBLYMAN MALONE: I just need an answer when the last time the Federal government ever met its mandate to fund education in the states, whether it's New Jersey or any other state; whether it's in regular education or special education. You picked out the last three years as your focus. Tell me the last time the Federal government ever helped the people in this audience, whether it was the last three year or the last 30 years.

CONGRESSMAN HOLT: The Federal government, except for IDEA -- which was -- when it was authorized back in 1975, said the Federal government would provide up to 40 percent of the additional costs of educating the special students. Other than that, the Federal education programs have been primarily either -- they've either been formula programs or they've been special programs through the National Science Foundation, or something of that sort. And so the Federal government has not had obligations like this. This is a new insertion, I would say, of the Federal government into the local schools. There are new requirements. So the expectations were higher because everyone, Republicans and Democrats, said they were going to make a big deal of this. But also, the requirements were higher.

ASSEMBLYMAN MALONE: So, what you're saying to me is, up until the last three years, the Federal government met all of its obligations to education in the State of New Jersey. Is that what you're saying to me?

CONGRESSMAN HOLT: The Federal government provides much less than 10 percent of the funding for education. So it has been a rather small piece in the education picture.

ASSEMBLYMAN MALONE: I'm just trying to get the dichotomy of what you just said earlier. The last three years-- Tell me, prior to the last three years, any year that the Federal government met its obligation to the--

ASSEMBLYMAN STANLEY: Excuse me, Assemblyman Malone. We're speaking specifically to No Child Left Behind. If you go beyond that, that's not within the scope of this hearing.

ASSEMBLYMAN MALONE: No, that's not what he-- He's mentioning in the last three years, and saying there's been an abominable track record.

ASSEMBLYMAN STANLEY: Well, I know, but we're talking about No Child Left Behind here, not previous acts, and so forth.

ASSEMBLYMAN MALONE: Okay, let me finish a couple questions here, and then I'll be done for this round.

You mentioned that -- and so did the Chairman -- that the funding for No Child Left Behind would be less than it was last year. Is that true?

CONGRESSMAN HOLT: No, I don't believe I said that. I said New Jersey--

ASSEMBLYMAN MALONE: Is it increasing or decreasing?

CONGRESSMAN HOLT: Funding for education is increasing. Funding for education falls \$9 billion short of what is calculated, by any number of impartial people, to meet the No Child Left Behind.

ASSEMBLYMAN MALONE: Congressman, we fully understand that, because we have fulfilled our funding obligations in the State of New Jersey since I have been in the Legislature. So it's not unique to say that the Federal government is not quite doing it. We haven't done it. I don't think there's anybody in the room here that would agree that we have done it. In the last three years, we've -- with the exception of this year -- flat funded for two of the last three years. So we fully understand that commitments aren't fulfilled.

ASSEMBLYMAN PAYNE: Point of order, Mr. Chairman. Are we talking about No Child Left Behind or are we talking about the State of New Jersey funding education? What are we talking about here today?

ASSEMBLYMAN STANLEY: We should be talking about No Child Left Behind and how it deals with respect to New Jersey. And that really should be the extent of what we're talking about.

ASSEMBLYMAN MALONE: Well, Mr. Chairman--

ASSEMBLYMAN GREGG: Not building schools in Iraq.

ASSEMBLYMAN MALONE: I don't want to get into the statements that have been made prior to Assemblyman Payne. But they surely were not on No Child Left Behind. But I'll continue to be on No Child Left Behind.

You're fully aware that the State of New Jersey, probably -- as the Commissioner said, and he and I have had long conversations -- that the standards we have here in New Jersey have been considerably higher. And our

ability to raise-- If, in the aggregate, students in some of the other states-- If their threshold of success is, let's say, 30, when in New Jersey our standards are 70 -- to raise somebody up from a 30 percent threshold up to a 50 percent threshold, as opposed to raising somebody from a 70 or 80 percent threshold up to a 90 percent threshold, is considerably more expensive and much more difficult. Would you agree to that? How would you rate New Jersey to Mississippi, or Alabama, or Georgia, as far as the standards in education are concerned?

CONGRESSMAN HOLT: I agree with the Commissioner. New Jersey has schools that are, by national averages, quite good. And our best students compete with the best students anywhere in the country. But the whole point of this is to say that we will leave no child behind, that we will not allow schools to hide behind averages, and that we will be the best we can, and set high standards for proficiency and annual adequate progress.

ASSEMBLYMAN MALONE: Last question, Mr. Chairman.

You mentioned about the moneys being allocated for teacher preparation and teacher training. Maybe somebody -- a later speaker-- I don't-- Being in a school system, I guess, 22 out of the last 32 years, I don't ever remember getting a considerable amount of money from the Federal government to train my staff in teacher training or advanced training.

Now, maybe there were a lot of moneys in the past to do that. I don't know if some other people in the room can cite when school districts got all this extra money, or maybe the State just got it and kept it. But I'd be interested in you following up and, maybe, getting some information as to how

much money out of the Eisenhower money was used for teacher training and advanced training for teachers.

CONGRESSMAN HOLT: Well, all of the Eisenhower money was used for teacher training. That's what it was.

ASSEMBLYMAN MALONE: How much of it was--

CONGRESSMAN HOLT: If it existed this year, it would be somewhere in the neighborhood-- I mean, when it was discontinued, it was about \$400 million. So with ordinary increases, it would be \$450 million, or something like that, this year. All I'm saying-- That's clearly insufficient, when divided in all the school districts in 50 states. That alone is not going to provide the teacher professional development that we need.

ASSEMBLYMAN MALONE: I would very much--

CONGRESSMAN HOLT: All I'm saying is that what we now have in Federal funding for teacher professional development in science and math education is about a third of that. So it has gone down.

ASSEMBLYMAN MALONE: I would like to see what school districts received funds that you say are not there this year, through the educational process, that were actually distributed to school districts in the past.

CONGRESSMAN HOLT: About \$400 million was distributed to school districts in the past. And about a third of that much is now distributed to school districts. It is not the same formula program. It's done on a different competitive basis. All I'm just saying is that the investment in teacher professional development, from the Federal government, is less than it was.

ASSEMBLYMAN MALONE: I'm going to follow up on that and find out how many school districts got money for teacher training and preparation in the State of New Jersey from that fund, then and now. Okay?

CONGRESSMAN HOLT: Okay.

ASSEMBLYMAN STANLEY: Thank you, Mr. Malone.

ASSEMBLYMAN MALONE: Thank you very much.

ASSEMBLYMAN STANLEY: Thank you, sir.

Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Thank you, Chairman.

Congressman, thank you very much for your testimony.

I think, on a bi-partisan effort, we certainly appreciate your support for this legislation, as it's obviously very important for all the kids in New Jersey.

I am not a member of the Budget or the Appropriations Committee, so a lot of dollar signs being thrown around here by speakers so far-- And I just want to clarify something.

This current fiscal budget proposed by the Federal government provides 36 percent more funding for education in New Jersey, nearly \$2 billion. And of that, almost \$5 billion -- \$500 million is for No Child Left Behind. There's an increase in Title I funding of nearly \$55 billion over previous levels. And in terms of special ed, nearly 50 percent increase in previous school funding.

We've been talking a lot about teacher preparation. Assemblyman Malone talked about that. This current budget provides, for New Jersey, nearly \$65 billion to attract and retain high-quality, qualified teachers for the

classroom. And I certainly would echo his comments. Not so much from you, Congressman, but from the State of New Jersey -- where's that money -- in the past, where has that gone, and where is this going to go.

It's also provided nearly \$120 million for a six-year grant to fund literacy in New Jersey. And \$20 million of that, on an annual basis, is allocated only to the Abbott districts, not the other districts. So I think, in terms of the big picture, obviously, No Child Left Behind is geared toward every child in the United States. We're focusing, obviously, on New Jersey. But we've been led to believe, so far, that New Jersey is really being left behind, financially. And I think we need to clarify and make it very, very clear that this budget, this Federal budget -- not the State budget, but the Federal budget -- does include significant increases in moneys to go strictly to New Jersey. And as Assemblyman Malone has said before, previously, we may not have gotten our fair share. We talked about housing and transportation. But I would say, certainly as a recognition, that there is an increased moneys for New Jersey. I think this is a first step.

And I thank you for your support, Congressman. Thank you very much.

CONGRESSMAN HOLT: Thank you, Assemblyman.

ASSEMBLYMAN STANLEY: Thank you very much.

And I think we can ask probably the Department of Education, when we get back to them, about the fact that the money from the No Child Left Behind appropriations has, in fact, decreased from 2003 to 2004, and anticipated to decrease again. But we'll ask the Department of Education to follow up with those figures.

But, Assemblyman Gregg.

ASSEMBLYMAN GREGG: Thank you, Chairman.

I'll be brief, because I know we have a lot of folks coming up. And I think we're going to get, as Chairman Gusciora said, a fair and balanced -- Fox News -- we'll get the other side of the story pretty soon.

I do want to ask the Congressman--

I thank you for being here, as well, and advocating for us.

Washington is a little different than us, for those of us who have a little experience on the Budget and Appropriations Committee. We don't have a word called *authorized*. That is not a term that we use here, probably to our benefit. We also don't have a word called *calculated by experts*. So I'd like to set the tone here, as we move forward to the rest of the testimony, so we get a clear understanding of what we're talking about when we're talking about calculated by experts, authorized, and actually appropriated. Now, I know the Congressman probably can't answer the calculated by experts, because that's not part of being in Congress. But there is a difference between authorized and appropriations.

Congressman, can you give us a brief synopsis -- for those of us who don't live in Washington -- what the difference between an authorized number and an appropriated number is?

CONGRESSMAN HOLT: Yes. Each year, or sometimes in multiple -- in one year, for multiple subsequent years -- the authorizing committees -- for example, the Education Committee -- will lay out the amount of money that may be appropriated for a particular purpose. The Appropriations Committee that covers that particular area -- such as the Health

and Human Services, Education subcommittee of Appropriations -- then appropriates the actual money that can be spent.

Authorized budgets do not allow Commissioner Librera or anybody else to write any checks, to buy anything. It must be appropriated before it's real money. I gave the example of the authorization of the IDEA, special education legislation, where it was authorized that the Federal government would provide up to 40 percent of the additional cost of educating students with special needs. It is now, currently, higher than it has ever been -- the Federal share for special education. And it comes to, as calculated by whomever, about 20 percent -- slightly over 20 percent of the cost of educating.

ASSEMBLYMAN GREGG: I thank you for that very honest answer, because I think it is important. We are talking about No Child Left Behind today. And it does appear that a large part of the discussion today will be reflective on whether there's funding that is appropriate to complete the process of that in the State of New Jersey.

There's no question we've been dealing with a term called *authorized*. And we don't have that term here. Authorized is the highest possible number that someone might think could be used for the completion of this process. In the State of New Jersey, we do a bill and say, "We're going to do X," and we appropriate \$3 million. The appropriation, usually, is attached right to the bill and, hopefully, it will complete it. But you'll get to argue it back and forth, whether \$3 million is enough, prior to voting for the bill. Here, in Washington, they vote for the bill with this magical authorization number, knowing it has to go to Appropriations, and then, ultimately, we determine what would be spent.

I give that somewhat long-winded comment, because it is my understanding that in the bill that was preceded -- or the legislation preceding No Child Left Behind, was a Democrat Congress and a Democrat presidency. And the authorization in spending was \$13 billion in that initiative in 1994, sending money back to the states.

Congressman, do you have an idea that-- Do you think that that Congress appropriated the full authorization number? It's not a test, because I know the answer. It's not the purpose of the question.

CONGRESSMAN HOLT: Let me try to make the point more clearly if I didn't before. The difference with No Child Left Behind is that that authorization, although it authorized a certain amount of money, it also required that schools do certain things -- that they're required that there must be, by a certain definition, highly qualified teachers. It required that if a school does not meet a definition of annual yearly progress for three years in a row, students can go to -- well, actually I forget which is three years and which is four years -- students can go to -- can be sent to a supplemental educational program. After a few years, students will have school choice and can move to another school.

Those are law. Whether or not the money that allows schools to carry out that law is appropriated or not, the schools have to follow that. And so the point I was making was that No Child Left Behind not only raised expectations greatly -- and therefore, when those expectations of funding were not met, it was hard to swallow -- but it also added new requirements to the schools that bring with them some very real expense. That very real expense, I believe, is close to what was authorized to carry out those very real regulations.

And so when that authorized number is not met, the Federal government has, what you folks like to call, an *unfunded mandate*.

ASSEMBLYMAN STANLEY: And I'd like to just, if I may, Assemblyman Gregg--

ASSEMBLYMAN GREGG: If I get to come back.

ASSEMBLYMAN STANLEY: --just have all of the members please restrict your comments, your questions -- and hopefully your questions and not your comments -- to No Child Left Behind. Please. I mean, we will be here all night. (laughter)

ASSEMBLYMAN GREGG: I will honor that as well as all the other members do. And with that said--

ASSEMBLYMAN STANLEY: Going forward, please.

ASSEMBLYMAN GREGG: I have one last question.

The answer to my question was, it wasn't to the authorization number, because, historically, authorizations are always higher than appropriations. And every member of Congress knows that when they vote for something. If they didn't, they clearly should have mandated it be an appropriation in the bill, as opposed to an authorization, which is clearly legal.

Following your last statement, is there any requirement in No Child Left Behind that a state must join No Child Left Behind?

CONGRESSMAN HOLT: Actually, you do raise a good point. A state can opt out. To my knowledge, no states have yet opted out, although there are a number of legislatures and state boards of education that are talking about it. Given the amount of money at stake, I would be surprised if any states actually opt out, but it is discussed.

ASSEMBLYMAN GREGG: And I appreciate that answer, as well. I think we are different. In the State of New Jersey, when we have a State mandate/State pay, we require you to do it. And then we should fund it. In this case, it is more like a transportation project, or a transportation issue, when we hold something over you saying, "If you don't have certain speed limits, we won't give you money. If you don't pass certain legislation that relates to driving while intoxicated, we will not give you certain money." This falls in that kind of a situation, where I don't think anybody wants that to occur, at all. I think we want No Child Left Behind to move forward, and we want the benefits of it to happen.

The term *Federal mandate* has been used, and I think it should be pulled back to-- Certainly, there is a carrot and stick here, but New Jersey is not required to stay. And as the Commissioner said, if he believes that we are doing better, and we don't need these enhancements -- because we're moving forward, and all of our kids are educated perfectly -- maybe that's what we should do. I don't think I would be voting for that. I think we do need some higher standards and some clear benchmarks to ensure that no children are left behind.

I thank you for that indulgence.

And thank you for the honest answers, Congressman.

ASSEMBLYMAN STANLEY: Thank you, Assemblyman.

Thank you, Congressman.

Any other questions for the Congressman? (no response)

Oh, sorry, Assemblywoman Voss.

ASSEMBLYWOMAN VOSS: Thank you, Congressman, for being here.

I ask my question as an educator and administrator for over 41 years. And, certainly, we have no problem with the intent of the law. But just for my own edification, and I think for the edification of many of the educators in the room, was this legislation crafted primarily by the politicians or by the Department of Education?

CONGRESSMAN HOLT: Assemblywoman, I can't really answer that. It was done with a -- as I have learned from conversations with my colleagues and also just reading, in the paper, accounts of it -- a not small group of people. I mean, it was not three or four people who got together. But it was a group of people who were -- some of whom were professional education association types, lobbyists; some who were in the President's administration, including the then, brand new Secretary of Education; as well as committee staffs of Senator Kennedy and Senator Jeffords, and Representative Miller and Representative Boehner, and so forth.

ASSEMBLYWOMAN VOSS: I don't mean to interrupt you, but I ask this question, because as someone who, in a classroom or in a school, would have to implement some of these, I find many of the provisions very unrealistic.

And my second question is -- and I think you alluded to this a little while ago -- are there, at the present moment, any attempts to amend certain aspects of this legislation, which very -- really needs several amendments, from my perspective? Are there any amendments in the works, at this point?

CONGRESSMAN HOLT: It depends on what you mean by *in the works*. Various members have suggested some changes to the bill, but there is nothing that is moving through the committee process now toward the floor. So

I would say that-- I guess if the President urged it, it's something that -- some changes could happen within months.

ASSEMBLYWOMAN VOSS: You mentioned--

CONGRESSMAN HOLT: But short of a demand from the President that something be changed, I think we are probably many months or even years away from legislative amendment.

ASSEMBLYWOMAN VOSS: My last question. You alluded a minute ago to the fact that some states are contemplating opting out of compliance with this. If a state opts out, does that mean that they will get no Federal funding? What would be the ramifications of opting out?

CONGRESSMAN HOLT: Various programs -- educational programs such as special education would still be available to a state that chose not to participate in this. But everything that is authorized under what used to be known as the Elementary and Secondary Education Act, now known as No Child Left Behind, would not be available. So that would be Title I. And after-school programs, some teacher development programs, and so forth--

ASSEMBLYWOMAN VOSS: Thank you.

ASSEMBLYMAN STANLEY: Assemblyman Pennacchio, and then Assemblywoman Pou.

ASSEMBLYMAN PENNACCHIO: Thank you, Mr. Chairman.

I'll try to keep it to two questions.

First, thank you, Congressman, for coming forth to this Committee, again.

I just want to echo Assemblyman Wolfe's numbers. He did it by percentage. I want to read out some numbers to you. And if there's any

disagreement at all, I want you to let me know, because these are Department of Education numbers. And I understand there is a representative. And I will challenge him or her for having given me those numbers. (laughter)

Under the previous administration of President Clinton, there was \$15 billion spent on Federal elementary and secondary education. Under George Bush, it's \$25 billion. The '05 budget, under President Bush, will spend \$38.7 billion for K-12 education. Under special education funding--

ASSEMBLYMAN GUSCIORA: Is this applicable to No Child Left Behind?

ASSEMBLYMAN PENNACCHIO: Yes.

ASSEMBLYMAN GUSCIORA: So these are the figures you're quoting--

ASSEMBLYMAN PENNACCHIO: I want to make sure that the numbers I was quoted from the Department of Education, to date -- past, present, and to date -- are correct. Otherwise, we will challenge whoever comes here representing the Department of Education.

ASSEMBLYMAN GUSCIORA: But you're citing numbers to implement No Child Left Behind.

ASSEMBLYMAN PENNACCHIO: Well, in total for education, inclusive of No Child Left Behind.

ASSEMBLYMAN GUSCIORA: Well, I think we should stick to No Child Left Behind, because then we're getting off the subject.

ASSEMBLYMAN PENNACCHIO: Well, it's very brief.

ASSEMBLYMAN GUSCIORA: All right.

And the other thing is, I think we all appreciate the Congressman coming. We certainly invite all Congressmen, on both sides of the aisles, to come. And I think we should remain cognizant of being courteous to--

ASSEMBLYMAN PENNACCHIO: And I--

ASSEMBLYMAN GUSCIORA: Because we want to do that for both sides. And we don't want to play "got you." We're just here to get information.

ASSEMBLYMAN PENNACCHIO: I believe I was.

Just very briefly, very quickly--

Special education funding is now \$11 billion, within the last few years. Under the implementation of No Child Left Behind, it was \$5 billion in the previous eight years. And Title grant money, as we know -- which goes specifically targeted to disadvantaged children-- Under President Clinton, in No Child Left Behind, it was \$14 billion. The previous eight years it was \$7 billion. Do you disagree with any of those numbers, to the best of your knowledge?

CONGRESSMAN HOLT: Well, there was no No Child Left Behind under President Clinton, so it's hard to make the comparison. We can look at Title I, or we can look at the total Department of Education budget. Indeed, I hope I didn't lead anyone here to believe that there have not been increases in the total funding for education from the U.S. Department of Education. All I'm saying is it falls short of meeting either the expectations or the requirements created under this legislation.

ASSEMBLYMAN PENNACCHIO: Thank you.

CONGRESSMAN HOLT: And I wouldn't want to include IDEA, special education, in this at all. That's a separate pot. I wouldn't want to

include funding under the National Science Foundation for developing educational programs. That's a separate matter. Those things that are normally reauthorized or authorized under the Elementary and Secondary Education Act -- that's reasonable comparison. And there has been some increase in that.

ASSEMBLYMAN PENNACCHIO: Well, it's a little more than some, it doubled -- aren't the last three years -- relative to the eight years prior to that?

ASSEMBLYMAN STANLEY: Again--
Congressman, I apologize.

But really, if we could stick-- And there's so much to No Child Left Behind that I don't think we have to go -- we have to deviate from that subject matter for this particular hearing.

ASSEMBLYMAN PENNACCHIO: It's important to all those children that these questions get answered, Chairman. And I do have one more question.

And it's good that we have both representatives from the State Department of Education, as well as the Congressman.

Because, Congressman, as you know, we spoke briefly about Title I money. There's a program -- I understand a new program called Supplemental Service Provider, within Title I, which gets extra tutorial services for kids that are disadvantaged, that are at risk and at need. The numbers I got -- you may not know the numbers -- \$1,279 per child for extra tutorial services.

Now, perhaps the State can answer me why, given the opportunity, a city like Newark, which had the opportunity to fill 3,500 slots of moneys

given to them, only filled 2,300 slots? Would anybody be able to answer that question?

ASSEMBLYMAN PAYNE: Mr. Chairman, I might be able to answer that.

ASSEMBLYMAN STANLEY: Well, if--

ASSEMBLYMAN PAYNE: Point of order, Mr. Chairman.

We're on No Child Left Behind. I would certainly hope that you would direct the speaker that we're on No Child Left Behind.

ASSEMBLYMAN PENNACCHIO: This is directly to No Child Left Behind. This is money that we got for No Child Left Behind, directly for a city like Newark.

ASSEMBLYMAN PAYNE: The Congressman is not here to answer questions about that. Please.

ASSEMBLYMAN PENNACCHIO: What happened with that money? Why wasn't it spent?

ASSEMBLYMAN STANLEY: Assemblyman Payne, thank you.

Assemblyman Pennacchio, if you have questions for the Department of Education--

ASSEMBLYMAN PENNACCHIO: Either/or.

ASSEMBLYMAN STANLEY: --the Department of Education will certainly be here to answer those questions. But at this point, if--

I think Assemblywoman Pou has a question for Congressman Holt.

ASSEMBLYMAN PENNACCHIO: I didn't get the question answered, Mr. Chairman.

ASSEMBLYMAN STANLEY: You want a question answered--

ASSEMBLYMAN PENNACCHIO: From the Department of Education.

ASSEMBLYMAN STANLEY: --from the Department of Education. We will go back to the Department of Education. Right now, what we're doing is, we're allowing members to ask questions of Congressman Holt. And then we will go back to the Department of Education. We had to let the--

ASSEMBLYMAN PENNACCHIO: Then I'll finish up.

ASSEMBLYMAN STANLEY: --Commissioner leave. So we took the Commissioner's testimony almost in the middle of the Congressman's testimony.

ASSEMBLYMAN PENNACCHIO: I'll finish with the question with Congressman Holt, if you don't mind.

ASSEMBLYMAN STANLEY: Well, if it's a question directed at DOE in New Jersey--

ASSEMBLYMAN PENNACCHIO: No, you said I wasn't allowed to ask that, Chairman.

ASSEMBLYMAN STANLEY: Okay. All right, thank you.

ASSEMBLYMAN GREGG: He's given up. You won.

ASSEMBLYMAN PENNACCHIO: My last question--

Thank you for your indulgence.

Congressman, that supplemental service provider -- allowing that \$1,279 per pupil-- Was it the intent, when you voted on that bill, as well as Congressman Payne, as well as Senator Kennedy -- who authored the bills-- Was the intent that that money -- some of those moneys should be used to pay rent to schools that were already opened within the district -- to service the

tutorial needs of those children? Or was the intent for all that money to go to tutorial needs?

CONGRESSMAN HOLT: I'm not familiar with the program you're talking about, nor do I know the restrictions on how the funds could be spent.

ASSEMBLYMAN PENNACCHIO: Perhaps I'll let my office--

CONGRESSMAN HOLT: Whether it is only for salaries or whether it can also be spent for supplies or infrastructure, I don't know.

ASSEMBLYMAN PENNACCHIO: Thank you, Congressman.

Thank you for your indulgence, Chairman.

ASSEMBLYMAN STANLEY: Thank you, Assemblyman.

Assemblywoman Pou.

ASSEMBLYWOMAN POU: Thank you, Mr. Chairman.

Congressman Holt, I just want to personally thank you, also, for being here on something that I think is very important -- as a subject area that is clearly, perhaps, on the minds of every single citizen, not only in the State of New Jersey, but all through America -- to making sure that our children are well educated and have the resources in order to do that.

I just want to follow up on a comment or a question that you were responding to from Assemblyman Gregg. He asked the question about the opting-out piece. In New Jersey, as you know -- and your response-- It's my understanding that if any of the states were to do that we would -- actually it was Assemblywoman Voss -- forgive me -- that it would eliminate the Title I program -- or the State of New Jersey would, in fact -- would be eliminated from receiving Title I dollars.

In New Jersey, as you know, we have -- as a result of the New Jersey State Supreme Court ruling with regards to the Abbott school districts-- How does that-- And most of those funds come from Title I. How does that particular opting out, and the elimination of those funds, have an impact on the Abbott district and the continuation or the -- or us being able to meet those particular State mandated -- State statutes, and the law as we know it -- and therefore putting to risk the educational system that we believe, now, is beginning to come back in place?

CONGRESSMAN HOLT: It would have a huge effect, Assemblywoman. I question whether we could carry out our Abbott program without Title I funding from the Federal government. If we opted out of that, we would have a very hard time doing even as well as we're doing, and certainly not as well as we want to do. And I think that it's for that reason that -- and similar situations around the country -- that it's unlikely that people will opt out of this.

My message to you today was that the prospect, under the current leadership in Washington, and the current plan in Washington, for increased funding at the level that would meet the authorized level is not likely to happen anytime soon. And we ought to get used to that, and the State education folks should be planning for providing the education and complying with No Child Left Behind, and carrying out the Abbott program with only the kind of -- the level of Federal funding that they have been getting, and nothing dramatically more.

ASSEMBLYWOMAN POU: Through the Chair, it's the kind of response that I really expected you to say. So it's really not as simple as simply

saying to the Commissioner of Education, and through his assessment and that of the staff that, because New Jersey is, indeed, able and ranking on top of the -- fifth, in terms of most of our testing -- and we're able to do and have some of the stronger standards in -- throughout the country. It is not as simple as us making the decision of opting out, because of the major impact that it, indeed, will have on all the other schools, and all the other programs, all throughout our state. So something like this-- I just think-- I wanted to have you be able to clarify something to that particular area, because I think, as we move forward, we need to be mindful that one decision is not a decision that is made for -- to cover all things. One, you make a decision -- it has multiple impact. And in this case, that's one of -- that's a major concern to all of us. And that would have a major effect on this state, and something that we can ill-afford to go back and change the hands of time.

Thank you so very much, Congressman. Thank you for your time and for being here with us.

CONGRESSMAN HOLT: Thank you, Assemblywoman.

ASSEMBLYMAN GUSCIORA: Again, I wanted to reiterate our thanks for your coming, Congressman. And please don't tell your colleagues the tough questioning you've undergone, because we're trying to get some of those members here. (laughter) And if they knew the tough questioning that Assemblyman Gregg gives, I'm sure that they would still continue to stay away from here.

CONGRESSMAN HOLT: I must say, I thought my reception here was very hospitable.

ASSEMBLYMAN GUSCIORA: I think we all appreciate your testimony.

One of the things that I was struck by-- About a thousand out of the 2,000-plus school districts -- the schools in our state -- receive some type of adequate progress warning or performance warning. And two schools particularly, in your district -- school districts Princeton and Trenton -- had the absurd warning, on both school districts, for different reasons. And one of the punitive measures in No Child Left Behind is, they can either close the school or they would -- you would have to inform all the parents and give them an opportunity to go to another school. I don't know where you're going to send the Princeton school children. And at the same time, I don't know how you would completely transfer all students out of Trenton and go to another school in the suburbs. While that may be ideal, most of those schools are filled.

But just on all the punitive measures, such as transportation costs, teacher training, the tutorial measures that have to take place, and transferring students, or forming a charter school as one of the requirements-- Is there adequate funding from the Federal government to implement all these punitive measures, or will that burden fall on the State to fund those corrective measures?

CONGRESSMAN HOLT: As I was trying to say earlier -- that I believe the authorized amount is not an inflated amount, that that is -- approximately anyway -- what is actually necessary to comply with what is required and what is offered under No Child Left Behind.

Remember, the funding that comes from No Child Left Behind is not all for punitive measures, either. Some of it is for corrective measures. In the first year that a school is listed, and the second year that a school is listed,

there are supposed to be additional funds to help the school come into compliance -- funding that will help those specific subgroups that are not in compliance -- to help, as the Commissioner was talking about, correct those four indicators, even if it is four out of 40 that are sub-par. So there is funding for both kinds. And I believe, strongly, that it is insufficient both for the corrective funding, as well as what's necessary for what you might call *punitive funding*, the relocation of students, and that sort of thing.

ASSEMBLYMAN GUSCIORA: Thank you.

ASSEMBLYMAN STANLEY: Well, I just want to say thank you, again, Congressman Holt. I don't see any more questions from our panel. We certainly appreciate your coming up here, and we appreciate the work that you're doing in Washington.

Thank you very much.

CONGRESSMAN HOLT: Thank you. It's my pleasure and my honor. Thank you.

ASSEMBLYMAN STANLEY: I know there were some members that had some questions for the New Jersey Department of Education. The Commissioner had to leave, but he did leave Assistant Commissioners and the Deputy Commissioner here. Perhaps they can introduce themselves, and then we can proceed with some questions for them.

I guess my first question will be -- or perhaps you can enlighten us on some of the disagreement among -- whether the dollars under No Child Left Behind are going up or are they going down in New Jersey. Based on what I have here, the actual appropriations from Washington to New Jersey are going down, under No Child Left Behind, this year from last year. And next year, the

anticipated amount is going to be reduced again. Can you just clarify that for us, also?

ASST. COMMISSIONER ISAAC BRYANT JR.: Yes, Mr. Chairman.

Our latest figures at -- indicated in State Fiscal Year '04 -- now this is just for NCLB funding. We got, in New Jersey, \$453 million. The next State Fiscal Year '05, it went to 451, which was a drop of about \$2 million. And the proposed for State Fiscal Year '06, is 441, which is a drop of about \$10 million. But within that, there was also an increase of about 5 million for State improvement grants. So it was maybe a net loss of about 5 million, so less than 2 percent.

ASSEMBLYMAN STANLEY: Thank you very much for at least clearing that up.

I want to ask you about the -- about how a school district like, perhaps, Princeton can be on an early warning, and how some of our stellar school districts can actually be either considered needing improvement or early warning. Maybe you could clarify that. And if there are any proposals that you have, or that we see coming from Washington -- am I correct--

ASSISTANT COMMISSIONER BRYANT: Yes. Well, first of all, as the Congressman and some of your members have indicated, the means in which schools are identified are based on 41 indicators. And the 41 indicators come from a number of different -- racial ethnic breakdowns, economic disadvantage, whether or not students are English-language learners, etc. Then you multiply that times assessments in both Language Arts literacy, as well as

mathematics. And then you also look at the various subgroups, based on their participation rates. So, therefore, when you put all this together--

Let's, as an example-- If your special ed population happen to fall below the proficiency standard that the State had established, let's say, for Language Arts literacy, that would be one indicator that was not met. Then that school would be identified as being in need of improvement. So, therefore, even in a very well-run school district, that very well could happen, especially in smaller districts, where the numbers are very small -- where sometimes we found as few as one student in a small subgroup category could make the difference between meeting that indicator and not meeting it.

D P T Y . C O M M I S S I O N E R D W I G H T R . P F E N N I G :

There's also the problem that within those 41 indicators -- that one student could actually cross into more than one of those indicators and, therefore, be counted more than once as that percentage that might get you into the early warning status.

ASSEMBLYMAN STANLEY: Are we going to see a change in this, or is this something that's being proposed to be changed in Washington?

ASSISTANT COMMISSIONER BRYANT: Well, we have, in New Jersey, taken advantage of all the flexibility that the Federal government has given. And we think that when we release the figures for the past assessment cycle, which was this past spring -- coming up within the next week -- that there will be a pretty marked reduction in the number of schools that are actually going into more stringent identification and whatever. And by that -- it was alluded to the fact, with the English-language learners, we're now able to count those students, once they exit from the bi-lingual or ESL programs, and count

their scores for an additional year or two within that group. So, therefore, you'll find less schools being identified because of that particular subgroup.

The other area that we're also still discussing with the Federal government, as many other states, is with the students with disabilities, because we feel that the 1 percent figure is a bit low, in terms of the number of students that we consider to be the gap students that are not extremely cognitively delayed. But, also, there are a number of students that, probably, it's unrealistic to expect them to be functioning on grade level, as well. And the Federal government has said that they are looking at that. And I think part of that's tied up with the reauthorization of IDEA. So I think there might be some flexibility coming out in the future in that regard.

ASSEMBLYMAN STANLEY: Let me-- And I think this pertains to that.

If there are any other members who have questions, please indicate-

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Just one other question, and it particularly is responding to what you just said. And that is, if a child is on a fourth or fifth grade level, is there still a requirement that that child, if, age wise, he should -- he or she should be on a sixth or seventh grade level -- that they be tested on the seventh grade level? Or has that been changed? It's my understanding that with special education students -- that you're required to be tested on the level that you're supposed to be, not on, necessarily, on cognitive level. Has that been changed or addressed?

ASSISTANT COMMISSIONER BRYANT: It has not been changed. But as the Congressman, or someone else, had indicated, states are allowed to give what they call APA, or alternate proficiency assessments, for

those students that are least able to meet the grade level expectations. But the caveat is that the number of students -- in a state, now -- we're looking at it statewide -- cannot exceed 1 percent of the total tested population. So, therefore, we have very complicated formulas, in terms of looking at how it affects statewide. And, so far, we have not exceeded the 1 percent here in New Jersey. But we're hearing from districts that they feel that that's extremely too low. It probably should be closer to -- 2.5 or 3 percent of the population should be given the alternate assessments and counted towards proficiency.

ASSEMBLYMAN STANLEY: Thank you very much.

Assemblywoman Greenstein.

ASSEMBLYWOMAN GREENSTEIN: Good afternoon.

ASSISTANT COMMISSIONER BRYANT: Good afternoon.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much for coming.

I'm hearing a number of things in here today. One is, certainly, the funding issue. But, obviously, the biggest issue seems to really be the standards here that would make so many really fine schools come out as low performing.

I also heard you say a little bit earlier that you thought that there was some flexibility built into the system so that this year, we won't come out looking quite as bad. I can tell you, though, being out there in the field, I hear so many teachers telling me about how upset they are about the system and the tremendous problems just in their day-to-day interactions.

And I guess I noticed a troubling statistic that -- in terms of the fourth and eighth grade reading and math tests, New Jersey students do so well.

And in spite of that, there are so many of those schools that are on this early warning system.

Summing up all of that -- at least seemingly contradictory, but probably not that contradictory information -- what are some of the suggestions you can make for changes in the system? Where do you see changes needed, if that is easy enough to sum up? Where would you like to see change? If the Federal government came to you now and said, "We would do whatever you feel you need in New Jersey," what would that be?

ASSISTANT COMMISSIONER BRYANT: Well, from my own perspective, I would say, probably, more flexibility with the disabled category. That would probably have the greatest net effect across the state, in terms of who would be identified and who wouldn't.

The other part, probably, would be to allow the State Department of Education to work more directly with the districts, as opposed to schools. Because when you talk about 2,400 schools within the state -- such as New Jersey -- and strong local control, and whatever -- it almost becomes physically impossible for -- at the State level -- to interact directly from State to the schools, and whatever, and bypass the district. So I know that was one area that the Commissioner has spoken on many times -- that we would like to see more of an emphasis of the relationship between the State and the district level, and let us assist districts in helping those schools within the districts that are not performing.

ASSEMBLYWOMAN GREENSTEIN: Does No Child Left Behind, somehow, prevent you from working with the districts in that way?

ASSISTANT COMMISSIONER BRYANT: Well, in some parts of the law, it prescribes that certain things must be done at the school level. And that's where there's some difficulty from the SEA's point of view.

ASSEMBLYWOMAN GREENSTEIN: And what about prior to this law? Were you able to work more with the districts at that time?

ASSISTANT COMMISSIONER BRYANT: Well, I don't think NCLB was precluding us from doing it, but I'm saying that there are certain prescriptive measures that the State has to do that are at the building level -- which I'm saying just the sheer numbers make it relatively -- very difficult for us to do.

ASSEMBLYWOMAN GREENSTEIN: Is there-- The last question I have is this: Is there anything that we can do, that you would be able to think of, on the State legislative level that can assist you in some of these problems? Legislatively, I guess. Or would the change have to come through the Federal government?

DEPUTY COMMISSIONER PFENNIG: I think the change has to come through the Federal government. But I think the work that you're doing, with regard to having testimony such as we have today, and working with the folks on the Federal level, is extremely important. Because that helps us in our efforts as we work, on a national level, with organizations like CCSSO, which is the Council of State -- Chief State School Officers -- on those issues of flexibility. And, of course, your input to our legislators, as we do, as well.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.

Assemblyman Malone.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

The Commissioner has, I guess, often spoke about this No Child Left Behind, and we've had a number of hearings to discuss this issue. I guess-- Are we really our own worst enemy, when it comes to this piece of legislation, and the level of performance? For example, Princeton High School-- I can't imagine Princeton High School-- If you took Princeton High School and put it in some other locale in the country -- would not be performing and meet every standard. Is that a reasonable assumption?

ASSISTANT COMMISSIONER BRYANT: Assemblyman, I would say probably, if we're looking at the aggregate and average scores, that would be true. But, still, once you start unpeeling the layers of the onion, there may be subgroups within that community that are not performing at the same level as most of the other students. And I think that's probably in--

ASSEMBLYMAN MALONE: In the state or in the nation?

ASSISTANT COMMISSIONER BRYANT: I'm saying in that particular school district that you had mentioned.

ASSEMBLYMAN MALONE: But if our own standards are so much higher than state X or Y-- I mean, we're not comparing a Princeton school with a school that may be in some other state. We're comparing it to other schools within the state.

ASSISTANT COMMISSIONER BRYANT: That's correct.

ASSEMBLYMAN MALONE: And the deficiencies, really, are created because we have such high standards. Is that a reasonable assumption?

ASSISTANT COMMISSIONER BRYANT: I would say to some extent it would be. That's, maybe, a result of our success, here, in New Jersey.

ASSEMBLYMAN MALONE: And getting back to the point that the Congressman made about all this money that came from the Federal government for teacher training and professional development-- How much money was allocated out of that? Was that something that was a State pass through, or was that directly given to school districts by the Federal government?

ASSISTANT COMMISSIONER BRYANT: Okay, I don't know whether--

ASSEMBLYMAN MALONE: The Eisenhower funds that he was talking about, which were such fantastic amounts--

ASSISTANT COMMISSIONER BRYANT: Yes.

ASSEMBLYMAN MALONE: Did that get to school districts?

ASST. COMMISSIONER RICHARD C. TEN EYCK:
Richard Ten Eyck, Assistant Commissioner.

The Eisenhower Grants were flow-through moneys that went directly to school districts, as do the Teacher Quality Enhancement Grant moneys that are specifically to K-12, versus teacher preparation programs. Both of those are direct--

ASSEMBLYMAN MALONE: And we have an accounting for that money going into funds for teacher improvement at various school districts?

ASSISTANT COMMISSIONER TEN EYCK: Part of the State-aid package include -- has always included the amount of money for the various entitlement programs, so that when I was a superintendent, there was an Eisenhower allocation and, just as there is now, a Teacher Quality allocation.

ASSEMBLYMAN MALONE: And it was utilized as such by the school districts?

ASSISTANT COMMISSIONER TEN EYCK: The ties, the restrictions for Eisenhower money was that it had to be used for staff development for math and science, and/or science.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

ASSEMBLYMAN STANLEY: Thank you, Mr. Malone.

We're back at Eisenhower. (laughter)

Any other questions for the Department? (no response)

I have a question with respect to the remedies in No Child Left Behind -- some of the things that a school district would have to do if they're found needing improvement.

Can you just speak to the 5 percent that has to be, I guess, encumbered or held in escrow, or used for remedial purposes that come out of the Title I funds, where there is no increase in Title I dollars. From my understanding, a school gets a certain amount of Title I funding. And if they don't show improvement within a certain time period -- maybe you can give us the specifics -- they have to take some of this existing Title I money and put it aside for maybe tutorial or remedial programs. What happens with the items that were being paid for by the 5 percent already? I mean, those could have conceivably been dollars for a reading specialist or some other tutorial type of programs. So we end up taking money from one end of the pot and putting it in another end of the pot, and calling that remedial when, in fact, we took from

a remedial to create another remedial program. Can you just explain that to me? I'm a little confused.

ASSISTANT COMMISSIONER BRYANT: Yes. I think your assessment is accurate, Chairman Stanley. There is a certain amount of money, based on your poverty count and whatever, that you get for Title I. If, after two years of not making adequate yearly progress, you're identified as a school in need of improvement, the first sanction level is offering school choice which, of course, is difficult here in New Jersey, because probably 40 percent of our schools -- there is no choice, because it's only a single school, so therefore, there is no other place to go. And the law does not require going across the district lines.

If you continue not to improve for an additional year -- and one of the Assemblymen asked that question about the supplemental services -- then there also is an additional 10 to 20 percent of that same pot that must be set aside for the supplemental educational services. And there, of course, you opened up the opportunities for community-based organizations, school districts, faith-based organizations to come forward to say that they will provide the tutoring services, and whatever. And that comes out of that same pot of money. It's not an additional pot on top of what you're getting in Title I. And, right now, we have about 175 approved supplemental service providers here in the state.

I don't know whether that answers your question fully, but--

ASSEMBLYMAN STANLEY: It certainly explains it, but it would appear to be that there would be some type of a-- That's a negative budget consequence that has to be filled in some other way, either at the local level or

at the State level. And I think that's one of the things that, perhaps, Congressman Rush was talking about when he mentioned that we're not really funding the remedies in a lot of cases.

With respect to the 95 percent-- From what I understand, there's a requirement that 95 percent of the students are tested. And if you don't meet 95 percent, that's another category within the framework that gives you another mark. And if you get four marks, you're in need of improvement. Do we have a 95 percent attendance rate in the State of New Jersey on any given day? It just seems to be a little high mark.

ASSISTANT COMMISSIONER BRYANT: Well, actually, the 95 percent participation rate refers to each of the 10 subgroups' participation on the Language Arts and on the mathematics part of the test. So you get all those permutations. So, consequently, the question was asked, in a high-performing school, if on a given time you had less than 95 percent of your African-American students that did not take the Language Arts literacy test, and whatever, that would be a fail indicator. So, therefore, you would be considered in need of improvement, just by that one. You don't need to fail four, just one.

ASSEMBLYMAN STANLEY: Well, thank you.

Any other questions from any of the other members?

Chairman Reed.

ASSEMBLYMAN GUSCIORA: I think I talked to Rush Holt about it-- I'm wondering who is going to pay for -- responsible for-- Evidently, it costs money to come up with the new standardized test. Who would pay for that test? Who would pay for the transportation, in case a school is deemed failed, to transfer kids out of a Trenton school system into a suburban school

system? Who is responsible for the teacher training? Is that something that's going to be the State's responsibility, or will the Federal government pay for all those ancillary costs to implement No Child Left Behind?

ASSISTANT COMMISSIONER BRYANT: Well, I can answer part of your question. In terms of the cost for students going to a different school, that would be born by the district out of their Title I funds. So that would be taken out of that 10 to 20 percent that Assemblyman Stanley had spoken about. In terms of the specifics concerning the cost for the assessments-- At this point, because we have a high-stakes, secured -- State-level testing and whatever, which will increase in the grade levels covered in the future years -- the amounts are significant. And my colleague, Mr. Ten Eyck, can share that with you.

ASSISTANT COMMISSIONER TEN EYCK: The State, currently -- prior to NCLB -- had tests in grades 4, 8, and 11. The Federal requirement is for tests in grades 3 through 8 and 11, which means that the State is required to add tests in grades 3, 5, 7, and 8. The annual contract cost for those tests has been running between \$3 and \$4 million a year. The Federal allocation, increased for assessment, is approximately \$9 million. So there's a shortfall.

ASSEMBLYMAN GUSCIORA: And transportation, would that be born by the State -- to transport a student from another--

ASSISTANT COMMISSIONER TEN EYCK: No, I believe that Assistant Commissioner Bryant indicated that the -- any remedial transportation needs are born by the district and paid for either out of the Title I allocation or, failing sufficient funds there, out of district funds.

ASSEMBLYMAN GUSCIORA: And teacher training to get their certifications-- Who would pay that?

ASSISTANT COMMISSIONER TEN EYCK: There is a certain amount of funding under No Child Left Behind for teacher training. Those teachers who have to incur additional costs for -- to meet the highly qualified provision -- would be born, most likely, by either the teacher or the district.

ASSEMBLYMAN STANLEY: Well, thank you very much. We certainly appreciate your testimony.

I imagine you'll-- I don't know if you're planning on leaving -- or perhaps we might be able to come back to you if we have some other questions that come up? Is that possible?

ASSISTANT COMMISSIONER BRYANT: Yes.

ASSEMBLYMAN STANLEY: Okay.

We thank you very much and appreciate your testimony.

Next we have Brian Jones, General Counsel to the U.S. Department of Education.

Mr. Jones, we appreciate you joining us today. We certainly look forward to your testimony. I'm sure there will be a lot of questions.

B R I A N W. J O N E S, E S Q .: But it's my pleasure to be here, Mr. Chairman. I want to thank you and Chairman Gusciora.

ASSEMBLYMAN GUSCIORA: You have to press the button.
(referring to PA microphone)

ASSEMBLYMAN STANLEY: Red is right.

MR. JONES: Red is right? Okay. Very good.

I want to thank you, Mr. Chairman Stanley and Chairman Gusciora, for the invitation to be with you here. I can say it's always a nice invitation for me to get out of Washington whenever I can. So I thank you for that.

I've been here listening to all of the testimony today. And, of course, we're talking today about the No Child Left Behind Act and, specifically, the implementation of it. But I think there are a couple things that bear emphasizing. I mean, I actually was struck listening to Congressman Holt and some of the others. And I think it's important to listen carefully to what's being said here.

Again, the No Child Left Behind Act, as it's been said today, has, as its core, the idea of closing the achievement gap. We, in this administration, arrived in 2000, staring down the barrel of some very alarming numbers. When you look at the scope of the achievement gap in the country, when you saw the year 2000 NAPE score showing that about 40 percent of white fourth graders in the country read at a proficient fourth grade level -- that is, read at grade level. You compare that to about 16 percent of Hispanic kids reading at that level, 12 percent of African-American kids reading at that level. And, certainly, we approach this issue with a real sense of urgency. And that is, of course, how we came to the No Child Left Behind Act. And it's been said here today that it was a bipartisan achievement on the hill. I think it is worth noting that the vote on that bill, I think, was somewhere in the neighborhood -- I've got the actual number -- 381 to 41 in the House of Representatives. I know there were probably fewer than 15 votes against the Act in the Senate. So, again, I think

that there is broad consensus about the need for this kind of emphasis on closing the achievement gap.

But I think there's also a broad consensus, too, about a commitment to backing up what it is that the law requires, both from our perspective at the U.S. Department of Education -- a real commitment to trying to be as flexible and as attentive to the practical realities on the ground as we can be. And then, also, of course, on a more global scale, a commitment to funding the Act.

It's been said here, accurately, that the President has increased funding for -- and the Congress have increased funding for this Act by about 36 percent since the President took office. It is funded at about \$25 billion for the current Fiscal Year '04. And if you focus on Title I, the provision of the No Child Left Behind Act, which is really designed to focus on the most disadvantaged kids in the country -- it's the big chunk of the No Child Left Behind Act -- that level of funding has increased by about 52 percent since the President took office. So these are not, sort of, insignificant increases that we are talking about.

There was also some discussion -- and I want to, sort of, note this point too -- that the other area where the No Child Left Behind Act has really focused -- apart from state standards, and state assessments, and that sort of thing -- is on this requirement of teacher quality. If there's one thing, again, that we know, it's that the more disadvantaged a kid's circumstance is, the more likely that kid is to be taught by a teacher who is not a highly qualified teacher, one who really knows and has a command of the subject area that they're being asked to teach. And so the law, from a national perspective, of course, said

that, "Look, by the end of the '05-'06 school year, we've got to make sure that every kid in this country is being taught core academic subjects by a teacher who is well-qualified to teach that subject."

New Jersey, of course, is a leader in that regard. I think about 90 percent of the teachers in this state are highly qualified under the definition of the No Child Left Behind Act. And I think that's something this state is proud of. And, of course, it's no surprise. We've heard lots of talk about the high standards in this state.

But a note on the funding levels for teacher quality efforts-- There has been a lot of discussion today here about the Eisenhower Teacher Quality program. Congressman Holt referenced that. And I think that we can make a mistake in these kinds of debates when we begin to focus on one discrete program. The fact of the matter is, as Congressman Holt noted, the Eisenhower program has been zeroed out. But that's not to say that the administration is not committed to teacher quality and to professional development for teachers.

In Fiscal Year 2004 -- the one that we're currently working in now -- there was a commitment of \$4.4 billion by the Congress and the President for teacher training. And that ranges across nine programs -- nine discrete programs that are specifically focused on teacher training. And then it also includes, though, money in the Title I program that can be used for teacher training in states. That bottom line is increasing.

And then, too, there was a reference, also, to personal costs that teachers might often bear for personal training. And you should note, too, that the No Child Left Behind Act also provides for \$406 million in potential loan

forgiveness for teachers who take out loans in order to go back to school in order to improve their training, their professional development.

And then there's also a teacher tax deduction. There's \$163 million budgeted in '04, and a proposed increase of \$229 million in the '05 request. And so that actually takes-- If you consider the requests for the range of teacher training programs in the President's budgeting for the Fiscal Year 2005, we're at about \$5.1 billion in money that the states can use for teacher training. And, again, that's an increase over \$4.4 billion in Fiscal Year '04. And so we should not make a mistake, I think, by just focusing on one discrete program when we have decided that there are other and more effective ways, I think, to deal with teacher quality.

But at the end of the day, too, the other factor that I think is important to bear in mind here is a real emphasis, a real effort at the Department of Education to try to stay focused on what's happening on the ground and to be flexible where we can.

Let's not forget, my boss, the Secretary of Education -- and I didn't adequately introduce myself, I suppose, at the beginning. I should note that I'm the General Counsel of the U.S. Department of Education. And I also serve, along with the Secretary, the Deputy Secretary, and the Under Secretary, on the Secretary's executive management team, which is, sort of, the principal policy approving body of the agency. But we have tried to stay very focused on the practicalities, what's happening on the ground in the states.

Congressman Holt referenced, for example, a few areas where we have moved to try to bring more flexibility, to try to address practical difficulties with the implementation. He talked about the effort that we've made to try to

deal with the problem that you have-- For example, a population of special education kids, who may be so seriously cognitively disabled that there may be some need to measure their progress against a separate set of achievement standards. Again, that's something that we have moved. We saw the problem on the ground, and we have tried to move to bring about that flexibility. That new regulation, for example, also notes that if a state believes that there are more seriously cognitively disabled students in their jurisdictions than our regulation permits them to count, using alternative achievement standards, that there is an avenue for them to come and appeal to the Department to try to get the ceiling raised for that particular state.

We've done the same kind of thing in the context of English-language learners. We recognize this problem that someone here this morning -- and I don't recall who -- mentioned about this problem of -- you have an English-language learner. They learn English. They move out of the category, and so you're stuck with a category of students that consistently poses a problem, because as students improve, they move out of the category.

Well, we undertook to address that problem to the extent that we could, given the statute. We now have guidelines in place that says that states can actually count a student for two years after they leave that category of limited English proficient, in order to try to acknowledge the fact that it creates a problem if the minute a kid becomes English proficient, he or she moves out of the category.

And we've done that, too--

Chairman Stanley, you mentioned the issue of the participation rate and that requirement that 95 percent of the kids ought to be tested in order for a school to be making adequate yearly progress.

And, first, let's remember why the participation rate is there. The point is, the No Child Left Behind Act has, as its fundamental idea, the idea that every kid can learn, and that every kid ought to be counted, and every kid ought to be accounted for in the system. And so there was lots of talk in the country -- and this is what Congress was responding to -- about these accountability systems where, on the day of the test, you'd have people who would encourage certain students to stay at home that day, the day that the test was administered. That way, the kids who were a "problem" wouldn't drag down scores for the rest of the school. The Congress and the President recognized that that was a problem. It's a charade if we say we're going to account for the achievement of every kid, but, yet, you allow some kids not to be counted in that way.

But we recognize that, obviously, there are going to be times when -- to use, I suppose, an arbitrary 95 percent cut off in some ways, to allow that to be sort of a hard bar so that, in some cases-- If you've got, for example, a -- and this is a real example that we've seen -- a flu epidemic occurs during the testing window, and so you've got a group of kids who may not be there, because they're sick. That's one of the things that we move to address. Now states can actually exempt, from the denominator, those kids who might be missing a testing window because of a serious illness.

We also decided that it would be important to allow districts and states to be able to average their participation rates over a number of years.

That way, if you have a little dip in one year, and you end up being at 94 percent one year, you don't necessarily get penalized by that blip on the screen -- that statistical blip. We now allow you to say, "Look, we're going to look over the course of three years." And if you average out at 95 percent, well that's right. That way, we accommodate the fact that there's always going to be a little movement in who's able to participate in testing.

The point that I'm trying to make, here, is that I think we really have tried, at the Department of Education, to stay very focused on the practical needs of districts. We responded. Commissioner Librera noted that perhaps we don't work as quickly as we ought to. And that's one of the things that, look, we're very focused on. But part of the trick here is trying to make sure that we're really understanding what's going on on the ground, and we respond as quickly as we can.

We're a government agency. We're an administrative agency. And I think I'm not telling anybody here anything you don't know -- to know that government agencies don't always move with light speed when we deal with these kinds of things. But I'll tell you, this law's been in place for two-and-a-half years now, and we have made some serious strides towards improving flexibility. So I think that's a good thing. But the bottom-- At the end of the day, I think what we're all in agreement with here -- and I heard it from everybody that I talked to -- is that the goals of the law are essential. In fact, I would argue that they're urgent.

I think where we do also agree -- and the Congressman noted this too -- is that there are serious increases in the funding that this President has supported. I think where we have a disagreement is exactly how much is

enough. I think that we, in the administration, are quite proud of the support that we've given the schools under the No Child Left Behind Act. I can tell you, I'm a Californian myself. I've been in Washington about three-and-a-half years. And it's just simply a fact of life in Washington. I have yet to hear anybody in Washington say, "I have enough money, thank you. I don't want any more." But the fact of the matter is, here we are committed to increasing funding, provided, of course, that that funding follows serious accountability and accountability for every kid in this country.

Thank you very much.

And with that, I'm happy to take your questions.

ASSEMBLYMAN STANLEY: Thank you very much. We certainly appreciate you coming up and sharing your information with us.

I guess my first question is that you indicated that there has been an increase in funding for No Child Left Behind. Yet, in New Jersey, we anticipate decreases in funding. I'm sure you anticipated this question. Why aren't we getting our fair share in New Jersey? How come everybody else goes up, but we go down?

MR. JONES: Mr. Chairman, I did, in fact, anticipate it, and opened up to my budget page here as you started with the question.

And you have noted that there was a drop off in funding for New Jersey in this year, 2004. I think it's important to note -- and these are numbers that I have from the Department of Education budget office, who basically keeps track of all the money that goes out of the door of the Department. And actually, if you look at total No Child Left Behind Act spending, it actually has increased from year to year -- from 2003 to 2004. In the Fiscal Year 2003, there

was \$465.298 million provided to the State of New Jersey under all No Child Left Behind Act programs. In Fiscal Year--

ASSEMBLYMAN STANLEY: I don't mean to interrupt you, but for our-- Did you say Federal Fiscal Year 2003?

MR. JONES: For Fiscal '03.

ASSEMBLYMAN STANLEY: That's Federal fiscal year you're talking about.

MR. JONES: That's right, Federal Fiscal Year '03 -- \$465.298 million.

ASSEMBLYMAN STANLEY: Well, we've got \$453 million. That is what we received.

MR. JONES: Well--

ASSEMBLYMAN STANLEY: So we better find out where that other money went.

MR. JONES: That's right. Exactly.

But then you move to Fiscal Year 2004, and we move up to \$467.210 million.

Now, there is a dip from '03 to '04 in the Title I program, which, as I said, is the part of the No Child Left Behind Act that is focused on the most disadvantaged kids. In '03, it looks like about \$272 million, and then in '04, it was \$266.5 million. But, again, it's important to remember that the Title I program is a formula grant program. It operates on a formula that simply looks at, sort of, the percentage and the number of disadvantaged kids that a particular state serves. And so that's what that is. It's just an operation of the formula.

Now, fast forward, though, to the President's budget request for 2005, and, actually, there is an increase in funding. The President proposes what would work out, given the current formulas, to be about \$463 million in No Child Left Behind Act funding for New Jersey. And even Title I funding would increase to about \$272.7 million.

But, again, setting aside the '05 request for the moment-- Again, that's in the hands of Congress at this point. But what is clear is that funding for No Child Left Behind Act programs, from Fiscal Year '01 to Fiscal Year '04 -- this is the time within which we're dealing with No Child Left Behind, and in which this administration has been in, in Washington -- there is a net increase in Federal No Child Left Behind Act funds flowing in the State of New Jersey in the amount of about \$137 million from '01 to '04. So it's quite clear that the trajectory in New Jersey, as it is elsewhere in the country, is upward. And so, again, we'll work out the, sort of, differences that we've got with what the State Department's numbers are. But these are the best numbers I have from our budget office.

ASSEMBLYMAN STANLEY: Well, as I've said, we certainly want to work that out, because there's about a \$12 million difference in the first year, and a \$16 million in the second. Now, I know, in the greater scheme of things, in the Federal government, it's not a lot of money, but I'm sure any district would like to have it.

MR. JONES: We'll work that out.

ASSEMBLYMAN STANLEY: One of the issues that has certainly been raised is the fact that -- and I understand the constitutional law and the

fact that the states are really mandated with education -- but when the Federal government funds, the Federal government can mandate and dictate.

But one of the issues that has come up is the amount of money that it costs to implement No Child Left Behind, versus the amount of money that the states are receiving. And this is not just in New Jersey, but throughout the country, this particular issue plays out. And I believe it's somewhere around 2 percent that -- 2 percent of a state's budget that would need to be used for the provisions of No Child Left Behind. And the actual allocation of moneys under No Child Left Behind is about 1.5 percent of a state's budget. And many of the states -- and I know the National Conference of State Legislatures has, in fact, been lobbying Washington for increased dollars for No Child Left Behind, and also the issue we spoke about before -- the remedial issue, where the money comes from the Title I pie. And it's not any new money. It's just money that a district has to take from its existing Title I pot to deal with remedial issues.

So I just want to know, is the Department going to ask for additional funding, with respect to No Child Left Behind, so that the cost will be born more by the Federal government? And with respect to remedial dollars, are we going to see some real dollars infused into Title I?

MR. JONES: Well, the answer to the question of whether the Department -- and, in this case, it's the Department, through the President's budget submission -- has, in fact, asked for more money for No Child Left Behind in the '05 budget request. As I said, moving from -- moving out to about \$468 million, it appears. So, yes, I mean, there is a request for an increase.

If I might, though, you talked a bit about this use of Title I money for the remedial purposes that you talked about. And I think it's also important to keep in mind what these remedial purposes are about. And we've talked and heard a little bit of testimony today about the public school choice option and about supplemental services, and all the rest, and the allocation of 10 to 20 percent of Title I funds. And I think it's easy to view that as a punitive requirement that impacts, negatively, the districts and the state. But it's important to note that what the emphasis of the No Child Left Behind Act is about, in very large measure -- is about parental involvement, parental empowerment. As you all well know, transparency is an important element of the No Child Left Behind law. Every state, every school district is required to publish a report card every year. Every state's got to publish and send the Department of Education its lists of schools and improvement status.

The reason for that is because we want to make sure that parents know what's happening in their local school communities. And part of that also is about empowering parents with a seat at the table of reform, so to speak. When you look at the public school choice element, when you look at the supplemental service requirement, and the like, and the money that flows-- The reason why the Title I funds are required to be dedicated is because we want Title I funds to be about the kids and not about the system. We want kids and their families to be empowered with a choice; to say that you are not a captive of a school that doesn't serve your child well if the school, over some period of time -- in this case, two years in improvement status -- you've got this public school choice element.

And so the idea is that Title I funds are supposed to be focused on improving education for disadvantaged kids. That's what it's about, improving education for disadvantaged students, not about the system. It's not about the districts. And so, by putting that money aside, and making sure that it's available to kids-- I think that that's the way we begin to try to bring to bear the dynamic in the system that says, "Look, there's now an incentive for reform, because parents are going to be involved. They've got the information they need. They've now got a choice." And at the end of the day, I think that that's a pretty good expenditure. It's a pretty good investment for Title I.

ASSEMBLYMAN STANLEY: That's-- I don't think anyone debates the issue of whether a person should have supplemental programs, things that would help the child. I don't think-- That's certainly not part of my debate. And I appreciate your oration.

But the fact is that what you would be doing is taking dollars away from existing Title I funds and saying, "Okay. Regardless of what you were using those funds for, you now don't have access to those funds." And the problem is, in the district, those schools could, or probably are, using those funds for very important issues related to student achievement. So what happens as a result of that is, you take -- as in cases where I've heard -- where you have a reading specialist that you hired with Title I funds-- Now you have to lay off that reading specialist to make room in the budget for another program, when we really have to look at some of the parameters and some of the qualifications of those supplemental programs that we're allowing to exist. And now we don't have a reading specialist.

So I just think that, for those kinds of things, that we have to -- that we really should be looking at not taking money from existing Title I funds that are being used correctly-- And if the State or the Federal government believes that these funds aren't being used effectively or appropriately, then that's another issue. But just to say that we're going to take these dollars, and they have to be put aside. And now those supplemental programs have to come out of your existing Title I pot. That doesn't seem appropriate either.

But I certainly understand what it is that you're saying. But I just believe that, when you talk about remediation, you should probably -- we should probably be looking at not taking it from existing funds that are supposed to be remedial funds as well.

The other question that I have, with respect to that, is the order in which we have -- in which we designate what should be the remedial action. In other words, choice -- or going somewhere else is-- From what I understand, that's the first thing. If you can't go anywhere else, then you try to deal with, maybe, tutorial programs or after school programs.

Why not have us try to deal with tutorial or supplemental programs first? And then say, "Okay, that's not working. Now maybe we should look at going somewhere else." Are we going to reverse that? It seems to be either to try to deal with the problem at hand in the school, and then as, sort of, a latter resort, maybe take everybody and ship them to another district.

MR. JONES: Mr. Chairman, those are two good questions that I hear a lot.

On the first question, let me just say, with all due respect, I think it's not accurate to say that the funds used for remedial purposes -- the choice

and the supplemental service provisions -- come from money that would otherwise be used for other purposes. What the law requires is that these funds be set aside up front, in the 10 to 20 percent range: 5 percent for transportation, 5 percent for school choice, 5 percent for subservices, and the remaining 10 percent can be apportioned however is most appropriate. But that money is set aside up front. Again, with the idea that this is -- that very well serves the underlying purpose of Title I, that is improving the education for disadvantaged kids.

Now, if you have a situation where a district doesn't need all that money, it can obviously use that money for other purposes in the Title I program. I should also note that there is a significant bit of flexibility built into the law which actually allows the transfer of money from some discrete programs -- like, for example, Improving Teacher Quality state grants program, the Educational Technology program, the innovative programs in Title V of the law, or in the safe and drug free programs -- where a district is actually able to transfer up to 50 percent of funds from those discrete programs into the Title I program, if it so chooses, without prior approval from the Department of Education. Because, again, the idea was, we really need to be focused on the most disadvantaged kids and providing them with the resources that they need. And that's why, in terms of the budgeting, you see the 52 percent increase for Title I funding since 2001. And it's also why this flexibility was built into the law that allows you to take 50 percent of an array of programs and move that money into Title I. And in this context, the money that you're talking about for choice and subservices-- Again, it's set aside for these remedial purposes. But if it's not used for those purposes, you can plow it into other Title I purposes.

You're not generally taking money away from other existing programs and moving it into these remedial purposes.

ASSEMBLYMAN STANLEY: Well, I guess my question is, is there any new money for remedial purposes or isn't there, under Title I or any place else? Is that the case, or are we just talking about shuffling money around to where you have to put it. And, in some cases, it's -- the law is very specific as to where you have to put it. Is there new money for that, or is there not? I mean, that's a simple question, yes or no.

MR. JONES: I think where the new money can potentially come from-- Part of the deal is to leave it up to states and the districts to figure out where they need the money. The idea was that we, in Washington-- What the needs of New Jersey are for its Title I program are not like they are everywhere else. And so the fact of the matter is, people of New Jersey now have the flexibility to be able to say, "Well, we don't need all this money that we have in the safe and drug free school programs. So we can take up to 50 percent of that money and plow it into whatever Title I purpose we think is appropriate." And so in some sense, yes, that is, I think, new money, because it's money that is in Title I that might not have been there originally. So that's the point.

ASSEMBLYMAN STANLEY: Well, I think you're saying that there's no new money. You could pretty much-- There's a little more flexibility with the money that you have. But as far as any additional dollars, I'll take that to mean no.

MR. JONES: Well, to be clear, all I'm saying is that there isn't a separate new program that's created for this remedial purpose. But there is the 52 percent increase in Title I funds. And then there's more flexibility in how

you use those increased funds under the Title I program so that you can use them for these remedial purposes, or whatever other purpose you think is appropriate in the State of New Jersey for your most disadvantaged Title I kids.

ASSEMBLYMAN STANLEY: Okay. With respect to the issue of using remediation as the second option -- and the first option is sending kids to other districts-- Is there any movement to maybe realign that?

MR. JONES: There has been talk about that, though, again, I don't know of anything official. Obviously, we at the Department of Education don't have the authority to make that change. The law says choice comes first, supplemental services follow. Though, again, if you don't have sufficient demand for choice, or if you don't have sufficient supply for choice, you can actually take the money for subservices, and you can actually provide the subservices up front. There's nothing in the law that says that you can't provide supplemental services in the first year of improvement status. But in terms of the order, it's written into the law: choice versus supplemental services, versus--

I've heard, on many occasions, the same sort of criticism that you note, and it's been noted often. And whether there's some movement on the hill to change the order, I don't know. Though, again, it's important to note that there is the flexibility, now, to offer supplemental services sooner than the second year of improvement if a state or a district so chooses.

ASSEMBLYMAN STANLEY: Thank you very much.

Assemblyman Payne.

ASSEMBLYMAN PAYNE: Thank you, Mr. Chairman.

Mr. Jones, I'm a little bit confused. It's kind of like a shell game here, or double speak. I really can't-- I heard earlier that -- and not only earlier

today, but other meetings I've been -- is that the Federal government has mandated a number of changes in the No Child Left Behind Act -- represent some changes in the law -- and, therefore, is to provide a number of improvements.

You say the overriding purpose of this is to close the achievement gap for all students, and not just some, but all of them. And we have heard experts testify that-- Number one, the Congressman, earlier, said that what we're talking about is the Federal government having raised the bar and having said that these are things that we require to bring all children up to this level, and that there are things, including new testing, etc., etc.-- And we heard earlier about the cost of implementing these tests, carrying them out, but there's no funding for the additional cost.

Then I'm hearing that, "Well, there's money in Title I, and you can move it. You really don't need it there. You can move it here." Overall, the question I have is, whether or not the Federal government is allocating the amounts of money -- is that the Federal government, itself, has set the bar, initially, to implement this No Child Left Behind. I've heard people mention before-- Marion Wright Edelman is one, who is a strong advocate for children -- has very eloquently pointed out that what the government has done is, kind of, diluted people who are the ones, in our society, who most need this education that the government has mandated and spelled out very clearly -- are the kinds of programs that we need to have, to have our children close the gap.

But we end up here with your coming up with some instances, some examples of what's practical, what's on the ground. You're going out to see what's really on the ground, what's really needed and, therefore, making some

kinds of adjustments. It comes back, again, always, to whether or not the government is living up to that elevated standard that we said that we have to meet for our children. Are we, bottom line, spending more moneys in this area? Are we meeting all the mandates that we set, or not? That seems to be the question I have, because I'm really confused about the manner in which we say we can shift here. "If you don't need it here, then you can put it there." But we're going-- Try to clarify it for me, please.

MR. JONES: Well, let me speak just generally, again, to the general budget issue. And then let me tackle the issue that you raised about the money for the testing and so forth.

Again, the facts are quite clear, in terms of the increase in funding for No Child Left Behind and all of the component programs of it.

ASSEMBLYMAN PAYNE: When you say increase, is that from the initial amount that was authorized? We said that this is what No Child Left Behind would cost us.

MR. JONES: Well, those are two different issues. The difference between the authorization and the appropriation-- I think there's been lots of discussion about this. And that is-- I'm often reminded of that -- the old line from *Casablanca*, where the inspector is shocked to discover that there's gambling going on here. (laughter) It's the same situation that we find when there is horror that there is a gap between the authorized spending level and the appropriated level. I think some members of the Committee, and other witness have noted, that's par for the course in Congress.

ASSEMBLYMAN PAYNE: Let me stop you there, if I may. It's par for the course, but we-- The authorization is the amount of money that we need to fully implement this program, right?

MR. JONES: The authorization is a ceiling. It's a spending ceiling. I don't think it bears any relation.

ASSEMBLYMAN PAYNE: It doesn't bear on what?

MR. JONES: I don't think it bears any necessary relationship to what's needed under the law. It's simply a ceiling. Again, I don't think I'm telling anybody here anything that comes as a surprise. I mean, that's just part of the legislative dance.

ASSEMBLYMAN PAYNE: I know, Mr. Jones. But we have to stop the legislative dance. We're talking about youngsters who are falling through the cracks and behind. So let's try to get some clarification on this legislative dance we're talking about. In other words, what happened with this legislative dance is that we had people who believed that what we were finally going to do was have legislation and programs that would, in fact, close that gap. But you're saying that-- So that was authorized.

I think that there may have been some kind of estimates on what it would cost to implement this entirely. So that's the max. That's the cap that we're talking -- the authorization.

The question I have is, when did we change that? When did we say, "Well, fine. We say that that's what we would really-- That's a wish list. That's what we need to have." It's not a wish list, it's what, exactly, that's required to bring us up to this level we're talking about. So that was the authorization.

My question is, whether or not the allocation that has been made -- whether or not we're short funding these programs? I know that's a cap, and the cap was based upon -- however -- what we estimated these costs would be. I suppose that's how the authorization came about.

MR. JONES: Let me say this, also. I think, too, it's also important to note -- and I know that there's been some talk of what sort of prior iteration of the law is. It's important to remember that the No Child Left Behind Act is simply the eighth reauthorization of the Elementary and Secondary Education Act.

ASSEMBLYMAN PAYNE: Of course.

MR. JONES: In the prior authorization, the Improving America's School Act of 1994, there was a requirement for testing and for assessment of students against the State standards. So, again, a lot of this work has already begun. And so when we suggest that all of this education reform effort is new -- that came along with No Child Left Behind and, therefore, all of the education reform effort that we see out there ought to be funded by No Child Left Behind -- I think, makes the mistake of assuming that there are many states -- and New Jersey, certainly, is principal among them -- that was well-along in its reform effort before the No Child Left Behind Act came along.

Now, the No Child Left Behind Act-- And you mentioned the issue about paying for the development and implementation of assessments, and that sort of thing. In the President's 2005 fiscal year budget, he requests \$410 million for the development and implementation of assessments. Many states around the country already have in place assessment systems. And so one of the things that the law says is, "If you don't use that money for the development

and implementation of assessments,” again, “you can use it for other Title I purposes.”

It’s important to know that the IASA, the 1994 reauthorization of this law, as I said, had a requirement to develop state standards and to develop and implement tests to measure against the standards. That law had zero, in terms of dedicated dollars for the development and implementation of tests, zero, even though that testing requirement was a requirement for every state in the country.

With the advent of the No Child Left Behind Act, there is now a dedicated line item for the development and implementation of state tests. As I said, \$410 million is the request. If that request were granted, that would bring the total budget for the development and implementation of assessments up to \$1.5 billion in support for states. And, again, the State of New Jersey has received about \$9 million each year since Fiscal Year 2002 to support its development and implementation of assessments. And, again, the development cost, presumably, is going to be a subcost. Once the assessment is developed, the ongoing cost is really going to be in the implementation. And so when you’ve got a consistent annual appropriation of at least \$9 million -- it’s projected to be closer to \$10 million in the 2005 request -- again, I think there’s a pretty strong argument to make that this administration of the Congress has lived up to the commitment to the states to help them develop these assessments.

And I think, particularly, when you compare that to where the ESEA was before the No Child Left Behind Act -- where you were required to develop these tests and implement them, but you got zero from the Federal

government -- I think we're seeing a real vast improvement that really has to be acknowledged.

ASSEMBLYMAN STANLEY: Thank you, Assemblyman Payne.

I have Assemblywoman Voss, then I have Assemblyman Pennacchio, then Assemblyman Baroni.

ASSEMBLYWOMAN VOSS: Thank you, Chairman.

A few minutes ago, I alluded to the fact that there were many, many problems in the No Child Left Behind. And we're talking a great deal here about fiscal management. But I want to talk about program management.

I had questioned whether or not the No Child Left Behind had been formulated by politicians or by educators. This is a great concern of mine, because as I read through the law, when I first got it, I could have shot it full of holes like a piece of Swiss cheese. Because having been in schools for 40 years, some of the problems that we're discussing here are so obvious to an educator. I mean, the whole component about special education, the whole component about English as a Second Language-- I mean, these were such obvious problems.

But to get down to-- We're talking about assessment, we're talking about teacher training. A lot of these components are left out of this bill. I mean, you're talking about something like \$5 billion for teacher training. And, yet, here in New Jersey, we spend over \$6 billion just in our Abbott districts. What are we doing to attract really qualified people into the teaching profession? We're not doing anything, because-- Again, I speak as a professional educator. The most important component in the school is the teacher who motivates the children. If you don't have that component, I don't

care how much money you're going to appropriate to different programs. It's not going to work.

This bill, or this law, I don't think was bounced off the people who are the professional educators, who would have given you good input. And I would hope that, in the future, when laws are going to be constructed that deal with education, please ask the educators. Okay?

Thank you.

MR. JONES: May I respond to that?

Assemblywoman Voss -- and I know that that's-- I appreciate you raising the issue. And that has been one of the things that we've really endeavored the folks on. I mean, you're right. What we're dealing with is a big piece of bipartisan legislation, lots of compromises, and all the rest. And imagine being in my position -- I'm the General Counsel of the Department -- in trying to make sense of this thousand pages of compromise and the rest.

But, again, by and large, it is an important law. I agree wholeheartedly with Congressman Holt who described it -- I believe it was Congressman Holt -- who described it as revolutionary in its focus on closing the achievement gap. But, again, we do have a responsibility to stay focused on, sort of, the practitioners and what the practitioners are telling us.

We have a Teacher-to-Teacher initiative, which Secretary Paige began, where we've got folks who actually-- And they now go out -- as a team of people that goes out, and we spend a lot of time around the country bringing in teachers. We host these Teacher-to-Teacher initiative events all around the country. And those are, really, an opportunity for professional exchange: what's

working, what isn't; and let's try to get a sense of the practical lay of the land from a teacher's perspective. So that's important, I agree.

ASSEMBLYWOMAN VOSS: And one other component that I forgot-- We're always talking about assessment. We test our kids to death. And the tests are always of the same type. They're paper and pencil tests. There's a lot more to assessing a child's understanding than just the same old, same old type of assessment. And so everybody thinks, "Oh, we're going to mandate a test and, all of a sudden, this is going to be the end all and be all of how well the child is doing." And that is not the end all and be all.

So I just would hope that-- I mean, I'm very passionate about education, I have to tell you. And so I have to say that those things have got to be addressed, not as a political initiative, but as something that's really going to help our children.

MR. JONES: Understood. I agree.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.
Assemblyman Pennacchio.

ASSEMBLYMAN PENNACCHIO: Thank you, Chairman.

Counsel, we had heard some of the issues that were raised relative to Title I money. And it almost seemed to me that the Federal government was giving us a pie. And with that small pie, that small portion relative to education, we have to chop -- if that child is having any trouble -- whether they need remedial reading, or whether they've got to be transferred to another school, or whatever.

Is there anything in Federal law, anything in Federal statute that prohibits the State of New Jersey from looking at its State dollars -- which is

roughly between \$8 and \$9 billion -- that it spends, and taking some of those moneys -- to redirect some of those moneys to go to the failing children? For instance, you'll have tuition that's being paid -- or the moneys that are being paid right now for a failing school system -- an Abbott district -- if it is failing-- Could we-- Would the Federal government have any problems if we took some of those moneys that were directed towards those children and make that money follow that student?

MR. JONES: No. I mean, there's nothing in Federal law that, sort of, dictates how the State of New Jersey, and how the Legislature here, decides to spend its own money.

You raised an interesting point, which I should have addressed with you, Mr. Chairman Stanley. And that is the idea that part of what the law is encouraging is, I think, a more targeted focus by states, with their own dollars, on the students who are most in need.

When we talk about, Chairman Stanley, the set-aside, the 10 to 20 percent set-aside for the accountability measures-- And, again, what the law says there is, you've got to set aside the equivalent of 10 to 20 percent of your Title I funds. So the fact of the matter is, it doesn't even have to be your Title I funds that flow for that purpose. If you wanted to devote State funds that were equivalent to the amount that you -- to 10 or 20 percent of your Title I funds, you could devote State funds to the purpose of accountability if you so choose. So, again, there's nothing in Federal law that's going to govern how you decide to spend State dollars.

ASSEMBLYMAN PENNACCHIO: If, in a failing school district, a child-- The ultimate failure is the child not showing up for school and just

giving up on him or herself. If that's going to happen, unfortunate as it is, can we take the moneys that are left over -- because there's only one census done in October, I believe-- Can we take whatever moneys are left over that was going to be geared towards educating that child, and putting it towards more remedial help for those kids that are at risk?

MR. JONES: Are you talking about State?

ASSEMBLYMAN PENNACCHIO: Yes, is there any Federal prohibition of doing that?

MR. JONES: No.

ASSEMBLYMAN PENNACCHIO: Thank you.

ASSEMBLYMAN STANLEY: Thank you.

I was going to ask all those willing to raise the 10 to 20 percent by State funds to raise your hand, but I decided not to. (laughter)

Assemblyman Baroni.

ASSEMBLYMAN GREGG: It's because we have a cap problem. (laughter)

ASSEMBLYMAN STANLEY: Assemblyman Baroni.

ASSEMBLYMAN BARONI: Thank you, Mr. Chairman.

Counselor, thank you so much for coming up from Washington to answer some of our questions. And while I sit on this side of the aisle, I have a couple for you. But I'm not going to ask you, sort of, budgetary questions, because the numbers we've seen are somewhat varying. And I'm not going to even ask you a policy question. I'm going to ask your help with something.

I have a school district that I represent that has created a very unique program for children with Down syndrome. New Jersey, like a number

of other states, has special services school districts, where you can send children with special needs. But some school districts have made the decision, for certain group populations of children with special needs, that sometimes it is better to have those students mainstreamed with students without those specific educational and personal challenges. And in this school district, Down syndrome is one of them.

And there is a program that has been built -- and a terrific program. And I have had the opportunity to visit, in one of my school districts, where they brought the high school students with Down syndrome together in one of the high schools in the districts. And those students are wonderful students, and the teachers care passionately about it. And it's amazing to watch the educational growth.

However, because of the current assessment system, this high school -- which is one of the nation's leading high schools, academically -- has now been put on a watch list, because the students with Down syndrome who are in the building are being tested, and being unable, for reasons that none of us here on Earth can understand, are (*sic*) able to keep up with students of their same age.

What answer do I give to the superintendent-- Wait, what answer do I give the superintendent when he asks me what incentive is there for him to continue the program and not just send the kids to special school districts? Because he gets phone calls from parents saying, "Why is the school on this list?" And then, "Well, if it's just those kids, why don't you send those kids to the school those kids should go to?" What's my answer?

MR. JONES: That's a good question. A couple of things, I would respond. I mean, first of all, what the No Child Left Behind Act is aiming at is accountability for all, even kids who are special needs, as I think Commissioner Librera alluded to earlier. Prior to the No Child Left Behind Act, the State of New Jersey, often and maybe in every case, exempted special education and English-language learning kids from the assessment regime. And I think what the Congress and the President wanted to ensure was that even those kids were being accounted for.

Now, it's also important to note that special education students are not a monolith in their-- There's often an impression that when you're talking about special education kids, that you are necessarily talking about people who are seriously cognitively disabled. But special education kids run the gambit from kids with learning disabilities, who can achieve at the same level as anybody else, who just may need a special accommodation here or there: more time on a test, that sort of thing. But then, on the other end of the spectrum, you do have kids who are going to be seriously impaired whom you may not be able to expect to achieve using the same standards that we might use for most other kids.

And that's one area where we have attempted, at the Department, to try to bring some more flexibility to the table. And that is by acknowledging -- and I alluded this before -- that a state can take, or a district can take up to 1 percent of its special ed kids, who are the most seriously cognitively disabled kids, and actually measure those kids against a whole separate set of achievement standards. Now, they still-- And they can take the proficient scores of those kids using that different set of standards, and they can count

them towards their proficiency numbers for purposes of making AYP and making sure a school is doing what it needs to do.

And so the idea is, there, that these kids are still being accounted for. They're still part of the accountability system. Their proficiency scores still count. But we recognize that there has to be something of a different standard for some limited population of kids. And as I also noted, if a state thinks that that 1 percent number doesn't quite fit for it, it can come to the Department and try to get a higher number. In fact, a couple of states have come to us and petitioned for higher numbers.

ASSEMBLYMAN BARONI: Have you granted the petitions?

MR. JONES: We have, in one case that I know of. And I hesitate to go beyond, but there may have been others. But I know that there was one case that my office was involved in. But, generally, these are done at a different office in the Department.

ASSEMBLYMAN BARONI: But you're asking-- If I could just stay on that question from a legal perspective -- from a sort of interpretation-- Because there are school districts who are going to listen to this today, and they're going to say, "That could affect us." So this waiver -- if that's the right phrase -- this waiver requires a state to make an application to the Federal Department of Education.

MR. JONES: Well, you don't even need a waiver if you're within the 1 percent.

ASSEMBLYMAN BARONI: Well, say you're not.

MR. JONES: You're under the 1 percent cap. To go above the 1 percent, then--

ASSEMBLYMAN BARONI: Let's say you're not within 1 percent.

MR. JONES: That's right, then it would require a waiver. The state department would come to the Department and seek a waiver.

ASSEMBLYMAN BARONI: Has the Federal Department of Education laid out its regulations of what the standards for granting above 1 percent are going to be?

MR. JONES: You know, actually I believe that we have. Again, it's sort of beyond my knowledge. It's very, sort of, technical.

ASSEMBLYMAN BARONI: Okay.

MR. JONES: It's a very, sort of, technical standard. There's got to be a real, sort of, validity to the argument that's being made. It's really got to be-- There's got to be a great deal of scientific evidence that shows that it's appropriate for the 1 percent.

ASSEMBLYMAN BARONI: One of the concerns that we have here, in New Jersey, and I have representing the district that I represent -- where a number of my school districts have done a significant amount of work to build programs for children with special needs. The 1 percent, sort of, aggregate statewide number is different by district. And what parents have often chosen to do -- parents of children with special needs -- and who can blame a parent for doing what they need to do for their child -- have chosen to move to certain districts, and raise their families in certain districts, because those districts provide such good programs for children with special needs.

Now, we could have a debate here -- and our Chairman, Mr. Stanley, has done a great job as Chairman -- on the issue of special education. But what do we say to a district -- a school district that, I would represent, that

doesn't have 1 percent, but has significantly higher. The state may not be at 1 percent, but some of my school districts-- I've got to tell you, they are, and they're hurting. And I'm trying to figure out what I'm going to tell the Superintendent tomorrow when I talk to him, because he knows we're having this hearing today. What do I say?

MR. JONES: That is a situation that we've heard about. And, again, the 1 percent does -- it applies to district level, state level, not at the school level.

I think that this is just one of these areas where, I think, we just need to stay focused on the practicalities. And, again, what we are always governed by, as an administrative agency, when we set these caps: for example, the 1 percent, or if we're going to grant a waiver is, we've got to make sure that we're not acting arbitrarily, that there's some solid rationale for making the change that's sought. And I think in the case of a district like that-- I mean, I think we do -- got some serious thinking about whether it isn't appropriate to revisit the 1 percent cap.

I don't want to speak specifically about the district that you're talking about and the dynamic there, but, obviously--

ASSEMBLYMAN BARONI: Nor am I asking you to speak.

MR. JONES: I mean, we're very mindful of that problem, and we recognize that problem, and it's one that we're trying, within the constraints of the statute, as it's written, to try to be flexible.

ASSEMBLYMAN BARONI: I would proffer to--

And, Mr. Chairman, this will be my last comment.

I would proffer to you that the intersection of two Federal laws, No Child Left Behind and IDEA, creates an intersection. And sometimes it's going to call for creativity. Where IDEA challenges schools to do the best things they can to create programs for individual students, and schools are making decisions to often -- instead of sending students to our great, special services school districts that are across the country -- choosing to keep students in the building under IDEA. We need to do everything we can -- that this intersection of these two laws doesn't become gridlocked for these students.

MR. JONES: You're absolutely right. And as you know, the IDEA is being reauthorized now. It's been a drawn out process. But one of the things that I know -- that the leadership on both sides of the aisle in both Houses in Congress is very focused on -- is trying to align the IDEA reauthorization with the standards of No Child Left Behind.

ASSEMBLYMAN BARONI: Just don't make things harder on the schools and special education kids.

Thank you.

ASSEMBLYMAN STANLEY: Thank you very much, Assemblyman Baroni.

I think--

ASSEMBLYWOMAN POU: Mr. Chairman.

ASSEMBLYMAN STANLEY: Oh, wait a minute, I think we have Assemblywoman Pou, and then Chairman Gusciora.

ASSEMBLYWOMAN POU: Thank you.

Mr. Jones, in the beginning part of your comments, you mentioned that Title I is based upon the number of percentage of disadvantaged children, and it's generally formula driven. Could you tell me--

If you could turn to your budget page in your book that you were referring to earlier for Chairman Stanley-- Is it broken down by rank, in terms of the top -- in terms of dollar amount, and therefore you can easily get that? Or is it done by alphabetical? How do you have the information which in--

MR. JONES: I'm not sure I understand the question.

ASSEMBLYWOMAN POU: I'd like to find out what is the top five states that have -- the number of funding-- So I was trying to gear my question based upon the way your information is set up.

MR. JONES: You know, we can do that, and I don't think I brought the state-by-state list of Title I funds. I mean, I have my New Jersey jurisdiction-by-jurisdiction calculation, but not the national state-by-state. But, again, it is by formula. So what you'll find is those states--

ASSEMBLYWOMAN POU: Does that include population, as well?

MR. JONES: Pardon me?

ASSEMBLYWOMAN POU: Does that include population, as well?

MR. JONES: Yes. Well, you mean overall population?

ASSEMBLYWOMAN POU: Is it based on per pupil?

MR. JONES: That's right. It's basically based on the states that have the most disadvantaged kids. And the states that have the most disadvantaged kids are going to get the most money under the formula. And

then, within those states where you find the highest concentrations of disadvantaged kids, those are likely to be the districts that will face the -- that will see the increases. That's one of the things-- If you were to look at, for example, the New Jersey breakdown -- which breaks down each jurisdiction within New Jersey and how much Title I funding it gets -- what you'll see is that some are up, some are down, and what that will be. What that reflects, generally, is just the movement of your disadvantaged population from one place in the state to another.

ASSEMBLYWOMAN POU: But you don't have it broken down, state-by-state, with you today.

MR. JONES: I don't.

ASSEMBLYWOMAN POU: Okay.

MR. JONES: I'm sorry.

ASSEMBLYWOMAN POU: I'm going to ask if, through OLS, Mr. Chairman, with your permission -- if we can have Mr. Jones, perhaps, provide to us that information so that we can have an understanding, in terms of how does New Jersey fair in comparison to some of the other states.

MR. JONES: Happy to do that.

ASSEMBLYWOMAN POU: For example, I'd be interested in seeing how do we compare to Ohio, how we might compare to Michigan, Florida, and any one of those states. How does-- If it's done per pupil, I'd like to know what is the Title I formula allocation for the state of Montana, compared to the per pupil population, to that of the State of New Jersey. So if you can provide that information to us, that would be helpful.

MR. JONES: We can definitely do that. And you should note that the formula itself, and how these numbers are determined, has been pretty static over the years. It's not--

ASSEMBLYWOMAN POU: I'm sorry, say that again.

MR. JONES: It's remained pretty much the same. I mean, we haven't changed the formula. I mean, the formula is what the formula is. And so it's not-- We don't control what the formula is, I guess, is what I'm trying to say. It's been pretty consistent over the years.

ASSEMBLYWOMAN POU: Sure.

So under the No Child Left Behind Act, the actual formula for this particular act was not changed. Is that what you're telling me?

MR. JONES: That's right. The formula for Title I allocations within the No Child Left Behind Act has not changed.

ASSEMBLYWOMAN POU: Under the definition -- under the public policy or definition for the No Child Left Behind, however, has the formula -- has not changed.

MR. JONES: Has not changed. It has not changed.

ASSEMBLYWOMAN POU: Thank you very much, Mr. Jones.

Thank you, Mr. Chairman.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.

Chairman Gusciora.

ASSEMBLYMAN GUSCIORA: Mr. Jones, I just wanted to reiterate our heartfelt thanks for coming up. I had a conversation with one of your colleagues in Massachusetts and expressed willingness to come down. And this truly is bipartisan, and we're not trying to play any *gotcha* or anything. And

we just want to make sure, at the end of the day, New Jersey's students are best served.

MR. JONES: I appreciate that.

ASSEMBLYMAN GUSCIORA: Just one clarification. Before, you said that the President's budget request was \$463 million. Is that also the authorization, the appropriations, number, or is that a different number?

MR. JONES: You know, I don't know. I don't know what the authorization number is, to be very honest.

ASSEMBLYMAN GUSCIORA: And a final question: Can you assure the New Jersey school districts that they will be held harmless, that they're not going to have to have any special budgetary outlays to implement No Child Left Behind? My concern is making sure the Federal government pays for the mandate that they have asked us to fulfill. Can we all be assured that they're not going to have any additional funding problems or spending problems? And I don't mean it to be a trick question, but is it the administration's position that all of -- everything to implement No Child Left Behind is taken care of by the Federal government, or are we going to have to spend additional moneys ourselves?

MR. JONES: Well, no, I think the fact of the matter is that there are conditions that every state has to comply with if they're going to take the Federal taxpayers money in this case. And what the Congress and the President decided was that we've got to attach some accountability to these significant Federal tax dollars that flow out the door.

Now, the bottom line, however, is that every state sets its own standards. Every state designs its own assessments. Every state really controls

its own destiny, in terms of its accountability system. We've simply set a baseline, in terms of the conditions that we've attached to this money. I would argue it's not a mandate. Again, no state is required to take the Federal taxpayers' money in this instance. But if you do, there are some conditions. And that's the baseline. Now, if a state like New Jersey chooses to go above and beyond those sorts of things-- Again, every state's free to do that.

I think that we would argue-- I certainly am prepared to argue, today, that with a 52 percent increase for Title I, with a 36 percent increase for No Child Left Behind Act funding, that this bill is amply funded for the basic requirements of accountability for all kids.

ASSEMBLYMAN GUSCIORA: In New Jersey.

MR. JONES: In New Jersey and everywhere else in the country.

ASSEMBLYMAN GUSCIORA: Thank you very much, Mr. Jones, again, for coming up.

MR. JONES: Thank you.

ASSEMBLYMAN STANLEY: Thank you, Mr. Jones. I, too, want to express our thanks and appreciation.

And I would also like to, in addition to the information that Nellie Pou had requested -- I'd also like for you to, perhaps, send us some information with regard to your figures -- the figures that you provided us with respect to what we're getting in New Jersey.

MR. JONES: I will do that.

ASSEMBLYMAN STANLEY: It differs a little bit from the U.S. DOE Web site, where we got our numbers from.

MR. JONES: Okay, we will do that.

ASSEMBLYMAN STANLEY: We would certainly appreciate that. Again, thank you very, very much for coming. We certainly appreciate your testimony.

MR. JONES: Thank you for asking me. It's been my pleasure.

ASSEMBLYMAN STANLEY: Okay, next--

ASSEMBLYMAN GUSCIORA: We want to get you out of here for dinner.

ASSEMBLYMAN STANLEY: I'm sorry. Thanks a lot. I appreciate it.

ASSEMBLYMAN MALONE: I mean, this guy was so fantastic, you want to get him off of the seat.

ASSEMBLYMAN STANLEY: Well, we just-- I didn't see over in that corner. I apologize.

ASSEMBLYMAN GUSCIORA: He's got to catch a train.
(laughter)

ASSEMBLYMAN STANLEY: Next, we have the President of the NJEA, Edie Fulton. We also want to ask, to come up, the New Jersey Association of School Administrators, Andrew Babiak; Dr. Michael Rice; Dr. Carmina Villa; and the New Jersey School Boards Association, Sarah Kohl; Debra Bradley, Marianne, and Barbara Tedesco, from the New Jersey Principals and Supervisors Association.

EDITHE A. FULTON: Well, if you were in my classroom, I'd have you stand up and play Simon Says right now, because we're all glossing over here. If you'd like to see if you could win that game, I'd be happy to conduct it.

At any rate, if you promise to read the testimony, I'm only going to really talk about what I've heard today and reference some of things that I think are important for you to know. We do have, really, some good information in the testimony about the people that are involved in this No Child Left Behind. And I'm talking about students, and teachers, and support staff, and paraprofessionals who work in our schools. And they are extremely affected by this law with, sometimes, very little good results for what they have to accomplish. I, myself, if I were to go back to the classroom tomorrow, would have to go through the house rules that they have set up and try to determine whether I am highly qualified to teach after 38 years in the profession. And that's a little bit insulting.

It was mentioned that the law, itself, is a thousand pages. And that was implemented -- I mean, passed and implemented immediately in January of 2002. And yet, the regulations, which are some 40,000 pages, were not able to be scrutinized until that following August -- and 40,000 pages of, frankly, regulations that just kind of blow your mind. And we really-- It took so much time to really discover the implication of that. And it is, as you will read in the testimony, estimated that for every dollar that needed to be spent from the Federal government on the law, it cost the district \$5 to implement the law in the long run. And so whether or not we have more money or less money, it seems to me that, of what I've heard for the past two years, is that even though the money is in print, it isn't in districts to do what this law is requiring us to do.

In fact, I think \$404.4 million that was mentioned by the Department as being for teacher training is, in fact, grant money. It's not given to the districts like Title I money is given to the districts for them to use in

different categories. It is grant money that districts have to apply for. And with the fiscal budgets of the Federal government and the New Jersey government being in different parts of the year -- we're July 1 to June 30. The Federal government is October 1 to September 30 -- sometimes that grant money is not received by the district for 18 months to two years after they have applied. So they can't even really count on that money to do the job that needs to be done.

It was mentioned that states can opt out. I think Vermont and Utah decided they would do that, and they didn't. Because even if you opt out of the Title I money, you still have to live up to the letter of that law. By 2014, every child has to achieve at the same level. And we know that kids do not learn the same. We do not teach them the same. Our special ed population is being used as scapegoats for the one or two indicators that are failed by a district. I think 78 of our high schools were on the early warning list: Princeton, Ridgewood, and West Windsor-Plainsboro. I could name 78 of them for you, but I'm sure you know what I'm talking about. And I don't think it was until some of our Congress people realized that their high schools were on the list that they had trouble with this bill and began to, in a bipartisan manner, talk about how we could fix it.

I don't think if we fully funded it, it would fix the bill. There are flaws in the bill that need to be changed. And AYP is definitely one of them, adequate yearly progress. And you can read about that. In fact, we've given you a copy that I think you may have received before. I know we shared it with our Congress people -- the white paper that was developed by the education community. All of the groups that you see here were part of developing that. And we talk about the problem, and we talk about the solution.

One of them, I think, has been changed, which is the flexibility with some special ed figures. But I'm not quite sure that that's even enough. It's a very heartwarming story about the Down syndrome students who, certainly -- even if you were able to take 1 percent of that population, it's not going to help that particular school district. And it is a money saving option to keep kids in your district rather than send them out. And so districts choose to do that. And yet they probably were punished by those kinds of programs.

I just took some notes, because I think there were so many things said that need to be referenced. The funding-- I think we could have a bunch of statistics on funding that nobody would agree with. So there are some pages there that give each congressional district figures. And there's one that gives the whole New Jersey figures from the research division of NEA that you can look at for authorization, for actual budget funding, and probably what districts ultimately receive.

You know that the first bill did have a component for vouchers. And I don't think it's just my personal opinion -- but a lot of educators agree with me that the object of this bill, in addition to what advantages or positive things it may proport, was really to diminish the reputation of public education, not only in New Jersey but in this country; because we are doing, especially in New Jersey and in many, many other states, a wonderful job at educating our students.

I believe we shared with the Legislature -- if not, we will make sure we give you -- some of the good facts about New Jersey education that have come out with testing and comparing our fourth grade and our eighth grade students with nationwide tests. And, frankly, in the foreign market, if we took

what other countries take as their top echelon kids and put them through the testing machine, we could match any of those results using our top echelon kids. But we choose to educate everybody here in America. And so we do not diminish the education of every student, rather than just pick out the top portion, as they do in many of the European countries that take those tests.

And in Japan-- People say, "Well, look at what happens in Japan." Well, in Japan, there's more suicide among students than anywhere else in the world. Teachers have more time to spend with each other in Japan. Students have to go to school on Saturdays. And because they do give an opportunity for the staff to get together-- Teaching elementary school, I can tell you we don't get that kind of time because of the schedule of the day.

But that, also, in teacher training, and teacher evaluation, and in looking at how we train our people, we probably have the highest standards in the country, in many ways, for training our teachers. And we also have the highest standards that our students are expected to achieve. And I think they have done a terrific job at that.

From the very onset of the law, the sanctions on -- punishment and sanctions was really of a concern to the professional associations and the people that work-- I mean, an over-reliance on one test given on one particular day -- we know that that is not how you judge a student's potential.

And I think now there is an opportunity, here in New Jersey, to develop portfolio-type assessment of students. And that's a pilot program that, I think, is being conducted in maybe about 15 of our districts. Hopefully we can determine, through other means, what the potential kids have, rather than one paper and pencil test. I'm sure that some of us here had difficulty with

paper and pencil tests, and filling in the little squares. I know that that was one thing that was troubling to me with younger students -- how just to take a test.

I think that I would be remiss if I didn't point out that compliance with the law has been a challenge. And the reason I think that we have met that challenge is-- And we must thank our Department of Education, in many ways, for its cooperative approach in some of the concerns that we had, and in them addressing them. And as we know, they have to apply to the Federal government -- to the Federal Department to get changes in the law, or get waivers, or whatever else we need to do.

I have to say that I think that teachers -- the Department has said that 90 percent of our people are highly qualified. I'm happy to hear that. I'm sure that's true. And the other 10 percent are probably exemplary teachers that just haven't filled out the paperwork yet. But I think, in New Jersey, we require people to teach within their certificate. Many other states do not do that, so that's a plus for us.

But let me talk a minute just about our paraprofessionals. These are people -- mostly women -- who hold maybe one-and-a-half to two jobs a day, who work in our schools, who live in the neighborhoods, who know those students, who sometimes walk them home if they think they're going to a home that has no supervision. To ask the age -- probably average age is close to 50, of our paraprofessionals. And we have about 15,000 paras in our school systems here in New Jersey. And some of them have thrown up their hands to say, "How can I possibly go back to school? I don't have the money. I don't have the time." I guess they can take this pro test, but that would be, kind of, something that we need to help them prepare for. And some of the districts have

done that. Trenton, I think, has done an admirable job in preparing their paras to meet the requirement by 2005-2006. But others have just thrown up their hands.

I mean, I don't know where we think that there are a plethora of people that hold 60 credits or an Associates degree that are just waiting to take these high-paying jobs that our paraprofessionals have. And as you well know, and as, I think, a district would admit, the paraprofessionals are really paid quite poorly in our districts for the job that they do.

So, after three full years, I believe that we all must confront the reality that No Child Left Behind is not the miracle it was painted to be, and that it requires full funding. And maybe even that will not help this bill to succeed. So in the spirit of collaboration that such change will require, I'm, again, submitting this testimony to you. And I hope that you will read the whole thing. And when I give you your quiz next week, I'll give you your grade and your stipend for listening to me today. (laughter)

Thank you very much.

ASSEMBLYMAN STANLEY: Thank you very much, Edie.

I have the New Jersey Association of School Administrators, Andrew Babiak.

A N D R E W B A B I A K, E S Q .: Good afternoon.

I'm Andrew Babiak. I'm Assistant Counsel with the New Jersey Association of School Administrators. And on behalf of NJASA, I want to thank the Committee for holding this important hearing today.

NJASA supports the overarching goal of NCLB, which is to ensure that students achieve academic proficiency. And as Assemblyman Co-Chair Mr.

Stanley noted, the questions are: How do our public schools achieve that goal, and how does one measure achievement towards that goal?

NJASA, along with other members of the LEE Group, who were seated up here, have identified problem areas with the law. And as Edie Fulton mentioned, we submitted a report to members of New Jersey's Congressional Delegation, entitled "Standards, Accountability, and Common Sense." And a copy of that report is attached to my written testimony. And also attached to my written testimony is a one-page summary to the NCLB problems that we've identified.

Along with me here today are Dr. Michael Rice, who is the Superintendent of Schools of the Clifton Public Schools, in Passaic County; and Dr. Carmina Villa, who is the Whole School Reform facilitator for the Long Branch school district, in Monmouth County. And they're here to testify about some of the problems that they have to address in their own school districts.

In order to understand the problems with NCLB and understand how those problems affect New Jersey's public schools, it's first important to understand how NCLB operates. And I just want to give a brief overview of how NCLB operates, because it's, kind of, been glossed over through some of the other testimony here.

NCLB attempts to achieve the goal of academic proficiency through an accountability system, which is linked to student assessments. Each state is required to test students on an annual basis in math, reading, and language arts in grades three through five, six through nine, and 10 through 12. In the State of New Jersey, these assessments occur in grades three, four, eight, and 11. By the 2005-2006 school year, testing must occur every year in grades three through

eight, and once in grades 10 through 12. By the 2013-2014 school year, all students are expected to achieve 100 percent proficiency on these assessments.

Under NCLB, the determination of whether a school district is progressing toward the goal of 100 percent student proficiency is made by examining whether each school in the district made adequate yearly progress, that's AYP as known in the law, and whether each student-population subgroup has made AYP. In addition to the total and general education subgroups, there are eight student-population subgroups considered in New Jersey. First is economically disadvantaged students, special education students, limited-English proficient students; Caucasian, African-American, Hispanic, Asian/Pacific Islanders, and Native Americans.

First, in order to make AYP, a school or school district must assess at least 95 percent of all students in the school and 95 percent of all students in each of the subgroups. And that number was mentioned before. If a school fails to have at least 95 percent of all of its students participate, or if a school fails to have 95 percent of all students in each subgroup participate in an assessment, the school fails to make AYP.

Second, each year, the total school population must meet or exceed the State's proficiency scoring levels, and each individual subgroup--

ASSEMBLYMAN STANLEY: Excuse me.

ASSEMBLYMAN GUSCIORA: Andrew.

ASSEMBLYMAN STANLEY: I'm sorry. If you have that as written testimony-- Maybe, if you've already submitted it, you could just summarize.

MR. BABIAK: That is submitted in my testimony. Sure.

ASSEMBLYMAN GUSCIORA: I think we'd rather hear the anecdotes from the superintendents.

MR. BABIAK: That's fine.

ASSEMBLYMAN GUSCIORA: That would be more helpful.

MR. BABIAK: There are several significant, major flaws with the law that have not been addressed completely. And I was hoping that some of the topics would have been addressed to some of the prior speakers.

The first major problem with NCLB is the requirement that special education students be assessed like regular education students. And this was the problem that was brought up by Assemblyman Baroni. Not all special education students learn the same as regular education students, but can be taught the same as regular education students. And for this reason, NCLB runs afoul of the IDEA Act. And so we've supported the effort to change the law so that special education students could be assessed in accordance with their individualized education plans. And that would address the problem with the special education subgroup.

Second is the problem with the assessment of LEP students and recently arrived LEP students. And attached to the testimony is some proposed comments regarding regulations that the U.S. DOE has proposed for assessments of recently arrived LEP students. And the bottom line is that we've continued to advocate for the exclusion of test scores of LEP students from the AYP calculation until they've completed at least two full academic years in the United States. This is a problem that a lot of districts are facing. And my colleagues here, that I've brought with me, are going to testify regarding this.

The third problem is with the sanctions regime, which has been talked about before. But my testimony -- my written testimony talks about it in detail, in terms of the sanction -- the progressive sanctions regime that schools need to follow in the event they fail to make AYP. And the bottom line there is that resources should be targeted to particular subgroups that need it, rather than to school reorganizations or staff restructuring.

And the last problem that I want to mention is the requirement that -- the lack of requirement, actually -- that supplemental education service providers employ highly qualified teaching staff. And as was mentioned before, the policy underlying the requirement for the employment of highly qualified teachers is that students perform better and learn more when they're taught by highly qualified teachers. But that requirement is not imposed, similarly, on supplemental education providers. And we believe that that should be the case.

ASSEMBLYMAN STANLEY: Thank you very much.

Dr. Rice, I presume.

C A R M I N A R. V I L L A, Ed.D.: I think we, sort of, drew straws, and it's my turn.

ASSEMBLYMAN STANLEY: Very good.

DR. VILLA: Thank you so much for the opportunity to speak to you this afternoon.

Long Branch is one of the Abbott district. It's a district of about 5,000 students. It's two-thirds minority and two-thirds disadvantaged students.

The whole idea about NCLB is closing the gap, bringing those disadvantaged and minority students to perform and achieve as high as the

middle class white students that have always, through our history, outperformed the children of the masses.

And in Long Branch -- I wanted to tell you that we have a story of success. In five years of Whole School Reform under Abbott, we have closed the gap. And I'm going to give you some -- because this is very important, about NCLB and what it's doing to us at the district level.

In the year 2000 -- we had just one year of Whole School Reform at that time -- 19 percent of our students in the fourth grade passed the ESPA -- 19 percent. We were 34 percent below the State passing rate -- 34 percent. This year, 2004, 73.8 percent of our students passed the language arts literacy. That is a progress of 53 percent in four years. And the gap has been narrowed by 26 percent. In mathematics, in 1999, 32 percent of our students passed the ESPA, 29 percent below the State passing rate. In 2004, 68 percent passed. And, I may add, that about 20 percent of those were advanced proficient in mathematics.

Now, I'm talking about the total population. This includes special ed and limited-English proficient students. We decreased the mathematics achievement gap by 25 percent. Now, we're talking a very stressed bunch of people working very hard to bring these children up to grade level and to achievement.

It is undeniable that our elementary schools have made measurable and significant progress within these past four years. And, yet, two of our three to four -- we have three to four grade schools -- we have three of them -- two of them did not make AYP because of one single group in one single subject -- did not make sufficient progress to achieve safe harbor. Those two schools are considered in need of improvement. They are sanctioned. They have to inform

all the parents that these are schools in need of improvement. Yet, district-wide, the total population made AYP. And every single subgroup, district-wide, achieved safe harbor. We are there, and yet two of our schools are, right now, undergoing sanctions.

Remember that 19 percent that, in 2000, passed the ESPA? They were tested this year, at the middle school level -- the GEPA. Fifty-six percent passed. They went from 19 percent -- that same group, that same cohort of students-- And four years later, they take the GEPA, and 56 percent pass. Guess what? The middle school is undergoing CAPA, they're undergoing corrective action plans, etc. Yet, the progress was enormous. But yet we are still being sanctioned, severely sanctioned.

We had to do reorganization. A lot of our people were shuffled around, because we're thinking they're not doing well enough. Yes, they are. Those teachers and those administrators are doing exceedingly well by our kids, but not well enough.

NCLB -- someone said about *A Tale of Two Cities* -- I think it was the Assemblyman -- mentioned *A Tale of Two Cities*. We are the poor city coming along, making tremendous strides. At the high school level, this year, on the HSPA, every single subgroup made progress -- every single subgroup. We made AYP in mathematics. Two subgroups made progress in language arts literacy, but not enough -- not to meet the 10 percent less failure rate. So we didn't make safe harbor.

These schools now have to offer very costly supplemental educational services. It's very costly -- 1,200 per child -- using outside vendors

in both subject areas, and offer to all the students. Does that make sense to anyone? Because it doesn't make sense to us.

We are doing a great job. We know our kids very well. We know we can meet their needs. And we know which subgroups are not making it, and we know why. Because we are really -- we really have our fingers in their paws. But yet we have to bring outside people -- some of them who are not qualified, really -- as qualified as our teachers are. And then we have to offer it to all the children, regardless of-- And yet they have to be disadvantaged children, because if they are advantaged children, they don't qualify. They fail, but yet they don't qualify for supplemental services. It doesn't make sense, again.

So I think that I can tell you a little bit about special education. Our special ed kids are making strides. They are gaining. But you know what? These are children with disabilities, learning disabilities. If the learning disabilities were visual, and we could see them in a wheelchair-- And we ask these children in wheelchairs, "Get up and walk, because all the other children are walking. And we're going to grade you on that walking. And maybe by the year 2014, you must run." Would that make sense? But just because the disabilities are not visual, they cannot be seen, and they cannot be touched, and they cannot be pushed around in a wheelchair, we're demanding that these children meet the same standards as the children that are -- that have the two legs to run with.

The limited-English proficient students -- another big issue. Again, we talked about this continuous influx of children. And we do our best to mainstream them very quickly, to teach them unto the best of our ability. But do you know what they do? They impact not just the limited-English proficient,

they impact four populations. And we can say, “This one child is going to bring our scores down for the Hispanics, for the limited-English, for the disadvantaged, and for the total population.” We target that child, we make hot lists, we help them a lot. But, you know, there’s just so much you can do in your first, second year, third or fourth. As a second-language learner, I know how long it takes to do hard order thinking in a foreign language, in a language that you were not -- you didn’t grow up with.

So all that I ask is reasonableness and common sense in all of these measures. Just think it through. And whatever flexibility that you can -- go to the Federal government -- whatever way we can possibly modify, for those two subgroups and for the impact of one subgroup upon our AYP -- our adequate yearly progress -- please do so, in the name of all the children of New Jersey.

Thank you so much.

I’ve got drafts for you on our growth.

ASSEMBLYMAN GUSCIORA: Did you submit that as testimony?

DR. VILLA: It’s submitted, sir.

ASSEMBLYMAN GUSCIORA: Okay, great. Thank you very much.

ASSEMBLYMAN STANLEY: Dr. Rice.

MICHAEL F. RICE, Ph.D.: Good afternoon.

My name is Michael Rice. I’m Superintendent of Schools for Clifton Public Schools. We have 10,500 students. We’re the most linguistically diverse district in the State of New Jersey at this time, with 65 languages spoken by our students at home: 6,200 of our 10,500 students speak a language other than English at home; 750 of them receive bilingual or ESL services in schools.

What I'm about to tell you dovetails nicely with the stories of my colleagues, but I would like to give them a little bit of a Clifton flavor, if I could.

You may recall Garrison Keillor and his Lake Wobegon, where the women are strong, the men are good looking, and all the children are above average. Little did educators realize that, one day, they would be asked to meet the Lake Wobegon expectations of No Child Left Behind, where by 2013, 2014, every child was expected to be proficient on an examination, which basically measures a child's proficiency for an average intelligence, in a reasonably well-performing school.

Ten thousand five hundred students in Clifton, 17 schools: 14 elementaries, two middles, and a high school-- In January, I was speaking at Woodrow Wilson Middle School to about 120 residents. And I asked them if they would raise their hand if they thought 39 of 40 was a good score. Most of the people raised their hands. They would be happy-- They would have been happy if they had gotten a 39 of 40 on a test when they were kids. And I asked them to raise their hands if they thought 97.5 percent was a good score, which is what 39 of 40 is. Most of the people raised their hands. And then I said, "Raise your hand if you have any connection to Woodrow Wilson, whatsoever: children, grandchildren, neighbor, kids -- you've known anybody who has gone or is going to Woodrow Wilson Middle School." Virtually, the entire audience raises its hand. "Raise your hand if you think Woodrow Wilson is doing a good job." The entire audience raises its hands. "Woodrow Wilson," I said in January, "achieved adequate yearly progress in 39 of 40 indicators under No Child Left Behind, as implemented by the State of New Jersey. What do you

think about that?” Applause from the audience of 120. And do you know what Woodrow Wilson Middle School got for achieving adequate yearly progress on 39 of 40 indicators? It got an early warning.

ASSEMBLYWOMAN PREVITE: It’s a sin and a shame.

DR. RICE: It got an early warning.

Forty categories -- sometimes people talk of 41. And there’s a logic to talk of 41 because, certainly, there is, if you will, the wild card category for both elementary, middle, and high school. But let’s look at the 40. Forty of those are attendance categories -- 20 of those are attendance categories. At least 95 percent of your youngsters have to show up for the math test. At least 95 percent of your youngsters in each one of those 10 categories has to show up for the language arts tests. That makes sense. I don’t have any problem with that. Although, if you get a flu going through your school, and you don’t have a whole lot of numbers in your school to begin with, that can really shake the numbers.

On the proficiency side, you have to be above State benchmark in every one of those 10 categories -- math -- every one of those 10 categories in language arts. Let’s take a school with 20 kids-- Because, remember, the State Department of Education-- And this is not about the Federal Department of Education at this point. The 39 of 40 -- that idiocy -- the Federal Department of Education, in the Federal government, owns. But the N equals 20, the sample size, our State Department of Education owns. The State Department of Education chose a low sample size, one of the lowest in the country. There are only eight states in the country that have a lower sample size than us.

What does that mean? That means that for our sample size of 20 --

N equals 20 -- any category of child in a school that has at least 20 children counts. So let's just say, for the sake of argument, that we have 20 white children in a school. The category counts. You have to achieve adequate yearly progress in that category.

Last year, the benchmark for language arts New Jersey asked for was 68 percent at or above proficiency. So let's say 14 of the 20 white youngsters were successful -- 14 of 20, 70 percent -- "Congratulations. You make adequate yearly progress in that category." "Oops, wait a minute. There's been a retabulation. Little Michael Rice was sick that day. But he dragged his sorry you-know-what in, because his teacher said, 'You all have to be here to test, or you know what, we don't make adequate yearly progress in another way.'" So little Michael Rice drags himself in and takes that test anyway. Unfortunately, he doesn't do very well, because he's got a 103 fever. And the 14 of 20, 70 percent, becomes 13 of 20, 65 percent. "Oops, sorry. You don't make adequate yearly progress."

Now, you can say, "Well, that's Michael Rice that didn't make proficiency." Right, I didn't make the benchmark. But because of the way that No Child Left Behind is set up by the Federal government, the whole school doesn't make it. Because of one child, the school doesn't make it. And because of the way the State has chosen to implement this, with a low N -- 20 kids per category -- one child has a dramatic impact. Remember, if the N equals 20, every child is worth 5 percent. When N equals 50, every child is worth 2 percent. There's a reason why the vast majority of states across the country have chosen to make that N, that sample size, higher -- because it ropes fewer schools into the onerous sanctions of No Child Left Behind.

Now, we can talk all we want about the money associated with No Child Left Behind. And those are interesting questions about whether No Child Left Behind is funded adequately or not. And I'd be happy to participate, at a later date, having already heard three hours of testimony about money. (laughter) But I would just like to say that money is not the issue. It's the structure.

You could provide me-- I used to be an athlete. You couldn't tell it from looking at me. But I used to be an athlete. And one of the things I used to do when I was real young was high jump. Can you imagine? Check this out. (witness stands up) High jump. (laughter) But I did. Now, you could have given me the best diet in the world, the best coaches in the world. You could have worked on my flexibility, my technique. I'm 5'6". I'm not jumping 6'6". It's not happening. We have children in our district with a 52 IQ. When I go into the room, the teacher says, "Could you say good morning to Dr. Rice?" They stare at me. "Could you say good morning to Dr. Rice?" And finally they begin to utter some sounds. A 52 IQ is three standard deviations below the mean. One-half of 1 percent of all children have cognitive functioning below that.

Our State Department of Education is right on when it says the Federal government has not provided -- Federal DOE has not provided sufficient flexibility when it comes to special education. I would argue, respectfully, that what is needed is not 3 percent flexibility, it's not 3 percent of the children being able to take alternate assessment; but whatever percentage of those youngsters, according to their individual education plans, require alternate assessments during the year, we should treat them the same way on test day.

Remember, Federal IDEA -- the Federal special education law says these youngsters are different every day of the school year. We accept that. We accept the responsibility to educate them in a different way according to their needs. But they don't become magically, mystically, mysteriously, extraordinarily different on test day.

Similarly, if I come from another country and am educated under Federal bilingual/ESL law for the entirety of my school year, on test day I don't suddenly become a native speaker. Now, it may be that with the number of years of experience in this state, in this country, that I will speak better than any of you do -- you having been born in this country, and raised in this country, and educated in this country -- but I'm not going to do that in my first two years in the country. Particularly if I come to the country after puberty. There's fairly strong evidence in the literature that suggests that, post-puberty, it's harder to learn a foreign language. It's not impossible -- absolutely can be done -- just harder. The brain is wired in a different fashion, if you will.

Now, I don't want anybody to hear this as, "Well, the Clifton Public Schools superintendent doesn't believe in State tests." I do, and I believe in annual State tests, and I believe in higher student achievement, and grade accountability. And if you look at our test scores, which are in the testimony that I provided to you a few hours ago, you can see that we've raised our test scores substantially at every level across the district -- 14.5 percent in elementary school mathematics. This is from a district that educates, increasingly, an immigrant population. We believe that all children can learn and learn well. But by the same token, we believe in realisticness in the establishment of goals, and this is not a realistic law.

And if I could, just a point on highly qualified teachers, if you would indulge me. We respect the fact that we need to improve what we do in classrooms throughout our district, and throughout the state. We believe we're doing that. We don't believe that the highly qualified teacher element of the Federal No Child Left Behind helps us out at all. In fact, quite the contrary. We think it's just a paper chase.

But what's fascinating is, let's assume you believe that all of the people that teach youngsters in the State of New Jersey, and in the country, ought to be highly qualified, according to the Federal law. I'll accept that. Just for the sake of argument, I'll accept that. But then why would anyone in the Federal government support supplemental service providers, who are given to youngsters as part of the Level II sanction? Why would anyone accept supplemental service providers that didn't have to be highly qualified? In other words, you're teaching in a public school. You have to be highly qualified. For whatever reason -- let's say the math test for special education youngsters -- those results fall below the benchmark. Now, we're allowed to get supplemental services for the children in your school. You're all highly qualified. You all teach in that school. So all the parents get letters, and the letters say, "Your children are eligible for supplemental service providers. Here's the list." And not a single one of those supplemental service providers has to have a single highly qualified teacher among them.

In some ways, No Child Left Behind really is about money. It's about diverting money from public schools to private entities. Private entities, I might add, do not have -- that do not have the same qualifications that public educators do. I'd be the first to admit that we haven't arrived in the education

of young people, in Clifton, in the state, across the country. We have more work to do. I think educators across the state are doing a dynamite job. I know they're doing a great job in Clifton, and we're making progress. But the way to judge us is not NCLB.

Thank you.

ASSEMBLYWOMAN PREVITE: Mr. Chairman.

ASSEMBLYMAN STANLEY: Thank you very much.

Assemblywoman Previte.

ASSEMBLYWOMAN PREVITE: Dr. Rice, I read your very fascinating testimony, and I put a big circle and an exclamation point after your sentence that says, "No Child Left Behind is unrealistic to the point of unreasonableness."

I have a couple of questions for you.

And, Mr. Chairs -- both of you -- I wish we had had the real people testifying at the beginning of this testimony today (laughter), instead of at the end, when people are weary.

I have a couple of questions. I am gravely concerned, after hearing from teacher, after teacher, after teacher in my district, and in South Jersey, saying that they feel as though this is the demise of the public education system -- just as you said, Dr. Rice -- going toward turning education toward private entities.

I'd like to ask you whether you have-- No one is going to confess, to give me the right answer here.

And, Mr. Bryant, I'd welcome your participating in this answer.

I have had school districts say to me, “We believe there will be the unintended consequences of shoving out children, because they are bringing down the scores of a school district,” through the kinds of things we’ve just listened to. We talked about -- it wouldn’t be little Michael Rice. It would be Miguel Ricardo. A school will find it easier to let that child drop out. I’d like to know, who has any sense that this is already happening? Because what we’re saying is, No Child Left Behind is leaving a lot of children behind.

DR. RICE: It’s happening in Houston, which, curiously, is the former school district of the Federal Secretary of Education. And a year after he left, there was a review of the statistics in the Houston independent school district. And what it showed was, in fact, the numbers didn’t sync. In other words, the graduation of-- You ought to be seeing X number of kids graduate if you don’t see any exited. Well, they’re noting that nobody’s dropping out, or few children are dropping out. But you’re not seeing them walk on graduation day. They couldn’t make those two numbers sync with one another, sync with a “Y” -- with one another. They couldn’t make them line up with one another.

And there was an audit. And, in fact, what was shown was that those numbers had been bogus. They had been altered. There was tremendous pressure in Houston on assistant principals and principals to crank up those graduation rates and to reduce those dropout rates. And the consequence of it was that children, if you will, were discouraged from attending, because they weren’t going to graduate, and they were going to be a drag on the numbers of the school.

Now, you won’t see dropouts in elementary school, obviously, nor will you likely see them in an middle school. But you would absolutely -- as the

requirements for No Child Left Behind get ratcheted up, and as we move from 68 and 53 in elementary school, 58 and 39 in middle school -- as you move up higher, and higher, and higher, get closer, and closer, and closer to 100 percent proficiency required in 2013-2014, you're absolutely going to see pressure on kids and staff. And it will manifest itself in even more dropouts than currently exist.

Remember, the graduation rate across the country is approximately three-quarters of our youngsters. About 72 percent of all children that start high school graduate four years later. I'm not talking about folks who are on the eight-year plan or the 12-year plan. I'm talking about four years later -- 72 percent. We lose 28 percent of our children, nationally, in high school. And these trends are going to be exacerbated with this sort of law. They don't have to be exacerbated, but I believe they will.

ASSEMBLYWOMAN PREVITE: Well, can we ask Mr. Bryant, our expert from the Department of Education, if there is any evidence, or what evidence there may be, to indicate that there are children-- I'm not going to say anybody's asking them to leave the school. But nobody's really delighted in keeping them in the school, because they're bringing down the scores for a school district.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.

And in addition to that, I'd like to know if there's any sentiment in the Department to move away from N-20 to a larger number. Because I thought I heard something along the lines that they were going to move that ratchet up a little bit.

Thank you.

ASSISTANT COMMISSIONER BRYANT: I'm probably not the person to answer the questions concerning the dropout rate. I do know that there are different initiatives that are being initiated as we speak, now. I know there was a high school summit that was held, and would have a greater emphasis on resources by the State Department of Education being put towards secondary students.

Also, as Dr. Rice had indicated, the elusive 41st indicator for high schools is the graduation rate. And I believe that the intention of the U.S. DOE is for that to be approaching like 90 percent, which is a very lofty goal, and whatever. Whether or not the ratcheting up, as we're saying, of the standards or whatever will have the opposite effect is something yet to be seen, because we're only into our third year of a 12-year project, as it were.

So I don't know whether that's answering your question, but I can't answer for the U.S. DOE's intentions and whatever. And, also, I don't think we have enough data, here in New Jersey, to find out what the consequences are at this point.

As to your question, Mr. Chairman, yes, we did apply to amend our -- as has been referred to -- our workbook. And for the next testing cycle in '05, the N size for the students with disabilities has now been approved by the U.S. DOE as 35. And, also, for participation rate, we have increased the N size to 40. And, of course, it's a rolling process. And as the data comes in from our colleagues out in the field and whatever, we have the opportunity to adjust these numbers as we move forward.

ASSEMBLYWOMAN PREVITE: Do we have anybody from the U.S. Department of Education still in the room that could inform us as to

whether or not -- or what effort the Federal government's taking to see whether this unintended consequence is going to happen, or is already happening?

ASSEMBLYMAN STANLEY: No, I think our representatives from the U.S. Department of Education have--

ASSEMBLYWOMAN POU: I thought the lady in the back--

ASSEMBLYMAN STANLEY: Do we have someone from the U.S. Department of Education still--

ASSEMBLYWOMAN POU: Yes, we do.

ASSEMBLYMAN STANLEY: Oh, fantastic. Excellent.

Mr. Jones left, but he left a colleague here.

V A L A R I E M. S M I T H: My name is Valarie Smith, and I am the Region II representative to Secretary Paige, which is the office for New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands.

Assemblywoman, would you clarify the question?

ASSEMBLYWOMAN PREVITE: I am gravely concerned -- and I have heard it on the street among teachers -- that because of this -- because one child, or two children, or a small number are bringing down the scores for a school district, it is going to be, or already is being, easy for these poor performers to be -- let them disappear, drop out, or -- just drop, not be on the rolls anymore, because they're bringing down these scores. I want to know what effort is being made to calculate or to assess this unintended consequence, nationwide.

MS. SMITH: Well, first of all, the assessment-- There was no accountability before No Child Left Behind, as for the students. So these students were hidden between -- they were hidden behind a school that was well-

achieving. And these are the kids that were leaving our schools, and nobody knew about. Now, under No Child Left Behind, we know about them. So that's the good thing.

As far as a school encouraging any cohort of students, any grouping of students to leave because they are not making -- because they're being labeled a school in need of improvement, I would think that that is not an ethical thing to do. And I would certainly question the ethics of any principal or district that did not pay attention to these cohorts of students, whoever they may be.

I'd like to add that I don't think that these are really the majority of students at risk. If you look at the city of Camden, you have got close to a 42 percent high school completion rate. They're dropping off in middle school, as opposed to -- maybe in Clifton, they're not dropping out in middle school, but in Camden, they are, because they're staying back so much and they've reached the age of 18.

So now we're identifying the problem. We are not-- NCLB is not aimed to create problems, it's aimed at identifying the problem. And that's where we are now. So we're being able to look at schools like Rumson -- which, I was called by a group of parents of disabled children, who wanted to know what their rights were under NCLB. They feel that this particular group of parents -- and there was about 20 of them -- felt that their children were being denied an education that they deserved, because their children were developmentally or physically disabled. I get calls, throughout the state, from different parent groups, whether it be from Abbott districts or to an INJ district like Rumson.

So, when you've got a school like Milburn, New Jersey, that scores off the charts throughout the United States-- If you have a cohort in that school that they're not bothering to address, then there is need of improvement. They have to address the cohort that they're not paying attention to. As a former school board member, I can tell you that I know for sure that schools have a tendency of guiding, cultivating the better students and letting the others fall aside. It's not fair. So NCLB identifies that problem.

ASSEMBLYWOMAN PREVITE: Well, I appreciate what you're saying, but I didn't hear the answer as to whether or not there is an effort to assess how many children are slipping out, under the present system.

I'm a former teacher and a former school board member, and I know the realities -- run a youth program for 30 years that has a full-fledged school. And I'm really concerned about this. I have a feeling it's something you can't get a handle on. It's not something anybody's going to say, "Hey, we got rid of this many kids that are bringing down our scores." Nobody's going to really tell the truth. And I most assuredly agree with you that that would be unethical, but that doesn't mean it isn't happening.

MS. SMITH: Well, that's sad, but it's the State's responsibility to do that. The State has the ultimate responsibility for the local school districts, for the accountability. The State has the responsibility of setting the Core Curriculum Content Standards, not the Federal government. The State has the responsibility of gearing its assessments, not the Federal government. The State has the responsibility of forming its cohort, of whether it be 20 -- and I do believe that the State of New Jersey is coming in with -- asking for some type of provision to redo that -- their 20 cohort.

So it's not the Federal government who has this responsibility. And if we did do something like that, I am sure the retaliatory remarks would be that we were interfering in the local dealings of independent entities. All we do is ask for accountability of Federal dollars that are being spent. We want to make sure that those Federal dollars are being spent properly and that we are getting a return for our Federal investment. We do not interfere in the daily workings of a school system.

ASSEMBLYMAN GUSCIORA: I disagree with that. I mean, after-
- I'd love for you to comment on Dr. Villa's and Dr. Rice's comments. But it sounds as if it's half way true, it's pretty *farkatk* a situation. (laughter) Here you have improving school systems. And you want them to alarm parents to say they're going to a crappy school, when they've made leaps and bounds.

MS. SMITH: No, I would never use that term, *crappy school*.

ASSEMBLYMAN GUSCIORA: Well, that's what you're doing.

MS. SMITH: No.

ASSEMBLYMAN GUSCIORA: They have to--

MS. SMITH: We are not doing it.

ASSEMBLYMAN GUSCIORA: Excuse me, Valarie.

MS. SMITH: You used the word *crappy*.

ASSEMBLYMAN GUSCIORA: Excuse me, Valarie.

MS. SMITH: We do not.

ASSEMBLYMAN GUSCIORA: Okay. You're telling them to notify all those parents out there that you have a failing school. And then they have a choice to go somewhere else. And this school district is, then, going to have to pay for transportation to put them somewhere else. I don't even know

where you expect them to go. I think it's a pretty damning indictment on No Child Left Behind if a school has made yeoman's progress, and yet, at the same time, they have to report out to the public that they're a failing school system. And that's the reality.

MS. SMITH: Well, I don't know who told the schools that they have to report that they're a failing school system. We issue a report that the school is in need of improvement. And if you're avoiding teaching to a particular cohort, to a minority sector, then you are in need of improvement.

ASSEMBLYMAN GUSCIORA: I think, Dr. Rice, you had a comment.

DR. RICE: If I could just mention a few schools that are in need of improvement: Ridgewood High School, Princeton Regional High School--

ASSEMBLYMAN GUSCIORA: Hopewell.

DR. RICE: Moorestown High School.

I beg your pardon?

ASSEMBLYMAN GUSCIORA: Hopewell.

DR. RICE: Hopewell High School -- a number of schools that we tend to think of as outstanding schools -- the Ivy League institutions tend to think of them as outstanding institutions, as well. They've been flagged under No Child Left Behind. And that's because of something that the Federal law -- the Federal government has to own at this point. Thirty-nine of 40 equals early warning. That's what it is. It is a very unforgiving system. And when youngsters are held to the same standards, regarding their linguistic background, regardless of their handicapping conditions, or their challenges, that has pretty dramatic consequences.

I would like to say, Mr. Chairman, if I could, we do-- Regarding the N, we do appreciate the Department's looking at the N number, and we appreciate the Department's making the recommendation to the Federal DOE to move N from 20 to 35 for special education youngsters. We continue to disagree that that is sufficient. We believe that it should be higher for special education youngsters, and it absolutely should be higher for other youngsters, as well. N equals 20 is artificially low. There's a reason why 42 other states have higher Ns than we do. And it's because they thought about this in more profound ways.

And I will tell you one more thing about No Child Left Behind. I believe strongly in disaggregating test scores. And I've been disaggregating test scores for almost a decade without No Child Left Behind. So you don't need to break out your-- You don't need No Child Left Behind to break out your test scores by ethnic groups and socioeconomic groups, limited-English proficient, and the like. You don't need No Child Left Behind to do that. We were doing that in Fort Wayne, Indiana, 10 years ago without No Child Left Behind.

I will tell you, though, that this is a law that paradoxically penalizes the more diverse districts and the more diverse schools. And the reason for that is, that more of the categories are applicable. If you have 100 percent anything school, only that particular ethnic group -- only those categories associated with that particular ethnic group are applicable in the ethnic categories. Whereas, if you have -- as we do at Clifton High School -- a wide range of youngsters -- and what a wonderful place Clifton High School is -- second largest high school in the State of New Jersey, a terrific place. I encourage all of you to visit, but not

on the same day -- a great place. But all of those categories are applicable for us.

If we were 100 percent something, if we were homogeneous, NCLB catches us in only a single -- or is applicable in only a single category. So, paradoxically, it doesn't necessarily help the more diverse schools, it creates a situation, whereby, the more diverse schools are likely to be singled out as deficient in one way, shape, or form.

ASSEMBLYMAN STANLEY: I have one of my members-- We have a couple of questions, still, that are pending. I'm going to ask the members to be as brief as they can in the questions -- and the answers be as brief as possible.

ASSEMBLYWOMAN VOSS: I just would like to ask, have you been listening to the testimony that's been given here today? I think all of us have raised some of the same questions.

I have to say, as an educator for my entire life, this is probably one of the most poorly thought out laws. It has penalized every aspect of education. The onus is put on the State when the Federal government is mandating things but not paying for anything. It is a terrible law, in terms of special education, as many of us have brought out. It's a terrible law, in terms of English as a Second Language, as many of us have brought out. And this whole law really needs to be revisited again.

We have, in the State of New Jersey -- and I've been teaching for 41 years -- we have had testing programs in place so that every child-- I also come from a district that has over 60 different nationalities. Every one of those children was taken into consideration. Every one of those children was given

the best education. And I know this to be true throughout most of the state, because I visited many, many schools. I wonder, sometimes, if the people who craft these laws have gone into our schools to see what we are doing. Because it is very obvious to me that that's not the case.

ASSEMBLYMAN STANLEY: Thank you, Dr. Voss.

Assemblywoman Pou, and then Assemblywoman Greenstein.

ASSEMBLYWOMAN POU: Thank you, Mr. Chairman.

Ms. Smith, I was just amazed at some of the comments that you were making, so I'd just like to ask you a question with regards to what is your understanding.

In your opinion, what is the Federal government, U.S. Department of Education's responsibility to the states?

MS. SMITH: The U.S. Federal government, as far as the Department of Education-- We did not become a Department until 1980. It wasn't until *Brown v. The Board of Education* that the Federal government started funding aspects of education. And that is because the Constitution does not address education. That is left up to the individual states. So the Federal government was never involved in that.

ASSEMBLYWOMAN POU: But what is, in your opinion, your job? What do you see yourself, as a representative of the Federal government-- What is your responsibility, as you see it, with regards to aiding and helping states -- the ones that you've mentioned -- in terms of what do you see your job as being?

MS. SMITH: All right. Well, you're asking two different thing -- as to what the role is and what my job is -- what the role of the Department is and what my job is.

ASSEMBLYWOMAN POU: No, I'm asking--

MS. SMITH: My job is to ensure--

ASSEMBLYWOMAN POU: Well, the both are intertwined.

MS. SMITH: Well, my job encompasses a lot of things. But I would say, if I were to merge it with the mission of the United States Department of Education, I would have to say it's to make sure that the civil rights of each and every student was abided.

ASSEMBLYWOMAN POU: Civil rights, not their educational--

MS. SMITH: Their civil rights to a thorough and efficient education.

ASSEMBLYWOMAN POU: Okay. And in assuring that a thorough and efficient education is provided for, what do you feel is the responsibility of the Federal government to ensure that it is helping the states along those lines?

And let me just try to -- because I know, in terms of time, where I'm going with this line of questioning. You talked about accountability. But you talked about the accountability of making sure that the money that is being provided for by the Federal government, that is, indeed, being used to provide -- that is being -- I forget the last word that you said -- something like that you're getting your money's worth, or that it's--

MS. SMITH: It's an investment. We want to see what the return is on the investment by student assessment, by getting all students to be proficient.

ASSEMBLYWOMAN POU: And if I may just stop you there-- How do we-- How do you gauge that if we're not involved, in terms of making sure that you're helpful -- not you, per se -- but the government is helpful in making sure that the schools are being given -- the State of New Jersey is being given the kind of assistance that is needed?

Clearly, you talked about what some of the schools-- And I recognize that you're-- I'm assuming that you're speaking in the abstract, because you're not specifically making reference to any particular school anywhere in the State of New Jersey that is in violation of any of the educational cohorts, as you called it, with regards to failing to do their jobs. So I'm assuming you're using -- you're speaking in the abstract here.

But do you not see that responsibility of the Federal government to making sure that you're helpful in seeing that -- that you're an aide and an assistant to the State, not looking to just making sure that those dollars are wherever it is?

MS. SMITH: Yes.

ASSEMBLYWOMAN POU: Then how can we come to the No Child Left Behind law to say that it is up to the State of New Jersey to decide how they want to implement the law, or what tests, or how they -- the testing standards that they set, that you've talked about -- when you're not providing them with the kind of assistance that is needed?

MS. SMITH: Well, we believe that we are. I respectfully disagree. The fact of the matter is, that we do not interfere with what the State puts together for Core Curriculum Content Standards, what their assessments are.

ASSEMBLYWOMAN POU: But you do evaluate them. You do not interfere, but you do evaluate them.

MS. SMITH: No, we do not evaluate them.

ASSEMBLYWOMAN POU: How do they get evaluated, in terms of the funding that they now get available then, if not done through the NCLB?

MS. SMITH: The State does the evaluating. You submit -- the New Jersey Department of Education--

ASSEMBLYWOMAN POU: The standards are -- the regulations or the statutes are set forth by the NCLB.

MS. SMITH: No, no. The State puts together an accountability plan that gets submitted to the Federal--

ASSEMBLYWOMAN POU: Which is approved by the Federal government.

MS. SMITH: --gets submitted to the Federal government. And we go--

ASSEMBLYWOMAN POU: And it's approved by you?

MS. SMITH: --by that accountability plan, by the accountability plan that is submitted by each and every individual state. So your accountability--

ASSEMBLYMAN STANLEY: Can we go through the Chair, so that we don't have a lot of back and forth, please?

ASSEMBLYWOMAN POU: Thank you, Mr. Chairman.

Actually, I'm going to really end this particular questioning back and forth, because, really, the whole point of what I was trying to make -- and I'm not sure that I'm making it. It is getting late, and perhaps we're very tired.

I just found it particularly disturbing to hear -- to say that we're only interested in the bottom dollar amount -- making sure--

And, Ms. Smith, perhaps you did not mean to say that. And we all are very (indiscernible), and it's important for us to be accountable and want accountability. But I think it also is equally important to make sure that our children's education, and the wherewithal, and the necessary tools, and the resources are made available to those particular states all throughout the country.

Certainly, in New Jersey, we're very proud of the kinds of things that is going on with our children, in terms of their education. And we, ourselves, set our standards very high in New Jersey.

MS. SMITH: Yes, you do.

ASSEMBLYWOMAN POU: And as a result, we have been able to be at the top level that we are in. But this is not to say that the government ought to be looking at where the money is going without taking into account the impact and the problems that are happening within the NCLB laws.

So those are the kinds of things that, I think, if we're more sensitive to, we have the ability to work together, better, towards that end result, as opposed to creating the separation of -- this is the way it's going to be, and this is the way it really ought to be.

Thank you, Mr. Chairman.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.

We have Assemblywoman Linda Greenstein.

I'm going to ask my colleagues, if we can, to try to move it along. We've got a few more people. We want to try to get them all in. We're running out of constrip (phonetic spelling), we're running out of tape. So let's try to be brief.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Ms. Smith -- is that correct?

MS. SMITH: Yes.

ASSEMBLYWOMAN GREENSTEIN: Okay, thanks.

I wanted to just ask you-- You've sat through this today. You've heard what we've heard. Do you have any sense of why the education personnel who put together the concept of No Child Left Behind would be so different, in terms of their views, from the education personnel that we're hearing, here in New Jersey -- the experiences that we're hearing? It's a little bit like a black-and-white, or a night-and-day, situation. And I feel that, clearly, there's something wrong here, and there's something that needs to be reconciled, in terms of all this.

MS. SMITH: Well, I think that any group, whether it be a union or different associations within the education community-- Not everyone beats to the same drummer -- walks to the same drummer. I forgot that term. I am getting tired.

So the thing is, as I hear the Superintendent of the Clifton school district, I can get other superintendents of districts here in New Jersey to state quite the opposite of what he has stated. I can get people to state quite the

opposite, that I know, that have contacted me and have told me that No Child Left Behind is wonderful.

ASSEMBLYMAN GUSCIORA: Could you give us their names so that we can contact them and invite them in here?

MS. SMITH: I will contact them and have them contact you, but I'm not going to give their names.

ASSEMBLYMAN GUSCIORA: Well, it's not Soviet secrets. What school districts say that they'd love to implement this law?

MS. SMITH: I am not going to violate people who are speaking to me off the record.

ASSEMBLYMAN GUSCIORA: I find this highly incredible.

MS. SMITH: So you're telling me the entire education community is all--

ASSEMBLYMAN GUSCIORA: We're trying to improve the education system, and you're saying that this is some kind of secret information. Either you have the information or not.

MS. SMITH: I love your terminology.

ASSEMBLYMAN GUSCIORA: You said that you could bring in people that could vouch for the No Child Left Behind. And I would just like to know what school districts, that you know on the top of your head, are performing swimmingly on this. Either you have it or you don't. And that speaks for itself.

ASSEMBLYWOMAN GREENSTEIN: Just to finish what I was--

MS. SMITH: I don't know why you have to be so hostile, Mr. Chairman.

ASSEMBLYMAN GUSCIORA: I'm just trying to get at the bottom. You're the one who is reluctant to provide information. We're trying to get to the bottom of this.

MS. SMITH: No.

ASSEMBLYWOMAN GREENSTEIN: I think, from what I'm hearing here today, one of the main problems in this system -- and I'm learning all the details. And, certainly, I'm not as much of an expert as some of the folks sitting up here. But it seems to me that there is this attempt to judge various groups in a homogeneous way. It's, sort of, a one-size-fits-all approach, which is never good in any kind of legislation. And by doing that, and by putting these harsh judgements on schools, it's clearly not the way to go.

We need to take an individualized approach. We certainly need accountability. We need to have standards. We need to have testing. But it seems like this may have taken the whole concept way too far in one direction. And I do believe, very strongly, that something needs to be done here, because we have a real disconnect with practitioners out in the field. Apparently, this is going on in other states, as well. And whatever might be some of the laudable objectives of this program-- I think it's not some of the objectives as much as it is the entire way it's being carried out -- the techniques.

And I also agree with what, I think, this gentleman said, that the funding is secondary. Yes, it's good to have these things funded. But, I think, what's most important is that the entire scheme to carry this out is, apparently, not working. And it's causing a lot of chagrin and upset in the districts. And I think not only are the teachers upset and the administration, but it's going to hurt the students. And, clearly, none of us want that to happen. So I hope that

everybody concerned will take a close look at this and reevaluate it. I really think it's necessary, from all that I've learned.

Thank you.

ASSEMBLYMAN STANLEY: Thank you, Assemblywoman.

I have Sarah Kohl, from the New Jersey School Boards Association; and I have Debra Bradley, Marianne Chletsos, and Barbara Tedesco, from the New Jersey Principals and Supervisors Association.

And if you've submitted written testimony, maybe you could just paraphrase your testimony. (laughter)

SARAH KOHL: Thank you, Chairman Stanley, and Chairman Gusciora.

My name is Sarah Kohl. I'm one of the new lobbyists with New Jersey School Boards Association. And about a half an hour ago, I crossed out *afternoon* in my notes and wrote *good evening*.

I just want to thank you for offering us the opportunity to come and talk with you about the State's implementation of NCLB. I will request that you look through the written testimony that we've submitted.

Like many of our fellow members in the LEE group, we are concerned about funding. But there are other issues that our members are bringing to us, in terms of the implementation of this law in the state. And, namely, those issues are the testing of students with disabilities and the maximizing of flexibility allowed by the U.S. DOE with regard to the subgroup size. And those are both issues that have already been mentioned.

NCLB treats students with disabilities as a homogenist group. This is in direct conflict with the mandate put out by IDEA that asks that students with disabilities be treated as individuals and establish goals and plans based

upon their individual needs. Although the State allows for flexibility with choosing certain accommodations for testing students with disabilities, only 1 percent are allowed to take an alternate assessment. Neither the word *cap*, nor the word *severely cognitively disabled* are based on scientific evidence or student need. We are asking for greater flexibility in terms of assessments of students with disabilities. And also that the State would maximize the amount of flexibility that's allowed in the Federal law.

Second, the subgroup size for reporting test results -- which has already been mentioned, I think, several times. Obviously, there has been increased flexibility in the latest changes to our accountability workbook in the State. Like our other members in the LEE group, we're asking for additional flexibility -- that the 35 subgroup size for students with disabilities is still not large enough. And, obviously, a 20 subgroup size, or an N equals 20, is also too small. And we're asking that it be increased to 40.

And that's the total of my testimony. There are other issues. These are the two main ones our members have brought to our attention.

Thank you.

ASSEMBLYMAN STANLEY: Thank you very much.

Ms. Bradley.

DEBRA BRADLEY, ESQ.: Good evening, Mr. Chairmen and members of the Committee. I thank you for your patience in hearing us at this late hour.

I'm here representing the New Jersey Principals and Supervisors Association. We represent close to 6,000 principals, assistant principals, and supervisors within the state. And I can tell you that, contrary to what you might

have just heard, our members have embraced the goals of this statute, and we work hard every day to implement it.

As you've heard before, No Child Left Behind puts the accountability for schools at the building level. You can't expect that to happen without school leaders being directly involved in the process. And our view is that the statute has been a positive piece in several areas. One is its focus on accountability. Another is its focus on all students learning. And another is its focus on parental involvement and notice to parents -- inclusion in the school community.

We have found that the statute has fallen short in several areas. One of them is funding. A second one is its rigid approach to accountability, as you've heard today through the numerous examples given to you. A third is its imposition of impractical remedies. Although, what we've already talked about today, about school choice and the issue of tutors-- If you recall back to the beginning of No Child Left Behind -- when New Jersey objected to the fact that school choice really wasn't a viable option in our state, because we didn't have places to send students, in many districts -- we were pretty much publicly criticized by the United States Department of Education for our failure to be open to these remedies.

The last main concern we have with it, overall, is the failure of the U.S. Department of Ed to promptly address the unintended, negative consequences of the Act. And you will hear more about that at the local level from my two colleagues who are with me today. And they've been very patient. Let me introduce them. Marianne Chletsos is the Director of Special Services

at the Kittatinny Regional High School, in Sussex County. And Barbara Tedesco is the Principal of Harrison Elementary School, in Union County.

Before I get to them, I'd like to just address very quickly the funding question. I know you've heard a lot about different numbers. Our view of the issue of funding of No Child Left Behind is that it's under-funded. When the initial Federal appropriations were made, they did show significant increases in certain areas, such as Title I. But the appropriations levels were not adequate in many areas, nor have the actual costs of implementation been acknowledged.

As you know, several states have done studies to determine if the State should bypass the limited Federal funds it would receive and could bypass the scope of these mandates. That's really not an option for New Jersey. We're too dependent on Federal dollars.

But let me tell you a little bit about what some of the states are considering. For example, six states -- and I will give you the names, if you're interested -- are considering or have considered bills or resolutions calling for the state to opt out of No Child Left Behind and return their Title I money. Maine and Utah are considering bills to prohibit the state from spending state funds to comply with No Child Left Behind, or they vow to only comply with the provisions of the Act that are fully funded by the Federal government. Vermont passed such a measure last summer, and a similar bill was considered, but rejected, by New Hampshire. Twenty states are considering resolutions requesting waivers or other means of flexibility, or additional money. Ten states are conducting studies, or have completed studies, on the cost of complying with No Child Left Behind.

If you add those up, that's 40 out of 50 states -- state legislatures that consider there's a problem with the funding of this statute. Whether you argue about dollars or not, that's a pretty big majority. And we think that this Committee -- one of the possible things you could do is conduct such a study for our state. We need to know what it's really costing the local districts.

And I'd like to share one with you. It actually comes from Assemblywoman Previte's district. The Cherry Hill school district -- within your community -- is a very highly successful school district. The district has invested money in hiring research directors to review and analyze testing data. They have hired a public relations officer to share No Child Left Behind data with the public, as well as meeting the public notice requirements of the act. They have bought new State tests, or new local tests, to do at the in-between grades, at the cost of \$20,000 to \$30,000 per test. They've purchased new math materials. They've paid additional stipends to the teachers to gear up for the test. They've hired additional student tutors. They've reassigned the duties of the assistant principal to redo the curriculum and oversee the implementation of the Act.

This is all to meet the requirements in a district that is really conceived as a highly successful district. And only one subgroup failed to meet the AYP goals for one year. And that's the investment they had to make at the local level. You know they're not getting Title I funds, because they don't meet the eligibility requirements for that. That's the reality of funding of No Child Left Behind. It's the districts that have to make up the cost without the funding.

And if you add to that, with all due respect, the school budget cap law, that was just enacted, I don't know how schools are going to be able to find the money. In the next year, we're going to be in the same situation we've

been in, where you have the Federal mandate that doesn't go away, a State that's unable to fund it, and the local districts and communities have to step up to the plate and fill in the gap. Those are our concerns with the funding.

And I'd like to now turn it over to the practitioners, to tell you what the concerns are in testing in the field.

M A R I A N N E C H L E T S O S: Good evening, and thank you for this opportunity.

I'll try not to repeat things that have been a theme that's been ongoing throughout this whole time today. But I would like to report--

ASSEMBLYMAN GUSCIORA: Could you please put your mike on? You have to just press red--

MS. CHLETSOS: It is on.

ASSEMBLYMAN GUSCIORA: Is it on red?

MS. CHLETSOS: Yes. I'll get closer.

ASSEMBLYMAN STANLEY: Oh, please state your name.

MS. CHLETSOS: Marianne Chletsos. I'm the Director for Special Services for the Kittatinny School District in Sussex County.

In reviewing No Child Left Behind, in terms of special education, no one has quite brought forward today this one area related to the code that we must follow to find a child eligible for special ed and related services. It's a three-prong criteria.

And one of those prongs says that the disability adversely affects the student's educational performance. In other words, if a student's educational performance is equal to or above that of grade level peers, that student is not

eligible for special education and related services. Therefore, I think we have a pretty obvious contradiction in terms.

We also rely heavily -- it's been said earlier today -- on one-size-fits-all, in terms of the statewide assessment. We have a high stakes test. We're asking students to perform on a test that their grade level age peers are able to -- or their grade level peers perform on. We are not given the flexibility of the option to allow a student -- who is, let's say, in eighth grade but reading on a fourth grade level -- to take a fourth grade level assessment. They take an eighth grade level assessment. And the code says that they participate if they are able to answer any of the types of questions.

There's one thing that data does not reveal, and this didn't come out today. And I'd like to impress this upon you. And that is the impact upon students with emotional issues. And I experience this work firsthand, and I've gotten similar feedback from many directors across the state. And what we've seen, despite how well we prepare these students to participate in this assessment-- And many of these students with emotional problems have intact cognitive functioning. But they struggle through those tests. We encourage them. We want to keep at our 95 percent of our small subgroup so that we're not looking as if we're trying to push them out the door. We have them participate. But many of them decompensate well after this testing time. I've seen it repeatedly, and others have seen it repeatedly. And I think we have to look at the personal factor when we look at some of this statewide assessment. They don't constitute the bulk of the students participating. I would say to you, most of them are those with learning disabilities, and that's a whole other issue.

In New Jersey, we're asking them to participate in a language arts literacy section where we may not read the test to them. During the school day, 180 days a year, we can give them assistive technology to assist them with reading. We can try to improve their reading skills. In my district, we use a Kurzweil reading system. We can scan in their tests, they can listen to them, they can respond to them. We can't do that on this test. They have to be able to read it and answer some complex comprehension questions. It's a decoding test. It's a reading vocabulary test. And it's a reading comprehension test. And if one has a specific reading disability, it precludes them from passing the test, very often. And they will shut down on it, and they will feel miserable about themselves.

The math test is also very verbally loaded. I pulled up one question today from the same tests, from the Internet, that the State Department offers to us to use as testing samples. And I'll just read you one. I just pulled it randomly: "A sequence of shaded squares is displayed below. One vertex of each shaded square, after the first, is at the center of the preceding shaded square. The ratio of the area of the tenth shaded square to the area of the twelfth shaded square is?"

When one has a significant disability in the area of language, they're very confused by the language of this test. It's not a basic skills test. It is a high stakes test, and it is very verbally loaded. And many of our students do poorly on it, just for those reasons. Not because we haven't educated them well, not because we haven't raised the stakes, not because we haven't put money into them and energy into them, but the test itself is not geared to their learning disabilities or their areas of deficit.

The 1 percent cap is particularly difficult for us. Yes, it's been raised from a half a percent to 1 percent. And New Jersey has been working on a waiver process. But I will tell you that parents network, and they move into districts that are willing to educate these students within district. I don't blame them. I would try to do the same thing if I had a child with a disability. I would want them with their peers as much as possible. But I can tell you, this year, I probably will have one APA, and next year, I know I will have six. And my N is probably no more than 22. So I will probably, at some point, be flagged for providing many students with an APA. But our door is open, and we're willing to educate them. But I think we're going to be penalized somewhere along the way.

Annual yearly progress is another issue. And what happens is, we compare different cohorts, different sample groups. So, for example, the population I have this year in eighth grade, participating in the GEPA, will not be the same group that is compared with next year. I, kind of, said that backwards. Bear with me. So we have 13 disabling categories within New Jersey. This year, I may have a different sample as those coming up a year from now. So we're really comparing apples and oranges. They're different cohorts. We're not a homogeneous group, and we're not a homogeneous group from year to year. And this can be particularly onerous for small school districts.

Staffing issues have been said before. Special ed teachers have to be highly qualified in many areas; whereas, regular ed teachers only have to be highly qualified in one area. Our district has very high standards. I'm not allowed to put someone who is not highly qualified into an area. So I have to

play a big juggling game. It's a staffing issue that needs to be reexamined, as well.

I think, hopefully rather quickly, I've given you some new issues to ponder. And I thank you for your time.

ASSEMBLYMAN STANLEY: Thank you very much.

BARBARA TEDESCO: Good evening.

I come to you not only with 32 years of experience, but my field is in bilingual/ESL and world languages. And I come to you, on behalf of the state, as the past president of the Bilingual/ESL teachers group.

ASSEMBLYMAN STANLEY: I'm sorry. You're Ms. Tedesco?

MS. TEDESCO: Yes.

And in my school, we have a central program. It is the bilingual home for our Spanish and our French programs -- our Haitian Creole students.

But when I come to you with this, it's to say that, first of all, I want you to know-- And I applaud the effort that No Child Left Behind has had, in terms of giving our students equal access. Many years ago, our students -- and I say ours, in terms of bilingual/ESL students -- were not allowed equal access into Title programs or other remedial services. So I think of this as very positive.

I also applaud New Jersey in recognizing that English-language learners are now currently waived, if they've been here for one year, from taking the language arts literacy portion of the test. They do take a test to assess their English language growth. My main concern right now -- and it's something that I work through every day -- is seeing that the English-language learners, in terms of the math area--

If we think about math, we first have to understand -- and I'm going to give you a crash course in ESL and bilingual 101. It takes a minimum of five to seven years for a child to start to acquire English proficiency. And the word *proficient* or *advanced proficient* is what we need, in terms of our State assessments. In this case, what you're looking at is anything below that -- is interpersonal and survival skills. It's the *hellos*, the *how are yous*, *I need to go to the bathroom*. And this is what we're developing.

Now, I'd like for all of you to reflect back to when you were in high school, taking your foreign language, which is now a world language. And just ask the question-- And I asked this of the power brokers. Would you have been able to take an ASP, a GEPA, or a HSPA, after one year, in that target language? And I know, for most of us -- even for myself, who is a language person -- I think the answer would have been, no. Because we're looking at the interpersonal skills that we need to survive, and not at the cognitive academic language that is needed.

So when my students begin to look at just the directions of the test -- and I'm not going to have as cerebral an example. But one of the directions that was given was to convert your information into feet. Well, for an English-language learner, the first pair of feet they know are the ones they're walking on. It has nothing to do with measurement. So that is one area that is really troublesome, in terms of understanding the lingo of the test. It's almost like a language in itself.

Another point that I'd like to bring up is the fact that, yes, the students may read. But as we look at this word *read*, we look at the word *decoding*, again, that has come up in special education. We have to look at

directionality. Many of our English-language learners come to us from cultures where the directionality is not as we go, from left to right, but rather as right to left. And think of those that use characters and other systems, rather than the system that we're used to. This is very-- It affects their domain. And that affect affective piece is something that, in terms of feelings, I think we downplay. I think that when we think about the students that are here -- and I looked, last week, just at my Haitian population. If this were the week of testing, they would have been devastated, because many of them lost family members in Haiti. It possibly could have even been their parents.

But one of the things we look at is, where is the strife? Where are the political unrest? These are the students that we are getting into New Jersey -- where we have 150 different languages represented in our state. So we have to look at the affect of domain, or else there is no way that a child is going to be able to achieve at the cognitive level.

I give another example, in terms of my Haitian students -- is that they have had, many of times, interrupted education. So even though they may be at the third grade -- and we try not to penalize them for their age -- this is an area-- Again, because of what is happening in their country, they're being hurt. And, again, they're having to take this test.

When I look at the math portion -- again I'm strictly focusing in on math -- there is an open-ended section, and they must interpret their answers in writing. Well, as we learn, even as children, the skills are listening, speaking, reading, and writing. There is no correlation that they're going to express themselves, even against their rubric, and get the score that's needed.

Where I'm asking for -- is another modification. And that modification, coming to -- in the math area -- that we allow either a modification that we can use native language, that we can also have portfolios, that we can use other types of assessments to show that they have the knowledge -- they just don't have the medium, right now, of explaining it. And even in reading directions, we are allowed to read the directions in their native language. But I think it's extremely discriminatory that if I have a school where I do have a Haitian teacher, and I do have a Spanish speaker, that they can have their directions translated; why can't my Gujarti speaker -- of where I have noone except the child's father and mother, and that would not be permitted -- or my student who speaks Ebughu, from Nigeria?

With that, I say thank you for giving me the time to address-- The rest of my statements are in my written testimony.

ASSEMBLYMAN STANLEY: Thank you very much.

MS. BRADLEY: I'm sorry. If I may make one quick comment with--

It's a prior answer to your question, Assemblywoman Previte, about the -- the question about, basically, districts hiding students to avoid them taking the test, or the dropout rate. No Child Left Behind does, in the AYP sections, include not only the test scores as one measure, but it also requires that the State choose a secondary measure. And in New Jersey, that measure is dropout rates or attendance rates at the elementary and middle school levels. And that is part of the calculation within that. So schools cannot be hiding those students. If they're above the dropout rate, or there's been a significant change in those areas-- And it's not even at the high school level. The question

is, if the school is a high school, was the school's dropout rate less than 2.6 percent, or is it .5 percent less than last year? So any kind of significant growth could be caught.

ASSEMBLYWOMAN PREVITE: Thank you. I appreciate your calling that to my attention.

MS. BRADLEY: You're welcome.

ASSEMBLYMAN GUSCIORA: I just have one clarification I need to seek with the Department of Education -- the State Department of Education. All of these pitfalls that have been testified -- whether it's the 40 criteria, or any of the other ones that we've testified on in the second language-- Can the State just merely change the regulations, or do we have to petition the Federal government? Can't we just make this all better tomorrow? (laughter)

ASSISTANT COMMISSIONER BRYANT: No, actually, what would happen is, as we have done for the past two years, amend our workbook application. And that can happen at any time. And we-- Our most recent submission was just approved for the N size of the special ed, and the participation rate was approved in August of 2004. So that's our most recent submission.

There's nothing to preclude us from going forward next month with additional amendments as necessary. And as I said, we would have to wait to see if we can get approval for that.

ASSEMBLYMAN GUSCIORA: So we can change the-- We can unilaterally change the N number from 20 to, say, 35 or 40?

ASSISTANT COMMISSIONER BRYANT: Well, we can make that recommendation. We have to wait for the Federal government to approve it.

ASSEMBLYMAN GUSCIORA: But we can't do that on our own.

ASSISTANT COMMISSIONER BRYANT: No, no we can't.

ASSEMBLYMAN GUSCIORA: And what about judging on all 40 criteria? Can we say we only want to--

ASSISTANT COMMISSIONER BRYANT: That's not negotiable. There are a number of things that are laid out in their guidance that are not negotiable. There are no exceptions.

ASSEMBLYMAN GUSCIORA: So there are solid criteria from the Federal government that we have to follow. We can't simply disregard--

ASSISTANT COMMISSIONER BRYANT: Exactly. Correct.

ASSEMBLYMAN STANLEY: Thank you very much for your testimony.

We have Dan Gaby, from Excellent Education for Everyone -- E3 -- and Angel Cordero -- can come up together.

DAN GABY: Is this the one? (referring to PA microphone)

ASSEMBLYMAN STANLEY: Red is on.

MR. GABY: Red is on. That's a new one.

Before we proceed, with respect to what Assemblyman Gusciora had asked just now-- I'm puzzled by this, because I'm sure that Mr. Bryant is correct and understands this. But I'm puzzled because I know that the state of Arkansas has no failing schools. It's inconceivable to me that this could be the case. And I was told that they had unilaterally changed the criteria. Now, I was

told that by someone, so I can't attest to it myself. But I think it's worth looking at, because I can't imagine Little Abner passing everything. (laughter) This is-- It's worth looking at.

The reason I'm here is that, about 35 years ago, I was serving as vice president of the State Board of Education during Governor Byrne's administration. And at that point, the first decisions -- which ultimately became the Abbott decisions -- were handed down. They were then called the *Robinson v. Cahill*. And it was the beginning of a process in which we began to funnel money into the special needs districts. I was a great supporter of that, and remain so.

And as part of that process, the Department began to formulate criteria that would go along with the money. And one of them was the beginning of the first, I think, statewide assessment program that we ever had. And part of that program required the testing of children in minimum basic skills. It has emerged since then. But at that point, it began that way. And there were penalties associated with the failure to reach certain levels.

Since that point to this day, there have been a whole series of reforms in education and increases in education funding. And all of them, either implicitly or explicitly, carried with them penalties for noncompliance. To the best of my judgement, in all those years, few if any of those penalties were ever imposed.

Now, I'm not a great advocate of penalties. I'm trying to make a point here, which is that, typically, governments faced with this kind of a backlash against the law do not go forward and impose penalties. I know, for example, despite the fact that we have poured huge amounts of money into the

Abbott districts, and that we are -- have been working at this for decades, many of the outcomes remain unacceptably low. And as far as I know, no penalty has ever been leveled against a school, or a district, or a teacher for failure to see that those children succeeded.

Now, I'm not here to argue whether that's a good idea or a bad idea. But I'm suggesting to you that I fear that the inevitable way that government and regulators operate -- that the Federal government will back off too far in enforcing this program.

By the way, I've learned a great deal here today. And I have to tell you that I have some real concerns, from what I heard today, and I think there's some real legitimacy about taking another look at this thing. So please don't misunderstand where I'm coming from.

I'm not one of those people who insist that you're going to push this thing through at all costs and punish people. I don't mean that. But somewhere between what my experience has been in this state and aggressive, uncompromising enforcement, there's got to be a reasonable way of making accountability a real part of this program and a real part of this process. And God knows I'd like it to be a real part of the State's process, as it relates to the school districts.

I can well understand that if a superintendent, or an administrator, or a teacher had been going along-- And I'm not saying they weren't trying their best. But with their best, they weren't getting results and nothing happened by way of penalties. I can well understand that if they envisioned the Federal government coming down on them, they'd be very upset, as these folks have been upset here today.

But I do think that without-- If you do not have accountability with consequence, then it's a logical absurdity. And I think that's what we've had in this state for many, many years. We have had what appears to be accountability. We've had tests, we've had judgements, we've published the tests. But the fact is that nobody has ever been held accountable for the failure of the schools in this state. And they're significant, and none of us can hide behind that.

Those of you who know what hat I wear, it's pretty clear that I am a staunch advocate of accountability, particularly parental school choice. It would be interesting for me -- and I don't know if my friends in Washington would like this. But it occurred to me, sitting back there, that maybe this thing is a heck of a lot simpler than any of us thought. And I'll make my pitch here.

What if parents-- It seems to me that you could take all of the No Child Left Behind money and leave it with the districts, back off all of the regulations, and simply say, "You know what? We're going to let these parents decide whether you're doing a good job or not. And if you're not, they're going to take a walk on you." That may be all that's necessary to make sure that the money the Federal government and the State government is putting in is accountable. Now, I had my little advertisement, and I will drop out.

One other point I want to make about the funding-- I heard some interesting numbers. Congressman Rush Holt indicated that the difference, as I understood it, between the authorized and appropriated amount was about \$9 billion, nationally. And it appears that there is some view -- without getting involved in whether they intended to authorize it or not, because I don't want to get into that. But let's assume, for a moment, that we can see that there

ought to be another \$9 billion. And he indicated that if they divided that amount, on a proportionate basis, New Jersey would get another \$200 million. Does anyone here really think another \$200 million, on the \$14 billion we spend on education, is going to suddenly be a magic bullet? The \$200 million is less than a third of what the city of Newark spends on public education.

It seems to me, guys, that having watched this amount rise steadily - When I was on the State Board, I think the per-pupil spending in Newark was about \$4,000 a year. It is now over \$15,000. I think in inflation adjusted terms, it's about two-and-a-half times what it was then. I don't think any of us believe that money is the only answer. I'm just making it as an aside.

So I think we can concede that whether it's appropriated or authorized, whether it's \$9 billion more or less -- pretty soon you're talking about real money, as Senator Dirksen said. But the point is that there is something seriously wrong with the system that I do not think has a great deal to do, at least, with the money it's getting at this point.

And with that, I'll turn it over to my colleague, Angel Cordero.

ASSEMBLYMAN STANLEY: Thank you very much, Mr. Gaby.

The hour is late, and perhaps we could stick to No Child Left Behind. That would be a great benefit to all of us.

Thank you.

ASSEMBLYWOMAN PREVITE: Amen.

ANGEL CORDERO: Mr. Chairmen, members of the Committee, it's an honor to be here.

My name is Angel Cordero. I live in the city of Camden. I'm a father of three children who attended Camden Public Schools. One of my

children dropped out, another graduated with a fourth grade reading level. My third child attends Camden Public Schools at a magnet school, where she is happy and performing well.

My first two children had no choice. They were assigned to middle schools and high schools that they did not want to attend, and where I did not want them enrolled. My third child had a choice, because a teacher took an interest in her and advised me that she would help me get her into a magnet school. This is her last year.

I work as a parent advocate for New Jersey parental school choice organization called Excellent Education for Everyone. We believe in parents' rights to choose from a variety of schools so they do not make the mistake I made in taking what was given to me, because I believed it was the only choice I had.

The No Child Left Behind law is supposed to give parents a choice. It's supposed to help parents who are unhappy with their schools, and who want a better option for their children. Giving parents a chance to do what I did with my third child -- a better choice.

Every day, I deal with parents and students who want a better choice. Some students are terrified to go to school, because they're being repeatedly assaulted. And some parents cannot get their children to go to school. Some students have been sexually abused, and their parents will not permit them to return to the same -- to the scene of their intimidation. Some are involved in the criminal justice system and do not want to return to the same school that was part of why they got in trouble in the first place. And some parents are dissatisfied with their children's academic performance and want

them to learn more in what they consider a safer, better school. In too many cases, Camden Public Schools refuse to do even the minimum required by No Child Left Behind -- make these transfers in enrollment possible.

I would like to cite three examples. I do not have permission from the parents or the children, so I will have to give my personal testimony, as an advocate. But these are all true cases. One young woman was viciously assaulted and abused in a Camden public school. When her mother asked for a transfer, it took the Camden public school three weeks to respond to the transfer request -- from a school identified as in need of improvement. And when the reply came, the first response was to deny the request. And, when the Camden public school finally gave in and said yes to a transfer, it was to another failing school, not the school the mother requested. The young woman is now enrolled in a Catholic school where she is very happy and performing well.

Another case of sexual abuse in the same failing school resulted in another denied transfer. The young woman's mother was forced to give up custody to her former husband so her daughter could establish residence and attend a suburban school.

Another case, in process right now, involves a well-behaved young man enrolled in a failing school that has failed to make accessible annual yearly progress for three years in a row. He is a well-behaved student, well-liked by the school faculty, but cannot read. His parents want a transfer to a highly respected alternative school in Camden that has a contract with Camden Public Schools. The principal supports the transfer. The alternative school has space for him and accepted him. But the central administration of Camden Public

Schools cannot provide an answer to the student, his parents, the alternative school, or the current principal.

Schools and school districts don't complain about all the money they get with the No Child Left Behind law. What they complain about is not getting enough money. But there is another side to the story. When some school districts, like Camden Public Schools, are not doing what No Child Left Behind requires them to do, in too many cases they are obstructed and denied transfer requests so that students and parents have what I had with my first two children -- no choice.

No Child Left Behind is supposed to give parents and students -- especially low-income parent -- low performing schools -- a choice, a way out, a future for their children. Then the United States Department of Education is going to have to hold the school districts accountable for implementing No Child Left Behind so that low-income parents and students in failing schools, truly, have a better choice.

Urban education has made this country a nation at risk. And this risk should be a national security issue. When New Jersey spends over \$700 million to implement No Child Left Behind reform and improve urban education, we need to hold people accountable for not getting the job done.

But in spite of--

ASSEMBLYMAN STANLEY: Mr. Cordero, I'm sorry. There was a lot on that first page, and now you just flipped it over. (laughter)

MR. GABY: No, there's three lines on the other side.

MR. CORDERO: This is my closing remark. That's it.

ASSEMBLYMAN STANLEY: Oh, you're almost--

MR. CORDERO: Look, there you go.

ASSEMBLYMAN STANLEY: Thank you very much, Mr. Cordero.

MR. CORDERO: I waited since 2:00.

ASSEMBLYMAN STANLEY: Yes, that's true.

MR. CORDERO: But in spite of all the difficulties and frustrations parents and children are facing in urban school districts, we still have a dream. A dream that is deeply rooted within the American dream, that no child be left behind.

I want to thank President Bush and Senator Kennedy for implementing this law, the No Child Left Behind, because it's a good law that gives these poor parents a power, a tool of transfer that they never had. And we have a lot of children graduating from school that don't know how to read or write.

This is an important law to us. We need to straighten some things out. But parents need that option to transfer -- to hold the school accountable for not teaching their children.

ASSEMBLYMAN STANLEY: Thank you, Mr. Cordero. We certainly appreciate your testimony.

MR. CORDERO: Thank you.

ASSEMBLYMAN STANLEY: Last group of people we have here-- (laughter) I think it's Regina Swiere (phonetic spelling) -- is that correct? Is she still here?

JUDY SAVAGE: Regina Swiere was not able to come. I'm Judy Savage, and I'm going to give about 30 seconds on her behalf.

ASSEMBLYMAN STANLEY: Okay, fantastic.

And can Karen McCloud come up, also.

And Sue Gottesman, is she still here, by chance? (no response)

Peggy-- Oh, these folks have left.

And Theresa Land-Fitzpatrick.

Is there anyone who I have not called who wishes to testify? (no response) Very good. Thank you very much.

Please go ahead.

K A R E N M c C L O U D - H J A Z E H, Ed.D.: My testimony really began with good afternoon, but now I'll say good evening to you. And I really do commend those of you who hung in.

I'm here to--

ASSEMBLYMAN STANLEY: Please state your name.

DR. McCLOUD-HJAZEH: Yes, I'm Karen McCloud-Hjازه. I'm the Superintendent of the Middlesex County Vocational/Technical Schools, and also an Executive Committee member of the New Jersey Council of Vocational Schools.

And what I'd like to do today is start with the end, because I know we're all kind of tired. And we've heard so many different aspects of NCLB.

The last page of my testimony -- I have a chart of percentages of special ed students, statewide, at the county vocational schools, and I'm my district. And this is really my case, my dilemma. In the State of New Jersey, there are approximately 12 percent of youngsters who are designated special ed. Those attending the county vocational schools represent 31 percent. In my district, we have 40 percent.

Now, from everything you've heard today about special education and different considerations, you can see that there is no way that my district will ever meet adequate yearly progress. I'd like to give you a couple of examples.

At my East Brunswick school, I had 100 percent of my regular ed kids pass the language arts test, 100 percent. And yet, only 24 percent of my special ed youngsters-- Because of the disproportionate number of special ed youngsters, the whole school failed it. So there is no way I will ever meet adequate yearly progress. And yet, we in the county vocational school district have, for the past 80-some years, been serving every child: the special ed kid, the at-risk kid, the college-prep kid, general academic kids. We have been the school district that has served so many youngsters that were referred to us because they weren't really making it in their home school. Seventy percent of my kids come at-risk to me. And we welcome them with open arms.

And what I want to just review with you is the job we do with these kids. By the time they graduate, I've got 99 percent passing the test. And that's not their first attempt at eleventh grade. They need to take it the second time, the third time. By the time they finish their senior year, I've got them passing. So that's a consideration for NCLB. Who said it had to be the first test in the eleventh grade? We know, from my district, over time, a youngster can improve. And then it is a measure of my school's curriculum. Because, remember, they come to me as ninth graders. So I have them two-and-a-half years only, to bring them up to the proficiency level.

So the outcome of our education -- which we have been, for years, outcome based. What does that mean? It means that we do believe that the

purpose of education is not just that test score. We really do think that people need to be contributing members of their communities, support their families; and my students do.

Of the last graduating class in my district -- and this is representative of every one of the 21 vocation schools -- of those available for employment, 99 percent work. Eighty-eight to 92 percent -- and this is consistent. I mean, we have follow-up studies over 25, 35 years that we've been doing this work. They work in the field we train them in. We've got 44 percent going to college. Isn't that a measure of success? Isn't that what education's about?

And I would just add that education is the beginning, the original training of youngsters. And some of them will go to work right after high school. But don't forget, even the ones who go to college go to work, it's just delayed, maybe, four more years.

So I want to just leave you with this point. For us at the county vocational school, this NCLB will destroy us, and yet, we've been the people servicing 70 percent of at-risk kids. I have 40 percent special ed kids in my district, and we've been doing the work with them. I would just ask for some consideration for county vocational schools, the same consideration that the county commissions for special ed, that the special service school districts have, that the private schools for special ed have. And those districts do not have scores counted against them.

Now, what I have not going for me is numbers. We have only 21 vocational schools. So what we have to present to you is our dilemma. We don't fit the model of a K-12. We don't have kids for 11 years before we test

them. We have them two-and-a-half years. What I'm saying is-- If I could have them four years and do all my programming, and training, and modifications of their curriculum, I can get them to pass. But is that asking too much to give me four years? Other districts have 11 years.

I don't want to delay the point, but I do want you to know that your county vocational schools have, over the past 80 years, educated every child that a sending school has given us. We don't turn them away. We prevent the dropouts. That's who we have been to the State of New Jersey. And I would just ask that you don't forget us, now that we really need help with this. Because, otherwise, you're going to see all those youngsters dropping out, and none of them are going to have viable skills to get a job.

Thank you so much for hearing me and for your consideration.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you very much, Ms. McCloud.

I just also wanted to say that I have first-hand knowledge of your school, and it's a wonderful facility. I grew up in Middlesex County. My mother used to go to the beauty parlor there. (laughter)

DR. McCLOUD-HJAZEH: There you go. See, where would we be without that, right?

ASSEMBLYMAN GUSCIORA: And I used to buy the famous cherry pies. And I even took an automotive class in there during high school. I was so bad that I decided to stay on the academic track. (laughter)

It is a wonderful facility. I have a lot of friends who went through the school. You guys do a great job over there. So we do often include the vocational schools in all our thoughts.

DR. McCLOUD-HJAZEH: Thank you.

ASSEMBLYMAN STANLEY: Thank you.

Yes.

MS. SAVAGE: Hi, I'm Judy Savage, and I'm speaking to you today on behalf of the eight county special services in New Jersey.

In view of the late hour, I want to dispense with the testimony. It was provided to you in writing, and I know you'll take time to read it.

But I just want to bring up one point that really hasn't been touched on today, at all. And we agree with all the other points that have been made with respect to testing of special education students, and so forth.

The highly qualified teacher requirements are also going to have a devastating effect on special education students and on the supply of special education teachers in the future. The law now requires that special education teachers have to be highly qualified in every academic area in which they instruct students. So if you've got a classroom of severely disabled students, and one teacher is teaching them English, and math, and social studies, and science either -- because the students can't communicate verbally or because they have extreme emotional disorders and can't deal with the transitions of going from teacher, to teacher, to teacher -- those teachers now have to have qualifications in all those areas.

The current teachers have a process by which they can do it. And they are highly qualified. They've been teaching all those subjects. They can

demonstrate that they're highly qualified. But when those teachers retire or leave, there is going to be nobody to fill those shoes, because who is going to go through the process of earning certification in special education, plus math, plus English, plus science? People are just not going to be able to do that.

The Department of Education has already changed certification rules so that anybody who wants to get a special education certificate now has to earn two certificates. You have to have special education plus elementary education, or special education plus one or more content areas. It's going to dramatically reduce the number of people who are willing to go into the very difficult field of special education. And we are really, really concerned about where -- special education field. All school-- It's not just special education schools. All schools with special education -- we're really worried about where they're going to be five years down the road.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

ASSEMBLYMAN STANLEY: Thank you very much, Judy.

THERESA LAND - FITZPATRICK: Theresa Land-Fitzpatrick. I'm from Gloucester Township, Camden County. I am going to read my little speech.

But I just wanted to say, about the woman from the vocational school -- I think she's the classic example of how No Child Left Behind can work. If she could do it in three-and-a-half years, could you imagine what could be done if it started from the beginning? But that's not why I'm here.

My brother went to vocational school -- did very well. He had a learning disability. He's making \$75,000 a year -- more than I did. So much for college.

ASSEMBLYMAN GUSCIORA: More than Assembly people.
(laughter)

MS. LAND-FITZPATRICK: Also, I had "good afternoon."

But I want to introduce myself. I am from a family of educators. They have been teachers, vice principals, and college professors, so I am aware of how the school system works from the inside to the outside. And the best experience you can have, though, is having your own children experience it. And boy, what an experience that has been for me.

My two children are now 19 and 20. They recently exited the public school system and are now in college. But as I saw my son move on, I saw the struggle that he had to overcome. When my son was in the middle of the eighth grade, he became very ill, had several surgeries, and subsequently missed one-and-a-half years of school, in which he was supposed to have been homeschooled. He only received two, one-and-a-half hour sessions a week instead of the five, two hour sessions that he was supposed to have received. I saw the school system pass the buck, despite my numerous meetings with them. I had to fight just to get my son the tutoring that he needed. And even then, they were instructed to only teach what was currently being taught that year and not help him catch up on what was needed.

I am a single mother who works full-time and lives from paycheck to paycheck. In order for my son to graduate, I had to work two jobs so that

I could afford to pay the \$400 a month of private tutoring that he needed just to graduate.

I also had a very bright daughter who went through the school system, and she went on to Rider University. When my daughter was in public school, and when it came time to take any standardized tests, she did not have homework because they were studying in class for the test they had to take. Homework wasn't necessary. The more important skill was learning what was going to be on the test and how to answer multiple-choice questions. They took sample tests to help ensure that they would pass. They even had practice test questions with the same questions on them. One would think that the better choice for educators would be to simply teach the subjects, rather than testing with multiple-choice questions, where the proper choices -- which proper choices were on the tests. Shouldn't the subject matter be part of the curriculum, rather than how to pass the test?

I grew up in Cherry Hill, where the average class size was over 30, and we had staggered schedules in the high school. We took standardized testing every year. And yet, we were one of the best achieving school districts in our time and in the state. The only preparation that we received was how to make sure you filled in the ovals correct and printed your name in the correct spot. Depending on the type of test, you were told to either leave it blank or guess. Other than that, you got nothing else. What was on the test was already being taught in class.

Now the schools do not run that way. You can't learn it at home. You can't -- like when my son was home -- you can't learn at home from the textbooks, because you need the teacher's manual in order to do the examples.

Kids today are developing back problems because of the books they are forced to take home every night. That didn't happen when I was growing up. You always had homework, don't get me wrong, but it was coordinated. And the majority of the things were taught in the classroom.

We keep trying to come up with all these new ideas on how much homework they should have. Instead, we have Kindergartners doing homework and high school kids watching movies.

The No Child Left Behind program was designed to make sure that all children are learning the same basic skills that all children should know. We should be teaching that at the start of the school year, and not a few weeks prior to the standardized tests.

Just recently I read that two of my township's local elementary schools did not pass the testing in the math portion set by No Child Left Behind. I was totally shocked. I cannot understand, when Federal spending has increased over 36 percent during the last three years, that our schools are still failing. I also don't understand why the Core Curriculum Act's funding was frozen for two years. By freezing this program, you have caused our taxes to skyrocket, at the same time as our local taxes have increased, supposedly to other State cuts for our local communities.

Then, I went to a meeting at my church just this week -- Mr. Mayor, you were there -- Assemblyman, sorry -- only to find out that there was a millionaires' tax that was supposed to help fund the schools, but has been used for property tax rebates. These rebates don't even come close to the increases that we are facing.

My mother was a teacher with a master's degree in Remedial Reading from Boston University. When she started teaching in the early 1950s -- she'll hate me for that -- she received \$3,000 per year. At her job, she came early and left late. She ultimately knew that her success as a teacher was directly connected to the success of her students. If not, she would be shown the door.

I used to think that my generation did not receive the same quality of education that my parents had, but now I realize that the next generation is actually getting it worse.

You can't blame it on money anymore. Administrators are making up to \$200,000 per year, and the teachers in New Jersey are the second highest paid in the country. My town is above average in the state. In Gloucester Township, we have been hit by two school tax increases: one for the K-8 school system and one for the regional high schools. The 10 percent local tax increase was like the icing on the cake.

I'm almost done.

I'm tired of everyone passing the buck. We spend more money per pupil than any other state, yet we don't see the best test scores. I cannot believe that we are collectively raising dumb children here in the Garden State. I believe that we all want to do the right thing, but we tend to get caught too much in the process of serving the education bureaucracy, rather than serving the students. When you follow the money-- I find myself here in Trenton, wondering why, with all the new taxes that you have implemented, we do not have a basic core curriculum. For all the money that we pay, is it asking too much that at least

our children can have a decent education? If you must take our money, at least make sure that no child is left behind like my son was.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you very much.

And on behalf of the Committee, I want to thank, especially, the U.S. Department of Education and the State Department of Education for hanging in there until the end -- and all the testimony. I think we learned a lot.

I'll turn it over to our chair.

MS. LAND-FITZPATRICK: Can I leave this for the people that did not stay?

ASSEMBLYMAN GUSCIORA: Yes, please.

ASSEMBLYMAN STANLEY: I really just want to thank everyone, including the members who stayed until the bitter end. I certainly appreciate your hanging in there. And we will be working together to come up with some items that we're going to be directing our Department of Education to, to sort of clarify; and, perhaps, some things that we can get information from them on that we might be able to move this -- at least our own experience here in the State of New Jersey -- along in the right direction with respect to No Child Left Behind.

Thank you very much.

I thank all the members.

(HEARING CONCLUDED)