
Committee Meeting

of

JOINT LEGISLATIVE COMMITTEE ON PUBLIC SCHOOL FUNDING REFORM

*"Testimony from Mary Fulton, policy analyst with the Education Commission of the States;
Barbara Gantwerk, Acting Assistant Commissioner of the Division of Student Services
in the Department of Education; and Raymond J. Brosel Jr., Superintendent
of the Voorhees Township Public School District"*

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

DATE: September 12, 2006
1:00 p.m.

MEMBERS OF JOINT COMMITTEE PRESENT:

Senator John H. Adler, Co-Chair
Assemblyman Herb Conaway Jr., Co-Chair
Senator Joseph V. Doria Jr.
Senator Gerald Cardinale
Assemblyman Brian P. Stack
Assemblyman David W. Wolfe



ALSO PRESENT:

Kathleen Fazzari
Theodore C. Settle
*Office of Legislative Services
Committee Aides*

Jacqueline Burke
Senate Majority
Mary Alice Messenger-Gault
Keith White
*Assembly Majority
Committee Aides*

Brian Alpert
Christine Shipley
Senate Republican
Beth Schermerhorn
Thomas Neff
*Assembly Republican
Committee Aides*

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ASSEMBLYMAN HERB CONAWAY JR. (Co-Chair): Good afternoon. We are here for, as you know, for our hearing on Public School Funding Reform.

This week's agenda: We'll hear from education experts on the question of Federal and State mandates, and their impact on the cost to educate children in the State of New Jersey.

As we have been doing, we are asking people to turn off their cell phones. Please take a moment to do that now.

And while you're doing that, I just want to reiterate that -- something about the schedule. Now, we have been following a program where we have laid out, on a bipartisan basis with a bipartisan agreement, that we are going to have -- run these Committee meetings in an organized way, along themes. We thought, as a Committee, that bringing information to this Committee along thematic lines would be the best way for us to understand the information that is being presented; and also the best way for the public to understand the information that's being presented. And so that we're not, hopefully, jumping back and forth from this or that. And as you know, as all our hearings, whether you're in the Health Committee, or whether you're in the Judiciary, or any of the other standing committees in the Legislature, we have an agenda, and we follow the agenda. And things are in order when they are consistent with that agenda. That has been a long-held and consistent practice here in this Legislature, and that is the way we are running this Committee and will run this Committee until we conclude our business.

Now, anybody on this Committee, any member of the public who wishes to make suggestions about the things we should consider, they

should do so, and we will consider them. And for the information of the public, because I know that this question has come up, we are going to have a hearing on outcomes and accountability. And there will be-- At that time, during that hearing, it will be appropriate for members of this Committee to ask questions regarding how money is being spent in the various districts across the state.

I just want to put that on the record; and announce and invite, remotely, our first presenter.

ASSEMBLYMAN WOLFE: Excuse me, Mr. Chairman?

ASSEMBLYMAN CONAWAY: And that's Mary Fulton, Policy Analyst with the Education Commission of the States. She joins us, remotely, from Denver and NCSL, by remote feed. We've done this -- this is not the first time we've done this.

Ms. Fulton coauthored, with Chris Piphon of the Education Commission of the State, and John Augenblick, "School Finance: A Primer – A Practical Guide to the Structural Components of, Alternative Approaches to, and Policy Questions about State School Finance Systems." That is the longest title I think I have ever read. But we're very pleased to have Ms. Fulton join us today and enlighten us about the No Child Left Behind Act and its impact on education spending.

Ms. Fulton, you have the floor.

MARY FULTON: Good afternoon, Mr. Chairman and members of the Committee. I appreciate the opportunity to present to you on the No Child Left Behind Act, on behalf of the Education Commission of the States, which is a nonpartisan policy organization based in Denver. I also appreciate your willingness to interact through video conference and the

willingness of the National Conference of the State Legislators to provide a facility.

I was asked by the Committee to provide a general overview of No Child Left Behind and to discuss states' implementation of the law, and possible issues that might arise as No Child Left Behind faces reauthorization.

First of all, in terms of the overview of No Child Left Behind, NCLB is the 2001 version of the Elementary and Secondary Education Act, or ESEA, which is reauthorized by Congress approximately every seven years. Therefore, NCLB is due for reauthorization in 2007 or 2008. NCLB built upon the 1994 ESEA version -- and mirrors states' reform efforts over the past decade, especially those in Texas -- but imposed more sweeping requirements and has been more strongly enforced than previous Federal laws. The primary goal of No Child Left Behind is to ensure that every student is performing at proficiency; or we can translate that into, approximately, as performing at grade level in reading and math by 2013, 2014.

The key state requirements under NCLB revolve around state reading, math, and science assessments; accountability for all students to reach proficiency in reading and math; consequences for low-performing schools; placing a highly qualified teacher in every classroom; and state and district report cards. If we break down those requirements by their deadline years, we can look at the year 2002/2003 by which states had to issue detailed annual report cards and include such information as reading and math performance by student group. That might include race, ethnicity, by income, English language learners, and special education students; also,

adequate yearly progress results, high school graduation rates, and teacher quality data. Now, most states already had their own report cards, but NCLB increased the requirements for the indicators. And in fact, a lot of states issue an NCLB report card, as well as their own state report card, which I believe New Jersey does.

During that year, states also had to establish adequate yearly progress starting points and annual performance targets, so that all students are proficient in reading and math by 2013, 2014. And AYP, which you'll hear about quite often, are basically benchmarks -- or annual benchmarks that ensure students and schools progress at a rate that they will meet that 100 percent proficiency goal. And states were given a fair amount of latitude to define what meant *proficient* in their states, based on assessments, and devise the cut scores; as well as to set these annual targets, as long as that 100 percent proficient goal was reached by 2013.

So if we look at New Jersey, for example, with the AYP targets for third to fifth graders in reading, it was set at 68 percent to be proficient in 2003 and 2004; up to 75 percent in 2005 through 2007; 82 percent in 2008, 2010; 91 percent in 2011, 2013; and finally, 100 percent by 2014. And most states used a similar pattern, kind of like a staircase where the proficiency targets jumped every couple of years, and then there was kind of a flat growth, and then they jumped again -- as opposed to a gradual, steady increase. So you're in kind of line with most states, how you devised your performance targets.

States also had to start applying NCLB sanctions to schools that receive Federal Title I funds and did not make AYP for two or more consecutive years, and therefore were considered in need of improvement.

The NCLB sanctions accumulate over the years and become more severe. And they start with offering transfers to better schools; then providing supplemental services or tutoring; adopting one of five corrective actions; planning for restructuring; and finally, restructuring schools.

Once again, in 2002/2003, states had to define what is meant by a *highly qualified teacher* and ensure that new Title I teachers met this criteria. Now, the U.S. Department of Ed laid down -- or the law laid down some basic guidelines to define a highly qualified teacher, which included that they had to have a Bachelor's degree, full state certification or licensure, and prove that they knew their subjects. That might mean they have a major in their subject or an advanced degree, pass a subject test, or meet some other state-defined criteria. And that's really where the states had the most latitude. And it also maybe caused some of the most -- or raised some of the most issues.

Along with the highly qualified teacher definition, states had to adopt goals and plans to ensure all teachers are all highly qualified, and measure and report on the extent to which all students have highly qualified teachers, particularly minority and disadvantaged students. (video malfunction) --2005/2006, states had to administer standards-based reading and math tests to all students in grades 3 through 8, and at least once in high school. By 2006/2007, states have to ensure that teachers in all core academic courses are highly qualified. And the Department of Ed gave states one more year of leeway, since no one was meeting that target. And by 2007/2008, states have to administer standards-based science assessments to all students at least once in the following grade bands: 3 through 5, 6 through 9, and 10 through 12. But these test results will not

be calculated into AYP or the accountability. It just is the math and reading, even though the test must be administered.

And many of these provisions are kind of wrapped in an unwritten requirement that pushes states to develop a far more sophisticated data system to gather, analyze, and disseminate information on indicators such as the students' performance, broken down by those subgroups I mentioned, and teacher quality data. And some states have (video malfunction) fairly far along with those data systems, but a lot are struggling. Sometimes the capacity issue -- and that's also an area of high investment, and I'll touch on that in my next section discussing the funding implications of NCLB, which I know the Committee is very interested in.

But unfortunately, it's real difficult to assess the cost of NCLB, and there have been some state studies that are conducted. But to isolate those costs-- Probably some of the easiest things to do is to track some of the increase in student assessments, or if states had to expand the assessments. But I think there are some experts that are trying to devise some more solid methods; because previous studies, some of the methods or agendas have been questioned. So we don't have some real, I think, solid information on the funding implications of NCLB. Although I think when we look more closely in the states and maybe look at their budget and their funding-tracking system, we could come up with some better information. And I think particular NCLB requirements probably have a greater cost impact than others, although this will vary by state. One, as I mentioned earlier, expanding the assessment system; and I'll touch on that in a moment when we look at where New Jersey stands. Also, providing assistance to low-performing schools. A lot of state departments of

education are really struggling, as are districts, with the capacity to assist low-performing schools. And as the number of schools that miss AYP increases, which we all pretty much expect will happen, that burden on the capacity could even grow.

And lastly, I think, as I mentioned, a major cost impact could be on collecting, reporting, and analyzing the data and having (video malfunction).

When we look at the Federal funding for NCLB, typically it's a Title I funding, which is by far the largest allocation and is directed toward disadvantaged students. When you look at the -- all states, in 2005, it was approximately 12.73 billion; 2006 estimate is 12.71 billion; and 2007 proposed is flat funded at 12.71 billion.

New Jersey's Title I funding has seen a slight decline over the past few years. In 2005, it was 271.6 million; 2006 estimate is 265.2 million; and 2007 proposed is 262.1 million. I wish I could provide a little more information on the funding implications, but that's just a tough area right now.

So let's turn to the state implementation of, in response to NCLB. Basically, nearly all states are administering reading and math assessments -- they meet those requirements -- and the majority are on track to meeting the science exam requirement in 2007/2008. Most states have submitted a highly qualified teacher plans and data, and include all the indicators on the NCLB report cards. But one area of struggle that states and districts are having is releasing the adequate yearly progress data before the beginning of the school year, in time for parents to transfer their -- or to have the option to transfer their students to better schools, if those children

are in schools that are in need of improvement; and also to sign up for tutoring. So we see a lot of states issuing these results maybe a few days prior to the beginning of the school year, which has caused some problems for the parents. Although, once again, you can imagine the massive data implications.

Several states also have made changes to their NCLB accountability plans. Some of this might be a little technical, but change in the minimum student subgroup size; the confidence intervals, which is basically a very technical term; and also shifting those performance targets, those annual performance targets. And I mentioned earlier that staircase that New Jersey uses. Some states have modified those, still trying to reach that ultimate goal. And mostly these changes have, I believe, made it easier for more schools to make AYP, but they've also complicated the AYP process and made the year-to-year comparisons more difficult. So, in fact, we may have seen more schools not making AYP if some of these changes were not allowed.

In general, though, I think there's some agreement that NCLB has pushed states faster and further with efforts to improve student learning, and to acknowledge and move toward closing achievement gaps. Although, that certainly is up to -- for debate across the states. But several key state concerns remain regarding NCLB, especially the adequate funding to meet the NCLB requirements; the whole state versus Federal responsibilities and roles -- what role does the Federal Government have in issuing requirements versus the state governments, where the actual responsibility for education rests? Also, the number of and timetable for requirements, settings of realistic performance goals for students, measures

of teacher quality. Some folks are concerned that they're measuring the subject matter knowledge, which is critical but not necessarily the ability to teach, which is also a key component of good teaching. And lastly, how NCLB requirements match up with state education reforms and if they can all kind of work together.

If we turn to the Federal response, under President Bush's First Secretary of Education, Rod Paige, the Department seemed to hold pretty tight to the spirit and the letter of the law, and offer very little flexibility or waivers. I think part of this was in response to earlier Federal laws where the enforcement had not been as tight, and therefore the law was not taken as seriously. But when Secretary Spellings arrived in office, I think she maybe shifted that relationship with the state to some degree, and has provided limited flexibility for special education students, English language learners, and certain teachers -- specifically rural teachers and those who teach multiple subjects. The Department's also granted requests for changes to the state accountability plan.

I think some of these adjustments were necessary as the NCLB played out on the ground, especially with the ambitious goals of the law. But more recently, it seems that the Department is maybe using a little stronger enforcement hand and is tightening up on the requests by states to change their accountability plans, which might result in more schools not meeting AYP. For example, it's my understanding that Acting Commissioner Davy is seeking to increase the minimum student subgroup numbers, which is part of AYP; but it's unclear whether this request will be accepted.

The Department's also pressing states to increase access to, and the quality of, tutoring, since only about 20 percent of the eligible students take advantage of these services offered under NCLB. The Department is also conducting a series of audits recently, and demanding revisions to state assessments and teaching quality plans. And I believe that many of these requests will require better state data and possibly additional investments. And despite the states' efforts to, kind of, meet the requirements, few receive full approval of assessments and teaching quality plans, based on some very recent reviews and audits. For example, only four states -- Maryland, Oklahoma, Tennessee, and West Virginia -- received full approval for their state assessments.

It's my understanding that New Jersey's standards and assessments are pending approval and that the State must address alternative tests for students with severe disabilities. And only nine states received full approval for their highly qualified teacher plan, including Kansas, Louisiana, Maryland, New Jersey -- fortunately -- New Mexico, Nevada, Ohio, South Carolina, and South Dakota. Also recently, the department has introduced several pilot projects, I think, to maybe cause or allow for some flexibility in NCLB and how the law was written, including using growth models to measure student performance -- and I'll talk to that a little bit later; increase student tutoring; and to improve state assessments for students with limited English skills when they're in the math and reading.

Only two states were accepted for the growth model pilot project. That's North Carolina and Tennessee, for this year at least, but I believe more states will be applying in the next couple of years. And so

about seven states are involved in the tutoring program and 24 states are working with the department to improve their exams for limited English students.

Where does New Jersey stand on some of this? A few key indicators with your state assessments: You meet the requirements for your reading and math. You're testing all students in grades 3 through 8 and grade 11. I believe that you previously tested students in grade 4, 8, and 11, so therefore you had to fill in about four grades, which certainly may have had some financial implications. Science assessments: You're testing in 4, 8, and 11, so you're meeting the requirements already, which aren't even due until 2007/2008.

If we look at adequate yearly progress results: For 2004/2005, approximately 39 percent of New Jersey's schools did not make AYP in that year, compared to 26 percent nationally. And somewhere between 23 and 25 percent of New Jersey's schools were in need of improvement, meaning that they had fallen into the NCLB sanction mode, compared to 14 percent nationally. And there may be a few reasons for that discrepancy from New Jersey to the national level. One, I don't think New Jersey started with a clean slate and already had schools on the path to *in need of improvement* based on the 1994 ESEA. It also might involve how you devised your accountability plan and define proficiency -- your minimum subgroup number. We can talk about that later if necessary, but I believe New Jersey is set at 20. I'd say most states are 30 and 35, and that can certainly affect how -- whether schools make AYP or not.

Also, the vast majority of schools that are farther along in the NCLB consequences are found in seven states -- California, Georgia,

Illinois, Michigan, New Jersey, New York, and Pennsylvania -- all states with large and diverse student populations. And we've seen that can also affect AYP results.

The preliminary AYP results for 2005/2006 -- there's been some improvement in New Jersey. Twenty-nine percent of schools did not make AYP and 24 percent are in need of improvement. At this time, no national data are available, but some states have started to report their AYP results. And it seems that the larger states you're pretty much on track with -- about 20 to 30 percent of schools are not making AYP.

If we look at the percent of classrooms topped by highly qualified teachers, which is what the states have to report to the Federal Government: In 2004/2005, 93.5 percent of classrooms in New Jersey were taught by highly qualified teachers; and 96 percent in 2005/2006. And nationally, almost two-thirds of states reported that more than 90 percent of their classrooms were taught by highly qualified teachers in 2004/2005. So you're certainly within the norm.

For the last section of my presentation: Look at the key issues as NCLB reauthorization approaches. As I mentioned, NCLB is scheduled for reauthorization in 2007, but it might be delayed until 2008, or after the presidential election. And it's unlikely that the law will receive the same bipartisan support it did during initial passage. And part of this is, after the years -- a few years of implementation, is several issues have surfaced, and I think -- that are prompting state leaders and Congress to rethink and possibly revise certain provisions. And some of these include the growth model for measuring student progress. And this basically involves giving credit to schools for making progress toward that hundred proficiency goal,

versus the current system of adequate yearly progress where schools either make or don't make AYP on a given year. So that, as I mentioned earlier, there's that pilot project. And I think we'll see a lot more movement and probably some revisions in NCLB toward allowing different measures of progress.

The second area might be a comparison between state and National Assessment for Educational Progress, or NAEP, proficiency definitions. And NAEP is also known as the nation's report card and is probably the closest thing we have to a national exam. And there's been some recent reports that have shown, or have basically shown, the gap between how well students are performing on their state exams versus NAEP. And so there might -- which might prompt a call for greater consistency between the different proficiency definitions of NAEP and those on states.

The third area is flexibility with the order of NCLB sanctions. As I mentioned, the Department of Ed has started a pilot project to flip the order of AYP sanctions. So instead of starting with offering school transfers or school choice, they would start with student tutoring as that first rung of sanctions to see if intense, focused intervention is a more effective and more efficient way to turn around performance.

The fourth area centers around including students with disabilities in assessments and accountability. And I think a big question is how we hold schools and districts accountable for educating students with disability, but also do so in a realistic way that best serves the students. We do know that probably the majority of schools miss AYP targets based on

the performance of their students with disabilities. So this is coming up in a lot of states.

The fifth area is to expand and evaluate supplemental services or tutoring, and define ways to increase and promote these tutoring services with better and more timely information to parents; and at the same time to help the states and districts evaluate the quality of the providers and publicize results. By some estimates, it's become a nearly \$2 billion industry with the tutoring and supplemental services created by NCLB. And therefore, states and districts, providers, and perhaps the Federal Government need to create some type of network, to create some better efficiency and greater impact -- and so we know how these tutoring services are working and whether that investment is worthwhile, or how there might need to be some changes.

The last area that might be considered under reauthorization is the highly qualified teacher data and distribution. There's mounting evidence about the importance of high quality teachers, especially for disadvantaged students. And so there might be more pressure on states and districts to comply with the NCLB requirements and to close the teacher-quality gaps between schools. That is, high-poverty and high-minority schools versus low-poverty and low-minority schools. Also, probably more pressure on the U.S. Department of Education to enforce the rules and to require stricter definitions of highly qualified teachers. If any of these issues could move to and from the front burner and others could surface, as NCLB approaches reauthorization.

So I encourage policy makers to listen within their states to the success stories and concerns regarding NCLB and state education reforms,

and to work with Congress, other states, and the U.S. Department of Education to significantly improve student learning, especially for our most disadvantaged students, and to close the achievement gaps that unfortunately still exist.

Thank you, Mr. Chairman and members of the Committee. I would be happy to entertain any questions regarding NCLB at this time.

ASSEMBLYMAN CONAWAY: Thank you, Ms. Fulton, for your very enlightening testimony. We appreciate your assistance today.

Any questions from the members of the Committee?

Senator Cardinale.

SENATOR CARDINALE: I want to thank you, Ms. Fulton, for a very thorough explanation of No Child Left Behind. I think it was passed with all of the best intentions. And I think, from your presentation, what I get is that it's a potentially valuable yardstick to see how we are doing with respect to our state versus other states. Can you tell me, in sort of a ranking of the states, how New Jersey is doing with respect to this yardstick?

MS. FULTON: Well, I'll do my best. I might have to, kind of, follow up with a response when I return to my office. You know, as I mentioned, you seem to be on track with most of the requirements. I think the biggest issue is the AYP, the adequate yearly progress. That's where most states are kind of looking and gauging their progress. And as I mentioned, a couple of years ago there were 40 percent of the schools missing AYP. Now there's 30 percent. Now, there could be a lot of reasons why for that improvement. One, there could be some better interventions, some better teaching, and maybe a kind of shifting around some of the teaching assignments so that they're targeted toward the urban or the kids

in greatest need. But as I also mentioned, that you have a fair amount of schools heading down the path of the NCLB sanctions. And once again, there's a lot of legitimate reasons for that -- from the previous ESEA, and just your student population. As I mentioned, you have (video malfunction) and it's a very highly diverse student population. So it's difficult to gauge. And that's why I mentioned these state comparisons are difficult because-- But unfortunately we want to do this. But every state exam is different. States are setting different proficiency definitions. They have different cut scores for their tests. Their academic standards are different. So it's sometimes very difficult to look at what is going on from state to state. Probably the best gauge, although it's not ideal, is to look at those NAEP results. I don't have them in front of me. New Jersey stacks up with other states, especially states that you might want to compare yourself to. But basically it looks as though -- for states that are similar to you, in the larger, more populated states, you seem to be measuring up very well in terms of trying to address the achievement gaps.

SENATOR CARDINALE: Thank you.

But my question was more specific. And maybe you don't have that information with you and you can get it for us later -- along the lines of this yardstick, in terms of the percentages of our schools that are failing or are succeeding with respect to these various aspects of this yardstick. We all know that New Jersey spends as much as anybody. And I'm interested in knowing whether there are folks who have developed methodologies where they're spending less money, who are measuring up better than we are on these yardsticks, so that we can look at what they're doing and perhaps copy some of their success stories. We're charged, particularly,

with coming up with a formula that's going to address high property taxes. And obviously, high spending is an aspect of high property taxes. So none of us wants to diminish our educational opportunity for any of our students. In fact, we all, I think, would like to increase the educational opportunity and improve the educational opportunity. But we need to know what other folks are doing that is within budgetary constraints and actually produces better than we are, so that we can copy their model. That's the kind of information I would like to get from you, if that can be forthcoming either now or at a later time.

MS. FULTON: Yes, Senator Cardinale, I did misunderstand your question.

I think I'll probably have to provide that information within the week or so, basically looking at some kind of efficiency and best practices, how you can get a better bang for your buck -- in putting it kind of in very crude terms -- and looking at states-- It's fair to look at states that have similar demographics. Sometimes it might be difficult to compare New Jersey to a very lightly populated western state out in -- one of our big (video malfunction) states out west, who have very few students, and not the diversity. But, no, I would be more than happy to help the Committee look at some states that seem to be performing very well, not only on their state exams, but also, as I mentioned, the NAEP exams, because that is a standardized national exam. And to also look at per-pupil spending and maybe factor out a few other variables so we can pinpoint some places. And then probably having to really drill down, because even though you might see the state results that look pretty good, that varies by district, typically. And so we'll maybe want to look at, are there some districts that are really

performing well and maybe spending a more reasonable amount. But I would be more than willing. I mean, usually there's a lot of states like North Carolina that are typically held up as doing a fairly good job. But I would be more than happy to follow up with the Committee and provide some specific examples.

SENATOR CARDINALE: Thank you very much.

ASSEMBLYMAN CONAWAY: Senator Cardinale, I thank you.

Ms. -- and we're going to go to Assemblyman Wolfe in just a second -- but on the question of NAEP, while you're there, could you let us know how New Jersey and other states are using that exam? When is it given, and who pays for it? How costly? And while you're talking about who pays for it and the cost, you might -- if you have information on other national tests -- SATs or other -- and talk about the costs of them in relative terms. I'd appreciate that as well.

MS. FULTON: Absolutely.

Mr. Chairman, National Assessment for Educational Progress, or NAEP, it's a Federal test and it's paid for by the Federal Government. Before No Child Left Behind, it was voluntary that states participated. As No Child Left Behind kicked in, the provision that it is no longer voluntary -- all states must participate. But previously, I would say around 40 states participated in NAEP, and that covered several subjects -- reading, math, science, social studies, history, geography, civics, the arts. But most states didn't consistently participate. Now all states must participate in the math and reading assessment. And the governing board that issues NAEP is also doing so on a more regular basis. Because beforehand, sometimes reading

would be offered every three or four years, and then math in between. Now math and reading are being offered every two years. And once again, states must participate. But it is a sampling. I think (video malfunction), but maybe on a given year it's 50,000 to 80,000 students across the country that take, like, the fourth grade reading exam. And so it is a sample, but it's the best that we have. But typically, the exams are offered in fourth, eighth and 12th, and we've had results. To be honest, I don't know the first year, but it was probably back in the 1970s. So we've been able to track the progress over time. And so the states, to my knowledge, aren't paying for this. It is a Federal cost. And it does provide a good trend analysis and a good (video malfunction) at how our students are doing. It will break the results down by race and ethnicity, to some degree income. You can look at some of the state by states, knowing that there might just be a few districts in New Jersey that actually participate. So we're not getting as good of a view through NAEP as we do through New Jersey's exam. But once again, New Jersey's exam is different than New York's; it's different than South Carolina's. So there's no cost implications that I know of to states. And I would also be more than happy to provide some of the performance results in New Jersey, compared to other states, over the past years.

In terms of SAT and ACT, the college entrance exams, most of those costs are born by students who pay the fees and the other organizations that administer and support those. Now, there are some states, for example Colorado, Kentucky, and a few others are considering -- oh, and Maine I think uses the SAT -- having all students, all juniors most likely, take one of the college entrance exams as part of their state

assessment. There's been some debate whether this is appropriate or not, but a lot of the states feel that both those exams are a very good measure of what students should know at that juncture or might need to know as they enter college. And also, some states, those that I mentioned, are encouraging more students to take those exams in hopes that more students will therefore apply to college, especially the students that didn't think that they were college material or could get financial aid. So we've seen a dramatic increase in, as I mentioned, the other states, like Colorado, who require ACT.

Did that answer your question, Mr. Chairman?

ASSEMBLYMAN CONAWAY: Yes, it did.

We have, in other testimony, compared New Jersey to about eight other states, and we're going to get back to you on what states we used for comparison. You might agree or disagree with those and want to add some in. But I'll try to sort of keep consistent with what material we've gotten from other presenters.

MS. FULTON: Absolutely.

ASSEMBLYMAN CONAWAY: We're going to provide you with the states to which New Jersey has been compared.

Now, Assemblyman Wolfe, do you have a question on testing, because Senator Doria has a question. We'll go to Assemblyman Wolfe, because he's been waiting on a question he has for Ms. Fulton, and then Senator Doria.

ASSEMBLYMAN WOLFE: Thank you.

Ms. Fulton, yes, again thank you very much. That's a very concise explanation on a very difficult topic. But I just think, for the

Committee, it's important. I think Senator Doria and I are aware of this, that the State requires its own testing, in addition to this Federal testing. So we may be wise to look at -- is it really necessary to do the State testing, and how is that comparable? Actually, my questions are, the funding obviously comes from Title I, obviously -- correct?

MS. FULTON: Most of the -- the largest amount of funding comes from Title I. And that's where most of the NCLB requirements rest, within all the Title I and all the accountability and assessments. So that's the biggest bulk. But there are actually titles.

ASSEMBLYMAN WOLFE: All right. So I guess my question, and also for the Committee, is that money based on socio-economic qualifications or academic performance qualifications of the student? How is that determined?

MS. FULTON: Assemblyman Wolfe, most of that money is basically, as I mentioned-- Since it's targeted toward disadvantaged students, it's really counted -- I'm sorry. It's targeted toward disadvantaged students. And so it is based on, basically, income or free and reduced priced lunch -- which students are eligible. So it is a poverty measure, not an academic measure, at least from the Federal Government perspective. So basically, you know, they're counting how many students are eligible for free and reduced lunch in New Jersey, which can certainly change and some of the slight measures can change. That might be why we see a slight decrease in the Title I funding for New Jersey of the past few years. But, no, it is a poverty measure.

ASSEMBLYMAN WOLFE: Okay. So it's based on socio-economic. However, all students are tested, correct?

MS. FULTON: Correct. Although only schools that receive Title I funding from the Federal Government are subject to sanctions under NCLB. So, yes, you are now -- under NCLB, you are now testing all your students in grades 3 through 8, but only those Title I schools are subject to the consequences. But, yes, they all are being tested.

ASSEMBLYMAN WOLFE: Okay. I have one other question related to the funding. And that is, you gave us information on the allocations for the last three years, and you indicated it's basically been flat from the Federal Government for the past two years. Is that correct?

MS. FULTON: That's what, as I said -- those are estimated and proposed numbers. But, yes, that's what it appears to be.

ASSEMBLYMAN WOLFE: Right. And New Jersey also has received flat funding, I believe, for the -- well, not flat funding, actually a decrease in the last several years. Now would that be, as you said before, because of a decreasing number of kids in the disadvantaged category?

MS. FULTON: That would be my guess, since that's the primary indicator of budget allocations for Title I. We could certainly investigate that further. And I had read there's-- I can also send a new study that the Center on Education Policy has issued -- they do every year. They summarize the state Title I allocations and name some reasons for the changes. And I would be happy to forward that study.

ASSEMBLYMAN WOLFE: Okay. Thank you.

Basically, we were talking about funding, but you did make a statement which perhaps you could expand for the Committee's information and also for mine. You indicated that if a school is low-

performing or is in need of improvement, the parent may request a transfer to another school. Is that an easy process; or how does that work, basically?

MS. FULTON: Assemblyman Wolfe, in most places it is not an easy process even for the state to notify the district which schools are in need of improvement; the district to get this information to the parents in a timely manner, also maybe in a form that they can read and understand, and better understand their options. And so that's been the big issue. Also, in some districts an increasing number of schools are missing AYP and therefore limiting the options within that district for students to attend another school. And so some districts have created arrangements with other districts that, in both those cases, whether they stay within or go outside the district, transportation can be a problem, even though some of those funds-- Transportation funds are provided by Title I, but you might-- You have transportation, you have information problems, you have the timing problems, whether parents can get this information in a timely manner and have an opportunity to go visit other schools and determine whether it would be in their child's best interest to transfer.

And what was also seen nationally, only about 1 to 2 percent of eligible students are taking advantage of the transfer option, and I think for a lot of the reasons I just outlined and you alluded to as well. And a lot of parents, they want to keep their children in the neighborhood school. And a lot of them also believe that their school might still be pretty good, even if the Federal No Child Left Behind Law and adequate yearly progress says they're failing to make AYP. So there's a lot of issues there. But, no, very, very few students have taken advantage of that option.

ASSEMBLYMAN WOLFE: Thank you very much.

Mr. Chairman, thank you.

ASSEMBLYMAN CONAWAY: Thank you, Assemblyman Wolfe.

Senator Doria.

SENATOR DORIA: Thank you very much, Mr. Chairman.

Through you, I want to go back to the issue of testing, and follow up a little bit on what has been said. And Assemblyman Wolfe pointed out one of the issues. And that's the issue of the State testing, and it was brought up about NAEP. Basically, NAEP is a statistically rated test in the sense that not everyone takes the test per state. They determine what districts, and they do it on a, I would suspect, on a statistical basis. Is that true, Ms. Fulton?

MS. FULTON: Senator Doria, to be honest, I don't know how those districts are chosen. In the past, districts offered to be part of the NAEP. And then I think some states are selecting districts as well, but I think ultimately there's a statistical analysis and a sampling.

SENATOR DORIA: Yes. And that's my question, that's my problem with NAEP, because some of it is voluntary and some of it is not. And the sampling process doesn't really determine whether or not students are -- the national norm is really a national norm. One of the issues that I've always had in the State of New Jersey, through you Mr. Chairman, is their use of state-created tests. My question to you-- And I know a lot of states do that, but once that happens it's hard to then use any kind of national norm to determine the comparative effectiveness of the education process between states. My question is, why hasn't the Federal Government -- you can't answer it, but I think the issue becomes-- There is

something such as TerraNova, which is a nationally norm test, which would then give everybody a better means of determining, in comparison, between states. And it would seem to me that that would be the better way. It would also save money for the states if everybody then went to a nationally norm test, such as TerraNova, and we wouldn't be creating our own test and everybody trying to compare apples and oranges. Don't you think that there's some justification to that argument?

MS. FULTON: Senator Doria, you certainly raise a lot of the issues that have been swimming around for years and years regarding testing. Either-- So much has changed, a lot of which was triggered by the standards movement or setting academic standards, which really began back in the early '90s where we wanted to know what should fourth graders be learning in reading, and science, and math; and should we have some consistency within a state? And so when that was triggered, and all of a sudden that became a very large movement, basically every state, other than Iowa -- they do much more local control -- developed academic standards in nearly all subjects for nearly all grades. So we have some consistency and benchmarks for what students should know and be able to do. Because previously, you'd be at one fourth grade classroom and very different things were happening than at a fourth grade classroom sometimes down the hallway, but certainly within the district. And although we want some latitude, I think there was a push for greater consistency and comparability within a state.

So when those standards were developed, the next logical step in many people's minds was to develop assessments to measure those standards, to basically determine are students making progress toward

meeting those goals. And that's why you saw the movement toward more state-developed tests, or states taking off-the-shelf tests, even TerraNova, and adjusting them to fit their standards.

So states have -- because they all wanted to develop their own standards and there's been movement away from national standards and national tests -- although that might be changing, and I'll comment on that in a moment -- we all want (video malfunction) and that prompted a lot of these individual state exams. You know, when I was a young girl, we all took Iowa Basics. I think that was probably the most common test. I don't know if they compared it across states, but that was one of the exams that we all took, along with our own teacher exams. So that's one reason we, I think, have moved away from a nationally norm test, because of the standards movement.

Now, NAEP is still the closest we have. And as I mentioned in my remarks with reauthorization, because we've seen these gaps with how students perform on their own exams versus NAEP, there may be a little bit more movement toward-- I'm not sure if I would say creating a national test, but creating some type of better national gauge of how our students are doing across the states; and more of them, not a sampling. So you might be ahead of with your thinking, and I certainly think that that's going to be an issue during the NCLB reauthorization and for years to come.

SENATOR DORIA: To continue on that-- My problem is, when Senator Cardinale asked for a comparison to other states-- To create a comparability, since there is no nationally norm test -- and since each state develops it's own test, meeting basically the curriculum standards that were created within that state, and then the testing that's done within that

state -- there is no way truly to create a comparability other than to say, "Well, this is what they're doing within their state." But there's no way, really, for us to say whether New Jersey -- how New Jersey compares to, let's say, New York or Pennsylvania or Utah or Maryland, other than, "This is how we compare, based upon this test that has been created by that state to meet their curriculum standards, and this is how we think it will be." NAEP, again, to my mind, since it's basically statistical sampling, doesn't guarantee that it's truly an indicator of what is occurring within a state on the basis of whether the students are succeeding or not, because it's totally dependent upon which districts, since a lot of districts -- it's a voluntary process. So a lot of the better districts may use it and a lot of the lesser performing districts may not, or vice versa. So the issue of comparability is a difficult issue in the end. Am I not correct?

MS. FULTON: Senator Doria, you're absolutely correct. And that's why I didn't want to back off trying to compare New Jersey with the benchmarks, but it is very difficult because of these varying state standards, assessments, and accountability methods. And I think that's something that this country is going to have to come to grips with, whether we want to have a dual system, like possibly expanding NAEP, so that's no longer a sampling and it's required (video malfunction) out, or having some variation on a national norm exam, as you mentioned the TerraNova, and perhaps still keeping our state assessments. But, no, that debate's not over. I think you make some very valid arguments.

But I think it was about, probably, 10 years ago this issue came up in Washington, D.C. with the Congress, and I believe at that time President Clinton-- And a big, huge argument whether-- And then it was

the whole issue of the states versus the Federal rights, or whatever. So I think NCLB has prompted a lot of these questions. And I encourage you to be part of that conversation.

SENATOR DORIA: Thank you.

I'm just going to comment on two things: Number one, the issue comes down to, now, the fact that education really is a responsibility of the State versus the Federal Government; and the Federal Government does not, in most instances, Mr. Chairman, want to get involved, but has gotten involved through NCLB, and established very stringent criteria which never existed in the old ESEA authorizations. And by doing that, then the next logical step is to create a national test. I don't know if I would be for or against that, but I do think that that's part of the discussion. And it also-- My concern here in New Jersey -- I personally think we waste a lot of money creating the tests that we use, and then we find that they are not really useful, in the sense that the teachers don't get the results to a point where they can then use those tests to help them teach and to know what deficiencies exist amongst the students who have taken the tests.

So if we're going to use our own test, we need to change the procedures that are presently used so the tests have a much better impact, and can be actually used to determine the deficiency students have -- so that teachers can then work with tutoring and extra programs to help those students with the deficiencies at the beginning of the school year. Or we should move to save some State money by going to the TerraNovas, which already exist, and just pay for the actual administration of those tests, which is significantly less. The State would save significant sums of money by

doing that. And so those are my two comments as it relates to this whole issue of testing. And I think it's an issue that we should try to deal with in the future.

And I thank you, Ms. Fulton. I think your response has really helped to explicate where we should be and what the issues are.

Thank you.

MS. FULTON: You're most welcome.

ASSEMBLYMAN CONAWAY: Thank you, Senator Doria.

Assemblyman Conaway speaking: I guess along the same lines on this testing, in your experience are you aware of states that have done what Senator Doria has suggested? That is, to use some of these national tests in order to reduce costs in their own testing regime. That's the purpose. And have they found after they've done that, if they've done it, that they've, in fact, reduced costs for testing their students? Do you have any information on that?

MS. FULTON: Mr. Chairman, yes. Some states have gone in that direction. We have to keep in mind though, under No Child Left Behind, states have to administer "standards-based tests." So the assessments have to, to some degree at least, match up with the state academic standards. But a lot of states have, through their whole testing system, or maybe in order to fill in those grades that they were not testing prior to NCLB. They've used some of these nationally norm tests, or what we called *NRTs*, nationally norm referenced tests, that you can kind of buy "off the shelf," like the TerraNova, and worked with testing companies to tailor part of the exam to the state assessments. And in doing so-- I could probably find some hard numbers for you, but, yes, those type of exams can

cost sometimes half as much as -- versus state-developed tests that are very, very closely aligned to the academic standards.

And some states -- I'm not sure this would work for New Jersey -- but a consortium of New England states recently have gotten together and created kind of more standard-based exams geared around some central state (video malfunction) and they've reduced the cost. This is I think in Rhode Island, Vermont, Maine -- what else -- a couple others. New Hampshire, I believe. And so they have joined forces. They have a consortium. It's called, I think, New England Consortium For Assessment -- oh, it's called the NECAP. I don't think we need to be exact terms, but-- Yes, they've joined forces to have a consortium to reduce the costs. And not only to develop the test, but also to administer the test.

So there's a few options here. One, yes, you develop these very specific state exams that are geared toward the standards; you kind of take an off-the-shelf exam and have it tailored toward your standards, which can be far less expensive, from what I understand, although some might argue it's maybe not measuring the standards quite as well. Or some -- create a consortium with some states to see how you can share some information and some of the costs.

And I believe -- I could also check this out with you -- the Council of Chief State Schools Officers, the umbrella group for state departments (video malfunction) -- they fund some of these assessment consortiums over the years where they share test items through a testing bank that states can pull from and contribute to. So there maybe are some options that you can still have some very valid exams or maybe save some resources as well.

ASSEMBLYMAN CONAWAY: Taking off on what Senator Doria says, this national assessment is probably -- it's going to be contentious clearly, but it would save a lot of money across the country if you come up with a standard. Because it seems to me we're competing internationally, and all kids are probably going to have to know the same set of items.

Have states refused any of the NCLB money? Have you seen that happen? Have the states said, "Thanks, but no thanks. We don't want the mandates, we don't want the strictures?"

MS. FULTON: Mr. Chairman, there has been more talk than action. There have been a few districts, I believe, in Connecticut, Vermont, and a few other scattered places that have decided that the requirements aren't worth the money, but these are typically districts that don't receive a lot of Federal funds to begin with, especially the Title I funds.

Then there are some states -- Vermont I believe threatened to pull out, ended up not doing so, as did Utah. But they passed some legislation that ultimately could trigger the state reforms taking precedence over No Child Left Behind reforms. But there was a big battle between the Utah legislature and the (video malfunction) of education on what was allowed, not allowed. But so far, they have not pulled out.

Connecticut, you may know, has sued the Federal Government on the grounds that they are not providing sufficient funds to meet the requirements of NCLB, specifically the testing. So no states have pulled out. There has been a lot of talk, some threats, a lot of concerns raised by both parties, especially around the funding levels and the Federal/State responsibility law. So no one's pulled out yet. I think it's a wait and see. I

also believe that, when Secretary Spellings came into office she may have diffused a little of that fire, offering some flexibility. But we'll see what happens in the next year or two. As I mentioned, I believe that the Department of Ed is tightening up on some of the waivers and flexibilities, and so we might see a little more tension created.

ASSEMBLYMAN CONAWAY: Are there any other questions from the Committee?

ASSEMBLYMAN STACK: I just have a quick question.

ASSEMBLYMAN CONAWAY: Assemblyman Stack.

ASSEMBLYMAN STACK: Ms. Fulton, thank you for your testimony.

I actually just had a quick question. Under NCLB, how much consideration is given in the funding formula toward ESL students and their needs?

MS. FULTON: Let's see, Assemblyman Stack, there is-- I'd have to double check on this. I admit, I'm not an expert on the Federal budget. Some of that money for ESL students is going to be wrapped up in the Title I, with providing some extra assistance and all the assessments and testing, etc., and the tutoring. So some of it's not pulled out specifically in Title I, but certainly is going to, geared toward ESL students, many of whom are also low income. So they're, kind of, getting in that as well. And then Title III, I believe, of the No Child Left Behind Act -- because I mentioned there's about 10 acts -- has been previously geared toward bilingual or ESL students, and provided a lot of extra funding to states and districts that meet certain requirements. And also, as I mentioned, the Federal Government is creating a partnership with at least 24 -- or maybe

18 states, actually, to help them improve their state assessments for limited-English students who have to take the math and science exams. For example, creating the reading exam -- a Spanish version of the reading exam. So there is money kind of floating around in No Child Left Behind for ESL students, but I think that that is a major concern for states, especially as that population continues to grow dramatically across the country, especially in certain pockets. And some of those students are coming with very limited English skills. We're also struggling to find qualified teachers. And so there's a lot of other issues that filter out. But I'd be more than happy to follow up with some more specific information, and looking at New Jersey and the amount of money that they receive, and some other ways that New Jersey and other states could use, probably, the Title I funding to help maybe support the education needs of bilingual students.

ASSEMBLYMAN STACK: I would appreciate that.

MS. FULTON: Absolutely.

ASSEMBLYMAN CONAWAY: Thanks again, Ms. Fulton.

We really appreciate your testimony today, and your offer of sending us additional information that will help us with our work.

Thanks again.

MS. FULTON: It's been my pleasure. And I wish you all the best. I know, I used to do school funding years ago, and I kind of had to laugh -- that a lot of these issues have been around for a while in New Jersey. And so I wish you the best in resolving all your school finance and other issues. And please let the Education Commission of the States know if we can help you in any other way.

ASSEMBLYMAN CONAWAY: Thank you very much, again.

MS. FULTON: Thank you.

ASSEMBLYMAN CONAWAY: Next, we have Ms. Barbara Gantwerk, Acting Assistant Commissioner of the Division of Student Services, in the Department of Education. She is here to enlighten us as to the effect of the Individuals With Disabilities Act and it's impact on education costs.

Ms. Gantwerk was a speech pathologist and curriculum coordinator for students with disabilities, in her past life, and we welcome you.

Ms. Gantwerk.

BARBARA GANTWERK: Thank you very much.

I want to thank the Chairman and the members of the Committee for inviting me here today to do this presentation. What I would like to cover -- do we have the presentation on? Yes, we do.

ASSEMBLYMAN CONAWAY: Just pull the mike closer to you. (referring to PA microphone)

ACTING ASSISTANT COMMISSIONER GANTWERK: I would like to talk today about the governing laws in special education, the major requirements of those laws, the national and state-specific cost drivers -- those things that affect what it costs to run special education in New Jersey, and some areas for your consideration.

Now, the governing laws in special education -- we all know the major law is the Individuals with Disabilities Education Act, IDEA. That is the law that basically dictates what we're doing on a day-to-day basis in the districts, as well as implementing State regulations.

You just heard all about No Child Left Behind, and I'm going to talk about it a little bit as well, because No Child Left Behind has also had a significant impact on how we deliver special education in -- around the country.

And our state statutes, I think, historically demonstrate that New Jersey has had a very strong commitment to serving students with disabilities. And while those State statutes don't dictate so much anymore, they have certain things in them that we still have as part of special education. For instance, the concept of a child study team is one that was created in State statute, and that's one that is in effect, certainly, in our school districts.

Now, the IDEA regulations are highly complex. They are unusually prescriptive for a Federal law, at least to my knowledge, for an education law, and -- as well as the regulations. There are many, many requirements for schools, for districts, and for states. And all of these requirements relate to the cost of special education, and there are procedural and programmatic costs.

Now, I want to just give a brief summary -- very brief, because it's a huge law with lots of requirements -- but to just go through the process of special education and the requirements. The first thing is that we are, as a State and therefore the districts, required to identify the potentially disabled students in the districts. Now, this is what we call *Child Find*, and it's called Child Find because we actually have to find the children. So the students that are in schools, ages 6 to 21, we do through our district procedures -- referrals, testing, whatever. But students who are 3 to 5, preschool students, we have to affirmatively go out and find them

through notes in doctors offices, through TV, radio -- to go out and identify these students. And we do this for public school students, nonpublic school students, the entire gamut.

Now, after students have been determined to be potentially disabled, or someone has made that referral, districts are required to conduct multidisciplinary evaluations. They have to have specialists evaluating the student and they have to determine, basically, does the student have a disability, does this disability have an adverse educational impact? And if so, does the student need special education services?

The IDEA requirements are that you then convene a team. Now, the IDEA has lots of teams. All along in these requirements, there are different teams that must be convened. And at this point, you must convene a team to determine eligibility. And if they're eligible, then a team -- an IEP team -- develops what we call the IEP, which is the Individualized Education Program. This IEP is kind of the contract -- this is what determines what services the student will receive. And it addresses the specific needs of the students. In this IEP, we have to say academically how they're performing and what they need, what their problems are, what are the behavioral issues that need to be addressed, what related services -- and by that, we talk about occupational -- the therapies: physical therapy, speech therapy; what supports they will need in schools to do well, to achieve; what extra curricular activities. All of these are laid out in the law, that you need to consider them.

The Federal laws regulate who attends these meetings. The Federal law regulates -- actually, they even say what's a meeting and when a meeting is not a meeting, for the purposes of this Act. The Federal law

requires that parents be given written notice before every meeting. And the law dictates what's contained in that written notice. It also requires that after a meeting -- again, written notice must be provided saying what you discussed at the meeting. It even requires that you say what you considered and rejected and why you rejected it. So at that meeting we also consider things for every student that you may not be providing, but you must consider for every student. For instance, whether they want to get an extended school year -- you can decide "no," but you must consider it. You have to consider assistive technology needs for a student, communication needs, staff training -- all of these things have to be addressed and considered.

When that team is determining the program, they must provide a program that provides what we call FAPE -- Free Appropriate Public Education. That's the requirement. Now, FAPE has been defined by the courts as a program that's reasonably designed to confer educational benefit. Now, it's been defined by the courts because there've been disputes over what constitutes a free, appropriate public education. So the courts have essentially defined it as not necessarily the very best program, but one that confers meaningful educational benefit. So once a decision has been made, or decisions have been made about what that student needs to get that program, then a placement -- a determination of where that program is going to be delivered is made. That placement is to be made in, another one of our terms, the LRE -- Least Restrictive Environment. That is, the student is to be educated with their nondisabled peers to the greatest extent possible. And a student is only to be removed from a general education program when education can't be achieved successfully even with

supports and accommodation. So the law has a very clear preference for education in a general ed classroom with nondisabled peers, and the courts have also maintained that clear preference.

So the appropriate program that's been defined then has to be provided. Let me also point out that the law is clear about who is the team that determines that program. And they're clear in that they also say there must be someone representing the district who has the authority to commit resources. And that's because it's that team that's determining the program, and no one outside that team has the right to, let's say, veto it. Or an administrator or a board that hasn't sat on that team and hasn't participated in the development of that can't turn around and say, "Well, we're not going to do that." So it's very clear who has the responsibility.

Now that that program that's been determined to be appropriate is provided, it must be evaluated on a regular basis at least once a year, or more often if necessary, and changed as needed.

Now another very strong requirement, and I guess it's a central principle of IDEA, is that the parent is a member of any meeting or any group that's making educational decisions for the student. So the parent must participate, must be afforded the opportunity to meaningfully participate in any decision. It's not that they get their choice. It's not that the parent decides unilaterally, or for that matter anybody unilaterally. The parent is also required to give consent. At certain points, the parents must give written consent for things to happen; certainly for the implementation of a program initially. A parent has a right to receive regular progress reports. And in addition, the parent has been provided dispute resolution rights in the law, when there is a dispute over things like the program, the

classification, the determination of eligibility -- a parent may believe that the child is eligible, the school not, or vice versa; the actual content of the program to be delivered; or the placement.

And so there are dispute resolution rights that are contained in the law. Those dispute resolution rights include mediation, which is provided by department mediators, as well as due process hearings that are conducted by the Office of Administrative Law. And that's usually when all else fails. Now, most cases are settled prior to getting to an OAL hearing. We typically have between 1,000 and 1,200 requests for mediation and/or due process, but only about 90 to 100 ever get to a full, plenary hearing in a course of a year. Most are settled -- either through mediators, or they're withdrawn, or they're settled at OAL prior to going to the hearing.

Now IDEA, when it was reauthorized in '04, they recognized that the litigation is a big issue, and it's a big issue nationally. People complain all the time that IDEA is a very highly litigated area. And so what they tried to do to address that was to introduce another resolution process. And what's now required is, prior to a hearing, the district has an opportunity and sort of must conduct a resolution session prior to going to a hearing. Again, another effort to try to get these things resolved at the district level and at lower levels, rather than going on to higher levels of hearing.

Our early look at that -- they seem to be settling a number of them at the resolution sessions, which is encouraging because we would like that to happen. No one likes the hearings. Districts don't like it. Parents don't like it. It's a very difficult thing to be involved in, so we always are happy to see some other opportunity for mediation and resolution session.

Now, states have many requirements themselves in terms of implementing these requirements. The state has to develop policies and procedures to implement these Federal requirements. And states regulate the programs. Now, in New Jersey, we have historically regulated programs, things that aren't in IDEA. So in New Jersey, the State Board, which implements the regulations for the Department -- we have regulated things like class types, class sizes. We have limits on class sizes. We say what the name of the classes are. We say what the team configurations are. We have age ranges in programs. We specify what they are. We have time lines for certain things. So there are ways that we set about providing guidance -- we like to call it guidance -- in the regulations to districts, and how to implement these requirements. All of these requirements, the ones in the law, are implementing regulations. All of them, we recognize, are what costs money in trying to deliver these programs.

Now, you talked a little bit about No Child Left Behind, but No Child Left Behind has had significant impact in special education. And when IDEA was reauthorized in '04, much of it was aligned to the requirements of No Child Left Behind. Certainly just the issue of requiring highly qualified teachers. Highly qualified teachers before were considered teachers certified in special education. Now, teachers teaching students with disabilities must also be highly qualified in the content area. So that's another significant requirement. Also requiring scientifically based instruction -- these are all things coming from No Child Left Behind. And a major issue has been the inclusion of students with disabilities in State assessments and State accountability systems. No Child Left Behind, IDEA required that all students participate in assessments. No Child Left Behind

required that their participation be included in the accountability. And by that I mean, previously, before No Child Left Behind, students with disabilities may have taken State assessments, many didn't. But even if they did, their scores did not count for the schools. So it didn't matter how the students with disabilities did in terms of how a school was judged. No Child Left Behind said, "Schools will be judged by the performance of all students, including students with disabilities."

Now, while there's a lot of debate over the appropriate way that No Child Left Behind does this, and setting the standards, the positive outcome for this has been a very intense focus on improving outcomes and expectations for students with disabilities: that we expect them to learn, we expect them to have improved literacy and math skills, that we look at improving the graduation rate, post-school outcome. All of those are the critical issues. So a focus on outcomes has been the next step for IDEA. Previously, we had a very strong focus on procedures: Did you get all the right signatures? Did you have the right days? Did you do this, did you do that? This is looking at how are students doing. At the end of the day, that's what this is all about. And in fact, all of the requirements are geared to improving student performance.

Now, I want to talk a little bit about the sources of funding. The first thing is that IDEA was authorized initially to be funded up to 40 percent of the average per-pupil expenditure, the national average. And there's sometimes confusion on that, because it was never authorized to fund a percentage of special ed costs. It was authorized to pay up to 40 percent of the national average per pupil, whatever that is. And of course, it's never been fully funded, even at that. And it's been increased. And

despite increases from 4.3 billion to about 10.8 in '06, it's never reached anywhere near the 40 percent. I don't know what it is this year, but the last time there was a study and information it had only reached about 17 percent. I don't have anything new. But it certainly has never been what the authorization allowed. And if it's 40 percent of the average cost, it's certainly not going to be near 40 percent of special education.

Now, we look also at where the funds come from for special education, and they're primarily funded by states and localities. Now, the Center for Special Education Finance, which has done most of the -- well, all of the research that I know in special education funding -- looked at where the share comes from for the excess cost of special ed. That's what they were looking at -- the cost above general ed. And they were saying that it was -- the local share ranged from zero to 80, with an average of 47. The State shared 3 percent to 90, obviously a large difference, with 45 percent. And the Federal share ranging from 4 to 21, 8 percent. Obviously, the Federal being the least.

In New Jersey, I used it for the same year, because that was the year they did the study and so they analyzed it the same way. And in that year, the local share for New Jersey was 43, and the national 47. The State share 48, the national 45. The Federal share 8.8, and the national 8. Not too far off. Again, this is from the Center for Special Education Finance.

Now, if we look at what the costs are for special education, what they're related to: The costs for special education is relative to the cost for general education. The National Center for Special Education Finance reports that the national ratio of spending on special education students is -- it's basically two-to-one. So we spend twice the average on

special education students nationally, as well as in New Jersey. So it stands to reason that states like New Jersey that spend more in general education, spend more in special education, as well as the opposite.

The cost drivers of special education -- some of them are national. That issue before -- the cost of general education. But the next one has to do with the increase in cost relating to the just sheer increase in numbers of students that are getting all of those services and procedures that we talked about before. And that again is what the National Center says is largely responsible for this increase -- is just the huge number.

New Jersey has about 250,000 students, ages 3 to 21, and that's including public, nonpublic, and student and State agencies that are receiving special education services. And we have, in New Jersey, a long history of recognizing and meeting the needs of students with disabilities. Our State laws preceded IDEA. And as a matter of fact, the lore -- not the lore, actually truth -- that the Director then, Dan Ringelheim, after he wrote the State regulations, went to Washington to work on IDEA. So we've historically been doing this. We've been identifying students.

We've also had, historically, a high percentage rate of identification. We are currently about the third highest in the country. And they're at 10.94 percent of the total population -- identified as students with disabilities. Now, there are about 12 states clustered around that 10 to 12 percentage. So we're not out there by ourselves. There are a number of other states at that same area.

And if we look at the increases over the past five years, the national increase in the percentage of students has increased by about four-

tenths of a percent. In our state, it's increased three-tenths of a percent. So our percentage is not increasing at any rate greater than the national.

Now, this is a large number of students to be providing services-- And, nationally, there is a belief that there are too many students in special education that are there as a result of a failure to learn to read because of poor instruction in general ed. No Child Left Behind also has that as a basic principle. And it's included in No Child Left Behind, and an expectation, that with improved methods of instruction, and a focus on general ed from No Child Left Behind, that there will be a reduction in special education. We're all waiting to see.

So the cost drivers -- the high -- the cost of general ed, the high number of students-- And those high number of students -- not only getting all those procedural things -- are receiving services. So these students are receiving services as determined in their IEP. And those services typically include human beings providing some service to that student. There are more teachers, they have smaller class sizes, they may be getting individual instruction, they may be getting a special class with a smaller pupil-teacher ratio -- they may have additional teachers, resource teachers, personal aides, interpreters, therapists. We have lots of speech therapists, occupational therapists, physical therapists. All of these are laid out in the Federal, as well as State, law. Nursing services-- We have specialized equipment, specialized materials, special stuff. And many students are now receiving extended school year. Again, these are all personnel costs that have impact on the cost of special education. Now, those are general costs that are everywhere.

The one thing that I did want to talk about that is State-specific is -- and it's not the only issue, but it is an issue to be discussed. And it's the high number of students in New Jersey in separate public and private programs for students with disabilities. These are what you would call *segregated programs for students with disabilities*.

Now, New Jersey consistently is the state with the highest percentage of students in these separate placements, as defined by the Federal law. Meaning -- and the Federal law defines them as buildings in which there are only students with disabilities, be they public, be they private, be they in your own district. It's just, you've taken the students and put them in a building only for students with disabilities.

The national average here is about 3 percent. Our state is at 9 percent. It's about 8.9 percent. And we have consistently been the highest state in the country for years. The closest state is Maryland, at 7 percent. And the -- next to Maryland, there are a few northeast states at 5 percent. So we don't even have a lot of people clustered around us. We are significantly, sort of, at a very -- we are always at the highest rate. We have about 20,000 students in separate programs.

Now, these separate programs are typically more expensive, and may have high transportation costs as well. And they're more expensive because they're smaller. They have-- Typically, they're smaller programs, with a smaller number of students to distribute the fixed costs that exist in a school, whether it's administrative costs, or rental, or mortgage if it's a private program, or energy costs -- if you have smaller student--

Plus, the costs fluctuate based on the final numbers of students. And small schools -- this has a greater impact. So a school intends to have

60 students, but they only have 50 students. Well, now all the costs are based on 50 students instead of 60 students. We have about 175 private schools in a small state. And some are very small. And some of the costs that are in those tuitions are not in other schools, like pensions and mortgages. So this is an issue.

Now, I brought just this chart -- two charts because, again, the Center for Special Education did a study looking at costs. And what this chart basically shows is that students who are in programs outside of the public schools, in separate programs, the costs are higher -- and it's not surprising -- for the things we talked about. So those programs are going to be the highest. So if you're in a state that has the highest percentage of students in those programs, that's going to have an impact on your cost.

The next issue is that they also looked at controlling student characteristics. Because one might say, "Well, all of the students that are in these programs are only the most severe. And, therefore, the costs will be higher." And what they did was control for students with similar characteristics. And even with that, separate programs tended to have higher costs than programs for like students that were provided within public school settings.

Now, clearly there are students who are going to need separate programs. We're not saying that students should not be in those. And we're fortunate to have fine programs that are doing a good job. However, we have a significant overreliance on these programs. And the overreliance has fiscal impact, as well as educational impact. Some students are removed to separate programs for what I would call *administrative* reasons. If a district says, "I don't have space. I would run that class, but I don't have

any space,” that’s not an educational basis, it’s an administrative basis. There are small districts with too few students for a particular program, and there is no organizing entity to help create those programs within a particular region within the public schools. And so the students tend to go out.

There’s also a parental belief that some of the -- some parents believe their child’s needs cannot be met within the public schools, because they’re not specialized. There’s a belief on the part of some that specialized programs need to be provided somewhere else.

We also have a historical issue in this State. Many programs were developed because of the Beadleston legislation, that was in 1954, that was, at that time, groundbreaking. It was very progressive. What it said to school districts is, “If you don’t have an appropriate program for a student, you can’t not serve them. You find one. And if it’s outside of your school, you find it and you pay for it.” Now, that set up, 50 years later, an infrastructure of separate programs, while today’s educational philosophy and laws to that -- for that matter, really speak to more inclusive education, serving students within districts, both for educational and fiscal-- We are one of the few states that’s still building separate buildings for students with disabilities.

These programs also, as I said, have high transportation costs. And we have not necessarily a coordination across counties to deal with it. So you may have students very close, driving on buses, and the students are driving for very long periods of time.

Now, I just want to talk a little bit about areas for consideration. And one of them is that this -- the Legislature has created a

legislative commission to study special education issues. And I know the next speaker is a member of that special education study commission. And I know they're working very hard to address the issues and to come forward with recommendations.

We need to increase the ability for districts to provide quality programs in districts. We need to develop increased coordination and provision of needed services. We have many examples of that. Current examples in some counties-- We have Bergen County Special Services. They run programs -- as well as a separate program -- they run programs in districts where they deliver the programs in districts in their county. Warren County Special Services runs all their programs in Warren County school districts. Middlesex County Ed Services Commission also has partnerships with local districts running those programs. We have lots of different structures. We don't have any unity with the structures. We have jointures, we have ed services commissions, special services. Some counties may have more than one, and some counties have organized themselves into regional collaboratives.

We need some incentives for shared services, and particularly for low-incident students so that instead of necessarily driving them to the services, we can drive some of the services to them. If we can provide therapists, equipment, specialized services -- running programs at a district level-- This is, sometimes, what is done in other states that would help to improve programs, as well as improve costs.

Assistive technology is another very important area. This is a critical area for students with disabilities now, and is going to be something that not every single district is going to be able to do on their own.

We need to continue the emphasis on assisting districts in developing quality programs for students with disabilities within the public schools. And I know the budget -- the Governor's initiative on autism, as well as other disabilities -- is designed to do just that, create -- give districts start-up funds and give them money to create, and enhance, and expand the programs that we have.

You can consider restricting the growth of private schools, and revisiting the tuition rate-setting structure and allowable cost system, with an eye toward promoting efficiency, and greater transparency, and accountability for the funds. We have to continue to develop the capacity of districts to learn how to serve students with disabilities in-district.

Also -- can look at construction. Because when we have construction of new buildings, it would make sense for a district to think about who are their students that they're not serving, since space is one of the biggest issues that districts give for not including students. We have to look at maybe some incentives for when -- for construction of new buildings.

And the other issue is to continue to focus on improving instruction and interventions within general ed to reduce the need for referral to special education in the first place. We're hoping -- and seeing some positive steps. We've looked at the early data from the Reading First Schools. And we have seen there -- and it's very early, but it's the first time we've had a look at the data for, let's say, three year. And there's been some reduction in the number of students with disabilities in those schools that have implemented these very intensive programs.

So that's what I wanted to present to you today, to try to give a brief overview. And I'm certainly available for any questions that you may have.

Thank you very much.

ASSEMBLYMAN CONAWAY: Thank you very much, Ms. Gantwerk. That was a very thorough and really marvelously presented presentation.

Questions from the Committee?

Senator Cardinale.

SENATOR CARDINALE: Thank you.

I'd like to repeat the Chairman's compliment on your presentation.

ACTING ASSISTANT COMMISSIONER GANTWERK: Thank you.

SENATOR CARDINALE: You mentioned the special ed committee. We had testimony, I think it was last week, that that committee has met. It has made some recommendations already, which have, in fact, not been adopted -- recommendations that would have had a potential to save money and staff time.

Do you have any insight into why those were not adopted?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, I am not aware of the committee that-- There's a committee meeting now, and they have not made -- they are still deliberating. And Mr. Brosel is on that commission. So he may be able to address it. But I am not aware that they have concluded their deliberations. They're meeting on a regular

basis, and they're coming up with recommendations. Unless you're talking about a previous special ed study commission.

SENATOR CARDINALE: This Committee-- The testimony last week was -- specifically a special ed committee, comprised mostly of directors of special ed services, have several policy recommendations that would save money.

ACTING ASSISTANT COMMISSIONER GANTWERK: Oh.

SENATOR CARDINALE: They're real, educational policy choices the State of New Jersey has chosen not to do.

ACTING ASSISTANT COMMISSIONER GANTWERK: Oh, I--

SENATOR CARDINALE: She went on to give one example, which is an IEP program.

ACTING ASSISTANT COMMISSIONER GANTWERK: Okay, I saw that. Now I know what you mean.

SENATOR CARDINALE: Okay.

ACTING ASSISTANT COMMISSIONER GANTWERK: That's not this commission. That's a group from the -- I think it's NJASA, or one of the organizations. And it's special ed directors. And I know that we have met with them on a regular basis, and have had the opportunity to implement many of their recommendations. I will say we don't implement, necessarily, every single thing.

The one thing she mentioned was that the Federal government had a pilot for a three-year IEP. And New Jersey did not apply to be a pilot. And that's true. Number one, when we make these decisions, we get

input from the various constituents. Many constituents, advocacy groups, families did not want a three-year IEP and did not want us to participate.

Also, you still are required to have a meeting every year to look at the progress of the student. So it was our belief that we should not do that yet, since you're still having the meeting, and since we had a very strong public opinion that we shouldn't do it. If the pilot is successful, we would expect that there would be changes, one, to the Federal regulations; or the results of that pilot would dictate to us that we should implement it.

SENATOR CARDINALE: Understood.

Just a follow-up: It's been suggested that some of these private schools market themselves to the parents who are -- who have children who need some of these special services. And that as a result of that marketing, we have encouraged a litigious process which results, most of the time, in either settlements or verdicts which favor the private placement rather than the public school programs which are available. Can you comment on that?

ACTING ASSISTANT COMMISSIONER GANTWERK: Yes. I don't know anything that would show that it's because of the marketing. I don't know that the marketing, in and of itself-- Parents find out. We have informed parents who find out where these programs are, what they are. And if they're not satisfied with the public schools, if they're not happy-- Typically, it's a breakdown. They don't feel that the public schools are serving their student, for whatever reason. They do look to other programs. And I think it's because they believe they can't get what they want.

Right or wrong-- Now, if we look at the hearings and the settlements, districts sometimes settle and give the parent-- Let's say the

parent wanted a private school, and the district settles. Now, they consider it a loss, but they settled. They made that decision, and it's kind of a legal decision. They decide, "Maybe it's going to cost me more to win than lose. And I'm just going to spend my money on education, as opposed to the lawsuit."

Now, I don't know that that means it's because of the marketing. I think it has to do with just how lawsuits happen. But if we look at the results of those in the courts, the ones that go up to the OAL, districts win at preliminary hearings most-- I mean, districts win the majority of times. The district may be saying, "I want that student in a separate program. I don't want them." Sometimes parents go to court to have their student remain in the public school, and the district is the one saying they want a different program. So I don't think it's just as a result of the marketing.

I do know that we-- It's not an allowable cost, marketing. So if they do it, they can't do it with money that they're getting through tuitions. But parents find out about programs, and programs get reputations, and parents have networks, especially if it's-- I mean, some disabilities -- like parents of children with autism. They're very connected to what's going on. They have organizations. And they also feel very strongly that they have a window of opportunity to get services for their student. And they learn what is available.

SENATOR CARDINALE: The implication of the testimony was that in some -- in many of the cases, the educational result that could be expected in the private placement was, frequently, not as good as would be in the public placement, and yet districts were yielding because they did

not want to risk, actually, the legal fees -- the legal costs that would have to be involved. And so they were settling disproportionately to what should be done. Would you agree or disagree with that?

ACTING ASSISTANT COMMISSIONER GANTWERK: I agree that they settle very often. And the reasons for settling, sometimes -- on everybody's part -- on the district's part -- may be a financial decision. They decide, "It's costly to litigate this, and so I will settle." I think that does happen. Whichever way it's going, the parent may want something. I think that happens. That happens all over.

SENATOR CARDINALE: Do you have any suggestions of things that we might do to change that balance so that the right outcome is more frequently achieved, rather than just a settlement because of the fear of legal fees?

ACTING ASSISTANT COMMISSIONER GANTWERK: I would have to think about that to see what you could do to affect that. Because it's hard to know, really, in that case, who is right. And if the district is correct, that their program is better-- I mean, the law put in place the dispute resolution and said there should be a hearing so that testimony can be provided. People bring witnesses, experts. People provide information. And then someone who has heard all of that makes what is supposed to be an appropriate educational decision. So it's hard to know, if they settled, if they settled and they really should have settled or if they shouldn't, I think, without the full knowledge of the information. So I have to think about whether there is something.

I think what we try to do all the time is to help districts to understand what are programs that they should be providing. And I could

just give you an example for autism, because that's frequently an area in which there is, first of all, a high level of service, and disputes about what should be provided. And we put out what we call *guidelines* for quality programs.

And we did this to assist districts. Because we said to a district, "If you are talking about providing a program, and you are informing parents in trying to get them to understand your program, the State can come out and say, 'This is what we think a program should look like.' It also helps if you go to an OAL judge and you can demonstrate that your program meets all of that." I think that's part of what it is, and that districts, sometimes, go to a hearing when they're dead certain that they're going to win. And maybe that's why they win, many times, when they go a hearing.

But they're very case-specific. Each one is so different. And I'm not sure what you can do. But I have to think about that, because if you can do something, that would be good.

SENATOR CARDINALE: You see, that testimony struck home to me. I just observed that. Because it coincides with what I've been hearing from educators back in Bergen County, who've talked to me about this problem.

They feel that if there is a dispute on a special ed placement -- that if the parent is on one side, and the school is on the other side, the school is going to lose. And they do not feel that it is an even playing field. And, obviously, you disagree with that.

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, I disagree at the hearing. We know that for a fact, that when

something goes to a full hearing, we look at who is the prevailing party. And districts prevail, more than parents, at full hearings. But that's only a hundred cases out of 1,200 cases. There are many more settlements. And I think districts feel that they lost when they settle. Even though they may have agreed to it, they still feel that they lost.

The litigious nature is something that is an issue across the country about special education. I mean, people say special educators go to trainings to learn law, as opposed to how to teach, to make sure we know all of these requirements. So I think it's an important issue. And I don't disagree that it's an important issue. I'm just not sure what could be done. And I don't know that it's not a level playing field. Because if you think about it, the districts have all the professionals. They have the team people that did the evaluations, that wrote the reports. The parent, in order-- And I'm not saying they're always right either. But the parent has to go out and pay for that. They have to go find an attorney and get the specialists.

So I understand that each side feels they're at a disadvantage. But I can guarantee you the parents feel they're at a disadvantage. Both parties -- and I think that's because the litigation is unpleasant for everyone, because we want to talk about education. We want to talk about what can we do for students. That's what schools want to do. Schools want to serve students. They don't want to be in court. Team people that went into this field, went into this field because they wanted to help, and they wanted to work with children -- they didn't want to testify at an OAL hearing.

So I think it is a very difficult issue.

SENATOR CARDINALE: I would agree with that. But it's puzzling to me how so many educators, apparently, feel like they are under the gun when they go into these disputed situations.

ACTING ASSISTANT COMMISSIONER GANTWERK: And I know they feel that way at settlement and before. It's true.

SENATOR CARDINALE: Thank you.

ASSEMBLYMAN CONAWAY: Senator Doria.

SENATOR DORIA: Thank you very much, Mr. Chairman.

I just want to follow up a little bit on Senator Cardinale's discussion -- because I think it's appropriate -- as it relates to the least restrictive environment.

It would seem to me that if that is the criteria that IDEA has established -- that many of these out-source placements are more restricted than least restricted. So it would seem that both legally, as well as educationally, it would be more likely that the placements within -- an inclusive classroom within a district, with a resource teacher -- except for those who are extremely developmentally disabled -- would be the most appropriate. But yet it seems that, in New Jersey -- because of the history of the Beadleston Act, and all the things you spoke about -- that we seem to be creating more and more out-placements that are more and more expensive. So how can-- Can you explain that seeming contradiction between least restrictive environment versus the placement in, basically, special schools that are very restrictive?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, I think it is the problem area that I pointed out. You're absolutely correct. It should be that students are placed in programs with non-

disabled peers. But school districts are making the decisions. It's not always the parents. It's sometimes-- It's the districts who are deciding to send students to these other programs, because they feel that they cannot serve those students, that they don't have space. And I hear *space* all the time. "We don't have the space. We could run that program, but we don't have the space. Our teachers aren't trained to deal with that. We don't have the specialized equipment." Those are not appropriate reasons to exclude students. They are reasons, but they're not educationally appropriate.

So you're right. We're looking to how do we change -- how do we move to a culture that assumes that students will be served within district, or in collaboratives, or shared programs.

SENATOR DORIA: But it's seemingly contradictory. Because at the same time that school districts are doing this, they're coming to us in the State and saying, "We need more money because of all these out-placements. We don't have the money to pay for these out-placements." So it seems contradictory that, at one point--

And I know you're right. The culture is that, because they don't want to be -- they don't want to have the problem. They're concerned about the problem. And especially the smaller districts. And this is one argument why you either need jointure commissions or special services. But the problem that occurs then is, that becomes, again, a very restrictive environment, because you put all the students with developmental disabilities in the same school, which is contradictory to IDEA.

ACTING ASSISTANT COMMISSIONER GANTWERK:
Absolutely.

SENATOR DORIA: Am I correct?

ACTING ASSISTANT COMMISSIONER GANTWERK:
You're absolutely correct. And I think we would need to separate the programs that serve students from an agency that coordinates programs in districts. You don't have the program that's serving the students deciding where you go if they're going to set up programs that are separate for themselves. But you need coordination among district services.

Warren County has an example of that. And I'm just saying, when they need a class-- So maybe this district runs a class for students who have emotional problems. And kids from other counties may go there. Whereas, some of those--

Go ahead, I'm sorry.

SENATOR DORIA: No, you're absolutely right. I agree with you.

ACTING ASSISTANT COMMISSIONER GANTWERK: Oh, good.

SENATOR DORIA: What you're saying is that, basically, you need coordination, whether it be through the county superintendent's office -- rather than the creation of separate schools.

ACTING ASSISTANT COMMISSIONER GANTWERK:
Absolutely.

SENATOR DORIA: You need someone to say, "Well, here's a program in a public school that works," and to move the students into least restrictive environments--

ACTING ASSISTANT COMMISSIONER GANTWERK:

Right.

SENATOR DORIA: --within the public school system; which is, again, much more cost-effective. You know, the out-placement to special schools, in some instances, for very -- students who have significant developmental disabilities is appropriate.

My next question ties to this, and that is that, in New Jersey, we're probably -- we're one of the states in the nation -- you point out -- at the highest rate of identification. We seem to have more students who are identified as special-ed students. And that identification process -- obviously, through the child study team -- is one that seems to be increasing every year.

Obviously, autism is a new category that has really come into its own in the last 10 to 15 years.

But separate and distinct from the issue of autism -- which is something that has come to the forefront -- it would seem to me that we're overidentifying, and that part of that -- at least what I have read in the literature -- is that part of it is the fact that whenever a student's a disciplinary problem, or has a learning problem that is not a significant learning problem, the solution to the problem -- especially if the parents are not educated enough to try to oppose this-- And there are some parents who actually look for that identification, but most parents would not usually look for identification as a special-needs student. It seems as if we -- in the poorer districts, and some of the districts where we have more educational and disadvantaged, and socially, economically disadvantaged --

seems to be a higher placement of students in the category of special needs. Am I correct that that is true?

ACTING ASSISTANT COMMISSIONER GANTWERK: You are correct. And I think I talked about it before -- that students go to special education because of a need for help. If there is no help in general ed -- if general ed is not providing additional services, or supports, or isn't successful, and the services are all in special ed, students are going to go there. I mean, I think No Child Left Behind talked about that and came up with the concept that was incorporated into IDEA, of response to intervention, requiring that interventions be done in general education. And they speak to the fact that a student shall not be referred because of a failure to receive quality education within general ed or failure to provide interventions within general ed.

So I think that's a very critical area and one that we definitely have to look at, to make sure that students can get served in general ed and not have to go there.

SENATOR DORIA: And the use of resource rooms, obviously, is one way to be able to do that in general education.

Have we done any studies-- And I know this might be a ticklish question, through you, Mr. Chairman. Have we done any studies on the socioeconomic background of students, as it relates to the placement in special education? Is there a higher percentage of students from lower socioeconomic backgrounds that are placed in special education versus those from wealthier backgrounds?

ACTING ASSISTANT COMMISSIONER GANTWERK: We do not do it by income. We do not do anything, that I'm aware of, in

special education. What we do look at is -- by race and gender. And we identify when groups -- and this is an issue in IDEA -- the overrepresentation of minority students in special education, as well as in more restrictive settings. And we are working very hard in our Department to identify the districts in which there is an overrepresentation or an underrepresentation. But we look across race and try to identify that. I mean, that is something we're required to do, and we've been doing it.

SENATOR DORIA: I would suggest that if you looked at it again, not only from race, but from socioeconomic background, you would find a similar correlation because of the fact that parents, and especially-- I would even think if you correlated to non-English speaking that, in many instances, you'll find a similar correlation, because of the fact that those children may not necessarily be special-needs students, but rather -- they have special needs that are not related to developmental disabilities, but may be related to language problems, or social problems, or economic problems that have impacted upon their ability to succeed in a general education classroom.

ACTING ASSISTANT COMMISSIONER GANTWERK:
Right.

SENATOR DORIA: I would recommend-- Again, I don't know what the resources are. But I think that is something to look at. Because I do think that we see that happening more and more. And I think one of the reasons, in New Jersey, why the identification process has increased is that teachers within regular classrooms don't necessarily always have the resources to be able to work with students who have those unique needs.

Any comment on that?

ACTING ASSISTANT COMMISSIONER GANTWERK:
Well, I mean, I understand the issue. I have to see whether we can -- whether we have the information to be able to do it. I don't know.

SENATOR DORIA: Well, free lunch-- The free lunch would be one way of creating a correlation. Those students who are eligible for a free lunch, or partially paid lunch, obviously, correlate with those in the lower socioeconomic class.

ACTING ASSISTANT COMMISSIONER GANTWERK:
Well, let me say, I think when we have a student database -- an individual student database that has all of this on it, we'll be able to do a tremendous amount of this kind of study without a problem, because we'll have the information by student.

SENATOR DORIA: Well, you brought up a very sore point.
(laughter) And I'm not going to even--

ACTING ASSISTANT COMMISSIONER GANTWERK:
Well, I'm sorry. I didn't mean to bring it up.

SENATOR DORIA: I know, you're not responsible.

ACTING ASSISTANT COMMISSIONER GANTWERK: I apologize.

SENATOR DORIA: If I remember correctly, that database was supposed to be in effect a few years ago. Maybe we could ask Jessica where we are in that database that has -- was supposed to be done more than a few years ago.

ACTING ASSISTANT COMMISSIONER GANTWERK:
Okay, Jessica.

I'm sorry I brought that up. I apologize. It's just that it will be a wonderful tool. (laughter)

SENATOR DORIA: I mean, that's something we've been talking about almost for-- You brought up-- You shouldn't have brought that up. (laughter) It's a sore point.

ACTING ASSISTANT COMMISSIONER GANTWERK: I know, I'm sorry. I apologize.

ASSEMBLYMAN CONAWAY: We may have to move on. I don't want to have to use the gavel now.

ACTING ASSISTANT COMMISSIONER GANTWERK: Okay, I'll do it. I'll just do it.

SENATOR DORIA: Jessica.

ACTING ASSISTANT COMMISSIONER GANTWERK: I won't wait. I'll do it.

JESSICA DeKONINCK: For the benefit of the record, I'm sure that that's something, at some point, the Commission would be happy to come speak to the Committee about, just so it isn't left unsaid.

SENATOR JOHN H. ADLER (Co-Chair): Thanks. Okay. That's good.

SENATOR DORIA: That isn't--

SENATOR ADLER: Okay. Thank you.

SENATOR DORIA: I'm going to end at this point.

But that is an issue. Because I think all of these things are-- There's a correlation between all of them. They're all connected. And we identify too much. The identification is related, in many instances, to nondevelopmental disability problems. And as a result of the fact that we

identify these people -- because of nondevelopmental disability problems -- then we do placements that cost significantly more; then the student is disadvantaged, the school district is disadvantaged, and the taxpayer is disadvantaged. And it all ties together.

ASSEMBLYMAN CONAWAY: Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Yes, thank you, Mr. Chairman.

And, thank you for your rather extensive testimony. It was very good. Actually, very fast. That was 30 pages you went through rather rapidly.

ACTING ASSISTANT COMMISSIONER GANTWERK: I was speaking as fast as I--

ASSEMBLYMAN WOLFE: Senator Doria just helped you put your foot in your mouth. My foot was sinking ships last meeting.

Remember that, guys? I was floating sinking ships. (laughter)

Anyway, I just have a couple comments.

I live in a district -- a school district, Brick Township, that has an excellent reputation for special ed. But I also have a number of constituents who basically see special ed as an adversarial exercise. When they advocate on behalf of a child, sometimes they feel as though the child becomes targeted, or they become targeted, or they become literally pains in the anatomy of the -- pardon my English -- of the school board, because they tend to advocate for their child.

So I'm wondering, based on what you said-- You talked about the formula and how that's determined. But how does a school district absolutely know, when they budget, how much they're going to have to set aside for special ed? Because, number one, the school year hasn't begun.

They know who was there last year. I know they've got kids moving into the district. And some districts are known as magnet districts for -- with good special ed programs.

So is a district penalized if they underestimate or overestimate? I mean, how does this work?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, as far as the State funding formula goes, I don't--

ASSEMBLYMAN WOLFE: I can't hear you.

ACTING ASSISTANT COMMISSIONER GANTWERK: As far as the State funding formula, I don't think I'm the appropriate person to answer that question.

ASSEMBLYMAN WOLFE: Okay.

ACTING ASSISTANT COMMISSIONER GANTWERK: I can say that they do sometimes get unanticipated costs. Even if they've planned well and thought they had everything under control, districts do-- A student could move in with very high costs. Now, people from the-- Better people would have to address how that's dealt with. I apologize, but I don't--

ASSEMBLYMAN WOLFE: I think that's important because, very often, the district is obligated to assume that.

My other question is-- You talked about the IEP and the team that works with the child. And the parents are involved. But is there any way that a child can get out of -- once they're in this process-- I mean, it's agreed by the parents they're in. Is there a -- by which they've tested out? Or is there a determination, based on their classroom behavior, that they don't need it? How does that work?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, we really like -- want special ed not to be a life sentence. And we are concerned if students get into special education and, by virtue of being removed from general ed, sometimes get further, and further, and further behind. So this is an important point.

But students can-- And every year you look at the program. Every three years, at a minimum, you reevaluate to determine: is the student still eligible. But at any point in time, a teacher, a parent says, "This student is doing great. The student no longer requires special education," so then, of course, they have to have meetings. And if everybody agrees, the student is declassified, and that's the end of it. And that happens every year for some students. And we're very happy when that happens, because we like to see the success.

ASSEMBLYMAN WOLFE: I just have two other questions. Senator Cardinale, I believe-- There was another question relating to -- I guess I would call them the private programs, as opposed to the public programs. In what way does the State evaluate or regulate those programs, in terms of are they actually doing what they're doing? Are they basically running deceitful programs? How does that really work?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, there are two ways they're supposed to be evaluated. One is per student -- and that is that the district is supposed to evaluate.

ASSEMBLYMAN WOLFE: Right.

ACTING ASSISTANT COMMISSIONER GANTWERK: But the State oversees these programs. And we call all of the programs, public or private, that are separate programs -- those are *receiving schools*, meaning

they receive programs -- students from public schools. We monitor them on a regular basis, we collect data from them on a regular basis, we visit them, we have a set of requirements to ensure that they're meeting the State requirements that apply to them, and the Federal requirements. And we are looking more and more to how we can have accountability for all programs, not just the local districts, but other programs, as well. But we do monitor them. We send out teams and write reports.

ASSEMBLYMAN WOLFE: Okay. I just have one final question, Mr. Chairman.

You talked about the cost of litigation facing-- And I know the next speaker is going to talk about mandates. But do you believe it would be beneficial if the Legislature were to recommend mediation in all cases?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, the law, essentially, has now said, "You must have a resolution meeting," an attempt to resolve it at a district level.

Mediation is voluntary. So you cannot require people to mediate if they don't want to. But we want to encourage mediation as much as we can. And we believe that when districts can communicate, and parents can communicate, they can get things resolved without going to--

ASSEMBLYMAN WOLFE: Okay. Thank you.

ASSEMBLYMAN CONAWAY: Thank you.

I had a couple of questions.

Sticking with the question of the IEPs, and how they work-- Now, my understanding-- I guess all schools-- Do all schools have these -- the ability, or the personnel, to do the IEPs?

ACTING ASSISTANT COMMISSIONER GANTWERK: Yes.

ASSEMBLYMAN CONAWAY: And is that cost-effective? Does that make sense? Should -- and I'm getting to -- should the, for instance, the county superintendent have a number of these groups under his or her control to -- because this is an administrative cost? Would it be wiser to have this administrative cost aggregated at some higher level and then shared more efficiently across the various school districts in the county?

ACTING ASSISTANT COMMISSIONER GANTWERK: Well, let me say--

ASSEMBLYMAN CONAWAY: Or in some other jurisdiction.

ACTING ASSISTANT COMMISSIONER GANTWERK: In consideration of that, we have thousands of child study team members working in districts. There are thousands of them. And the reason is that they're doing evaluations in context of a school that they work in. They know the school, they know the students. They're writing some recommendations based on the resources, knowing what is available. So there's a difference, I think, between the act of the evaluation, because they are also providing resources to the district.

The child study teams, the psychologists, the social workers, the learning consultants that are doing these evaluations-- They are also working with teachers in general education. They're serving a greater function. They're also working with these students -- with special education students. So they're doing a lot that's integral to the student. The issue that can be most easily -- at least in my mind -- separate is coordinating programs for services that are not available in the district.

ASSEMBLYMAN CONAWAY: I understand that. But even if they're adding -- doing other services, there's no reason why each school -- it seems to me -- has recapitulated all those services.

SENATOR DORIA: Each school doesn't have it.

ASSEMBLYMAN CONAWAY: That's what--

SENATOR DORIA: No, Mr. Chairman. Each school doesn't have a child study team. The way it works in a school district is, the school district determines, based upon the number of students, how many child study teams there would be.

I'll give you an example of my district in the city of Bayonne, with 9,200 students. There are six child study teams. Those child study teams are responsible for the identification process and creating the IEP. So it isn't every school that has one.

When they sit down, the principal from the school where the student is, is a member of that child study team, as they go over the issues of that child. But there isn't one per school. It would be not cost-effective to do it that way. In a small district, I don't know how they do that. But in a bigger like mine, and I know Assemblyman Stack's, there's a number of them that work for the whole district. They're assigned per district, not per school.

ASSEMBLYMAN CONAWAY: Understood.

But even taking your example, if every school doesn't need one -- and particularly given the way education seems to be done here in New Jersey, and the way government generally tends to work, I suspect there are probably more of these teams than are needed.

SENATOR DORIA: Actually--

ASSEMBLYMAN CONAWAY: No?

SENATOR DORIA: --if you go through the process, the biggest problem we have -- and I'm sure it would be confirmed -- is that we have a hard time -- because of the overidentification that I spoke about--

ASSEMBLYMAN CONAWAY: This was my next question.

SENATOR DORIA: --we have a hard time meeting the requirements of the Federal and State law to get all of the IEPs done. One of the issues is, every district is always looking to get more child study teams, because they can't meet the yearly requirement. Every student who is identified has to have an IEP every year. So, right now, most child study teams are working on a continuous basis. They used to run 10 months. Most of them are now, in many instances, running 12 months to try to keep up with the requirements of the IDEA. So it's a real problem. It's not that they're underutilized, they're overutilized.

ASSEMBLYMAN CONAWAY: Now, the child study teams-- Are they regulated almost entirely by Federal law or State law? Because, again, looking at the cost question, to what extent are requirements that the State has put in, here in New Jersey -- to the State Board of Education -- added to any Federal costs that may be associated with the regulation around the child study teams? That's a question.

And, two: Even with the-- See, my concern is that one of the things that we have heard is that one way to save money is to look at the administrative side of this. And while we cannot necessarily aggregate schools, perhaps we could aggregate the administrative costs for schools and share those things as a means of saving money.

And getting to Joe Doria's question, there is the issue of standardization. If we're overidentifying, it seems to me that the State has an interest in controlling this process and how those kinds of things are done, because they drive cost. So one way of getting at the cost questions-- I mean, I ask this as a question. I don't know the answer. But if you could have some coordination and control of how these child study teams work, perhaps you can reach the overidentification question that Senator Doria has suggested exists.

Your thoughts.

ACTING ASSISTANT COMMISSIONER GANTWERK:
What was the first question?

ASSEMBLYMAN CONAWAY: Oh, you know what? I can only do that once. (laughter)

ACTING ASSISTANT COMMISSIONER GANTWERK: I'm sorry, I forgot.

SENATOR ADLER: One aspect of it. Is it possible to limit the number of people that attend each IEP meeting?

ACTING ASSISTANT COMMISSIONER GANTWERK: Oh, now I remember. It's what is the genesis of the child study team requirements. I'm sorry.

ASSEMBLYMAN CONAWAY: Yes, that was one.

And are we-- Is the State adding to the cost of those by our own regulation?

ACTING ASSISTANT COMMISSIONER GANTWERK: Let me answer that. The child study team -- the name *child study team* comes from State legislation, constituted by a psychologist, a social worker, and a

learning consultant. This was a New Jersey creation, long ago -- a nice creation, I might say.

Now, the Federal law requires that there are teams that do things that -- these child study teams are the people who tend to do them. Now, we have not required that the full child study team do everything at every meeting. We allow flexibility that's inherent in the Federal law. And we say that a member of the child study team-- So it may be seen as the State mandate's defining what the Federal requirements are. And the child study team comes up there as a result of State legislation.

ASSEMBLYMAN CONAWAY: So it's the Federal mandate that the job be done, and the State law comes in to fashion the process by which the Federal requirement is met.

ACTING ASSISTANT COMMISSIONER GANTWERK: Right. It says you have to have a multidisciplinary evaluation. They've defined that as at least two people. We say at least two child study team people. It's two people. We have child study team people, and any others that are needed, depending on the student's disability, or potential disability, or areas of disability.

ASSEMBLYMAN CONAWAY: Well, what suggestion do you have, based on your experience, to get at Senator Doria's question about the overidentification of students?

Because we're going to be charged with coming up with a formula that's going to try to identify students as to their needs in a particularized way. And one of the issues that's going to present itself in that context is that there is -- the State, in my view, is going to have to be very concerned about the number of people who get into these categories

that require more and more funding. We're going to have to figure out a way to make sure that when schools present to us data on their students, that that data is correct.

Now, you can build in sanctions and do audits, but we're going to have to-- It seems to me that we're going to have to have the State, county superintendent, or some higher -- some person, here, working in Trenton, review these decisions made. And if you're going to have a process -- (indiscernible) or anything else -- there has to be standardization built in. So that means you have to -- in my view, you have to have unitary authority in order to do that. And I don't-- I'm wondering whether you have that kind of uniformity, and unified authority with this kind of dispersed responsibility across all these districts. That's what I'm trying to get at.

ACTING ASSISTANT COMMISSIONER GANTWERK: I think there are differences because of the districts -- we have many districts. And I'm not exactly sure one way to get at it. But one way that we have to look at is looking at the criteria that are established in State regulations for eligibility. And one could intensify the monitoring and the reviewing of how districts are making those decisions. It could become something that we look at more closely in our district monitoring, as to whether the criteria are being adhered to. I mean, we do that to some extent, but it could be done more. We could intensify that.

No one really outside the process has the right to say "yes" or "no." So if a team made a decision, someone outside of that could not look at it and say, "Oh, I don't think that child is eligible." So we have to be

careful that what we're doing is building the consistency for -- in the place that the decision making is happening.

ASSEMBLYMAN CONAWAY: Now, you mentioned in your statement that the State, in looking at these private -- at the private institutions involved in this-- I guess there are some cost factors or -- somehow determines what the cost should be at those private institutions. And you suggested -- I thought I heard you say -- that we should look at the costs that are allowable. And perhaps by adjusting those, we might put in disincentives for the use of those private programs and help drive students back to, sort of, in-placements. I mean, is that what you were suggesting? Because that seems to be an issue. I mean, all of this out-placement that we have here -- three times the national average. We need to look at what we're doing in that area. And the money often determines what we do.

ACTING ASSISTANT COMMISSIONER GANTWERK: Right.

ASSEMBLYMAN CONAWAY: Where it goes, that is.

ACTING ASSISTANT COMMISSIONER GANTWERK: And I was talking, then, about private. But when I talked about the out-placing, it's in any separate building, public or private.

But in the private-- Yes, we could take a look and see if there are opportunities for more transparency, because these are private businesses to some extent. And you could decide that you wanted more. I know, in legislation, now, I believe the only thing that's there -- that I know -- is something that says private schools shall have a tuition rate established based on actual costs, by the Department of Education. So that might be

an area where there was something else that could be done to look at what are the allowable costs.

ASSEMBLYMAN CONAWAY: Senator Adler.

SENATOR ADLER: Ms. Gantwerk, I thought your testimony was enormously educational -- helpful to all of us and very, very well-presented. So thank you for that.

And thank you for laying out the areas of consideration. They are, obviously, the areas of consideration that we have facing us, as part of our mandate from the Legislature and from the Governor to find ways to maintain the high quality of education for general ed and for special ed students, consistent with our past practice and with our constitutional obligation, with our moral obligation, and at the same time to do that with greater cost constraints than we've realized in the last few years.

I'm going to embrace all the questions and comments that Senator Cardinale and Senator Doria raised, Assemblyman Conaway, Assemblyman Stack -- I think he spoke -- and Assemblyman Wolfe.

I have the same concerns that Senator Doria ticked off regarding the level of identification and then the tiering -- the sort of overtiering we seem to do in New Jersey. I have the same concerns that Assemblyman Conaway just laid out about the private placements and whether there are things we can do about that; and about the dispute resolution process. It seems to me we should be mandating mediation, based on your testimony.

We're going to have another hearing relatively soon about special ed costs, and have some of the stakeholders come and further educate us as presenters. Hopefully, you can return for that. And having

identified for us some of these areas of consideration, I'm hoping that you can then help give us greater guidance as to which areas of consideration we should adopt, in terms of real policy changes.

I know there is already a panel -- Superintendent Brosel is on it -- from legislation that I sponsored, to figure out special ed costs. I don't think we have time to wait for that panel to do its job and come back a couple decades from now and give us good recommendations.

Ray, you're a busy man. (laughter)

The reality is, it's the second panel that I've sponsored to try to find ways to -- one was mandates, now it's special ed. And I think these panels somehow don't get around to doing the hard business of decisions that somehow offend some stakeholders but get to a better place for New Jersey overall.

And so I'm hopeful that when we have our next hearing on special ed -- having laid out for us these areas of consideration -- you'll come back and say, "And on this area, you should do this." Because I think there will be legislation coming from this Committee where we do something about private placements, and maybe something about classification, and tiering within -- for those kids who have been identified.

I think we want to take real action in the next couple of months. And as important as it is to study these things at a much greater length, I think we need smart, very well-informed people like you and some of the stakeholders to tell us what would make sense and what would have adverse -- unintended or unanticipated consequences. But we're going to make some decisions.

So I thank you for your testimony. Next time you come back, you're actually going to have to tell us, "This is a good idea; vote yes on this. This is not a good idea; here is why." Because I think we're actually going to take action at some point in the next few weeks.

Thank you. Your done.

Thank you so much.

SENATOR CARDINALE: Mr. Chairman.

SENATOR ADLER: Thank you. You're done.

SENATOR CARDINALE: Mr. Chairman.

SENATOR ADLER: You can talk.

But you're done.

SENATOR CARDINALE: I have just one--

SENATOR ADLER: No, no.

SENATOR CARDINALE: --short follow-up question.

SENATOR ADLER: No.

SENATOR CARDINALE: Very short.

SENATOR ADLER: She'll be back.

SENATOR CARDINALE: Okay. But let her think about it.

SENATOR ADLER: Gerry, no. We've got to keep moving here. We've got to get this done for the taxpayers of New Jersey.

SENATOR CARDINALE: When you come back, I'm going to ask you a question.

SENATOR ADLER: Gerry, talk to her later. Talk to her outside.

SENATOR CARDINALE: Okay.

SENATOR ADLER: Thank you, Herb. You're doing a good job.

ASSEMBLYMAN CONAWAY: Next, we have Raymond J. Brosel Jr., Superintendent of the Voorhees Public School District. He has been appointed to the Commission studying special education, as has been pointed out. He is a Navy Veteran, by the way, and a graduate of -- working at Camden City High School in the past.

We appreciate your coming before us today to offer your perspective as a leader in education in Voorhees and in our state, to talk with us and enlighten us about the kinds of things the State's doing that drive the costs and raises the costs of -- drives the cost of educating students in New Jersey.

Did you want to add anything, Senator Adler?

SENATOR ADLER: Mr. Brosel, first of all, I'm so delighted you are here. You have been on me, on some of these issues, for a decade, frankly. (laughter) And I've been trying, incrementally, to get at some of these things. And the delay that I and the Legislature have permitted has driven up property taxes around the state. And so it's to your credit that you have been pushing this at the local level, and enacting whatever practices you could for your very successful school district, which includes at least one school that was on our list from a week or so ago of the Best Practices schools in the entire country. The Osage School was on that list. And you've got a lot to be proud of, not just with that school, but with your entire district.

But I thank you for having been nagging me about issues that we should have dealt with over a number of years, and have been dogged

about it on behalf of not just the taxpayers of Voorhees, but also the people of all New Jersey. So thank you for that.

And welcome.

RAYMOND J. BROSEL JR.: Thank you.

And you're quite welcome. Yes, we do nag--

SENATOR ADLER: Use the mike. (referring to PA microphone)

ASSEMBLYMAN CONAWAY: Push the button. Red light--
There you go.

SENATOR ADLER: Red means go.

MR. BROSEL: Makes sense to me. Red means go. Okay.

Thank you, and thank the entire panel for inviting me to speak.

I must admit, following the dynamic speaker from Denver and Assistant Commissioner from New Jersey is an exciting spot to be slotted in. And I do appreciate that I get the last say. (laughter)

But with that in mind, I would also add, to the background, that you are right. We've been working at this for decades. I was actually involved when Senator Dumont's task force on Business Efficiency was in Camden City in 1975. So this is an ongoing process. And one of the things -- or outcomes from that time was to change the bid threshold from \$2,500 and the certification from \$25. You couldn't even buy a hundred stamps for \$25 today. And you'd have to get somebody at the post office to sign off on that certification.

I had the pleasure of serving on the mandate commission, which presented a report in the Winter of 2004. And I presented that to the Committee for this afternoon. And I would like to go over just a couple

of the items to show you how complicated a task you've taken on -- to streamline education and not impact negatively on the educational program for our young people. We're all in the business. You have certainly made comments today that you understand that whatever we do to reduce cost drivers cannot negatively impact on the programs for young people.

If you can see, in that report, one of the things that has been around since taxes were paid in cash is something that has been recommended to be done away with, that I know of, since 1975. I don't think there is any cash transactions in paying taxes. State aid is now wired to an account. Most people have direct deposit. Cash is not the driving force to need a custodian of school moneys or a treasurer of school moneys. We have an estimated \$3,000 to \$12,000 cost per district, depending on the size of the district. This person is certainly responsible for a check and balance on the accounting of the funds flowing through a district. But we also have an auditor that comes in every year and audits all the transactions. So that was another one of those good things to have at one point in time, not necessarily needed right at the moment.

We also appreciate the fact that you did eliminate the transcript requirement for the hearings on public safety that we hold in October. And that particular commission did raise the issue on why we have to hold that in a specific week in October, which may or may not cause districts to have special meetings.

We also have to point out that the reporting -- which you've spoken so highly of today -- of the magnitude of the reporting, and the fact that you may or may not be getting all the details that you need. But we still have tremendous duplication of effort.

And moving quickly to Page 5, you will see the quality assurance annual report, which very well may be replaced in the near future. But that is actually our task to put together a copy of every report we've sent to Trenton, and send it to Trenton so it's all in one place. There is a lot of duplication of effort. And that one I have to certify that everything that we were required to do, we did.

I'd also like to point out that there's a tremendous paperwork increase since NCLB. There is no doubt about it, NCLB is driving tremendous reporting requirements. And Senator Doria is correct. Eventually, we will have all that data in one place.

SENATOR DORIA: We hope.

MR. BROSEL: I said eventually. (laughter)

Special education was certainly a subject for today's conversation, of the previous speaker. And I am serving on that special commission to review the delivery of special education programs to young people. It is a cost driver in our district. Our district has a very good reputation for providing special education programs in the district. I would share with the Committee that we also have the distinction of going to the Third Circuit Court, trying to place a child out of the district because we could not provide the program. And the Third Circuit agreed with us. Unfortunately-- And I would certainly ask the special ed committee and the Department to take a look at why did that take us eight to 10 years, while the youngster may very well have been in the wrong program. There has to be a better conflict resolution -- they're my words, *conflict resolution* -- a better system.

I would suggest -- and I would complement the Commissioner -- that we need to have the Department -- not wanting to use the word *prescription*, but come up with guidance so that when we go to the due process hearing, the court has a better understanding of a neutral position on what should be provided for a particular youngster that comes before them.

Sometimes the parent and the district cannot agree. But the administrative law judge has to pick which is best, based on the information we could provide. It would be very helpful if we could say to the mediator or to the court, "This is what the State also thinks is best for this youngster, and maybe while we're going through this process, the youngster stays in an appropriate stay-put."

I know all the Federal legislation that might need to be looked at, I know of all of the challenges that that brings to us. But for the youngster-- While we adults have a difference of agreement, we have to provide the best program to that youngster.

While we're on special education: I was certainly glad to hear that we only require two child study team members to be at a meeting. But let me share with you how many other people are at those annual review meetings. You might have the regular ed teacher, you might have the special ed teacher, you might have one of the therapists, you might have one of the providers -- speech or whatever. We estimated and calculated, one Spring, 4,000 people hours are spent in the annual review. In Camden County, seven districts put together and counted \$152,000 spent in the annual review. That's counting the persons' time at the meeting, at one hour meetings. And we left out the cost of the sub that's in the classroom.

Because when we schedule that, if we do four or five meetings a day, we fortunately use the same sub, if all the youngsters are in the same building. Going to the comment, could you do it from on-high -- whatever on-high may be -- you have to get into the local situation of providing those people at those meetings. So you might have to do it in the school. So we're doing those kinds of things.

We thank you for pointing out to us that the radon testing, which is in the report, did not meet the State-funded, State-mandated requirement. I would also point out that sometimes hearings like this bring out more information that's useful to the Committee deciding on such bills, such as we are required to change X amount of the air per hour in each room. We have other situations that are already remediating some issues that come along.

The annual audit: We spoke of that briefly. It has grown to an over \$40,000 bill to our district, because the need to verify reporting data that we're required to make is checked by the auditors. Actually, the auditors randomly check IEPs to make sure the IEP and the child reported on the annual application for school State aid match, which is -- obviously, someone should be checking that. But it's a cost driver. Every time we ask the auditors to do more, it takes them longer. And they do receive -- and appropriately -- additional information. They need additional funding for that.

Considering how much went before me today, I would like to suggest some ideas which I consider are inside the box, when it comes to mandates. Outside the box is way beyond my role; I work with inside the rules. So some ideas inside the rules: While we are proceeding through all

of these hearings, I would imagine there are rules in every department being put forth on a regular, daily basis. You may want to ask someone to hold them up until you come up with your recommendation. Because they will be in place. Like all the other things that are happening, they will already be in place. And they're very hard to change. And I certainly have only 12 years experience as a mayor to know how long and how hard it is to change something that's already in place. So I'm sure that may make sense to everyone.

One of the other challenges, that we need, is a cost estimate to implement a new requirement. And not just the cost estimate -- and it's nice to have it on paper. If it's not funded when you go to do the budget in June, it doesn't stay in place. Just a thought. Let's stay with radon. If you couldn't afford to fund the radon testing, which costs us \$10,000, your budget process overrides every other thing except for the requirement. If you don't fund the requirement, it doesn't go away. It just gets transferred. And all the money is our money, whether you pay for it at the State level or we pay it locally. It's all our money. So mandates that are coming through - They have to survive the budget process. It might help us for new requirements that come out of the Department.

This one is -- was pointed out so well today -- that the Federal government is not paying their fair share, or even their 40 percent of special ed costs. I would consider asking them for it in some aggressive manner. (laughter)

SENATOR DORIA: We can ask, but we won't get.

MR. BROSEL: Well, maybe we need to go beyond asking. I was just suggesting that. You can interpret that one any way you want.

SENATOR DORIA: We can try.

ASSEMBLYMAN CONAWAY: Cross congressional steps.

MR. BROSEL: I would also suggest that the process that you're going through is informing everyone in the State, in the community, and yourselves about what is going on. And I would throw out a suggestion that mandates-- This commission spent several months coming up with the report that you have. I would ask that you consider a standing committee that reviews mandates before they -- as part of your deliberation process that you run that through someone.

And in the area of cost-effectiveness inside of the mandates, we have the following things that we are currently doing, and many districts are doing. We have a South Jersey insurance pool for all of our insurance. We have a South Jersey health group providing us with health benefits with, currently, about 20-some districts putting that together. We have 265 New Jersey districts cooperating in the purchasing of school supplies, paper products, and the right-to-know compliance. We have a South Jersey purchasing co-op for our food services program, which we operate in-house. We have an all-business office software application support group. We have special education transportation out-of-district and in-lieu-of for nonpublic auxiliary services -- we have an educational services commission doing that. We have the Camden County Department of Health doing our nursing services. We have the regional high school helping us with the elections. We are in the ACES program for natural gas and electricity consortium purchasing. We just received a solar grant for solar generation. And with our township, we do have a cooperative relationship on trash collection. We have a tremendous education and recreation program, which

provides services throughout the district, both in the schools and on the public property -- the township property. And we have cooperative arrangements in many areas that we are allowed to under the purchasing.

We talked about transportation -- the cost of transportation. I can talk to you about that, but I can also talk to you about something as simple as aid-in-lieu-of, which is a State mandate that we provide money to parents of children going to private or parochial schools. We provide per child, not per trip. So a family with three youngsters could certainly receive \$2,400. Their neighbor, with one youngster, will receive \$800.

There's all those different things in the report that we can talk about, Mr. Chairman.

ASSEMBLYMAN CONAWAY: Any questions for this witness from the Committee?

Senator Doria.

SENATOR DORIA: I just want to begin by thanking the Superintendent for his comments. I think they're well taken.

Unfortunately, when we did the State-mandate, State-pay, which I was sponsor of, we were encouraged by the administration at that time not to include education. So it is not included within the parameters of the constitutional amendment that was created at that time. There is a State mandates council that deals with the noneducational mandates. So what you're suggesting, as it relates to someone reviewing-- If there is a mandate that's created that deals with municipal or noneducational issues, we can go to that council and have them determine whether or not it is a mandate. So that does exist in other than educational areas.

Some of the other things-- I read the report from 2004. Some of the things have been implemented, such as: now you can go to a local construction official to review school construction plans rather than going to DCA. And that's much quicker. You're absolutely right, a number of these suggestions, I think, are just common sense, and we should look at them. I think it's worth reviewing.

I think that one of the things--

And let me just say, I'm now going to take the Legislature to task, and my colleagues. As you talk about regulations, we have, through a constitutional amendment, the right to legislative oversight. Neither house of this Legislature has ever -- and I use the word *ever* -- implemented oversight, even though it's been on the books for, now, going on close to eight -- nine years. And that is something that the Legislature should be doing. Because if we had oversight over the regulations, we would be having less impact of mandates. But that's our responsibility. And it's a fault of the Legislature. I'm to blame as much as all of my colleagues. And that's something that we have not done, even though we fought for it. There was a constitutional amendment to do it. But nobody has taken the bull by the horns, and none of the committees that have been assigned that responsibility have done it in the Legislature. And that would solve a lot of the mandate issues.

That's my comment.

Thank you.

ASSEMBLYMAN CONAWAY: Any other questions from members of the Committee?

SENATOR CARDINALE: Yes.

ASSEMBLYMAN CONAWAY: Senator Cardinale.

SENATOR CARDINALE: Since you're going to be on this committee studying this special ed situation, the question I was going to ask -- and I will ask it at another time, but you may want some time to think about it -- is in some areas that we deal with, we have created what, in legal terms -- terms of legal art -- is called a *rebuttable presumption*.

From what I hear from my school boards, they're deathly afraid of going to a hearing because of the legal costs and what they perceive as a likelihood of not prevailing. I understand there has been a Supreme Court decision recently -- a U.S. Supreme Court recently -- which has changed some of that dynamic. However, from a legislative perspective, if we were to create a rebuttable presumption favoring the school board in those disputed placement questions, do you think that that would help?

MR. BROSEL: I was just, earlier this afternoon, given a brief survey that was done in New Jersey on that very question. And the consensus was, we don't know. I would think that school districts should have an equal playing field when they go to court, at a minimum. Because we-- There's a lot of knowledge, there's been a lot of scientific study, and there's a lot of information available for how to treat or address issues that youngsters present. We are in that business, so we should have some deference to our opinion on what is appropriate. We have an experience factor, we have a knowledge base that has grown over the years. So I don't see how that would not be to the benefit of the youngster, that the people who are providing -- and knowledgeable of the service -- should have a deference.

SENATOR CARDINALE: Thank you.

ASSEMBLYMAN CONAWAY: Well, thank you so much.
Senator Adler can certainly finish.

But thanks for your testimony. We appreciate you taking the time to come enlighten us with your long experience in education leadership here in New Jersey.

Thanks again.

Senator Adler.

SENATOR ADLER: Mr. Brosel, I really want to thank you. I know you spent time as an educator in your Voorhees school district. The fact you've also taken time on this education mandates elimination commission -- the report that we have in front of us -- and then you take the time to be part of this special ed commission to try to find reasonable, fair ways -- kid-friendly ways for cost containment -- it speaks of your commitment to education and the taxpayers at the same time. And it's what this Committee is supposed to be about.

I know you're going to come back when we talk about this special thing, whether you like it or not, apparently. (laughter) And I just appreciate the fact you answered the call for taxpayers and for kids at the same time.

So, truly, thank you very much.

SENATOR DORIA: Thank you.

MR. BROSEL: Thank you.

ASSEMBLYMAN CONAWAY: We're adjourned.

(MEETING CONCLUDED)