

---

---

# *Committee Meeting*

of

## JOINT LEGISLATIVE COMMITTEE ON PUBLIC SCHOOL FUNDING REFORM

*"Testimony from Thomas Parrish, Ed.D., Judge Richard F. Wells, and invited representatives of special education service providers and advocates in the delivery of high quality special education programs and services in a cost-effective manner"*

---

---

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

**DATE:** October 3, 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



### **ALSO PRESENT:**

Kathleen Fazzari  
*Office of Legislative Services*  
*Committee Aide*

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

Brian Alpert  
Christine Shipley  
*Senate Republican*  
Beth Shermerhorn  
*Assembly Republican*  
*Committee Aides*

***Meeting Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

---

---

## TABLE OF CONTENTS

	<u>Page</u>
Judge Richard F. Wells Administrative Law Judge New Jersey Office of Administrative Law	2
Thomas Parrish, Ed.D. Managing Director American Institutes for Research Palo Alto, California	23
Cathy Moncrief Member Board of Directors, and Member Special Education Committee New Jersey School Board Association, and President Board of Education Lindenwold Public Schools	43
Toni J. Gotthilf Bergen County Representative Executive Committee New Jersey Association of School Administrators, and Director Region V Council for Special Education	48
Diana MTK Autin, Esq. Executive Co-Director Statewide Parent Advocacy Network	54
Mark J. Finkelstein Superintendent Middlesex Regional Educational Services Commission	64
Gerard M. Thiers Executive Director ASAH	71

## TABLE OF CONTENTS (continued)

	<u>Page</u>
<b>APPENDIX:</b>	
Testimony submitted by Judge Richard F. Wells	1x
PowerPoint presentation submitted by Thomas Parrish, Ed.D.	8x
Testimony, plus “Positions and Policies on Education” submitted by Cathy Moncrief	32x
Testimony, plus attachments submitted by Toni J. Gotthilf	44x
Testimony submitted by Diana MTK Autin, Esq.	51x
Testimony, plus charts submitted by Gerard M. Thiers	64x
lb: 1-41 rs: 42-88	

**ASSEMBLYMAN HERB CONAWAY JR. (Co-Chair):**

Welcome, once again, to the Joint Legislative Committee on Public School Funding Reform.

This week's meeting will focus on the area of special education, and reform measures in that area to bring about increased efficiencies and quality of education to that aspect of education here in the State of New Jersey.

We have distinguished guests who will join us. First, at the outset, let me say as usual, and remind myself, that for those of you who have cell phones, please either turn them off or put them on vibrate so that we're not bothered by interruptions related to the ringing of cell phones.

Today, the first testifier will be the distinguished, honorable Judge Richard F. Wells, who was appointed to serve as Administrative Law Judge in 2001. Prior to his appointment, Judge Wells engaged in the practice of law for approximately 20 years. And during his practice, Judge Wells was approved by the New Jersey Administrative Office of the Courts -- replacement on the roster of mediators for the Statewide Mediation Program; and served as an adjunct professor of law at the Rutgers University Law School. Judge Wells also has a degree in civil engineering from Rutgers University and an MBA from Drexel University, as well as his law degree from Rutgers Law. He is also the former Republican Mayor of Haddon Heights, a township in Camden County.

If Judge Wells could come forward, we would very much appreciate what you have to tell us in the area of special education, particularly as it relates to the legal processes which often revolve around

IEPs and other issues, regarding making sure that kids get access to the education they need here in New Jersey.

Judge Wells.

**JUDGE RICHARD F. WELLS:** I thank you very much. It's my privilege to appear in front of the Committee.

I've prepared a presentation of about 15 to 20 minutes. I've separated the presentation to more or less three categories: The first being a very quick, brief background of the law with regard to special education, as concerns the Office of Administrative Law and the job of the Administrative Law Judge. And I obtained some statistics and some data that I thought may be of interest to the Committee. And then lastly, I thought it may be of interest to the Committee of -- just some recent developments in this important area.

The Office of Administrative Law is entrusted with deciding disputes under the Federal law of governing special education -- the Individuals with Disabilities Education Act, or IDEA. The Federal Court has held that Federal law requires these cases to be heard by an independent hearer, not affiliated with the Department of Education, and that the decision of the hearing officer must be final. In response, the Commissioner of Education asked the Office of Administrative Law to hear these cases, and we have been doing so now for over 20 years.

The disputes are usually emotionally charged and can often involve complex issues and expert testimony. Appeals of an ALJ's decision are to the New Jersey Superior Court or the United States District Court, though most choose to go to the District Court if they appeal.

In a nutshell, in order to be eligible for special education and related services under the IDEA, a child must be between the ages of 3 and 21, and meet the definition of a child with a disability. The definition includes children with physical, emotional, learning, and cognitive disabilities who, because of their condition, need special education and related services.

Under the IDEA, every child who meets the law's definition of a child with a disability is entitled to a free appropriate public education, or sometimes called a *FAPE*, in the least restrictive environment. The term *FAPE* is defined as special education and related services that: are provided at public expense, without charge to the parent, under public supervision and direction; meet the State's educational standards; and comply with the child's Individualized Education Program, sometimes referred to as IEP.

A *FAPE* includes an educational program that is individually designed to meet the child's unique educational needs, and prepares the child for employment and independent living. While the IDEA does not entitle a child to the best educational program available, it does require a school district to provide a child with a planned educational program that accounts for his disability, offers the opportunity for significant learning, and allows the child to make meaningful educational progress. No child may be excluded from public school on the grounds that his disability is too severe to benefit from education. The law recognizes that every child is able to learn and requires educational opportunities to be provided for all.

The IDEA requires that children be educated in the least restrictive environment possible, given their individual needs. This means that they must have the opportunity to interact with, and be educated with,

students who do not have disabilities, to the maximum extent appropriate. There is a strong preference in the law for educating children with disabilities in the general education classroom with appropriate aides and services.

In my experience, the greatest portion of the matters that are actually heard involve disputes between parents and school districts with regard to in-district versus out-of-district placement, even though these cases are only about 30 percent of the special education cases filed with us. Sometimes those dispute are heard after the parents have unilaterally placed a child in an out-of-district setting. In any event, the context of the dispute may be the position of the school district that it is unable to properly educate the child in-district, and the parents disagree and insist the child remain with the district. Conversely, the parents may feel that their child is not receiving a proper education within the school district and so want out-of-district placement, but the school disagrees believing it can offer the child a FAPE utilizing the school district's facilities and staff.

The special education cases in the OAL are heard in a courtroom setting. Witnesses give sworn testimony and documents are received as evidence. Usually, expert testimony is presented. The decision is rendered by the ALJ. The hearings are confidential and only the participants are permitted to view the proceedings. The ALJ's decisions are always in written form. They contain findings of fact and conclusions of law. The ALJ's written decisions are published on Lexis, Westlaw, or the Rutgers University Law School Administrative Law site. Confidentially is preserved by redacting the identities of the students and their parents or guardians. The ALJs who hear these cases are well versed in the law and

participate in ongoing training in that regard. The ALJs have access to interns specializing in the area of special education.

The OAL offers the parties to a special education dispute a streamlined process. The Federal law requires issuance of the final decision within 45 days of the hearing request, although adjournments at the request of a party may delay this timeline. In order to ensure compliance with this requirement, the process at the OAL was modified in February 2005. Participants are assigned a date certain for the hearing, 10 to 12 days from the transmittal of the case to the OAL. The parties are assured that their case will be heard on the date assigned. This is a significant advantage to the participants, because they are not required to prepare for trial only to later learn that their matter will not be reached that day, and so they must go home, await another trial date, and essentially begin the trial preparation process anew.

In almost all cases, the ALJ will conference the case prior to trial. Many cases settle at this juncture in the proceeding. Sometimes the parties need to hear from the ALJ, which they readily perceive as an independent voice. ALJs routinely make themselves available for telephone and in-person settlement conferences. The ALJs are well versed in the settlement and negotiation process. By way of example, before my appointment as an ALJ, I was on the Administrative Office of the Courts' roster of approved mediators. Parenthetically, it has been my experience that cases will settle even after a hearing is underway. A party may better see the relative strength or weakness of his case and opt for a negotiated resolution.

I would like to share with the Committee some data. This information has been obtained from the Office of Special Education and reflects outcomes in the OAL from the year 2001 to the present, the report having been generated September 29, 2006. During that time period, there have been 517 cases decided in the Office of Administrative Law. In those 517 cases decided, the parents prevailed 27 percent of the time, and the school district prevailed 63 percent of the time, while the result was mixed in approximately 10 percent of the cases. I would stress that the OAL does not keep these statistics, as it is not appropriate for an independent tribunal. Rather, solely for the purposes of this Committee hearing, this data was requested from the OSEP.

The number of special education filings in the OAL annually exceeds 600. It is estimated that 620 cases will be filed this year. About 20 percent of the filed cases result in a hearing and decision; the remainder are resolved through settlement and withdrawal.

In Fiscal Year 2005/2006, 60 percent of the cases were disposed of, via settlement or decision, within 45 calendar days of the matter being transmitted to the OAL as a contested case; 79 percent of the cases were disposed of, via settlement or decision, within 90 calendar days of transmittal. This represents a substantial improvement, as you can see from the attached chart, resulting from modifications to the process undertaken by the OAL.

There have been several recent developments that affect the OAL in the area of special education. As I alluded to earlier, last year the OAL amended its rules to require scheduling of the hearing 10 to 12 days from transmittal. Before the 10-day rule came into effect, petitioners would

often file a case before they were ready to proceed, resulting in adjournment requests to obtain evaluations or reports. Now, under the new amendments, delays for such reasons are not countenanced.

Another significant development in the area of special education law has occurred with regard to the allocation of the burden of proof. The United States Supreme Court and the Third District Circuit Court of Appeals recently issued opinions that change the procedure for allocating the burden of proof under the IDEA. The court held, in *Schaffer v. Weast*, that in cases under the IDEA the burden of proof in an administrative hearing is properly placed upon the party seeking relief. The Third Circuit decision in *L.E. v. Ramsey Board of Education* found the *Schaffer* holding applicable to litigation under the IDEA in New Jersey. Prior to the *Schaffer* decision, the burden of proof was always on the school district. Accordingly, the parent petitioner would only have to raise the allegation that the school district failed to offer or provide a FAPE, and then the burden would be placed on the school district to essentially validate its program and placement. Now, if a parent seeks out-of-district placement, the burden is on the parent to prove by a preponderance of the evidence that the school district has failed to offer or to provide a FAPE in the least restrictive environment. Conversely, should it be the school district who is seeking out-of-district placement, the onus is on the school district to prove its case.

Lastly, I would like to tell you about the most recent development in the area of special education. On June 26, 2006, the United States Supreme Court issued its decision in the case of *Arlington Central School District Board of Education v. Murphy*, holding that the IDEA

attorney's fee provision does not extend to expert fees. Accordingly, the law is now that a prevailing parent may not receive recoupment of the expert fees expended during the litigation of a contested special education case. I cannot say whether the above-mentioned holding in *Murphy* will have a chilling effect on parents' decisions to fully pursue grievances under the IDEA. As I mentioned, the IDEA does have a fee-shifting provision which authorizes prevailing parents to recover an award of reasonable attorney's fees. Interestingly, although the ALJ has final decision-making power with regard to the substantive issue of whether a FAPE was provided, the IDEA places exclusive authority for determining the appropriateness of an award of attorney's fees with the United States District Court.

I'd like to take this opportunity to thank Director and Chief Judge Laura Sanders, and Assistant Director Patricia Prunty for their help in this presentation. I'd also like to note to the Committee that I called upon the booklet put out by the Education Law Center, sponsored by the New Jersey State Bar Foundation, entitled, "The Right to Special Education in New Jersey," for purposes of my presentation.

I have brought with me, if the Committee would be interested, just some representative special education decisions that I authored, for no particular purpose other than if you were interested to see the depth that is required, and with the findings and fact and conclusions of law that are necessary in these cases.

With that having been said, I would be pleased to attempt to answer any questions that the members may have.

ASSEMBLYMAN CONAWAY: Questions from the Committee?

Senator Adler.

**SENATOR JOHN H. ADLER (Co-Chair):** Judge, first of all, thank you for taking the time to be with us today and sort of giving us the context for the legal aspect of special ed. You talked earlier on in your presentation about the ALJs being well versed in the substantive law. Can you give me a sense of whether that's consistently true, or whether you think maybe ALJs should be assigned for some period of time specifically to handle special ed cases; and not to go from special ed to this environmental issue to this personnel issue, as some ALJs do.

**JUDGE WELLS:** Well, I'm not exactly sure if I can go to that administrative type of call. I don't know if that's my province or not. But currently in the Office of Administrative Law, there is essentially learning and education before new administrative law judges do preside over special ed cases. So essentially, the way the Director has set it up is, a newly appointed ALJ, unless there is some particular expertise or background in the special education area, would not immediately sit on special education cases. But rather, there is a rather intensive, ongoing special education training in-house, as well as outside seminars, that the ALJs attend before they're essentially, I suppose it would be, deemed ready to preside over that subject matter. Whether there should be a specific specialization in that area, I can give you my opinion; but I'm not exactly sure what weight that carries. It is a detail area of the law. But I will say, at least it's my personal opinion that it is not something that an individual qualified to be an administrative law judge is not capable of. Whether you would increase the speed of decisions, or dare I say, the quality of decisions by specialization,

I'm not exactly sure I would be able to comment on that one way or the other.

SENATOR ADLER: I guess the reason I asked is, I think you're aware that in the Superior Court there are three different main parts -- the family part, and criminal part, and civil part. And judges sit in one of those three parts for puritive -- some years generally, maybe rotating every three or four years, maybe even being in one part the whole time. And it seems to me that we might be better served structurally if we had some ALJs assigned for a period of years to just handle special ed cases or just handle DEP permitting cases, or have some of that same specialization.

I thank you for your general thoughts on that. And if you want to think about that and tell us later on, that would be great.

ASSEMBLYMAN CONAWAY: Just following on what -- Senator Adler's question. Are the cases studied and reviewed -- that is, Senator Adler's suggestion seems to get at a deeper question of variability in decision making in the -- by ALJs. And does that office undertake any kind of study to look for consistency of decision across the number of judges who sit in this area, perhaps falling on some concern that people might sort of judge shop? I don't know if that sort of thing goes on or not. But do you have any sense of that?

JUDGE WELLS: Well, the ability to judge shop, I believe, would be essentially impossible. The assignments are made by the assignment judge in either Newark or Trenton, and I believe it would be virtually impossible for one party or the other to a special education case to essentially shop around or try to pick and choose a judge.

With regard to consistency of opinions, there is constant review, that I'm aware of, by the Director and the Deputy Director over the quality of the decisions. But I would note that these cases often, if not all the time, are very, very fact sensitive. And a decision, for example, finding that-- Just for an example, an out-of-district placement appropriate for this individual or child may not work at all for a different child in a different set of circumstances. So they are very fact sensitive. But again, the ALJs have a voluminous body of case law, Federal as well as State law, to call upon. We get many, also, special education reporters, so we certainly do not make these decisions in a vacuum. And maybe my bringing the decisions may be helpful to the panel, because you will see they are full of law that must be followed in order to render an appropriate decision.

ASSEMBLYMAN CONAWAY: On a different vein, it's our understanding that a number of these cases sort of turn on available infrastructure, what physical plant's available at a school, as well as professional staff. And does the court ever undertake its own inspection of the physical plant infrastructure in a district to determine how that might impact the placement decisions? Do you have -- is there an investigative arm that you have? Do you ever go to sites yourself?

JUDGE WELLS: I-- I'm sorry.

ASSEMBLYMAN CONAWAY: Go ahead.

JUDGE WELLS: A hearing in front of -- in the OAL, in front of an ALJ, with regard to special education or really any of the other matters, is virtually no different than a trial in Superior Court. And the decision is made on the testimony and the evidence presented. If there is -- if it becomes relevant with regard to the quality of the facilities or

something of that nature, that would be based on testimony, whether it be lay testimony, fact testimony, or expert testimony. The ALJ acts as a judge and not as, essentially, an expert. And basically, then, weighing the evidence, would come to the decision.

ASSEMBLYMAN CONAWAY: And are you -- and you might be reticent to comment on this -- but from your vantage point, having served and for such a long time, are there recommendations that you have for us in making changes to the system? That is, do you think the system is working just fine the way it is now? Senator Adler suggested the possible reform, but are there things that you have thought of that we, perhaps, ought to take up and change here?

JUDGE WELLS: I think the choice of the word *reticent* to comment on that would probably be a good choice of words. It's probably not my province to comment on that. I can just say that the examples I gave, I think, have at least improved the speed within which the cases are disposed of in the Office of Administrative Law. The 10-day rule has been important. I'm a little hesitant, but it's not to suggest that I have any answers that I'm hiding, anyhow, but I just -- I don't think it would be my province. But I do believe the 10-day rule has been helpful from both parties' standpoint. Because in the past, we would receive a filing, and it's hard to know -- and again, this is not limited to one side or the other -- but the case is filed. And really, it's filed with no background at all, no underpinning, no experts, no reports, or anything like that. And the case would, almost by necessity, languish. You would try to schedule it for a hearing, and one side or the other side would say, "Well, we're waiting for this evaluation from this expert. We need a report, etc., etc." And it could

drag out. Nobody's fault, I suppose. But now that is really not the case. The cases must be ready to go. The majority of the cases are being decided within the 45-day period. Quite frankly, if they're not being decided within the 45-day period, it could be for a multitude of reasons. For example, it could be multiple days of hearings. It could be that sophisticated of a case that it takes many days to try the case, and it would go over the 45 days. But I think that's about all I can go, in that regard.

ASSEMBLYMAN CONAWAY: Any ballpark figures on cost you mentioned, on attorney fees? And I guess you're -- the ALJs don't decide that, but any ballpark figure on what the costs are to parents, what the costs are to schools, in your experience in dealing with these cases?

JUDGE WELLS: No, sir. And when a special education case is decided, our focus is whether a free and appropriate public education is offered or provided in a least restrictive environment, with essentially cost being -- not a relevant consideration. And then I used the word *interesting*. I found it interesting, but I suppose we have enough to decide and we don't need additional things. But a prevailing part in a special education dispute that has gone to final decision, under the fee-shifting provision, does not seek recoupment or award of attorney fees from the ALJs, but has to go to a different court. So I really -- we don't even see the applications for fee reimbursement.

ASSEMBLYMAN CONAWAY: You mentioned in your testimony that parents can unilaterally place their child -- I'm quoting on the bottom of Page 2 -- have unilaterally placed their child in an out-of-district setting. Can you talk about that? I guess the proprieties of -- of course, parents are going to do what they need to do for their children. But

what are the circumstances, certainly that cause that kind of thing to occur, and does it have an impact on our decision making when these cases come before you?

JUDGE WELLS: The usual context would be that -- there would be some dispute, probably with the school district. And then the parents would either be impatient or frustrated at the process. And they can choose to unilaterally place their child. But it would be -- the law would be clear that it would be at the parents' risk. And then in that example, if the parents did, for whatever reason -- felt that they had no other reason than to unilaterally place their child out of district, the parents would, for example, come in front of an ALJ in a plenary due process hearing and essentially seek what we call *compensatory education*, or *compensation* that they're paying for the out of district. There's many factors that go into that. Sometimes--

Well, for example, I just decided a case relatively recently where from the beginning -- I can't quite recall the age -- but at least from Kindergarten I believe, that the parents essentially insisted on an out-of-district placement. But the parents and the school district were in a dispute whether that was the appropriate placement. They entered into a settlement in that regard for a number of years. But then in third or the fourth grade, finally it came to a head. The school district was insisting that they could no longer enter into the settlement-fee splitting and wanted the child back in the district, because the school district was certain that it could provide the FAPE to the child. So the unilateral placement comes in many sorts of settings.

Sometimes we have the situation where there's a unilateral replacement in a nonapproved school. And it becomes another issue for us to determine, was there no other approved school that the child could be placed, even if it is determined that a FAPE was not being offered or provided by the school district. So the facts -- easily widening there.

ASSEMBLYMAN CONAWAY: Well, thank you very much.

We have a little timing issue, and I'll just let the public know. We have a speaker, a testifier, who comes to us remotely, who will not be available until 2:00. So in respect to that, we will--

SENATOR CARDINALE: Mr. Chairman?

ASSEMBLYMAN CONAWAY: Yes. Yes, sir.

SENATOR CARDINALE: Can I ask a question?

ASSEMBLYMAN CONAWAY: Please.

SENATOR CARDINALE: You mentioned that cost is not a factor in the decision. Why is that so?

JUDGE WELLS: Senator, it's my understanding that under the IDEA the relevant inquiry is whether a school district is offering or providing a student with a free, appropriate public education in a least restrictive environment. And that is the extent of the inquiry. There is no provision in the IDEA for any cost weighing or cost-benefit balance, anything like that. It simply does not exist. So it would just not be a relevant consideration for us to determine under the controlling Federal law; or to use cost as a factor in making a decision with regard to the relevant inquiries, whether a FAPE is being provided.

SENATOR CARDINALE: I understand that point, but would there not be a number of potential private placements that would be

suitable for a given child that might vary in cost? And it strikes me that there could be a preference by a parent or a school board for one or another of those placements, and there would be a cost differential where both are, perhaps, able to provide an adequate opportunity for the child.

JUDGE WELLS: Yes, sir.

I understand. And we have that from time to time. The parent would, for example, insist on an out-of-district placement and the school would be a school in, for example, Connecticut, as opposed to a school in state, in the State of New Jersey. Again, with regard to a cost-benefit analysis or weighing of cost, that would not be appropriate. But I believe the appropriate analysis in that setting would then go to the least restrictive environment. And under that, you're not only removing a child from his local school district, you're removing the child from his neighborhood, you're removing the child from his state. So there is a continuum with regard to least restrictive environment. And I think, more appropriately, the analysis would then be there.

SENATOR CARDINALE: Is it by law that there is no weighing of the cost? And is that a Federal law?

JUDGE WELLS: Well, I would-- Yes, it's the-- In other words, it's the law that we're bound by -- IDEA. And I can't tell you, Senator, as I sit here, that there is a section that says that costs are not to be considered. But I look at it the other way around -- that the relevant considerations are whether there is a FAPE provided.

SENATOR CARDINALE: I've heard from some of my schools that when these disputes arise, as a practical matter, the school may very well, in a number of cases, believe that it can offer an adequate educational

opportunity, and the parents feel that there is a superior opportunity in another setting. Is that a fair assessment of the kinds of disputes that come before you?

JUDGE WELLS: Yes, sir.

And that, again, the Federal law, the New Jersey law on the subject would control. And as I mentioned in my brief presentation, parents desiring for a superior education or a superior setting are -- would, without hearing more -- would not prevail on that position. There is case law out there. I hesitate to use these words, because I don't like the analogy, but controlling case law -- case law often cited -- indicates that under IDEA the student, parents of the student, are not permitted the Mercedes of education. And that is the case under IDEA. There must be a free appropriate public education in a least restrictive environment, such that it confers a meaningful educational benefit. That is the law. If a parent would want to go to the best to get the best possible, in anywhere they can, education -- that is inconsistent with IDEA.

SENATOR CARDINALE: Are some of the settlements that are reached such that a parent would contribute an amount in excess, so that what they at least deem to be a superior opportunity for their child would be possible?

JUDGE WELLS: The only experience I have in something like that is the case I was just telling your Committee about, in that rather -- at least, initially, rather than going to a plenary, due process hearing, the parents and the school board entered into a 50/50, if you will, tuition agreement for the out-of-district placement. I have no experience where -- I think what you're saying is the parents would say, "All right. You give us a

credit for whatever tuition is in district, and then we'll pay the rest to go out of district." I've not had a case like that.

SENATOR CARDINALE: Now, in some of the reading that we were given previous to this meeting, it indicated a history of this. And I just wanted to clarify a portion of that, if I might, having an expert like yourself who deals with this. It appears that at one point in time, if a child -- if a child was not educable, if there was no likelihood that the child would benefit from an education, then there was no obligation on the part of government to provide anything for that child. And I think it could be a simple declaration as the superintendent saying, "There's nothing available for this child, whether in or out of district." I get the impression that this IDEA or these Federal laws somewhere along the line have changed that, so that every child, no matter what the child's status, is entitled to an educational opportunity. Is that correct?

JUDGE WELLS: I believe that is correct.

SENATOR CARDINALE: And there are no exceptions to that?

JUDGE WELLS: I am aware of no exceptions. I believe, consistent with what I read in my presentation, that the law basically is of the position that every child can receive a benefit from education, whether it be something as simple as maybe mastering the use of a spoon, or something like that. I must confess I'm not aware of the history that you're referring to, but at least it's my understanding -- and I'm sure, Senator, you would know that when we decide these cases, we look things up just to make sure that we're getting it right. But just talking now to you, it's my understanding that there are no exceptions to, I guess, the situation that

you're saying -- that that student is plateauing, I guess, if you will. I'm not aware of that.

SENATOR CARDINALE: Thank you.

ASSEMBLYMAN CONAWAY: Just following on that, because there are -- because I've worked with them in my own life experience -- folks that have IQs in the 60s and 70s. And is it-- And I think you're probably interested, if you don't know the answer to this question. That is, there's no way with someone with that severe a handicap, disability, to say they have plateaued? So that at some point if, for instance, to use your own example -- mastering using utensils to eat, for instance -- is there a professional opinion that could come to bear on this that will say this particular skill set, once achieved -- we're not going to be able to get beyond that, so expending money in an educational setting would no longer be appropriate? Now this doesn't mean other social supports and other things. Obviously, that's going to be provided. But is there no evaluation in some of these -- and I'm sure there are limited cases -- that would suggest that it would be appropriate to stop spending -- inappropriate to advance the performance of someone who structurally can't get there because of a severe -- an IQ of 60? That's very, very severe and very profound, in my recollection working in the environment. Does that ever happen?

JUDGE WELLS: I have not had a situation like that. I can just tell you from my knowledge of the law that it's my understanding that IDEA basically is of the position that every child between the operative ages is entitled to a free appropriate public education. And I do not know what the situation would be if there was, I suppose, a consensus of experts that any education could not confer a meaningful benefit to that particular child.

But my feeling is that under IDEA there would not be a cutoff. And while in that operative time period, they're still entitled to an education with a hope of receiving meaningful educational benefit.

ASSEMBLYMAN CONAWAY: Can you comment on the settlements? Because one of the things we heard in prior testimony, educational leadership that offer comment on it seem to see settlements as a defeat. And while you mentioned in your testimony, and we've heard others say, that if the case does go to decision often schools just find that they prevail, are there things about the settlements that are instructive to us in thinking about reform, in your opinion, and looking at these and presiding over these settlements? Is it reasonable for districts to say they lost when these settlements occur? Your comments on that.

JUDGE WELLS: Yes.

It seems to be inconsistent with the word *settlement* if the districts are claiming they lost. But I can tell you -- and I can speak obviously from my own individual practice, but of my colleague judges as well -- is if possibly the districts were intimating that their arms were twisted into a settlement in some fashion or another, it certainly does not happen with me and none of my colleagues that I know of. Essentially, when a case comes to the OAL, if both parties are so inclined, the OAL will endeavor to facilitate an amicable resolution. But certainly myself and, I would certainly think, my colleagues, we understand our role is when a case cannot be settled; it is time to try it, to try it fairly and render an impartial decision. And there is no arm-twisting or anything like that. So I'm a little bit nonplussed on that one, because although usually-- They always say a good settlement -- one side is not happy, nor is the other side. I can't see

how a party would willingly enter into a settlement and then walk out shaking their head that they lost the case. But I would underscore that at the OAL, if it is helpful, there will be feedback. There will be feedback every day at the end of a hearing day, if the parties so desire. But nobody goes in there -- and the word I used before is *appropriate* -- nobody twists their arm into a settlement. And settlements are made under their own free will.

ASSEMBLYMAN CONAWAY: Senator Doria.

SENATOR DORIA: One final question, and I don't know if it's appropriate or if you can answer it, actually. It relates to the process. My question would be, at the present time the parties to litigation are encouraged to settle, to create some kind of a settlement. My question would be, would it be feasible for us, under IDEA or the laws that are determinative here, to actually set up a procedure where they would have to go to mediation? There would not be a choice that they would have. And only if they did not settle on mediation, could they then have the right to go to an OAL proceeding? What I'm saying is, rather than allowing this as an option, making it a requirement. Do you think, number one, that would be feasible? And number two, do you think that it would actually be a better situation?

JUDGE WELLS: Senator, that question would be a little -- possibly beyond my scope as a judge, but I can offer maybe -- just a thought in that regard is, I'm not exactly certain that essentially a mandated mediation would be consistent with IDEA. But if it was, I see a lot of times the parties, at least initially, come into my courtroom and there is sometimes a great animosity. There has been just a relationship

breakdown. And I would think that essentially a mandated mediation, under at least those circumstances, would probably not be fruitful.

I do understand that they do have, as you said, voluntary mediation, and now they have the resolution additional step as well, if the school districts would require it. I have found that sometimes, notwithstanding the bad relationships, the animosities, the -- sometimes it looks like thinly veiled, if not out-and-out hatred between the parties by the time it gets to us. Sometimes it seems very important, very significant to the parties when they have what they perceive is a completely independent, disinterested third party. Sometimes the courtroom setting helps, sometimes the black robe helps. And whereas it seems impossible to achieve settlements before that, they seem to settle once they're filed with the OAL. Mandated mediation-- I guess that's about all I can say on that.

ASSEMBLYMAN CONAWAY: Great.

Well, we thank you very much for your testimony and the information you provided us today, and hope that should we have other questions in the future that you'll be available to us. But thank you again.

JUDGE WELLS: Thank you.

ASSEMBLYMAN CONAWAY: Next we have, joining us remotely, a Dr. Thomas Parrish, Managing Director of the American Institutes for Research. He joins us from Palo Alto, California. His major area of expertise is in fiscal policy that regards public education, with a specialty in special education. He has directed and participated in numerous cost analyses, education policy, evaluation projects for Federal, State, and local agencies over the past 25 years, and has addressed numerous committees at various levels on these matters. He also serves as

the Co-Director of the Center for Special Education Finance, known as CSEF, which is involved in research addressing the national agenda for special education and finance, and in conducting State and Federal studies on the impact of special education finance reform. Dr. Parrish received his Ed.D. from Stanford University in Education Policy and Administration, where his dissertation focused on special education costs and funding issues in California.

Dr. Parrish, you're on.

**THOMAS PARRISH, Ed.D.:** Thank you.

Can you hear me all right?

**ASSEMBLYMAN CONAWAY:** Yes, indeed.

**DR. PARRISH:** Great.

All right. Well, my purpose today is just to provide kind of a brief overview about what's happening in terms of special ed nationally, some of the issues; talk a little bit about what I know about New Jersey, which is not necessarily extensive or current, but we did do a report there a while back. So I'll try to go through these points fairly quickly. I believe you have the PowerPoint there that you can follow along as I go through this.

So how are we articulating this, Scott; is -- I just go through slide by slide?

**UNIDENTIFIED PERSON:** I believe so.

**DR. PARRISH:** Okay. So I think you should be on my first slide, which just kind of provides an overview of this. But if we turn to the second one, why of interest? Special ed finance in some ways may seem like a fairly arcane area, but it is 14 percent of public school students are in

special education, approximately on a national basis, and about 14 percent of our educational public dollar goes to supporting special education. So it's a big part of our overall public schooling effort.

The formulas that we see across the states to fund special education, or the ways or the basis on which we allocate funds to districts, vary considerably. So just to tell you a little bit about the Center -- you basically mentioned -- before I move into some of the detail, we started in 1992. We're housed at AIR, which is based in D.C. I'm in Palo Alto (video malfunction).

So let's just move right ahead to the next slide, which points out what the source of some of these policy issues are. So the first one we see is rising enrollments, and a subsequent slide will actually show this. But what you've seen is that perhaps one of the most resilient statistics in education, or maybe in all of policy in some sense, is that ever since the passage of IDEA -- the Federal legislation for special education -- the percentage of students in special education has risen every single year. So we're looking at a pattern over 30 years in which every year the percentage of students in special education, nationally, is going up. And so while we don't see a skyrocketing jump, over time we see a very steady, consistent, resilient, rising trend of more and more kids in special ed, which is an issue. Along with that issue we see increasing costs. So as we get more kids, we get more expenditures in this area. We get more of what we call *encroachment* concerns -- bad debt into general ed -- and so we have the increasing cost issue.

Another important issue is called *least restrictive environment*. This was a part of the initial law; basically said that kids in special

education, all else equal, are to be served in the least restrictive environment appropriate to their needs. That means that, for example, a child who can be served in a neighborhood school should not be served in a special school. A child who can be served in a general ed classroom with nondisabled students should be served there and not clustered with other kids with disabilities, all else equal. And so that's a concern that gets into fiscal policy and could be a concern from New Jersey, looking at some of the statistics that we'll talk about in a moment.

Another issue I've mentioned: general encroachment. Just as special ed spending is rising, how does that then encroach, if you will, on general ed spending? And it has something to do with the nature of the entitlement for special ed kids. So all special ed kids are entitled to an individualized education program and costs cannot be an issue. That's not true for all of the kids. Parents of special ed kids can sue to make sure. We have a contractual arrangement. This is a very different situation, the non-special ed, and so it does raise questions about that differential entitlement, possibly contributing to rising enrollments, raising concerns about so-called *encroachment* into general ed.

Blended services and funds is simply the extent to which special ed can be used in conjunction with other funds. For example, Title I, compensatory funds to provide things like early intervention or provide more comprehensive services. Some of those are provided through things we call *pre-referral activities*. In other words, attempting to find the needs of special ed kids possibly before they come into special education, and look if there are ways that we can serve them other than simply assigning kids to special ed.

The issue of accountability, of course, is huge. Everyone's aware of the issues around educational accountability now. But in special ed, it really started with fiscal accountability. It then went to procedural accountability. And just now, we're really starting to focus on the level of accountability that's really most important for all kids in education, and that is results. So that's somewhat of a new direction for special ed that clearly is the primary emphasis at the moment.

The last major issue, just to kind of summarize them, would be, I think, full Federal funding. At one point, there was a limit placed on Federal participation, that some saw as a guarantee that the Federal Government would fund up to 40 percent of the cost of an average per pupil expenditure in the United States toward special education, as a commitment at the time of the passage of IDEA. The Federal Government has never come close to that, so there are concerns about the Federal role and the amount of support that comes from Federal coffers in support of special ed.

So the next slide simply -- I won't go through it -- you can just take it for what it's worth. If you look at the last column, in '76-'77, the first year these data were collected, we had 8.3 percentage of students in special ed in the United States. By '04-'05, we're at 13.9 percent. And I think the most telling part of that is, if you'll look at every single year, you'll see that number has been rising.

So let's look at the Federal versus State versus local roles. The Federal IDEA is the major blueprint for special education policy and law. However, implementation of special ed law comes mostly from states and localities. And so when we look at some of these national averages, for

example 13.9 percent, they mask substantial variations and implementation of what we see in special ed at the State and local level. So we have a Federal blueprint, we have implementation in the states, and what we see across the states and localities, despite the fact of the overlay of Federal law, varies quite a bit.

So if you look at the next slide -- for example, in terms of funding, we'll see that-- And again, these are estimates. We don't have great data on this. But the data we have suggests that across the states, the local share of support for special ed ranges from zero in some states, so there's no local responsibility; to 80 percent in other states, whereas in some states local revenues provide the primary source of support for special ed. And that means that the state is playing a very small role, because the Federal Government certainly is a player in there as well.

The state share ranges from 3 percent to 90 percent. So we see a great deal of variation in terms of the role that the state plays in supporting special ed across the 50 states. And the Federal share ranges from 4 to 21 percent. Now, those numbers may be a little suspect, but in fact, under new Federal law, the amount that states get per special ed student does vary and it's varying increasingly with time.

Now, again looking at the Federal funding, because again this has been an issue, we have seen dramatic increases of Federal funding from '99 to '04. So we saw a real commitment at the Federal level to put some teeth into this promise of full Federal funding at that 40 percent level. And we saw that Federal support went from 4.3 billion, in Fiscal Year '99, to 10.6 billion in Fiscal Year '06 -- 146 percent increase. So a very substantial growth over time in Federal funds. And approximately a 1 billion increase

annually, from 2000 to 2004. So we saw a real discussion about possibly getting up to that 40 percent of full Federal funding, and we saw some impetus moving in that direction. However, even at its high point, the 40 percent target was only at about maybe 19 to 20 percent. So they're still only about half way there. And over the last two years, we've seen a clear decline in the Federal commitment -- or a real leveling off, I should say, so that it's been fairly nominal in the last couple of years; so that it has seemed to wane, that enthusiasm seems to have waned with competing priorities at the Federal level.

Special ed funding formulas at the state level can vary considerably in their orientation. There are basically five types of formulas; I won't describe them in detail. But I would say New Jersey has what I would call a form of pupil weight, which is the most prevalent system. With your tier system, that's very similar to pupil weight -- where we see differing amounts of funding for kids in different categories of disability; one example of the pupil weighting system in which we see 19 states have a system like that. The other system I'll mention, which I think is most different from that, is called a *census based*. Ten states have adopted, and the Federal Government has adopted, a funding system that is independent of special ed. It's special ed funding based entirely on the total enrollment of a district, independent of the percentage of kids in special ed, how they're served, the categories of disability, or their need. So it's very independent of local practice, by design. So -- but quite radically different than other funding formulas that vary funding based on categories of kids.

In terms of what do we know about special ed expenditures, you can look at the next slide here where we talked just about the last study

that was done on this. The Federal Government does not collect expenditure data from the states, and so we do not have an accurate current picture of special ed spending across the country. But the last major study that was done was for the year '99-2000. At that time, it was estimated that the total expenditure -- if you'll look at the next slide -- on a student with disabilities was 12,639 across the nation. And the bars on the left sort of show how that breaks out for the average special ed student, with 8,000 of that amount going to support special ed services for that child and about 4,000 of that amount supporting the regular ed services that they received; knowing, of course, that virtually all children in special ed receive regular ed services as well.

If you look at the bars on the right and you say, "What's the marginal cost of special ed," after you take the average expenditure that everyone gets, the average expenditure for all general ed kids of \$6,000, the marginal cost of special ed is 5,900. And that's where we get the--

Then actually, we'll go to the next slide where you see how that amount has changed over time and constant dollars. And we'll come back to that ratio in a minute. But there have been four studies. And so what we can see is that spending on special ed, in real terms, has grown considerably from '68-'69, when the first study was done, to '99-2000. It's about doubled from about 6,000 to 12,000. So that just shows the change over time in real terms -- that substantial increase in special ed spending.

However, if we look at the ratio, I think -- which you'll see on the next page -- we find, I think, a rather surprising result. That ratio -- let's just look for '99-2000 -- shows you the ratio that -- if we go back two slides before, it really shows you that we are spending about 1.9 amount on the

average special ed student in relation to the average general ed student. So 1.9 times more on the average special ed student than the average general ed student. (video malfunction) time, so about almost two times as much as a special ed student than a general ed student, but somewhat less.

That number gradually rose -- in the '77-'78 ratio it's about at 2.2; '85-'86, it looked to be about 2.3. The sense was, that with rising special ed expenditures and pressures from special ed, that that number would be even higher in '99-2000. In fact, it's smaller. And the reason we think that it's smaller is that, even though expenditures on special ed have risen considerably over the time period, expenditures on the average general ed student have increased even more. So that the ratio of additional costs for a special ed student is actually declining. We think that has some implications for some possible policy interventions in regard to concerns about special ed growth and increased costs. But we'll come back to those.

But let's look at the next page, just because people are very interested in variations by category of disability. You'll have to -- apologize, the abbreviations -- I won't run through each one of them. But on the left, we see that the lowest-cost disability is SLD, or students with learning disability. And the highest, if you go to the right, the very far right we see NPS, or nonpublic schools or kids outside of public schools. And while that's not a category of disability, that's broken out separately. Because of the methods that were used, you really couldn't break it out by category of disability. So the one before that, a multiply disabled, is then the highest in the category of disability in relation to LD, which is the lowest.

But the other thing, that I think is worth noting in each of these categories of disability, is you'll see that the variation at the 90th and

10th percentile. So you'll see a great deal of variation across the so-called *low incidence disabilities*. So if you look at children, for example, who are visually impaired or blind, VI/B, you see that they are a high-cost disability on average. But that some students with that disability are much lower cost than others that are much higher cost. So a great deal of variation.

I think of some salience to New Jersey is, again, this last figure, though, nonpublic schools. New Jersey appears to be about the highest in the nation in the percentage of students in what we call *nonpublic schools* or special external schools for special ed students. It is the highest-cost category. It is also the most restrictive category. So that's of some concern.

The same SEEP study that was done on a national basis also focused on some states that chose to participate in a more extensive way. New Jersey was one of those states. You can see all of the states in the next slide. But let's just then go to the next slide just to kind of leave time for questions here, and kind of summarize what we found in the New Jersey SEEP report that we issued in 2003.

And the purpose of the SEEP study in New Jersey was to estimate the spending on special ed students unique to the State of New Jersey, and also to look at funding issues around your tier system. It was not an extensive study of the policy issues, but at least attempted to get some sense of the issues around your tier funding system. What we found is that the total average public education spending per student with a disability in New Jersey was estimated to be about 40 percent higher, as compared to the national average. Now, in some ways that's not surprising, because all of your public education expenditure. You invest more in public education services than many other states. So the fact that special ed would

also be higher is perhaps not that surprising. But it is approximately -- we estimate 40 percent higher than the national average.

There also appeared to be substantial misunderstanding by school district staff regarding eligibility standards by special ed funding tier. And the way we got the sense of that is we looked at -- the tiers are fairly clearly aligned with categories of disability. And yet when we looked at our student sample, we found that about 30 percent of the students, according to the category of disability, were claimed in the wrong tier. So we concluded that the tier system seemed to be rather confusing to them, and so that was a concern in terms of sort of efficient implementation of that tier funding system.

Moving to the next slide, we felt that to better articulate student need with State funding, a change in the current tier funding system may be needed. In other words, what you really want to do if you have a funding system that allocates funds to special ed students in a variable way -- you want that variation to be correlated to the greatest extent possible to some sense of true student need. And there seem to be breakdowns in the implementation of the tier system and some concerns.

One concern, for example, was just kind of lack of understanding. But another concern is the fact that the tiers are so cleanly articulated with categories of disability, and those are often a fairly poor proxy for variation in special ed spending or cost. If you go back to the slide we saw before, that showed so much variation in spending by category of disability as well as some fungibility across those categories, it's not clear that that's the best basis -- category of disability -- for differentiating funding.

There are also least restrictive environment concerns. And we're just talking about those from the Fall '05 special ed enrollment data from the U.S. Department of Education. We see from those data that New Jersey has the highest percentage of any state in regard to special ed students in public or private separate facilities: 8.6 percent were reported for New Jersey; 8.6 percent of special ed students were reported as being served in public or private separate facilities, as compared to the average across 50 states of 3.1 percent. The next highest state is Maryland at 7.2 percent. So New Jersey, I think, is clearly an outlier in regard to the extent to which it's using the separate facilities for public and private placement. That's not to say those are never appropriate, but I think if indeed this represents -- and it does seem to be an outlier or perhaps excessive placement in relation to what we see across the nation. There are concerns about expense, because it's the highest-cost placement; there would be concerns about efficiency, because of the, kind of, the completeness of the outcomes in separate placements, as associated with concerns about least restrictive environment or serving students in special ed in isolation from their nondisabled peers.

Just in this same measure, 27 states are below 3 percent. So New Jersey at 8.6 percent, 27 states below 3 percent. So they tend to be the most restrictive and the most costly ways to serve students in special ed.

Now, looking at the other side of the coin, as you might expect then, seeing that where you are at the high end, New Jersey is much lower than the national average of percentage of special ed served in the least restrictive and generally lowest-cost setting. New Jersey shows 46 percent of its special ed students spending less than 21 percent outside of general ed

classrooms, versus the national average of 57 percent across 50 states. So you see a much smaller percentage of students in special ed in New Jersey who are spending the vast majority of their time in general ed classes with nondisabled peers. In other words, fully included or largely included, a much smaller percentage than the national average.

Only Hawaii is lower than New Jersey in this regard, and Hawaii is a real outlier at 23 percent.

So just in wrapping up, what are some of the questions I think are worth considering: How does the State's special ed funding system fare -- and it's misspelled, sorry about that, it should be F-A-R-E -- in regard to the standards of equity, adequacy, and efficiency? Does it provide incentives for identification and placement in higher-cost funding tiers? Does the tier system now appear better understood? Does the system contain fiscal incentives for placement into separate facilities? We haven't looked at this in depth, but when I see an extreme outlier such as 8.6 percent, I've got to wonder if there are some -- what's causing that? And if they are -- perhaps part of it is some fiscal incentives to move kids outside of the public mainstream system.

Overarching special ed formula goals are *adequate*, *equitable*, and *efficient* -- just overarching guides that one might use to think about how you should allocate funds. And then just to conclude, I think the notion of adequacy: if we think about one policy question in special ed, it's probably being most broadly considered across the country right now, in states -- is the notion of adequacy. It's a part of the overall issue of adequacy in general education. How much is sufficient to meet certain outcome goals for students? And we see litigation around adequacy in a number of states,

and special ed needs to be considered as a part of that larger adequacy question. Even though there's some unique attributes to special ed in regard to adequacy, I think that's the fundamental question -- are we spending too much? Are we spending too little? What's appropriate for kids with disabilities to meet the outcome goals expected of them?

And then the last page just simply shows our Web site, if you'd like additional information and how to contact me.

So I'll stop at this point and see if there are any questions.

ASSEMBLYMAN CONAWAY: I thank you very much, Dr. Parrish, for your testimony. Very enlightening.

Questions from the Committee for Dr. Parrish?

Senator Doria.

SENATOR DORIA: Thank you very much, Dr. Parrish, for an excellent presentation. My question relates to the funding methodology that's used by New Jersey. As you reviewed it, do you believe that in changing the funding methodology we could then deal with the issues of special education in a more cost-effective manner?

DR. PARRISH: I think you probably could. I mean, again, we'd have to sit down and look at it more in depth. But when I see some of the numbers that I see coming out of New Jersey, and I saw in terms of the tier system, it seemed to be some clear breakdowns in regard to that. I think it raises some serious efficiency questions. And some people would question whether fiscal policy actually can effect the way programs are provided. But after 20-some years of looking at this, I've come to the conclusion that they do.

SENATOR DORIA: So again, through you, Mr. Chairman, so it would seem that the system that we have, the tier funding formula, would seem to encourage, in many instances, people trying to scam the system more, play the system in order to try to come up with more funding for the special education student or program that they were working with.

DR. PARRISH: Well, I probably wouldn't use that terminology. And I believe, if I understand correctly, that actually the tier system has not even been that operative over the last few years because things are largely frozen and districts kind of are grandfathered in to what they got two to three years ago. So one might argue it's perhaps not possible to play the system at this point, but that doesn't mean that the system is still designed to be most efficient in regard to the policy outcomes that we'd like to see for kids with disabilities. And I think that's what I would question. There's something going on there that I think is of concern.

SENATOR DORIA: What would you think is the best type of system for funding; in your opinion, of course?

DR. PARRISH: Yes. Well, of course, that's the question I'm always asked in every state I go in. And I mean, the honest answer is that there is no silver bullet that I can offer, unfortunately. There are a number of criteria that I lay out, and we kind of talked about those. I think the-- I've been working in three or four states over the last few years, and I've made different recommendations in each one. Because, (a) there is no silver bullet; (b) it's dependent on kind of the history of the state and what they're doing in general ed. It has to do with the policy goals of the state,

so where there's some overarching guidance to say that one system is unilaterally better than another -- I've just not been able to do that.

SENATOR DORIA: Thank you.

ASSEMBLYMAN CONAWAY: Dr. Parrish, looking at your summary of findings, you mentioned that 30 percent of the sample of students submitted to the study, the SEEP study, have been assigned to the wrong funding tier. How have states addressed the issue of accountability in terms of the categorization or tiering of students? In your experience, in looking across the states, have departments come in and reviewed all of the placements? Have they audited the placements for sufficiency and then taken action against districts that don't -- that seem to have a pattern of overclassifying students? How would you suggest the states deal with this problem of overclassification?

DR. PARRISH: Well, keep in mind, I don't want to get too far out of area of expertise. So in terms of actual monitoring in special ed programs, and exactly what monitors should do, is probably a little beyond exactly-- I'm going to speak to what I feel I can speak to and not try to go beyond that. I also want to be clear. I think -- I don't want my statistic there to be misinterpreted. I'm not saying that 30 percent of students were miscoded or placed in the wrong category of disability. What I'm saying is that, for example, in Tier II, just to take as an example -- let's say that's a cluster of five disability categories. So we look at Johnny who is in this disability category and he should be tracked to Tier I. And yet we saw him placed in Tier II. So somehow that communication about, "this disability category maps onto this tier," broke down and it actually wasn't always to

the fiscal advantage of the district. So it wasn't clear that they were gaming it towards fiscal advantage, it just seemed that it was confusing.

Now, in terms of the notion of potential overidentification, at least from a fiscal perspective: We look at fiscal policies that possibly incent identification, as opposed to policies that would disincent it. So that's in terms of identification, also in terms of placement. Are there certain policies that create a incentive to serve certain kids in certain ways? So, for example, in New Jersey, your 8.6 percent of kids served outside of, kind of, the general public school system is a concern. And I don't know what incentives are out there. On the face of it, they're not obvious. But something is going on to drive this sort of disproportionate statistic, and I have got to think money is part of it. So I think, without a more in-depth analysis, it would be a little hard to say; but I think somebody needs to take a look at that.

ASSEMBLYMAN CONAWAY: You mentioned, and just for my own understanding, also under your summary of findings -- might have been your second page, yes, maybe your sixth thought -- it says, "Category of disability, which is the basis for the New Jersey tier system, is a fairly poor proxy for variations in special education spending or cost." If you'd explain that a little bit more fully, at least for me?

DR. PARRISH: Yes. I mean, if you go back to one slide, maybe you'll remember -- we call it kind of a box-and-whisker plot -- but are the ones that are showing the average expenditures by category of disability, and then the range. And what you'll see is that there is as much variation within category of disability in terms of spending than there is across them, on average. So while it's true that a child with a learning disability is less

costly than a child who is deaf/blind, you're going to find so much range across that deaf/blind that you'll find more variation within the category than you will on average across the categories.

Now having said that, is there a better proxy for severity or need? And I'm not sure there's a better one, and that's a concern. I mean, there are some potential better ones in terms of things like overall needs assessments, which is a more detailed discussion you probably don't want to get into. But I think the question about trying to vary funding by category of disability is a concern, number one, because there is so much variation in true cost; and number two, because of concerns about possible incentives of moving kids into higher-reimbursement categories of disability. Do we suddenly create an incentive to say that a kid on the margin should move into a category of disability, be placed in a category of disability that may not be most appropriate to their needs? And those are tough questions about the extent to which they happen, but I think they are prevalent enough to be possible concerns. And so I think the answer is, there really is no real good measure out there. People use category of disability, thinking it's -- and maybe it is the best, but I think it's not very strong; and it raises real questions about whether we want to vary funding based on that at all.

ASSEMBLYMAN CONAWAY: Can you enlighten us about how these weighting factors have been used, the way those things have been generated? Are there better methods -- and again, looking from the 50,000-foot level across the states and determining what these weighting factors ought to be -- that you can suggest to us?

DR. PARRISH: Well, I think the primary alternative you may want to consider here: You can say, is there a better way to do weights?

The general approach is to either use kind of a single weight, simply to remove those incentives to weight by category of disability, or weight by category of placement. And each one of them has concerns and limitations, as well as possible strengths. I would make it as, sort of, straightforward and transparent as possible (video malfunction) with weights.

Let's talk for a minute though about the really complete alternative that 10 states have adopted, and some of the biggest states have adopted -- California, Massachusetts, Pennsylvania, as well as the Federal Government; and that's more of a census approach. And I think the reason it seems, at first blush, it's sort of illogical is because they base funding on criteria that really have nothing to do with special ed. It's not based on the percentage of kids of special ed, how they're served, category of disability. It's simply based on what we call an exogenous, or variable, entirely out of district control, such as size. Or, in the case of the Federal system, it's the overall size of the state, population, school age population, and the percentage of kids in poverty. Those are the two criteria that drive how much goes into special ed. And why they went to a system that seems so disconnected to special ed costs, I think, is largely because of the belief that there are no good bases (video malfunction). So just, for example, if you allow me to go on for another minute here. If you see a district that's identified--

ASSEMBLYMAN CONAWAY: Well, I have to interrupt you, because we lost you for a moment.

DR. PARRISH: Oh, okay.

ASSEMBLYMAN CONAWAY: You blanked out there, and we were all waiting for the punch line and we missed it. So if you could back up there, 30 seconds or so, we would -- it would help.

DR. PARRISH: Okay. Well, let me see if I knew which punch line you missed. But I think--

ASSEMBLYMAN CONAWAY: I think you were saying that the Federal Government particularly looks at size and the number of people in poverty in the district to determine a number -- and then that's where we lost you.

DR. PARRISH: Then I blanked out.

Yes. And I think they and 10 states have gone to what may seem like an illogical system because it's so disconnected to special ed, as I think, largely because the belief has eventually evolved that there are really no very suitable criteria for measuring true need, if you will, in special ed. The category of disability is as unhelpful as it is helpful. The percentage of kids in special ed really doesn't tell you true need.

And just to give an example of -- if I have one district that's identified, let's say, 14 percent of its kids in special ed; and I have another district that's identified 7 percent of its kids in special ed, do I really know that that district of 14 percent is any needier than the one at 7? There are a number of explanations. The one at 7 may be underidentifying. The one at 7 may be serving kids in much more creative ways outside of special ed, such that they don't need to be placed in special ed. It's awfully hard to know exactly what that means, such that, I think -- and because of the rising percentage of kids in special ed over time, the Federal government and some states have decided that a special ed funding system that is

removed from, kind of, local behavior is the best way to go. And so that's probably the best alternative I think you should consider.

It has (video malfunction).

ASSEMBLYMAN CONAWAY: We lost you again for a moment.

DR. PARRISH: I'm sorry. I was just saying I think that census approach is maybe the most viable alternative you might consider. However, it has limitations as well.

ASSEMBLYMAN CONAWAY: I don't see that other members of the Committee have questions.

You did note that you have a Web site, at the end of your presentation, where additional -- and an e-mail address there where people on the Committee and other staff might reach you for additional questions and help.

I hope that you will make yourself available to us if we have a need. And we thank you very heartily for the information you've provided us today.

DR. PARRISH: Thank you for the opportunity.

ASSEMBLYMAN CONAWAY: Thanks, again.

Next, we'll bring up our roundtable panelists.

I see that our panelists are in place and seated. And as I look at you, I'm trying to decide-- I guess we'll start from the left, with the ladies, if I may say, and move to the right.

And we have Ms. Cathy Moncrief, who is on the Board of Directors of the New Jersey School Boards Association.

And we'll have you make a statement. I hope those statements are in the order of about five minutes or so, to leave plenty of time for questions.

Ms. Moncrief.

**CATHY MONCRIEF:** Thank you.

As you just mentioned, I am a member of the Board of Directors of the New Jersey School Boards Association; I'm a member of the School Board's Special Education Committee; and I'm Board President of the Lindenwold School Board.

NJSBA is a nonpartisan federation of more than 600 school districts in this state. We are grateful to have this opportunity to address the Committee on this important element of public education.

School board members commit themselves to public education. We govern the delivery of educational services to regular and special education students. We want what is best for all students.

The New Jersey School Boards Association is currently engaged in a comprehensive study of special education costs and practices in New Jersey. The study will be completed in June 2007. The final report is expected to identify cost drivers, provide a valid estimate of how much local school districts actually spend to provide special education services, identify educationally effective and cost-efficient programs in local school districts, and recommend changes in regulations and statute.

NJSBA also has representation on the State's Special Education Review Commission, that is also exploring how best to deliver a quality education to children with disabilities in the most cost-efficient way possible. Those studies are still in progress. So, today, I would like to share

with you observations and recommendations for change, based on the beliefs of the New Jersey School Boards Association, as well as my experience as both a local school board member and as an educator for over 35 years.

In 2002, I reported to our Delegate Assembly that a major achievement for public education had been attained by the passage of legislation to fund extraordinary special education costs in excess of \$40,000. This new law represented essential relief for districts that were straining under the burden of high-costing, out-of-district placements or expensive special education costs within the district. This new law was funded for only one year. A great tool for tax relief remains unfilled. One district reported to us that they have three districts -- three students out of district who require full nursing services. The cost is \$151,000 per year, this year. They paid \$90,000 for nursing services for one child alone during the past two years. This same district is paying over \$130,000 for a single placement of one child, and this does not include the cost of transportation.

Historically, New Jersey has been in the vanguard of special education programs. We have worked diligently to provide outstanding programs for our most challenged students. Other states have looked to us for leadership that we provide through innovative solutions for our special needs students. We have risen to the challenge, but special education services are, by their nature, very expensive to deliver.

Over the last 20 years, the number of special education students has increased for several reasons. Among them are the expansion of identified disabilities and higher rates of certain disabilities within the population that we serve. Boards of education recognize their obligation to

provide the best quality education to all students, and particularly to special education students, in the least restrictive environment, as mandated by law. The price tag is especially burdensome to small school districts.

You have asked that we provide you with some suggestions for saving money while preserving quality services in special education. The huge costs associated with special education are complex, because New Jersey law is based on IDEA and modified by NCLB, No Child Left Behind. These are two Federal drivers, but the Federal government has not coordinated these directives. In addition, services to all children have an element of emotion, and that is certainly true when considering services provided to our special education students.

In my written testimony, I have 15 suggestions, but I would just like to highlight a few.

First, we need to control out-of-district placements. Specialized programs can be very expensive. Additional problems can occur in a district with a large mobility rate; that is, when students come in and out of our districts. In Lindenwold, our mobility rate of special education students in the school year 2005-2006 was 58 percent. And 57 percent of all of our children in out-of-district placements are already in those facilities before they come into our district.

A staggering amount of money is spent on students with serious disabilities who require highly specialized intervention programs. These students most certainly deserve an appropriate educational program, yet we need to realize that it can present an enormous cost burden to the districts.

In my community of Lindenwold, there is a student with significant medical and developmental disabilities who requires a one-on-

one assistant, a one-on-one nurse, and medical transportation. The cost to that district -- to our district exceeds \$200,000 a year for that one student.

Where possible, we should look to reduce out-of-district placements for substantial savings. Basic barriers must be removed to allow districts in this -- to consider this effort. One of the most important is space. In cases where districts have no additional space, portable classrooms cannot be used unless a petition for emergent relief is made. Relax that requirement. Lengthy and costly litigation can result when parents demand an out-of-school placement for their child, even though the law requires the school district to educate the child in the least restrictive environment.

Reduce litigation costs. Litigation costs can be enormous. To reduce these costs, some districts -- some states use a peer review mediation process that kicks in before the matter reaches the courtroom. I believe that such a mediation system should be investigated. Additional legal and programming expenses are incurred if the case goes to the Office of Civil Rights, where decisions are made about education offerings without regard to the cost or the impact to other districts in that school system.

We also need to be concerned with transportation costs. Transportation costs are spiraling. We must provide the necessary money for each individual child to reach the program where they're going to be educated, and sometimes those costs actually exceed the cost of the program.

Also, charge the cost of medically based related services to health insurance, not school districts. Under the present code, schools must provide related services when they are required for the student to benefit

from the educational program. Related services can include transportation to, from, or around the school building; physical therapy; occupational therapy; and counseling for students and parents. When a parent seeks a physician's order for a related service, it is not required that the physician specify how the additional service relates to that educational program. Often, the reason is a medical one and should be, more importantly -- more appropriately be born by the insurance company rather than the school district. In addition, costs for students requiring nurses and medical transport, as I mentioned a bit earlier, would meet -- be more appropriately born by the medical insurance carrier.

And, lastly, provide direct State funding not tied to local school districts for DYFS and court-ordered placements. Districts are frequently charged for educational programming for students who have dropped out of school or never even attended our schools. If a student is incarcerated and their legal guardian moves to a new community, then that new school district is responsible.

One student registered in Lindenwold on April 22, 2004. That student was placed in a therapeutic group home and educated in a special school with a one-to-one aid. This student later assaulted a staff person at that facility and was placed at the Ancora State Hospital. The district paid over \$50,000 per year for that student. Another student was placed in a specialized, court-ordered program at Bonnie Brae Treatment Center at a cost of over \$71,000. Incarceration and court-ordered placements should have separate educational funding not tied to the district.

You have the rest -- the remaining aspects of our testimony.

And I just wanted to close with saying that, often, schools have little or no choice when it comes to the delivery of special education services. They are a significant part of our total budget and the educational costs in New Jersey. But we do believe that there are cost-saving measures that can be taken while protecting the high quality of special education services that we have achieved.

We thank you for listening to our suggestions for reducing special education. And we stand by, ready to assist you in any way as you move forward in the task of this Committee.

Thank you.

ASSEMBLYMAN CONAWAY: Great.

Thank you.

Next, we have Ms. Toni Gotthilf.

**T O N I J. G O T T H I L F:** Gotthilf. (indicating pronunciation)

ASSEMBLYMAN CONAWAY: Gotthilf, (indicating pronunciation) Executive Committee member of the New Jersey Association of School Administrators.

Ms. Gotthilf.

MS. GOTTHILF: Thank you.

Good afternoon, Committee Co-Chairs and members of the New Jersey Joint Legislative Committee on Public School Funding Reform.

My name is Toni Gotthilf, and I am a Bergen County Representative to the New Jersey Association of School Administrators' Executive Committee; and I am the Director of the Region V Council for Special Education in Bergen County. It's a position I've held since 1988.

I am here today on behalf of the New Jersey Association of School Administrators. And after considerable thought and discussion, the leadership of the New Jersey Association of School Administrators would like to suggest to the Committee to carefully review the organizational model of Region V as a cost-savings measure that can be implemented statewide.

We are all well aware that the local public school district is the point of service for the educational needs of the special education population. Bergen County, with its dense population and level of collaboration, looked for a way to provide special education in a cost-effective manner by examining the joint needs of school districts. The county was geographically divided into seven regions for the purpose of sharing services for the benefit of special education students. In my formal written testimony, for your benefit, I have attached a listing of the districts and their coordinating regions.

Before I focus my remarks on the Region V management structure, I want to share with the Committee that we, as educators, are under both Federal and State regulations to provide a free and appropriate education to our special ed population. And I do want to comment here that, many times, our State Department produces a code prior to any of us being exposed to it. And perhaps, if we were given an opportunity to see that code before it goes into the discussion level, we could give input to it so that things don't become more costly than they already are. We did have a very successful year, this year, with that. But it would have helped if we had gotten it beforehand.

ASSEMBLYMAN CONAWAY: What codes are they?

MS. GOTTHILF: I'm sorry?

ASSEMBLYMAN CONAWAY: Could you say what the code is? You mentioned the code.

MS. GOTTHILF: The implementation of code.

I'm sorry, I didn't understand.

ASSEMBLYMAN CONAWAY: I'm sorry. But you used the word *code*, and I would -- you didn't say what the code was.

MS. GOTTHILF: Code -- the New Jersey administrative code governing special education.

Sorry.

I feel it is incumbent upon me to inform you that more children in need of special education services equal more costs. I just recently completed a survey -- a follow-up survey of 73 districts in Bergen County to ascertain the number of children with autism. The results were alarming in all respects. Within three years of the last survey I conducted, our children with autism have risen by 57 percent.

Services for children with autism start early, sometimes as early as 1-year-old, and certainly by the time they reach their third birthday. And that is the time we pick them up, and it is our responsibility. Services can continue until a child is 21 years of age. An autistic child placed in a private placement at the rate of \$80,000 for 18 years will cost the public school district, and its taxpayers, \$1.44 million. This does not include transportation or after-school program costs. I have also attached a copy of the survey results to my testimony.

Bergen County has, in place, a management structure that we believe is cost-effective; and programs available to our member districts.

Faced with the rising number of children with autism, 13 years ago, Bergen County decided we needed to do something about programming. Three regions -- Region V included -- developed a program called the *Valley Program*. This program now serves 130 children and has classes predominantly located in public school settings. The program has received national recognition and is highlighted in the book *School-Age Education Programs for Children with Autism*.

Utilizing our shared-service model, the Valley Program is able to provide exemplary services to this population at a significantly lower cost than the private schools. Our tuition is \$56,000, versus the tuition of a private school at \$80,000 or above. We have successfully returned to district over 60 children, and yet the public opinion -- including our local newspaper -- is that private is better than public. In a week-long series on autism, a Bergen County paper focused their attention on the two private schools in Bergen County and gave absolutely no recognition to the Valley Program. What message do you think that sent to the public?

We would like the legislators to look at the permissible costs that private schools are permitted. The director of a private school of 24 children can make the same salary as the highest-paid superintendent in the county. Who is paying for this? The public schools.

Bergen County regions recognized the growing needs for a secondary program for children with autism. The Valley Program reached out to our county special services district, and we designed a program called the *New Bridges Program*. What is unique about the New Bridges Program is it focuses on transition services, assisting young adults in life skills and employment, which will contribute to an independent life.

We have employed our parents of these young adults to work with the adult agencies to help in preparing programs and services after 21. The New Bridges Program does not just collaborate with the public schools, but also the private sector. Our consultant, Ms. Anne Holmes, is from the Eden Institute, and she works with both the Valley Program and the New Bridges to guide in perfecting our services.

Without these types of programs for children with autism, the future is dim. We already have two children from Bergen County who did not benefit from a program, who have been placed in residential placements because their behaviors have become so unmanageable, they no longer can be kept at home. Unfortunately, the costs for these placements will be passed on to the public school district.

Autism is not just the only area focus for Region V. We also transport 467 children with disabilities from our 10 member districts to over 97 locations in and outside of the county, at an average annual rate of \$6,300 per student. Sharing transportation reduces the costs for all the districts, and it avoids duplication of efforts.

Region V, in concert with three other neighboring regions, has developed and copyright protected a database program which houses information about our classified students, prepares State-mandated reports, and provides a platform for preparing IEPs. Sharing the cost of this program was far more cost-effective, rather than purchasing one. The IEP Writer is sold to other districts, bringing in a source of revenue for its maintenance.

Other services provided by Region V are: coordination of services to nonpublic schools; large-scale staff development; curriculum

coordination; the Park Academy, a program for children with attention deficit disorder; a grant-driven transition program; access to a regional behaviorist; coordinated occupational and physical therapy.

I do not want the Committee to think that there is a large staff at Region V. There are four employees, including myself. Every year, the Region looks for more ways we can deliver special education and related services to our member districts in a cost-effective, high-quality manner. Districts retain membership in the Region by paying a proportionate share of the operational budget for the Region. Budget assessments are calculated by the number of classified students in each district.

Bergen County can also be recognized for its efforts in sharing in other ways. Recently, several school districts joined together and approached banking institutions and proposed that all of the districts would utilize the banking services if they could get an increased rate on the interest of the money they had deposited. This initiative will generate additional funds for schools that would not be possible with just one district.

The New Jersey Association of School Administrators is suggesting the Committee reviews the regional models for Bergen County and recommends replicating this structure statewide.

In closing, many states have conflict resolution that is effective and prevents situations from escalating to a full, due process in front of an ALJ. There is a very fine line between appropriate and best, and some of the New Jersey Administrative Law Judges are being manipulated by costly attorneys into costly placements that drive up the public school districts' costs and strain the ability of the districts' taxpayers.

I thank you for affording New Jersey Association of School Administrators the opportunity to testify.

ASSEMBLYMAN CONAWAY: Thank you very much, Ms. Gotthilf.

Next we have Diana Autin.

**D I A N A M T K A U T I N, ESQ.:** Autin. (indicating pronunciation)

ASSEMBLYMAN CONAWAY: Autin, (indicating pronunciation) who is Co-Executive (*sic*) Director of Statewide Parent Advocacy Network.

Ms. Autin.

MS. AUTIN: Thank you for inviting me to share the perspectives of many New Jersey parents of, and advocates for, children with special needs on the topic of education funding.

SPAN is the Federally funded parent training and information center for families of children with special needs in New Jersey. We are represented on the Department of Education's stakeholders committee for the State Performance Plan, the Special Education Review Commission, and the New Jersey Council on Developmental Disabilities Education Task Force.

I'm a parent of children with and without special needs. And SPAN provides support information and training to parents of children with and without special needs.

First, I want to talk about the costs of segregation. As has been said many times in your hearings, the Individuals with Disabilities Education Act, or IDEA, establishes a strong presumption that children

with disabilities should be educated in the least restricted environment in general education, with their peers who do not have disabilities. Extensive research since 1975 has unequivocally demonstrated the efficacy of educating children in inclusive settings, when the proper supports are provided.

But what's New Jersey's current status? New Jersey's status, as the state with the highest rate of out-of-district placements -- three times the national average -- is a significant problem. We are out of step with the rest of the nation. On Page 3 of my longer testimony, you'll see a chart that shows various disability categories, and the percent of students with those disabilities, nationally, who are sent out of district, compared to those in New Jersey.

Other states with high rates of out-of-district placements, such as our neighbor, New York, are significantly decreasing their numbers, while our numbers continue to increase. Between 1996 and 2000, for example, in New York, the number of students sent out of district by districts in New York State decreased by 9,600 students, while in New Jersey the numbers increased by 1,140. Yet, we continue to approve more private special education schools and build more segregated public special education buildings -- virtually the only state in the country that is continuing to build new public special education segregated settings.

The mere existence of so many segregated placements in New Jersey lends credibility to the removal of children, not based on individual need, but because there is little incentive to develop supports within districts when those supports are housed elsewhere. Although it is more expensive to send children out of district, it is also often more convenient.

To the extent that districts are sending children to out-of-district special education placements, whether they're public or private, funds are not available to build capacity within local schools and districts to provide educational programming to address a wide range of learners with and without special needs within their communities.

With high tuition costs, the highest rate of out-of-district placement, transportation costs, it's not a coincidence that New Jersey leads the nation in the per-student cost for special education and transportation. Such money tied up in these out-of-district settings is unavailable to invest in the upfront cost needed to build in-district capacity, such as training teachers and other educational professionals, hiring additional staff, and purchasing equipment and other supports necessary to include children in their neighborhood schools.

There are also human costs for New Jersey's oversegregation: students with disabilities who can't get around their own communities because they only learn how to navigate the communities in which their segregated schools are located; the increased potential use of adversives and restraints, because they attend school only with other children with disabilities far away from their families; the fact that they never develop friendships with their nondisabled peers, who will be the landlords, employers, neighbors, voters, and policy makers of tomorrow -- making decisions about whether or not they will rent to, hire, live next to, or support policies that benefit people with disabilities; and lowered expectations for academic performance.

Let's be clear that the State funding formula and education funding structures have a definite impact on placement. When I chaired

the New York City Bar Committee on Education, we did a study that clearly found that the placements that were incentivized by a state funding formula were disproportionately favored in placement decisions, whether that placement was inclusive, a resource room, self-contained settings, or out-of-district.

New Jersey's facially placement-neutral funding formula does little to reverse our State's long history towards segregated special education. While State aid flows to districts based on student need, as opposed to placement, the ability of county freeholders to supplement the funds of the segregated public settings mitigates against this facially placement-neutral funding formula. Unfortunately, the county freeholders would never consider funding local school districts with the millions of dollars they currently pour into segregated county public schools, regardless of the research or the laws supporting inclusive education. Even though the extraordinary aid funding formula passed by the Legislature is also facially placement-neutral, it's available to students no matter where they're placed. Well over 90 percent of that money is being spent to educate students in out-of-district public and private placements.

One way in which this program is actually not being implemented in a placement-neutral manner is that, while all the costs of tuition for students who are placed out of district goes toward the 40,000 threshold; things like teacher professional development, accessibility costs, supervision, administrative overhead for students who are educated in district -- those costs don't get to add up to the \$40,000. So, actually, it's really not as facially neutral as it pretends to be.

With regard to this issue of insufficient space that we keep hearing about to educate students in district, the law is clear. Students with disabilities may not bear the total brunt of lack of district space. If a district truly has space limitations, the burden is supposed to be shared proportionately between general and special education students. But I can't imagine having a superintendent come before you and talk about how they're going to be sending general ed students out of district because they don't have enough space.

Further, it's not always necessary, when you bring students with disabilities back into the district, to put them in a separate class. Many students who are currently educated in out-of-district placements could be brought back and educated in the general education classroom, which would not have these space considerations.

I want to mention something, briefly, about children of color in New Jersey. Children of color in New Jersey are significantly overrepresented in special education, in the disability categories that are most likely to result in segregated placements, and in segregated placements. But they're underrepresented in categories like speech and language disabilities, which are most likely to be included in the general education classroom.

Children of color in New Jersey who have disabilities are more likely to be segregated than children of color nationally. In New Jersey, if you are white and you're placed out of district, you're more likely to be placed in the more expensive private school. If you're African-American and you're placed out of district, you're more likely to be placed in a less expensive, public segregated setting.

In some suburban districts -- including the one I live in -- classifying and segregating students, allegedly because of their disability, really turns out to be continued segregation by race. I invite you to visit some of these districts and go into their basement self-contained classrooms, where you'll see virtually all African-American male classes of students with disabilities.

The oversegregation of students in New Jersey has an impact on adults with disabilities in our state. New Jersey has the fourth highest number of adults in institutional, rather than community, settings. And just as out-of-district placements are more expensive than in-district services, institutions are more expensive than community settings. Developmental centers have an annual per-person cost of \$143,752, compared to a per-person cost of only \$73,883 for adults with disabilities living in community settings.

Given this possible troubling future, you might ask, "Why do parents agree to, or request, segregated placements for their children with disabilities?" Well, often, noneducation professions -- doctors, for example -- who aren't familiar with the law or best practices in special education will tell parents of children with significant disabilities at an early age that their children need segregated programs. Some even refer them to specific segregated schools well before their child is old enough to attend. So by the time the parent comes to the school district, somebody has already told them, "Oh, my child needs to go to this out-of-district placement."

Parents may be afraid that their child with a disability -- especially a significant disability -- will be ostracized, or face ridicule, teasing, taunting, and bullying. Some of the parents who contact us

indicate that school personnel raise these issues with them. “Are you sure you want your child to go to the regular middle school? Adolescents can be so cruel.” Instead of taking this tack, schools should instead be telling parents about their effective bullying prevention and intervention programs -- which this Legislature has required of them -- and their policy not to tolerate teasing, bullying, or harassment of any student, not just students with disabilities.

Some parents get tired of frequent calls from the school to come pick up their child, disrupting their work and home lives. Other parents visit the public schools and see that basement room, where the segregated self-contained class is located; and then visit the beautiful, new, segregated out-of-district facilities with the two pools -- like the new school to be built in Middlesex County. Is it any wonder that they prefer the latter?

Other contributing factors include lack of teacher knowledge and expertise on how to effectively instruct and include students with disabilities in public schools, lack of accessible buildings and classrooms, and lack of data for parents to gauge the effectiveness of out-of-district placements.

Many of the parents we talk to, who succeed in having their children included in general education, feel that it’s a full-time job. They feel a tremendous responsibility to identify effective practices and build the capacity of local districts and schools to implement them for their children. It’s much easier to put your child on a bus and send them to a place that at least welcomes them, even if that means that they spend two hours on a bus and never see a child without a disability. But few parents would choose to

put their children on that bus for that long ride if they felt that their local school had the knowledge, expertise, and desire to effectively advocate -- educate their child.

So where do we go from here? Given our long history of segregation of special education in this State, we need strong leadership from the Governor, from the Legislature, and from the Department of Education articulating the consistent message that including children in general education with appropriate supports is not a choice, it's the law's presumption. We have some specific recommendations on how to do that in our longer testimony.

We do support some county-based services available to provide expertise on things like inclusive education, transition to adult life, positive behavior supports; to be located at the county level, but to be able to go into school districts and schools, and help them build their capacity.

Teachers have to be prepared to educate all students. So our institutes of higher education have to change.

I urge the Legislature to review the findings and recommendations contained in "Still Separate and Unequal," issued last year by the New Jersey Council on Developmental Disabilities. And each member of the Legislature received a copy of the report. There's also information in my testimony on how you can get a copy online.

I just want to say a few last words about the costs of conflict. Now, I have to say I'm an attorney, but I don't act as an attorney in my current position. As the Administrative Law Judge indicated earlier, less than a third of New Jersey's due process hearings relate to placement. And, in New Jersey, districts prevail in most impartial hearings. Districts have

attorneys on staff or on retainer, they have educational experts on staff, and they have the capacity to implement changes to a student's IEP and services without the parents' consent. The only way the parent can stop them from making those changes is through requesting mediation or a hearing. Most of the parents we talk to can't afford an attorney, and there are very few free or reduced-cost attorneys available.

Now, with the burden of proof shifted to the moving party -- which would be the parents in most cases, since the districts can make changes on their own initiative without parental consent -- it will be even harder for parents to find attorneys willing to represent them.

Let me assure you, virtually no parent wants to go to due process. We speak with literally tens of thousands of parents each year. And almost all of them wait months, and even years, before considering due process. But when districts refuse to even consider inclusion for preschoolers with disabilities; when they refuse to change their reading program to ensure that a student with dyslexia is able to learn to read; when they have low expectations for students with disabilities that become self-fulfilling prophecies; when they fail to provide transition to adult life services so students aren't sitting at home after leaving school; when they don't provide students with disabilities with highly qualified teachers who actually know the content that students with disabilities are expected to learn; when they repeatedly suspend or send students with disabilities home instead of conducting functional-behavior assessments and implementing research-based positive behavior supports; when they don't provide the services that they committed to in the IEP, parents have no recourse but due process, even when it means, as it often does, remortgaging their home

or spending all of their savings. For the low- or moderate-income families that we talk to, there's often no recourse at all.

Now, there are, undoubtedly, unreasonable parents. But there are also unreasonable schools and districts -- not all of them, not even a majority of them, but enough of them -- who don't want to be held accountable for the effective education and progress of students with disabilities.

A stronger State monitoring system with real teeth in it will do more to reduce due process hearing expenses than draconian provisions aimed at even further limiting parental access to hearings or representation. Funding an unbiased facilitator at the new resolution sessions that have to be held whenever a parent or district requests a hearing -- as is happening in some other states -- would be a good idea. Assigning judges to specialize in special education cases would ensure more consistent knowledge of the nuances of special ed law and best practices when hearings were held. And passing a State law that places the burden of proof back on the school districts, who have access to all the records and all the experts, would make districts more interested in creating agreement with parents.

In conclusion, New Jersey could substantially reduce its special education costs, comply with Federal law, and increase achievement and outcomes for students with disabilities if it drastically reduced its overreliance on outmoded and ineffective segregated placements. SPAN is eager to partner with you to provide the kind of leadership that will be necessary to reverse our decades-long habit of exclusion by race and by disability that has kept us, far too long, at the bottom of national rankings

in inclusion of students with disabilities in schools and adults with disabilities in our communities.

Thank you.

ASSEMBLYMAN CONAWAY: Thank you for that very fine testimony, Ms. Autin.

Next, we have Mr. Mark Finkelstein, Superintendent of Middlesex Regional Educational Services Commission.

Mr. Finkelstein.

**MARK J. FINKELSTEIN:** Thank you, Mr. Chairman.

And on behalf of our Board of Directors, I thank all of you for the opportunity to join you today.

Our Commission in Middlesex County has been in existence for 29 years. We have a board which is comprised of 25 members, with one representative from each municipality in our county. We have an operating budget of over \$60 million. We receive no State aid. All revenue is derived from direct services.

With approximately 1,200 employees, our Commission presently operates a total of seven special education schools for 750 severely learning-disabled students, and four early childhood programs for approximately 400 students. We also provide remedial services for over 4,000 students enrolled in 102 nonpublic schools, and transport 7,000 students daily.

In June of 2005, the New Jersey State Board of Education approved our name change to a regional status, and as a result we presently provide programs and services for students representing 75 school districts located in 12 counties.

While we have diversified over the years, we continue to place a heavy emphasis upon the area of special education. In this regard, we have saved districts millions of dollars in tuition and transportation costs by constructing facilities and implementing programs for learning disabled students within our county. Our tuition costs average \$15,000 to \$25,000 below the average tuitions charged by private, out-of-county schools. In addition, our districts reap additional savings by no longer having to transport students excessive distances from their residences.

This past year, we turned away a total of 118 students because of a lack of space in our facilities. These students enrolled in private schools, at an additional expense to local taxpayers of over \$2 million. This is unacceptable. In response, we will be constructing two new schools to accommodate an additional 210 students. The bonds for these facilities were provided by the Middlesex County Improvement Authority, with the Middlesex County Board of Chosen Freeholders guaranteeing them, thus ensuring a lower interest rate.

To be sure, tangible and significant special education savings can be realized by allowing public entities, such as educational services commissions, to work with local governmental agencies to construct and administer specialized programs. In this regard, the State should serve as our leading advocate, not as an adversary.

But this is not enough. Our Commission has collaborated with the Edison and Sayreville school districts by assisting them in bringing back 45 students from out-of-district, private school placements. Our Commission has implemented a total of eight classes within these districts to accommodate these students. Over a three-year period, savings in excess

of \$300,000 have been realized. The State has consistently pointed to our collaboration with the Edison Public Schools as a model for others to emulate. Now would be the time for the State to display its commitment to this initiative by providing incentive funds for the expansion of the program. Our collaboration with these and other school districts have saved local taxpayers literally millions of dollars.

By functioning as the county and regional shared services provider, accrued savings have been realized by our Commission providing the following. Number one: a 38-district, 10-municipality cooperative purchasing consortium which will now be a member of the county cooperative purchasing consortium. This consortium, which has saved districts over \$6 million in the area of natural gas bidding over the past five years, shall be expanded to include virtually all supply, equipment, and material requests.

Two: home instruction services for eight school districts, 102 nonpublic schools, and over 350 students.

Number three: remedial Child Study Team and policy-making services for nine charter schools.

Four: training of staff members in 12 school districts so that they may initiate specialized programs in their own districts for preschool, autistic, multiply disabled, and behaviorally disabled students.

Five: a special education clearinghouse in which the Commission maintains a data bank of all special education classes in operation in Middlesex County. And in doing so, local districts, by pushing a button, now have access to class list information for 25 districts when seeking an out-of-district placement.

Six: We coordinate and implement, on behalf of 25 public school districts, the following programs and services for eligible students enrolled within nonpublic schools: Chapters 192/193, textbook, nursing, technology, Title I, and IDEA-B.

Seven: We provide speech services, Child Study Team services, and augmentative evaluations for seven school districts.

Eight: We implement partial hospitalization instructional services for learning disabled and at-risk students. This is a collaborative in which our Commission provides the educational program component, while Princeton House is responsible for the clinical aspect of the program.

Nine: Our Commission operates the Regional Professional Development Academy which, over a seven-year period, has accommodated the professional needs of over 1,300 educators.

Ten: We also operate the county alternative middle and high school for learning disabled and at-risk students. Tuition rates range from \$12,600 for nonclassified students, to \$24,840 for classified students, both substantially below private rates elsewhere.

Eleven: School districts realize cost savings by contracting with our Commission for occupational and physical therapy services, and in-district training for staff members and parents.

Twelve: Our Commission received a grant in the amount of \$2.5 million over a five-year period to operate an after-school program for multiply disabled and autistic students. Eighty-seven students are enrolled within this program, which is offered cost-free for districts.

Thirteen: Our Commission offers consultation services for districts as they prepare for special education monitoring, thus reducing

unnecessary duplication and the potential for costly noncompliance and remedial activities.

Fourteen: We also are available to review the operational procedures within the departments of special services for school districts in order to streamline procedures, promote best practices, and increase efficiencies.

Fifteen: We have assumed complete or partial transportation responsibilities for 38 school districts. By bidding on over 500 routes, cost savings have been substantial. As an example, the New Brunswick school district realized a transportation savings of \$300,000 for the 2005-2006 school year.

And 16: This past Summer, our Commission administered the remedial school -- Summer school programs for the Old Bridge and Highland Park school districts. This resulted in a total savings to taxpayers of over \$100,000.

To be clear, there are two types of shared services costs savings. The first is financial, in which there is a direct dollar savings. The second is the opportunity for savings. These are cost savings for not employing additional staff, or better use of existing staff and facilities.

Efficiency savings must be recognized. As an example, by offering tuition-based special education programs, district facilities are not used. Therefore, demand for classroom and support staff -- space within districts is reduced, thus making room for other programs. And, further, districts do not have to staff programs.

The State must work with shared services providers to create a more user-friendly environment. The construction of new facilities and

creation of new programs and services must be encouraged. Incentive funds must be made available to encourage collaboratives between local school districts and shared services providers. Further, the State must stop promoting for-profit, private programs by continuing to approve the opening of new schools. In addition, they must stop approving excessive tuition increases, which the private sector continues to request and receive.

Our officials must begin identifying and promoting shared services providers, such as educational services commissions, who are both public and nonprofit. The unlevel playing field which continues to allow the for-profit, private sector to thrive must be eliminated. The State must stop treating the public, nonprofit agencies and the for-profit agencies equally. We know what to do and how to do it. Just imagine what we could accomplish for our students and our taxpayers if we had the full support of our educational leadership.

I have a great deal of respect for our own Department of Education. However, it is our own Department that, over the years, allowed school districts to identify and classify the number of learning disabled students presently enrolled within our schools. Now, because of pressure exerted by the Federal government, these same Department of Education officials tell us that we have overidentified the number of learning disabled students and, as a result, there must be a reduction in their numbers.

Ladies and gentlemen, the lives of our most challenged students and their families are not to be trifled with. Those of us in the rank and file known as school district employees will no longer be handed edicts telling us what's best for our students. We know our students and how to address

their unique educational needs in the most cost-efficient manner available. We are not interested in statistical arrangements brokered between our State and the Federal government. We are only concerned with the immediate and future needs of our students. It is the right thing to do. If we are not there for our students, who will be?

In summary, I have attempted to demonstrate proven practices administered by the Middlesex Regional Educational Services Commission which have resulted in significant cost savings for local taxpayers within the arena of special education, as well as a number of other important sectors.

However, sharing this information with you seems inadequate. In this regard, may I respectfully request that your Committee convene a meeting at one of our schools. I invite you to spend a day -- even a half-day -- observing our students from the time they arrive in the morning through their departure at day's end. In so doing, you will be able to directly observe what makes special education so special: students working to their maximum capabilities to master the most fundamental of skills, which others take for granted; staff members setting aside traditional methods of instruction in order to implement specialized instructional methodologies which gradually change the focus from special education to education for all children.

The miracles which you will observe will provide an intrinsic satisfaction which can never be measured from a fiscal perspective. After all, in the final analysis, isn't it our ultimate mission and responsibility to help those who cannot help themselves?

Thank you for affording me the opportunity to share my thoughts with you today.

ASSEMBLYMAN CONAWAY: Thank you, Mr. Finkelstein.

Next, we have Mr. Thiers -- Gerald Thiers, Executive Director, ASAH.

**G E R A L D M. T H I E R S:** Thank you for the opportunity to speak to you about cost issues related to approved private schools for the disabled.

ASAH is a statewide association of 147 private schools in New Jersey, educating 11,000 students. The schools -- 83 percent of which are nonprofit, and 17 percent for-profit -- share the same goals as public schools in delivering the most appropriate education for the students. Our member schools serve 5.8 percent of New Jersey's special needs students, whose severe disabilities dramatically impair the students' ability to learn in other settings.

These students need highly specialized, adaptive equipment for speech or school-related tasks. Some are so medically fragile that they may die during the school year. Other students with learning disabilities cannot read or do math, in spite of academic potential. Some have emotional and behavior problems so disruptive that they pose a danger to themselves and others.

Our first and primary goal is to prepare students to return to public schools and mainstream activities. Of the hundreds of students who transfer out of private special education schools each year, 45 percent go back into public school programs. Of this group, nearly half go back into general education classes, and others go back to district-operated, self-contained special education classrooms.

We produce successful graduates. Of those who graduate from approved private schools, 95 percent enter some mainstream activity.

Almost two-thirds, or 62 percent, go to college, technical school, competitive employment, or the military. In a five-year study of the class of 2000, private school students compare favorably to special education students nationally, particularly for alumni with emotional and behavioral disorders.

The tuition rates of private schools reflect the severity of the students we serve. After researching this issue, we have come to one major conclusion: the cost -- private school costs are comparable to public special ed programs that provide comparable or similar services. Confirmation of this finding can be seen in public receiving-school tuition rates. These are rates one public school charges to another public school to educate out-of-district special education students. Based on data from 2001-2002, 64 districts charged at least \$30,000 a year for their special education programs. Some charged in the range of \$50,000 to \$60,000. The average private school tuition that year was \$29,402.

The GAAP accounting system used by school districts makes it difficult to identify all the costs that go into public special education and, therefore, difficult to accurately compare costs. Public programs are often subsidized by funds from other sources, such as Federal and State grants, supplemental aid, and tax revenues from county governments. The private school tuitions may appear more expensive because they represent a more full set of costs.

Under the current system, the Department of Education sets a tentative rate for each private school for the coming year. As in the case with public schools, the private school tuition increases are capped at 2.5 percent. When the school year is over, each private schools submits an

audit to the Department and an allowable per-pupil cost is determined. Private schools that have a surplus are required to distribute the funds back to sending districts. And in 2004-2005, schools returned approximately \$3.5 million back to sending districts. Private schools with deficits may rebill the sending districts to cover their actual costs.

The surplus distribution and rebilling mechanism reflects the difficulty that all schools -- not just private ones -- have in projecting enrollments for the coming year. This is one of the positive features of private schools. They serve as a safety valve for districts by taking students on an as-needed basis.

Private schools being -- also bring a number of hidden resources into the special education system. Our schools raise over \$25 million annually from private sources to help pay for services. Many of our schools have facilities that were built with donations and contributions from private sources and fundraising. This means that building costs do not get passed on to taxpayers in the form of bonds.

Many of New Jersey's approved private schools are nationally recognized and attract high-quality educators and leaders looking to gain valuable experience. These professionals accept salaries that are below those of their public school counterparts. Many educators now working in New Jersey's public special education programs gain their experience and training at a private school, bringing a higher level of expertise into the State's public school system. In fact, many innovative approaches to educating students with severe disabilities are developed in private schools and transferred to public schools through joint ventures and consulting

agreements. This is happening now, particularly in the area of instruction for autistic students and preschoolers.

We recommend that the Committee and the Legislature take a holistic approach to special education programs and funding. There are some viable strategies that can help contain costs. The Legislature could promote preemptive services that districts could provide to help struggling students -- keep struggling students out of special education. The Legislature should also promote innovation. Some approved private schools and other programs provide in-district services, keeping students closer to home and saving on transportation costs. The key is to preserve the high-quality services that New Jersey currently provides.

Thank you for involving us in this effort.

If I may add just two points that were mentioned before-- The Department of Education, two years ago, revised the application formula for opening new private schools. It's a lot more extensive. There are more committees -- focus groups and county review committees that the application goes to. And as a result, no new private schools opened in 2005-2006. There are two that are in the process that may be approved for 2007-2008, but there are two programs that closed. So basically the net effect is no increase in private schools in the foreseeable future.

The second point is about the tuition for private schools. Well, I'll leave it at that. I lost my thought on that. But people mentioned that tuitions are high. And the point is already made -- is that the cost -- the tuition rates that are charged have to be -- all the costs have to be packaged into one rate. And that appears high. But if you look at other programs

and the sources in the actual costs, the tuitions are -- the cost -- the actual costs of the programs are relatively the same.

Thank you.

ASSEMBLYMAN CONAWAY: Thank you.

Questions from the Committee? (no response)

I'll start, since mine are right on the edge of my tongue.

Mr. Finkelstein--

And it's an interesting juxtaposition to have these various panelists here with the private school folks on the other end. You got a lot of mention in others' testimony. I guess I don't need to tell you that.

You mentioned-- This question of cost came up. And you mentioned, Mr. Finkelstein -- or doctor -- I hope I'm not--

Are you Dr. Finkelstein?

MR. FINKELSTEIN: Mister.

ASSEMBLYMAN CONAWAY: Doctor, I'm sorry.

MR. FINKELSTEIN: No, no; mister.

ASSEMBLYMAN CONAWAY: That -- about cost savings. And I wonder whether or not there has been an independent assessment of those cost savings. Has the Department come in and looked at these cost savings, comparing what-- I guess your providing a regional service. And, presumably, they're looking at what the costs would be to provide those same services at the local district, and saying that they're  $X$ , and looking at those services provided in a regional way, and can determine  $X$  savings. Is that-- Has a, sort of, third party -- disinterested party -- come in and looked at your cost structure?

MR. FINKELSTEIN: Well, I can't speak for the Department. But I can tell you that every year I provide our board with an analysis of what our tuitions are, versus comparable programs in the private sector.

And I think the best response, sir, would be, when it comes to tuition for special education programming, you don't always get what you pay for. And by that I mean, excessive costs don't equate to quality of programming.

ASSEMBLYMAN CONAWAY: And following on that-- This question really is for everyone. How are the-- How is quality being measured? Is the Department doing that? Are they doing a good job of that? Are there third parties coming in and measuring this quality?

But this is, of course, a concern to this Committee. And we have heard it across the broad spectrum, whether it be in the regular education program or in the special education program, where the (indiscernible) quality concerns is really heightened when you compare that to the dollars that are being spent.

How are these assessments of quality being made please?

MS. AUTIN: Well, the Federal special education law, in 2004, required states to develop state performance plans, where they measure their performance in a series of indicators that are most closely tied to student -- positive student outcomes, like graduation or dropout rates, performance on state assessments, etc. And so every state, including New Jersey, now has a state performance plan that looks not only at compliance with the procedural requirements of IDEA, but also looks at outcomes for students.

And so one of the ways in which performance is going to be -- or quality is going to be measured, is going to be by the outcomes for students with disabilities in these various indicators that are required by the U.S. Department of Education.

The first report on the State's performance plan is due February 1, 2007. So we will be able to see what kind of progress has happened since the State first set its baseline data and implemented its activities to try to improve outcomes for students with disabilities.

I think there are lots of other indicators that parents think of as being quality services. And that includes, most importantly, whether or not their children are learning -- and not just learning academics, which is important, but also learning how to get along with other children, learning how to live in the world, learning how to be independent, learning how to be part of their community. And those are indicators that really aren't well measured by any of the existing assessments that we have.

MS. GOTTHILF: I think, also, that the--

ASSEMBLYMAN CONAWAY: Push your button. (referring to PA microphone)

MS. GOTTHILF: --the autistic community measures, very strictly, the outcomes of students in how they can function in their environment within the school and outside of the school. I think all of us look at the indicators of how are we going to get these young people into life with the skills that they need, and the transition skills that they need. That's how we measure it. And we look for parent satisfaction along with that.

ASSEMBLYMAN CONAWAY: Mr. Thiers.

MR. THIERS: The quality is definitely measured through outcomes. And in our studies, we looked at students who not only transferred out of our schools -- to see where they went, have they gone back to district or to other programs -- and then, also, what happens to students who -- when they graduate.

The interesting thing, too -- that over our five-year study, the Class of 2000-- We took measures such as: can they live independently, how long have they held employment, what are they doing right now. And the rates are good, in terms of the -- compared to national -- the national-- The only study available in outcomes, right now, is called the "The National Longitudinal Transitional Study." And compared to those, the students are doing well. And we infer that students in New Jersey -- not just in private schools, but other graduates -- probably do better than national standards, as well. The reason, we think, is because when the kids need the services, they get them. There's a wide array of services provided in New Jersey. So one way or the other, the students get the services when they need them. And it helps them perform better when they're in school and, then also, when they graduate.

ASSEMBLYMAN CONAWAY: For Ms. Gotthilf and Mr. Finkelstein, the-- Have you compiled statistics looking at your outplacements? That is, I would presume -- maybe I shouldn't -- that there are less outplacement. Of course, some people consider your school an outplacement from the local district, by the way. And I guess it depends on how you want to do the measures. But let's just stick to private outplacements. Maybe that's a little less controversial a question.

I would assume that you have less private outplacements in Middlesex County than, perhaps, a comparable county.

And for you, Ms. Gotthilf, with your-- I look at your system as sort of a regional system. Do you have bricks and mortar buildings, as well, or are you providing services in the local districts, and coordinating those services through your office?

MS. GOTTHILF: That's in both arenas.

And I do have a statistic to share with you. Because when I did the survey on autism -- and that's the only one I can really speak to as being the most accurate -- we have-- Sixty percent of our students were in a public setting, 20 percent in private, 12 percent in county special services, 7 percent in the South Bergen Jointure Commission, and 1 percent were in residential.

So I think-- Yes, I think the development of the Valley Program has certainly curtailed the number of children that have had to go out to other placements. And we've gotten 60 students back to district, which I think is a fantastic number.

MR. FINKELSTEIN: It's comparable in Middlesex because of our schools, and because we have introduced the concept of collaboratives, in terms of bringing students back to the local districts. And we've trained half the districts in our county on how to initiate programs of their own. You're seeing less and less students being placed in private schools. Since 1999, 153 of the students that had previously been in our programs have been returned to their resident districts on a partial or full-time inclusive basis.

So I think the results have been tangible. I think the school districts are working very hard to try to accommodate the need, but they need time. And in time, I believe that all school districts will be able to satisfy the need. But the question is: What happens to the students during the interim?

ASSEMBLYMAN CONAWAY: Now, doctor (*sic*), you mentioned that you maintain a class list. And this idea of information, and how it might help to save costs, is something I think we need to do a lot more of. And if I understood what -- and I just want to make sure I understand what you're doing. You're able to say to possible sending districts -- sending jurisdiction -- that you have availability and can make that-- And by letting people know, folks are more likely to avail themselves of your services than if they didn't have this information. Is that the concept you're getting at there?

MR. FINKELSTEIN: That is correct.

ASSEMBLYMAN CONAWAY: And do they do that in Bergen County?

MS. GOTTHILF: Yes, we do.

ASSEMBLYMAN CONAWAY: And is that a ubiquitous kind of thing that's done, or you guys are just sort of ahead of everybody on this?

MS. GOTTHILF: Not in other counties, to my knowledge.

And I have to say that I did some consulting work in the southern part of this state, and it was rather appalling that because they're so separated from each other, and there's no coordination at all, that there are so many more children that wind up going out-of-district. I think, for my money, if I could-- I mean, that's what you really need to do. You

really need to look at a central source of information to help districts make decisions and provide training. I mean, if you've got districts all around, and there's nobody that's really coordinating those services for them, it's just -- everybody's out there on their own and trying to do the best they can.

MS. AUTIN: I hope-- I think that there's a lot to be said for having regional or county-based professional development services and consultation services. But I don't want that to lead us in the direction of thinking that we have done all we can in terms of including children with disabilities in regular classrooms. Not only do we have a much -- the worst rate in the country, in terms of out-of-district placements, but we're also far from the national average in terms of children with disabilities who spend 80 percent or more of the school day in the general ed classroom. It's like 55 percent -- national average. We're at 45 percent -- around that -- in New Jersey. So we have a lot more kids with disabilities that we could be educating full-time in the general ed classroom, compared to the national average, than we are. And I, for one, don't think there's anything in our water or air that means that all of our kids with disabilities need to be someplace else other than the general ed classroom.

ASSEMBLYMAN CONAWAY: Ms. Gotthilf.

MS. GOTTHILF: I'd like to just speak to one point.

I did work for the Department of Education for a number of years. And I was included in some of the meetings that they had, when they give out, let's say, an application. We have to do an ADR report every December, which is our headcount for where children are placed. Unfortunately, half the time the people that are filling out these surveys, or

the documentation, don't understand the directions, don't understand how to fill it out. And they just plug children in wherever they think they should be. And our Department of Education needs to provide training to our secretaries, to the directors, whoever is going to fill out that information, so that they have accurate ways to tabulate it. It's not accurate.

ASSEMBLYMAN CONAWAY: Well, as we've heard from other--

Put your light off. (referring to PA microphone)

MS. GOTTHILF: Push it off?

ASSEMBLYMAN CONAWAY: Thanks.

On that -- because you mentioned in your testimony, Mr. Finkelstein, about the classification system. And we have heard-- It seems like we're hearing--

I heard something different from you.

We have been told-- It's been suggested to this Committee -- let's put it that way -- that we have a problem with overclassification. You've suggested that Federal priorities are changing, and seemed to suggest that, perhaps, overclassification is not a problem. And maybe it's misclassification. But can you talk about the classification system and the accountability that the government either does not, or should exercise in making sure that children are slotted in the right place? Because our goal, of course, is to -- (indiscernible) we're sort of moving in the direction of trying to put funding on the individual's head, as it were. And so it's going to be very important how children are classified, if you will, in the system.

And so I suspect what I'm hearing is that we have -- we're not doing a very good job of getting people in the right -- properly categorized and properly -- yes, properly categorized. I'll leave it at that.

MR. FINKELSTEIN: The history on this issue is very interesting.

And I started teaching in 1973. I can remember a time when there was a cap on the number of students each district in New Jersey could have, in terms of a percentage. And if you exceeded that cap, you were in trouble with the Department of Education.

Then the cap was lifted. But New Jersey went above and beyond, for a decade-and-a-half, what the Federal requirements were in terms of numbers and classifications. I believe there were 10 Federal classifications. At the highest count, I believe New Jersey had 21 classifications.

The Department was responding, in large measure, to pressure exerted by various interest groups. So for a solid decade-and-a-half, districts went essentially unchecked with regard to the number of students that they classified. Then, suddenly, the Department of Education turns around and says, "There's 611 districts. We now have too many classified students in New Jersey. And we have to do something about it. And if we don't do something about it, we're going to have a major problem in terms of receiving our Federal funding." So districts said, "We have all of these classified students, which you permitted. Now you're asking us to cut back."

And, most recently, we received the information that the arrangement -- the plan that our State made with the Federal government

was that by the year 2010, 4,000 students would be returned from out-of-district placements to their resident districts. Who made that plan? Were we involved with it? How can you make a plan on special education students four years from now, when each plan is supposed to be individualized in nature? It doesn't make sense.

ASSEMBLYMAN CONAWAY: And again, on the accountability question-- What's your thought about that? How should the government -- the Department review these decisions -- these classification decisions.

MR. FINKELSTEIN: Oh, yes.

ASSEMBLYMAN CONAWAY: Please.

MR. FINKELSTEIN: There was a time, particularly when I was the director of special services, when I had three masters to answer to in terms of out-of-district placements. I had to answer to my local superintendent, to my board of education, down to my county supervisor of Child Study. Every county in New Jersey has someone who is responsible -- from the Department of Education -- for special ed. That person always asked the hard questions. "Did you try a local district first? Did you try an educational services commission? Did you try a special services school district?" And after I responded to all those questions, then I got to why I had to place this student in a private school.

That level of accountability has been lifted. And it's been lifted for almost a decade. And we don't understand why. It's not that the county official has final say with regard to an out-of-district placement. But at least I knew there was somebody at the county level that would question why I was going to a private placement versus the others that I just

mentioned. When you take that accountability away, it makes life immeasurably easier to initiate a private school placement.

ASSEMBLYMAN CONAWAY: Ms. Gotthilf, then Ms. Moncrief.

MS. GOTTHILF: I think the accountability issue is a very difficult one, because I think you're asking about the level -- the rates of classification.

I personally think that we need to do more in general education to-- There are-- You go into some of the school districts, there's just not-- There's not enough there to avoid classification. So what happens is, the bleeding hearts -- the special education people -- decide to classify, because then we can ensure that they're going to get the service that they need. And I think that has to be addressed. And I'm not sure what the venue is for you to do that. I don't know how you require that. I know that we've had some laws in effect with I&RS, the intervention and referral services committees. But they're not effective. So I think we need to find another way of putting some teeth to it.

MS. MONCRIEF: It is always surprising to me-- It is said that districts classify students to get extra funding, or to get rid of problems, or whatever. We all know the districts are not fully funded, not even close to being fully funded for special education cost -- in particular those for the costly out-of-district placement.

It has been my experience, in all my years of education -- and I'm not saying that it's like this everywhere. But I have to tell you, there are a lot of districts where people are working these students and trying to do their very best, and trying to comply with the IEPs, the Core Curriculum

Standards, IDEA, No Child Left Behind. We have a lot of masters. And we're trying to create a program for a child that best benefits that child, and doing so in a situation where the funding is very limited; and the cry from the taxpayers is to create a system that is more efficient and more cost-effective. So it's a very difficult challenge.

MS. AUTIN: Why is it that a student who is an A student in Newark or Camden moves to Livingston or Cherry Hill, and within a few months their parent is calling us, saying that the district is referring that child for a special education evaluation? It's not because the student, all of a sudden, developed a disability between moving from Camden to Cherry Hill. It's because the quality of-- It may be because the quality of education a student was experiencing in Camden or Newark was not the same, maybe the expectations were different in those two districts. But there are far too many children, of color especially -- especially African-American boys -- who are referred to special education, and who end up in special education, and therefore end up in segregated settings. Because that's often the first placement for African-American males in special education. And it's not because they have a disability, it's because we're not doing a good enough job in general education to meet the needs of all students. There's no reason why almost 25 percent of African-American boys are classified as having a disability. There's no reason. They don't have a disability. And that's where I think the biggest problem is with overidentification and overclassification.

ASSEMBLYMAN CONAWAY: Thank you.

Your testimony-- I had it written down here to ask the question -- I guess I don't know if it's unfair or not -- but this issue of the

disparate treatment in the system is obviously one that's going to be troubling, I hope, certainly to us all here.

Mr. Thiers, how many-- Do you have any statistics among your association of how many children of color are served in your private institutions there?

MR. THIERS: We don't have the-- No, we don't collect statistics like that. We do have a general census of the children that come into the school. But we don't have that. We don't argue with the statistics that the Department of Education has, concerning disproportionality -- that there are higher numbers of kids of color that are in special education. But, again, I will look to see if I have information. If I do, I will provide it to you within a week.

ASSEMBLYMAN CONAWAY: Thank you for that, because that's-- You anticipated my question. If you can get those numbers to this Committee, I would request that you do so.

Ms. Gotthilf.

MS. GOTTHILF: I was just going to mention that the ADR report that comes out in December is done by race and by placement. So that certainly would be a starting point -- to be able to look at that report and see, if it's accurate, where those children are placed.

ASSEMBLYMAN CONAWAY: Thank you, all, for your very fine testimony. It's very much appreciate. And I hope and expect that you'll available to us in the future.

Thank you, again.

MR. FINKELSTEIN: Thank you.

MS. MONCRIEF: Thank you very much.

**(MEETING CONCLUDED)**