

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

UNITED STATES DEPARTMENT OF EDUCATION

PRESIDENT'S COMMISSION ON
EXCELLENCE IN SPECIAL EDUCATION

FINANCE TASK FORCE HEARING

MARCH 21, 2002

W Los Angeles Westwood
930 Hilgard Avenue
Los Angeles, California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

COMMISSIONERS :

JAY CHAMBERS

DOUGLAS GILL

ALAN COULTER

DAVID GORDON

BYRAN HASSEL

STAFF :

C. TODD JONES

TROY JUSTESEN

1	INDEX	
2		PAGE
3	OPENING REMARKS	
4	DOUGLAS GILL	5
5	TASK FORCE PRESENTATIONS	
6	COST DRIVERS PANEL	
7	BILL FREUND	11
8	STEPHEN B. CHAIKIND	20
9	REGULATORY AND ADMINISTRATIVE COSTS	
10	JACK DARAY	78
11	PAUL M. GOLDFINGER	97
12	ALTERNATIVE STATE AND FEDERAL FUNDING STRUCTURES	
13	ERIC A. HANUSHEK	169
14	USING MONEY DIFFERENTLY	
15	STEVE JOHNSON	232
16	THOMAS PARRISH	243
17	BILL FREUND	252
18	PUBLIC COMMENT	
19	GERALD HIME	313
20	ED AMUNDSON	315
21	ANDREW BARLING	318
22		

	PUBLIC COMMENT (Continued)	
1		
2	IRVING LEBOVICS	322
3	DWAN BRIDGES	325
4	VICKI I. GORDON	327
5	FRED SHAW, JR.	330
6	JUDY McKINLEY	333
7	LOEB ARONIN	336
8	KIMBERLY BRANDT	339
9	JACQUELINE SHOHEIT	341
10	BARBARA THOMAS	344
11	BRETT McFADDEN	347
12	VIVIAN LURA	349
13	SALLY SHAKE	351
14	BENNETT ROSS	354
15	JOHN LUCAS	356
16	DOREEN LOHMES	360
17	ALNITA DUNN	362
18	BRUCE WISEMAN	364
19	ROBERT LEE GRIEGO	367
20	DEB ZIEGLER	370
21		

P R O C E E D I N G S

8:18 a.m.

DR. GILL: Good morning.

My name is Doug Gill. I am a member of the President's Commission on Excellence in Special Education and I am State Director of Special Education for the State of Washington. I welcome you to the fifth meeting of the Commission; our hearing today is led by the Commission's Finance Task Force, which I chair.

Our goal today is to closely examine the complex issues and factors relating to the financing of Special Education. However, before we get started, I would like to briefly describe the Commission's mission and activities.

President Bush established this Commission last October. His goal in creating the Commission was a simple one that can be summed up in four words: "No child left behind." The "No child left behind" message has become a familiar and important one. It is the guiding principle of the newly reauthorized Elementary and Secondary Education

1 Act; and now the phrase comes into play with the work
2 of this Commission because, as the President has
3 pointed out, those at the greatest risk of being left
4 behind are children with disabilities.

5 In our work, the Commission will use the
6 four foundation principles of the "The No Child Left
7 Behind Act." Those principles are, one,
8 accountability for results; two, flexibility and local
9 control; three, expanded options for parents; and,
10 four, use of educational practices that are based on
11 good science.

12 The Commission is holding hearings and
13 collecting information to study issues related to
14 federal, state, and local Special Education programs.
15 Ultimately, we will recommend policies to improve the
16 educational performance of students with disabilities.

17 The Commission's work is not designed to
18 replace the upcoming Congressional reauthorization of
19 the Individuals with Disabilities Education Act.
20 Rather, the report we produce and issue this summer
21 will not only provide vital input into the
22 reauthorization process but also into the national

1 debate on how best to educate all children.

2 The President has charged us with
3 providing findings and recommendations in the
4 following nine areas: One, cost-effectiveness; two,
5 improving results; three, research; four, early
6 intervention; five, funding; six, teacher quality and
7 student accountability; seven, regulations and red
8 tape; eight, models; and nine, federal versus local
9 funding.

10 Today, we will examine three of those
11 areas, funding, financing, and cost-effectiveness.
12 More specifically, we will look at:

13 One, how Special Education funds are
14 spent. While the administration is funding Special
15 Education at record levels, it recognizes that money
16 won't solve all the problems facing Special Education
17 today. That means we need to look at fresh ideas
18 about how we can better spend federal resources to
19 improve Special Education;

20 Two, the appropriate role of the federal
21 government in Special Education programming and
22 funding;

1 Three, "cost drivers." We need to look
2 closely at the factors that have contributed to the
3 growing costs of providing Special Education services;

4 Four, federal and state regulations and
5 red tape. We need to review the impact of regulations
6 and red tape not only for their potential to increase
7 costs but also because they have the potential to
8 obstruct the ability of schools to better serve
9 children with disabilities;

10 Five, the impact of federal IDEA funds on
11 state and local education spending.

12 The Commission needs your suggestions to
13 help us tackle these issues; please tell us about what
14 works, show us the models.

15 We will have a public comment period this
16 afternoon to ensure that everyone has the chance to
17 provide us with the input. As we examine these
18 issues, I hope we can bear in mind that our goal is to
19 do what's best for children, not what's best for the
20 system or what's best for one government agency or
21 another.

22 As Secretary Paige said at the

1 Commission's first hearing in January, "The way we
2 educate our children reveals our character. Let's
3 show strong character. No American should be
4 satisfied until every American child is learning."

5 Thank you for your interest in the
6 Commission; we appreciate everyone who has taken time
7 to attend our meeting. We will now open today's
8 hearing of the Finance Task Force.

9 I would first like to introduce our two
10 panelists who are going to be with us this morning in
11 the area of Special Education cost drivers.

12 The first is Bill Freund; Bill is an
13 expert in K-12 finance and is currently serving as
14 senior budget analyst for the Senate Ways and Means
15 Committee in Washington State. He has worked for the
16 Washington State legislature since 1973 and has held
17 numerous assignments in both the House and Senate,
18 including public school budgets for 21 years, the
19 capital budget, and revenue and financial
20 institutions.

21 In 1977, after the state's finance system
22 was found unconstitutional, he played a lead role in

1 the design and implementation of a new K-12 finance
2 system over a number of years. In the area of Special
3 Education, Mr. Freund has participated in the
4 development of two separate funding formulas in 1981
5 and again in 1995.

6 Our second speaker is Dr. Stephen
7 Chaikind. Dr. Chaikind is professor of Economics and
8 Finance in the School of Management at Gallaudet
9 University, a position he has held since 1989. He was
10 named Gallaudet University's Distinguished Faculty
11 Member for 1997.

12 In addition to currently initiating a
13 project that will study the economic and financial
14 factors that affect, and are affected by, the deaf and
15 hard of hearing community in the United States, Dr.
16 Chaikind researches issues related to public finance,
17 budgeting, and the economics of education.

18 Dr. Chaikind received his Ph.D. in
19 economics from the Graduate School and University
20 Center of the City University of New York and also
21 holds a B.B.A. and M.A. degrees from Baruch College
22 and City College of New York, respectively.

1 So we will begin the testimony this
2 morning with Mr. Freund.

3 MR. FREUND: Thank you, Dr. Gill and
4 members of the Commission.

5 While I've spent most of my working life
6 as a budget analyst so I come at this from the
7 viewpoint of a state budget perspective. And one
8 important thing to know about our state is that, since
9 1977, our state has been under a court order to fully
10 fund basic education; and Special Education is a part
11 of basic education. And I'd like to start by covering
12 a bit of our Special Education funding history to set
13 a context for my remarks.

14 Since 1975, Special Education has been
15 one of the most heavily-studied programs in our state
16 budget. And the concerns that the legislature has,
17 and has had in the past, are some of the same concerns
18 that you all have here now. And, in 1981, following a
19 study, our state adopted a new Special Education
20 funding formula and it was based on 14 categories of
21 disability with differing resource levels. And this
22 was a full-cost formula and it included a portion of

1 regular education funds attributed to students for the
2 time that they spent in the Special Education program.

3 In 1993, as in some other states like
4 California, the state voters approved Initiative 601
5 limiting state expenditure increases to the rate of
6 inflation and population growth. As a consequence,
7 the legislature commissioned a series of studies of
8 programs with high growth rates and Special Education
9 was one of those programs that had high growth rates.

10 The resulting 1995 study found that the
11 state's 14-year-old formula created a financial
12 incentive to label students into high-cost categories
13 and that, from 1984 to 1994, Special Education
14 enrollment growth was growing at more than twice the
15 rate of the regular enrollment growth.

16 Also, a third thing happened; in 1987,
17 the state was sued on the use of the Special Education
18 formula and the formula that we were using was found
19 constitutionally deficient because it failed to fully
20 fund the Special Education program in some districts
21 since it was based on averages. And the court
22 suggested that continued use of the formula was

1 contingent on establishment of a safety net to provide
2 supplemental funding to districts with above-average
3 costs.

4 Given this study and to deal with
5 increasing programs costs that were no longer
6 sustainable under Initiative 601, the 1995 legislature
7 changed its funding formula. And the new funding
8 formula was based on two categories of disability,
9 ages zero through two, and ages three through 21.
10 And, for the three- to 21-year-old group, the excess
11 funding amount was set at .9309 of the regular
12 education amount. And the percent of a school
13 district's funded enrollment as Special Education was
14 limited to 12 percent.

15 And, finally, a safety net process was
16 established for districts with enrollment above 12
17 percent or with demonstrated needs exceeding state
18 funding levels or having high-cost students.

19 And this new formula essentially stopped
20 growth for a number of years. And, in fact, we had a
21 number of school districts whose enrollment went
22 negative for several years. But, in the last four

1 years, Special Education enrollment growth is once
2 again growing at a very fast pace, far outstripping
3 our regular education enrollment.

4 Now we do have some issues in our state
5 concerning our Special Education cost drivers and
6 we're not having a problem with our main funding
7 formula but there are some questions that have arisen
8 as a result of the operation of the Safety Net and in
9 establishing Safety Net award amounts.

10 And so these questions include: What are
11 legitimate costs for Safety Net funding?; Is cost
12 variation among districts due to factors within a
13 school district's control (such as district
14 philosophy, service delivery choice, or accounting
15 practices) or beyond their control (for example,
16 student characteristics)? Do districts for which
17 costs are being compared provide a similar quality of
18 service? I think most -- all of our districts are
19 providing -- but, when we look at individual cost
20 differences, we find large differences for students
21 that look alike.

22 There has also been the issue of, what is

1 excess cost? And this has special relevance to our
2 state because some districts allege that the state is
3 not meeting its mandate to fully fund basic education.
4 So, for us, it's important to know, what's included in
5 'cost'? For example, is the district's Special
6 Education program adequate, is it an enhanced program,
7 is it efficient, are any other programs costs
8 included? Are excess costs properly allocated?

9 And, effective this year, our state
10 accounting system deals with the notion that not all
11 costs of a Special Education classroom can be
12 attributed solely to Special Education. Our state
13 philosophy, and it's embodied in the state
14 Appropriations Act, is that Special Education students
15 are regular students first, and for the entire school
16 day, and are entitled to their full share of regular
17 education funds.

18 In an accounting context, this means that
19 Special Education program staff are also providing
20 regular education and part of their costs must be
21 assigned to the regular education program.

22 As to the reasons for cost differentials

1 among school districts, several studies have addressed
2 this. And a 1992 State Education Agency study found a
3 strong correlation between availability of local funds
4 and total expenditures for Special Education. The
5 study also noted that cost differences among districts
6 were largely due to district administrative and
7 service philosophy, and accounting practices.

8 Also, as part of the 1999 formula change,
9 the legislature began funding a Special Education
10 audit team in the State Auditor's office. And, since
11 1996, this team has examined Special Education
12 programs with high rates of growth, high costs, or
13 other aspects warranting attention by the Safety Net
14 Committee. And we do have a Safety Net Committee to
15 allocate Safety Net funds; Dr. Gill happens to be one
16 of the people involved in that.

17 And the audit team was created because
18 the legislature did not know if, in creating a safety
19 net, it had created a black hole. And this team
20 reported inconsistencies in school district practices
21 and discovered a number of problems with IEPs.

22 Among other things, the activities of

1 this audit team have increased the quality of our IEPs
2 throughout the state and made school programs more
3 efficient.

4 Making determinations of need for safety
5 net purposes is difficult because there is no
6 benchmark for level of services or costs. And the
7 Safety Net Committee is presented with requests from
8 school districts consisting of budget numbers,
9 enrollment, staffing, and a statement regarding the
10 reasons for the request. But there is no qualitative
11 tool to assess the submittals.

12 So the question that the Safety Net
13 Committee is faced with when they are looking at these
14 Safety Net applications is, are they looking at an
15 enhanced program? Is the reason that the school
16 district can't live within the amounts that it
17 receives from the State because, in essence, they have
18 more than an ample program? Maybe you want to call it
19 an excellent program, maybe not.

20 But, accordingly, the legislature
21 requested the State Auditor study whether establishing
22 benchmarks was possible. And the Auditor tested for

1 links between academic delay and the investment of
2 Special Education instruction time. And the Auditor
3 concluded that 86 percent of the variation in Special
4 Education instruction time provided to Special
5 Education students is driven by factors other than
6 student academic delay.

7 So, at this point, there is no handy
8 yardstick for us to evaluate a school district's
9 request for Safety Net funds.

10 I'd like to now turn to the
11 recommendations.

12 And, number one, if federal assistance
13 for Special Education is based on costs, it should be
14 based on excess costs.

15 Secondly, if costs form the basis for
16 federal funding, they should be based on a national
17 average or an index which accounts for demographic
18 characteristics of states. And I say this because of
19 equity considerations. Basing federal assistance on
20 individual state costs would increase existing fiscal
21 disparities among states. And, if there are concerns
22 about potential underfunding among states, they could

1 be addressed by setting aside some funds for regional
2 safety net funding.

3 And you may be wondering about the size
4 of our Safety Net. And it's about three percent of
5 our Special Education -- State Special Education
6 funds; and it's been more than sufficient so far and
7 it's been in operation since 1995.

8 Third, federal Special Education
9 assistance should continue to limit the percent of
10 total enrollment funded as Special Education.
11 Otherwise, increases in federal funding may add to
12 existing fiscal incentives to identify low-performing
13 students as Special Education. And, again, if limits
14 are concerned, I think they should be addressed using
15 a regional safety net.

16 And, as federal assistance increases, a
17 mechanism needs to be developed to relieve the burden
18 of states that are fully funding the excess costs of
19 Special Education. And, of course, this would require
20 some changes in maintenance-of-effort requirements.

21 And I'll be glad to answer questions -- I
22 don't know if it's now or --

1 DR. GILL: Okay. We're going to go to
2 Dr. Chaikind and then we're going to take the
3 opportunity to ask both of you questions at the same
4 time.

5 So, Steve?

6 DR. CHAIKIND: Thank you. Good morning.

7 I'm here, first of all, as a researcher
8 and I'm not representing Gallaudet University.

9 My testimony today is intended to provide
10 a brief --

11 MR. JONES: Can you speak more directly
12 into the microphone?

13 Just so all of our witnesses who are here
14 today know, the microphones are being used by the
15 transcriber to make sure we get a record of this and,
16 at every meeting, we have to make sure we get as much
17 into the mics as we can.

18 DR. CHAIKIND: Thank you.

19 My testimony today is intended to provide
20 a more general and brief overview of the issues in
21 Special Education finance and especially in the ways
22 the finance of Special Education is related to the

1 quality of education the students receive.

2 In last year's yearbook for the American
3 Education Finance Association that Bill Fowler and I
4 co-edited, we said the following, that now is the time
5 for the sometime provincial field of education finance
6 to reaffirm its bonds with the wider education
7 community. No less can be said about Special
8 Education.

9 And, by the 'wider education community,'
10 I mean we need to look at a lot more than just the
11 technical funding formulas that occupy a lot of state
12 directors' time by a lot more than the degree of
13 federal versus state support, or even the overall
14 costs of Special Education, and try to link these
15 technical finance mechanisms somehow with things like
16 educational processes, curriculum outcome, and even --
17 and post-school success for students with
18 disabilities.

19 I'm not sure I have a whole lot of
20 answers on how to do that yet but I have a number of
21 issues I'd like to point to the Commission for your
22 consideration in the next months.

1 To be sure, Special Education has been an
2 unqualified achievement in the United States in the
3 last 25 years since P.L. 94-142 was passed. There are
4 a lot of kids who would never have even gone to school
5 prior to the passage of this law who are now in
6 Special Education programs. Right now, about 6.3
7 million students receive some kind of Special
8 Education or other in the United States. The total
9 costs of Special Education are a little mystic, harder
10 to determine, but a good guess is that, nationally,
11 we're spending between \$40 and \$50 billion a year on
12 Special Education, probably closer to \$50 billion,
13 within that range.

14 So the first condition in any discussion
15 of relating Special Ed finance to outcome is to figure
16 out exactly what the costs of Special Ed are. And the
17 current Special Education Expenditure Project, or
18 SEEP, being led for OSEP by Jay Chambers, Tom Parrish,
19 and their colleagues, will shed some new light on this
20 question. SEEP will add fresh and disaggregated data
21 to those reported in the three previous important
22 studies of Special Ed finance. And all three of these

1 studies over the last 35 or 40 years have shown that
2 Special Education costs between 1.9 and 2.3 times the
3 costs of regular education.

4 Some preliminary data from the SEEP
5 survey indicates that that ratio is now about 1.9
6 times the costs of Special Education. But it will be
7 interesting to see what the final data show in terms
8 of how a more mature Special Ed system is being paid
9 for.

10 And the historical data also show that
11 Special Education costs seem to be driven by, first,
12 the population of children in the cohorts qualified to
13 get Special Education; second, by the number of
14 children with disabilities identified within that
15 cohort; and, finally, by the nature of their
16 disabilities and their educational needs rather than
17 by any ad hoc increase in the cost per student.

18 As these new data are calculated and
19 disseminated, there are a number of additional policy
20 issues I'd like to indicate now; and here are some
21 general observations.

22 We're learning a lot about the costs of

1 Special Education now and we're even beginning to know
2 something about the outcome from Special Education but
3 what we have very little knowledge of is the processes
4 or practices that connect those resources to the
5 outcome. And by processes, again, I mean, in the very
6 general sense, everything and anything including
7 teaching and classroom methods, curriculum reform,
8 resource allocations, service provision, or even
9 organization of structure that can result in improved
10 outcome for kids with disabilities.

11 Part of this basic question is about
12 quality and efficiency and I can say the same thing in
13 two different ways, the same question that I can pose
14 to you in two different ways. The first is, how can
15 we improve outcomes for kids with disability at the
16 same cost; or say the same thing a little bit
17 differently -- as an economist, I think this way --
18 is, how can we provide the same outcomes at lower
19 cost? That is, are there better ways to provide free
20 and appropriate public education, as well as related
21 services, for kids with disabilities.

22 We know little about this, again,

1 especially in relation to the costs or savings from
2 implementing educational innovation within Special Ed.
3 In fact, there might not even be one process, one
4 factor, or even a group of processes, that lead to
5 improved outcomes but it could be a continuum of
6 processes that actually, in the end, come down to what
7 happens in the individual classroom or what the
8 individual teacher does.

9 Another issue to consider when linking
10 the financing of Special Ed to outcomes is to look at
11 the type, quality, and delivery place of supplemental;
12 and related services. These are things like
13 transportation, medical services, assessment, therapy,
14 evaluation, and so on. And previous studies have
15 shown that these costs can range from between 19 to 46
16 percent of total Special Education costs, depending on
17 how the calculation are made. One area for the
18 future, then, would be to examine which of these
19 related services are being received by which kids in
20 what placement setting and how all of these services,
21 and the costs of these services, relate to outcomes,
22 and what kind of model can be developed to analyze

1 that.

2 Another question, of course, is who pays
3 for these services. Prior to P.L. 94-142, a number of
4 independent agencies, health agencies, vocational
5 agencies, have paid for these services and, when
6 Special Ed came in, how the Special Ed absorbed more
7 and more of the cost of these services.

8 So, if there are individual state
9 agencies providing these and they are not paid for by
10 State directives for Special Education, or if there
11 are private third-party payers, are these services
12 being coordinated and is there cooperation between the
13 providers to provide the best possible combination of
14 related services to kids with disabilities?

15 All of these issues raised in testimony,
16 again, try to relate the finance of Special Ed to
17 outcomes. You need to keep in mind, however, that
18 outcomes for Special Ed, for kids with disabilities,
19 depending on their disabilities, may differ a lot from
20 those in regular education in subtle, and sometimes
21 not so subtle, ways. For example, for some kids with
22 disabilities, just being able to live independently

1 could be a goal and these are picked up by the normal
2 measurement and assessment processes we have.

3 As another example, for some kids where
4 assessment requires a written exam or -- if these kids
5 aren't provided the appropriate services or enough
6 time to read the exam, then the result might be biased
7 and we might not really measure what we're trying to
8 measure. So we need to keep in mind that, for kids
9 with disabilities, sometimes, even though ... outcome
10 assessment to those in regular ed is a goal of the
11 1997 amendments of IDEA, we need to keep in mind that
12 sometimes the goal is different. And all of these
13 things should be in these kids' IEP; but you need to
14 keep it in mind.

15 Finally, I would be remiss if I didn't
16 note that many of the issues I have just raised,
17 assembling accurate data, determining the best
18 educational practices, and even figuring out what
19 outcomes should be for Special Ed all require study
20 and research. Hence, continued revenues are required
21 to support the research to validate the most
22 successful implementation of Special Ed.

1 So let me summarize the recommendations I
2 have here, that came out of this. First, we need to
3 carefully assess disaggregated recent actual cost data
4 across and within disability, type of service
5 received, placement, geographical region, mode of
6 delivery, and student characteristics, among other
7 things.

8 Second, we should continue to search for
9 the best educational processes and innovations to
10 achieve results for students with disabilities. We
11 should study in more detail the role and alternatives
12 for optimizing the use of supplemental and related
13 services. We should carefully consider the rate of
14 outcomes from Special Ed; and, finally, we need to
15 support the research and study costs that validate
16 Special Education success.

17 Let me add one more thing. And, you
18 know, we're talking about all these arcane finance
19 concepts -- and I hopefully didn't mention any arcane
20 concepts here -- we need to keep in mind that we're
21 still talking about real kids with real disabilities
22 who have real needs; and doing the right thing means

1 obtaining the best results.

2 And I'll be happy to answer any questions
3 you have, as well.

4 DR. GILL: Thank you.

5 Commissioners?

6 Well, let me just introduce each of the
7 Commissioners to you a little bit.

8 To my far left, in the corner, Bryan
9 Hassel; next to Bryan is David Gordon, and he's a
10 California person, the Sacramento area; next to David
11 is Alan Coulter, Alan Coulter is from Louisiana State
12 University Medical Center; Todd Jones, Executive
13 Director of the Commission; I'm Doug Gill, State
14 Director of Special Ed in Washington State; next to me
15 is Jay Chambers from the Center for Special Education
16 Finance; and Troy Justesen, who is staff to the
17 Commission, as well. Just so you folks kind of know
18 who we are.

19 I guess I could start with the first
20 question. And my first question is probably for both
21 of you but I'll start with Mr. Freund since he was
22 first up this morning.

1 And the question is, how would you define
2 excess costs and what particular elements would be
3 part of that definition?

4 MR. FREUND: Well, excess costs are costs
5 over and above the cost of regular education. In our
6 funding formulas in the state, we have excess costs
7 for transportation, for bilingual, for learning, it's
8 just all those excess costs; it means they are on top
9 of regular education.

10 Now, when I was talking about excess
11 costs with respect to Special Education, I did not,
12 and do not, include transportation costs as part of
13 the .9309 that I'm talking about.

14 Does that answer your question?

15 DR. GILL: Well, would there be any other
16 elements? I mean, if one of the elements certainly is
17 the basic education unit, another element is the
18 additional or excess costs on top of that basic
19 education unit, so collectively they are the funding
20 base for Special Education. Are there any other
21 elements that you think the Commission should consider
22 in the context of excess costs determination?

1 And I think one of the things that
2 someone mentioned was the percentage of the population
3 as a parameter of some sort of formula, too.

4 DR. CHAIKIND: Well, in my -- I've been
5 told recently that the word "excess costs" is going
6 up. I think that Jay mentioned that. But, in my
7 mind, if you look at the cost of educating the kid in
8 regular ed with no disability, how much is that cost,
9 and then you take the average cost of a typical kid
10 with a disability in Special Education and you take
11 the difference; to me, that would be the excess costs.
12 How much more are you spending for this kid because we
13 have a Special Education program? And, if I'm
14 remembering the data right, the total last year or the
15 year before was about \$12,600 a kid in Special
16 Education on average; the cost for a regular
17 education, something like \$6600. Therefore, the
18 excess costs, the way I would define it, would be
19 something like \$5900 that would get you that 1.9
20 ratio.

21 DR. GILL: Okay.

22 DR. CHAIKIND: And that includes

1 everything, I think, including some services from
2 other programs that might be within that number, as
3 well.

4 DR. GILL: Okay. So what I think I hear
5 both of you saying is that a student identified as
6 Special Education does not in any way dilute the fact
7 that they are regular education or general education
8 students first. So, when you say excess costs, I
9 think I've heard both of you say that it's in addition
10 to the costs of providing a basic education. So you
11 take the basic education costs times a factor -- let's
12 say it's 1.9 or whatever it happens to be, somewhere
13 between 1.9 and 2.3 if you believe the studies over
14 the last several years -- and then subtract that basic
15 education unit from that total number and that derives
16 excess costs in your minds; is that accurate?

17 DR. CHAIKIND: In mind, yes. Again,
18 these kids might not be in a regular education
19 classroom but, if they had no disability, it would
20 still cost that amount.

21 DR. GILL: That's correct. They're still
22 enrolled in the school district; are they not?

1 MR. FREUND: (Nods)

2 DR. CHAIKIND: (Nods)

3 DR. GILL: Okay.

4 MR. GORDON: I have a question.

5 DR. GILL: David?

6 MR. GORDON: Thank you, Chairman.

7 Mr. Freund, you mentioned that, in your
8 state, you put the cap on, I think you said in 1995
9 and, quote, basically stopped or slowed down, and now
10 it's begun again. Help me understand, in the behavior
11 of school districts, what is going on now to make it
12 rise again? Because I think it ties back to our other
13 witness' point about the interaction of regular ed and
14 Special Ed being very important in all of this.

15 MR. FREUND: Well, to start with,
16 whenever we change our funding formulas, it's kind of
17 like districts step back, it's kind of like a wave
18 going backwards, you know, before it comes -- hits the
19 beach. So there was a pause while school districts
20 figured out what the new formula was and how they
21 could operate within the constraints of 12 percent.

22 I don't exactly know what now is causing

1 the increase in Special Education enrollment. I will
2 tell you that the legislature, now with federal funds,
3 has increased the percentage that it will fund next
4 year; it's going to be around 12.3 percent of total
5 enrollment.

6 So, as to the reasons -- and I'm going to
7 talk about this a little later -- it may be that some
8 underachieving students are now being put into Special
9 Education because of the new No Child Left Behind Act
10 and the '97 changes in ESEA and our own State
11 adequate-yearly-progress requirements. And then there
12 is a large financial incentive to put students into
13 Special Ed. We lay out about a little over \$600,
14 maybe \$650 per student for remediation. The amount
15 that is provided by the state for Special Education is
16 six times that amount. The school districts don't
17 lose their remediation money if they put a student
18 into Special Education.

19 So I haven't studied this to see which
20 category of Special Education is increasing; and maybe
21 Dr. Gill could talk about that. But it may be the SLD
22 population but I'm -- we haven't studied that and I

1 rather suspect that our legislature will start
2 studying it next year because we're facing another
3 billion dollar shortfall in our budget.

4 MR. GORDON: Thank you.

5 DR. GILL: Bryan?

6 DR. HASSEL: Dr. Chaikind, one of the
7 points in your testimony, which I've also read in
8 other places I think, is that, if you look at
9 increases in Special Ed costs over time, they're
10 completely driven by changes in population rather than
11 changes in the costs of educating particular students
12 with particular characteristics. And I wonder if you
13 could comment on that. Is that, in fact, your view of
14 the evidence?

15 And, secondly, are there any exceptions
16 to that overall generalization? Are there certain --
17 do you know if there are certain kinds of disabilities
18 for which costs per student have been rising or going
19 down that go away from that general trend?

20 DR. CHAIKIND: Well, I think I said that
21 it appears that that's how costs are growing. That is
22 based on the data of 1.9 to 2.3, back to 1.9 again.

1 It seems to show that the costs appeared, on average,
2 is about the same as it's been over this period.

3 But, of course, there are variations by
4 disability and by the nature of the disability, by the
5 severity of the disability, by the service need; and
6 part of the variation in the cost of the time is that
7 we're getting different shares of kids with different
8 disabilities within the program and some high-incident
9 disabilities are lower-cost disabilities and,
10 therefore, the average cost could go down because of
11 that, for example.

12 So there's all kinds of variations going
13 on underneath the averaging. So I don't think it's
14 only population, but those who are identified as
15 having disabilities and, if identity is becoming more
16 prevalent, then, of course, it will go up for that.

17 Does that answer your question?

18 DR. GILL: Jay?

19 DR. CHAMBERS: Well, I'm always pleased
20 when I hear a researcher tell us that one of the
21 recommendations is that we need more research. Being
22 a researcher myself, I'm always excited at that

1 prospect that keeps us employed. It also means that
2 the issues are quite complex and there's much to do
3 and we're never going to really resolve some of these
4 issues once and for all.

5 I'm glad to hear Steve's comments related
6 to expenditures versus costs. As an economist, I
7 think those two terms, to the general public, probably
8 are somewhat synonymous but we've come to use the word
9 'cost' to replace 'expenditures' and, in fact, they
10 are two different things. They are related to one
11 another; cost implies we know something about the
12 outcomes, that we're providing equal opportunity or
13 equal outcomes in some way, or that we can benchmark
14 the outcomes in some fashion and say, "What does it
15 cost to provide services to a particular kind of
16 student?" Or it says, "How much more does it cost to
17 provide..." something, a set of outcomes that's
18 similar to some other group, let's say the average
19 regular education student.

20 In fact, all the studies that have been
21 done in the past, and almost every study that's done
22 at the state level, is talking about expenditures,

1 which tells us what districts are spending for
2 different kinds of children but really doesn't give us
3 information to help to determine what it really costs
4 to provide services to a particular kind of child.

5 In comments regarding Bryan's --
6 Commissioner Hassel -- excuse me -- his comment --
7 disability doesn't really tell us much about pupil
8 needs. Dr. Chaikind referred to that in his comments.
9 The amount of variants that can be explained in
10 expenditures related to disability is pretty small.
11 We need to know more about individual pupil needs.

12 But I'll stop my comments at that point
13 and get on to a question.

14 Dr. Freund, I guess I'd like --

15 MR. FREUND: -- a wish -- it's not Dr.
16 Freund; I wish it was, but --

17 DR. CHAMBERS: Oh, excuse me.

18 MR. FREUND: It's Mr. Freund.

19 DR. CHAMBERS: Mr. Freund -- thank you.

20 MR. FREUND: Thank you.

21 DR. CHAMBERS: I guess I'd like to hear a
22 little bit more about how the Safety Net funds program

1 operates in the state. You said it was three percent
2 of the funding for Special Education, did you mean?
3 Is that -- did I understand that?

4 MR. FREUND: Yes, it's three percent of
5 the state funding for Special Education.

6 Before I answer your question, I did
7 intend to address the question of costs versus
8 expenditures and neglected to do so when I was talking
9 about the recommendations. Because, in fact, our 1981
10 formula was based on costs. The 14-categories of
11 disability, that was based on a two-year study which
12 examined what were all the elements that were needed
13 to provide an education for each category of
14 disability. And so that included related services,
15 psychologists -- and so -- the whole gamut.

16 And so it's only when I was talking about
17 the recommendations and I think, at that point, what
18 you're faced with is you don't have costs -- if you're
19 looking at different states' data, you have
20 expenditures and you don't even know what is in those
21 expenditures. You don't know if they're clean
22 expenditures -- and by 'clean' I mean excess costs.

1 They may include all sorts of things; it depends on
2 the sophisticated nature of states' accounting
3 systems.

4 With respect to your question about how
5 does the Safety Net work, we established a Safety Net
6 Committee and it's composed of various school district
7 personnel, so that we have school district
8 superintendents on this committee, educational service
9 district personnel, we have curriculum experts,
10 finance experts, state auditor, and Dr. Gill; and they
11 are supported by SBI staff (phonetic).

12 So this Committee's task is to figure out
13 how to allocate the about three percent of dollars
14 that the legislature appropriates. And I have to say
15 that, since inception of the Safety Net, not all of
16 the funds have been allocated, only about two-thirds.
17 I think somewhere around two-thirds has been allocated
18 in each year.

19 So initially there was great fear that
20 the \$12 million that was put into one of the Safety
21 Nets -- and we have a couple -- that that wasn't going
22 to suffice. And what -- as I recall, initially, I

1 think we started at \$15 million and then, because the
2 funds languished, the legislature reduced the amount
3 to \$12 million. And we also have a high-cost Safety
4 Net; so the combination of the two is about three
5 percent of our total funds.

6 And this Safety Net Committee meets, oh,
7 about every quarter; and school districts submit
8 applications consisting of all sorts of data that --

9 and there are forms and the like. And we meant to
10 bring
11 the forms with us so you could see exactly how it
12 operates.

13 And basically what it -- what the data that
14 the school districts are required to submit compares their
15 prior year expenditures to the current year's expenditures
16 for which they are requesting money. And the question
17 that the Safety Net Committee deals with is what is it
18 that -- if you lived within the state formula last year,
19 what is it that causes you not to be able to live with it
20 this year, what factors. And they request an explanation.

21 And it's difficult. I'd say, having sat in
22 on a lot of those meetings, it's difficult to determine

1 how legitimate their request is. But as a jury of school
2 district peers, they do have to convince this Committee;
3 and, in watching this Committee, I'd have to say they're
4 pretty tough.

5 DR. CHAMBERS: How would you change it? I
6 mean, based on what you've seen -- I mean, is it -- do you
7 feel it's operating effectively, is it something you would
8 recommend to somebody else?

9 MR. FREUND: I happen to be in a unique
10 position because I get to write the State's budget. There
11 is another House and we do work together, but I do get to
12 make recommendations on how to make it more efficient; and
13 I would say to you that the Safety Net hasn't -- over the
14 years, there have been a number of changes and, in fact,
15 the Safety Net is changed for next year. Where we used to
16 have two Safety Nets, now we're only going to have one
17 Safety Net. So the high-cost Safety Net portion has been
18 folded in into the regular Safety Net.

19 And, when I say two Safety Nets, the
20 calculations for both were relatively the same but they
21 had different fund sources. We have always funded the
22 high-cost Safety Net piece from federal funds.

1 DR. CHAMBERS: The high -- did you say the
2 high --

3 MR. FREUND: High-cost, high-cost student
4 Safety Net piece has been funded from federal funds. And
5 then the Safety Net for districts that have unmet needs,
6 that is -- and, when we say unmet needs, we mean after
7 they have exhausted their regular education money, their
8 State Special Education money, any other monies that the
9 State provides, the federal money, after that -- so you
10 take all the revenues and then you stack it up against
11 expenditures, if there is a deficit, then they come in and
12 ask for the deficit and they have to present clear and
13 convincing reasons for why it is that the State should
14 give them money.

15 DR. CHAMBERS: How do you define high-cost?

16 MR. FREUND: There is a threshold and it's
17 \$15,000. And you understand that we're providing about
18 \$8,000 -- a little less than that -- for Special Education
19 students, and that's a combined State regular education
20 money and the Special Education money. So it's about
21 \$8,000, a little less than that. And a threshold of
22 15,000 has been set and that is -- the reason for that is

1 that we have a formula that's based on .9309 and so we
2 have an array of students within the formula, that is
3 high-cost students and low-cost students. And we know
4 that a large percentage of the students that are
5 identified as Special Ed are -- tend to be lower-cost
6 students, for example, SLD and CD, communication disorder,
7 those do not cost as much as some of the -- for instance,
8 multiple disabilities.

9 So it's assumed that every school district
10 will have some high-cost students and that the high cost
11 of those students will be averaged out over all the low-
12 cost students. So we've adopted a threshold of \$15,000,
13 which is almost twice what is provided under our formula.
14 And, once school districts can show that they have that --
15 and that have to figure out one other thing is that they
16 have to show financial need, as well. That is, just
17 merely having a high-cost student doesn't get you a penny,
18 you must also show that you need the money, that is, that
19 you cannot live within the state and federal dollars that
20 are provided.

21 And school districts are also -- they've been
22 providing local funds, they are expected to continue to

1 provide their local funds because our funding formulas are
2 not intended to replace local funds.

3 DR. CHAMBERS: Wouldn't what you just
4 described have a differential impact on districts that
5 have a greater capacity to provide services in the first
6 place, high-wealth versus low-wealth school districts?

7 MR. FREUND: Well, there may be some
8 variation in the amount of local funds that are provided,
9 but our state has a levy lid in place and so we do not
10 have the range of differences in our state that other
11 states have. Our levy lid allows school districts to
12 collect 24 percent of the state and federal funds that
13 they receive. We do have some districts that are
14 grandfathered at slightly higher amounts but the range of
15 disparity in terms of dollars between school districts is
16 about a maximum of 33 percent.

17 And, when I talk about it that way, I should
18 let you know that it's probably not appropriate to talk
19 about disparities in terms of dollars in our state because
20 we have resource allocation formulas, or an input formula.
21 And the inputs are based on staffing costs and it is
22 possible that you could be comparing a district with

1 relatively inexperienced staff with a district that has,
2 say, all Ph.Ds. So, if you had a district like that,
3 disparity, in terms of dollars -- if you were looking at
4 dollars, it would be a factor of a hundred percent
5 difference.

6 But we don't call that a difference because
7 we have what we call a staff mix factor so we allocate
8 based on school districts experiencing education of their
9 staff.

10 I probably complicated this a little too much
11 but --

12 DR. CHAMBERS: No, you've stimulated more
13 questions but I'm going to relinquish my time here.

14 DR. GILL: David, you've got a follow-up
15 question that you'd like to ask?

16 MR. GORDON: Thank you, Chairman.

17 Just as a follow-up on the Safety Net, I
18 think I understand but help me.

19 A high-cost student would be, say, a child
20 you have to send to a private school, a residential school
21 or --

22 MR. FREUND: Yes.

1 MR. GORDON: -- something like that. Now, on
2 the non-high-cost group, as I understand the system, the
3 district comes in, when at the end of the year, and says
4 basically, "We ran out of money."?

5 MR. FREUND: It would be -- they can do this
6 at the beginning of the year; it's based on their budget.

7 MR. GORDON: Okay, based on the prior year,
8 then?

9 MR. FREUND: No, it's based on the current
10 year. They have a current year budget, they know how much
11 revenue they're going to get, they know what they budgeted
12 for, they hired staff and --

13 MR. GORDON: Okay, so help me understand.
14 How does the Committee, or whomever, validate that they
15 haven't simply inappropriately over-identified? Is there
16 any cross-check to make sure that their assertion is
17 correct?

18 MR. FREUND: Yes. The way that that's
19 validated is based on comparison over the prior year. So
20 it's assumed that, in the prior year, one hadn't over-
21 identified. So it's a temporal calculation, let's say,
22 comparing one year with the next year. That's the base

1 year --

2 DR. GILL: Plus, I think, just to add to
3 that, that you know what the allocation is; it's
4 essentially 12 percent of your K-12 population. So one of
5 the reasons that a district could come in for Safety Net
6 is to say, "Well, our percentage is now 13, 13 and a half
7 percent." and that's a difference than last year.

8 So the question becomes, why is that a
9 difference than last year's, is that a difference in any
10 kind of practice that you, as a district, has engaged in
11 or, in districts of -- and we have very small districts in
12 Washington State with 50 to 100 kids -- if you had two
13 kids, there is your difference.

14 So, you had to come explain why you're
15 spending more this year than you're going to get in
16 revenue and what those reasons are attributable to, it
17 could be a percent difference, it could be a difference in
18 the change in the funding formula from '95 that's a
19 carryover, or it could be some other factor that is beyond
20 the control of the district, or it could be one or more or
21 an aggregate of individual high-cost students.

22 I think, as Bill pointed out, that the issue

1 is, can the district establish, if need be, some sort of
2 threshold comparison of budgets to actuals and then,
3 second, what is the rationale for that difference.

4 Does that help clear that up?

5 MR. GORDON: Yes, thank you.

6 DR. GILL: Bryan?

7 DR. HASSEL: If you look at the amount that
8 you spend out of the Safety Net funds, do you have a sense
9 of how much of it goes to districts that say, "We're over
10 the 12 percent, we have a greater proportion of kids than
11 12 percent." versus "...we have a higher cost per student
12 than you told us we would."?

13 MR. FREUND: Actually, I have a piece of
14 paper that I brought with me that's got that on there.

15 But maybe, Doug, you can --

16 DR. GILL: Go ahead.

17 MR. FREUND: I'm going to have to look for
18 it; maybe I can field another question while I'm looking
19 for the piece of paper.

20 DR. HASSEL: The other question I had was
21 whether -- you say you're not spending the full amount of
22 funds. Are you not getting requests for the full amount

1 of funds or are you turning down requests that are not
2 legitimate?

3 MR. FREUND: We do have a -- I don't know if
4 we had a request for the full amount of funds.

5 Let me see here. I don't have it; I didn't
6 bring an annual number with me.

7 At any rate, I don't think that we've ever
8 had the full amount requested for the state-funded piece
9 of the Safety Net, but our high-cost Safety Net has
10 exceeded the appropriation amount that the legislature
11 had; and it is growing by leaps and bounds.

12 And the way that the budget was crafted was
13 that the legislative appropriation of federal funds was a
14 minimal appropriation of federal funds and the agency then
15 had to come up with all other available federal revenues
16 if Safety Net awards exceeded the appropriation amount.

17 So that piece of the Safety Net has not been
18 capped. And for next year, by the way, we're going to all
19 federal funds for our Safety Net next year and it is not
20 -- the Safety Net is not capped. That is, the agency will
21 -- if they award more than -- if the Safety Net Committee
22 awards more than what has been appropriated, then the

1 agency is to apply all available federal funds,
2 discretionary federal funds, to fill the hole.

3 DR. GILL: Troy, do you have a question?

4 MR. JUSTESEN: Before I ask the question, I
5 want to thank Mr. Freund for coming because he was under a
6 great deal of pressure with the State legislature, as you
7 know, Doug. And, every day he would call and say, "I
8 don't think I can make it but I want to make it..." so
9 let's leave him on the schedule.

10 And I want the members of the Commission to
11 know that he went through a great deal of effort to make
12 sure that he could be here, including no sleep.

13 DR. GILL: Troy, we need you to talk into the
14 microphone.

15 MR. JUSTESEN: Okay, how's that; better?

16 DR. GILL: That's great.

17 MR. JUSTESEN: You mentioned, and I'm not
18 sure I was following you very well, Bill, and I'm curious
19 about your reference to regional determination for safety
20 nets on a larger national scale? Was I following what
21 your comment was? And, if I were --

22 MR. FREUND: Yes.

1 MR. JUSTESEN: -- elaborate on that model.

2 MR. FREUND: Well, it occurred to me that
3 you're facing a large problem, which is, if you're trying
4 to figure how to lay out federal funds and if you're
5 trying to use a 40-percent number, what do you base it on?

6 And the question is, can you come up with
7 cost or expenditures? And I think that, ultimately, you
8 end up having to use expenditures if that's what you're
9 going to try to do.

10 You know --

11 MR. JUSTESEN: Regionally, though, what
12 reason would there be --

13 MR. FREUND: Well, because there may -- if
14 you do establish a safety net, I rather doubt that you can
15 make it work on a -- that you'll have a schematic for how
16 it's supposed to work. You can't sit there and quantify
17 this thing, it's -- what's the word I'm looking for, Doug?
18 -- it's not quantifiable, it's kind of like --

19 DR. GILL: Discreet.

20 MR. FREUND: Well, that's nice of you to say
21 that but I -- it takes a lot of work to make these
22 determinations; there's no yardstick. And so the idea of

1 having a national safety net committee to make these
2 determinations means that probably it would be operating
3 year around and it would be a lot of work.

4 So, rather than having a number of people
5 doing this full time, I think that if you broke the task
6 up into regions and assigned certain limited pots of
7 money, people in the region would know that they couldn't
8 allocate it all, say, to one state because then there
9 would be nothing left for the others.

10 It also gives you an opportunity to put
11 school district personnel, maybe fiscal people, on such a
12 committee. So that's why I say regional.

13 Our Safety Net Committee spends -- what is
14 it, two days every quarter? There's quite a bit of
15 homework that our Safety Net people do -- I mean a lot of
16 homework, particularly with the high-cost Safety Net,
17 because what they're doing is reviewing IEPs for validity
18 and then they're looking at the services that are being
19 provided. And so we have program personnel on the
20 Committee that are able to make those kinds of
21 determinations and then the school districts show up and
22 they have to justify -- they have to face an array of

1 questions from the Safety Net people as to why it is that
2 they requested the money.

3 MR. JUSTESEN: Are you saying that this is a
4 recommendation for consideration for the members of the
5 Commission?

6 MR. FREUND: I think that -- I was talking
7 about what you would fix, here, your reimbursement rate
8 on. And I think that, ultimately, you can't use -- I
9 don't think that you're going to be able, within your time
10 constraints, to establish costs so you're going to have to
11 go off of expenditures. The problem is that I don't think
12 that you know what expend -- what excess costs
13 expenditures are because not all state accounting systems
14 are the same.

15 And that is why I said to use some sort of a
16 national average because, otherwise, I -- you know, the
17 more sophisticated the accounting system -- suppose you're
18 given -- somebody is giving you a full cost number as
19 opposed to an excess cost number, then, if you're using
20 costs then you are rewarding the state that gave you that
21 kind of number for allocation purposes.

22 So I think, in the end, you have to do the

1 kind of thing that we do when we do budgets, which is to
2 generalize, hang your hat on something, and then, in our
3 case, we established the Safety Net so that in case that
4 it doesn't work properly for everybody, there is a safety
5 valve.

6 MR. JUSTESEN: May I ask one more question?

7 DR. GILL: Go ahead.

8 MR. JUSTESEN: Do you believe it is the role
9 -- it should be the role of the federal government to have
10 a safety net, then -- I'm asking both of you this question
11 -- for kids with the most severe disabilities?

12 DR. CHAIKIND: Well, I don't have -- having
13 not seen it, so I was just --

14 MR. JUSTESEN: Okay, I don't have to --

15 DR. CHAIKIND: -- I don't know what the role
16 of the federal government is; that's something that needs
17 to be based on what you can and want to afford in policy
18 questions.

19 MR. FREUND: I don't think that it's an
20 absolute necessity. In our state, we do have a federally-
21 funded Safety Net for high-cost students. I think that
22 you could make provision for that for states, you know,

1 within your federal funds allocation; I just suggest that
2 that's what they do.

3 DR. GILL: Commissioner Coulter, you had a
4 question?

5 MR. COULTER: I think that a question that I
6 had relative to driving costs, you already responded to in
7 some respects. But just let me make certain that I'm
8 clear in what your answer was.

9 I think a concern often arises in terms of
10 having the right children receiving the right services,
11 certainly as it relates to Special Education. I think
12 there is a concern, also, about, in some instances,
13 implicit incentives to identify more children.

14 As I understood it, the mechanism that you
15 use in Washington State is to compare increase from one
16 year to the next. Is there any other mech -- are there
17 any other mechanisms such as interaction with a monitoring
18 system for determining that these children really were
19 appropriately identified, or other kinds of audit
20 procedures that are used to ensure -- I guess my concern
21 is that gradual increases year to year would not
22 necessarily, in a year-to-year analysis, depict that

1 something was going -- something inappropriate might be
2 occurring. But there could certainly be a head-hunt
3 mentality that's operative over a number of years to drive
4 up the costs.

5 How would you see that as being prevented?

6 MR. FREUND: You know, one of the reasons why
7 I couldn't answer what's happening with our Special Ed
8 program in terms of what types of disabilities are
9 increasing is because we don't use categories any more and
10 haven't since 1995 so -- and the only report that we have
11 on disability types is -- I think it's a federal report;
12 but I don't remember the form number but it's submitted.
13 Is it 10 -- is that a federal form number?

14 MR. COULTER: Yeah, it's a federal child
15 count.

16 MR. FREUND: Child count. That's the only
17 thing that's available on the types of disabilities.

18 But, to answer your question more directly,
19 we do have that Special Ed audit team that we're funding.
20 Our state is spending about \$800,000-and-some a year on
21 this Safety Net team. The Safety Net Committee
22 periodically sends them out to look at school districts,

1 particularly if there is any sort of a question.

2 The fact that there is a Safety Net audit
3 team, or the possibility that this audit team can come to
4 the school district, has resulted in school districts
5 being much more careful about how they put together IEPs
6 and who's on IEPs.

7 They have uncovered, and continue to uncover,
8 by the way, an error rate in the reported Special
9 Education students. That is, there may be a problem with
10 the IEP or the students aren't being provided specially-
11 designed instruction, or else they're being provided the
12 wrong instruction -- that is, what they're being provided
13 has nothing to do with the IEP.

14 The error rate that they've been looking at
15 has been dropping slightly, but very slightly, on some of
16 these matters. But the preparation of the IEPs,
17 themselves, has improved markedly. So that's the only
18 audit activity that we have.

19 MR. COULTER: As you think about those
20 special audit -- you said they could send them out if they
21 want to. Of the districts that you have, and I'm aware,
22 you know, that you have a lot of districts in Washington

1 State, a lot of small districts, what's the proportion of
2 districts that have actually been visited by this special
3 audit team?

4 MR. FREUND: I think that -- maybe about 50,
5 60 over the course of five years.

6 Is that about right, Doug? I think it's --

7 DR. GILL: That's about right; I'd say less
8 than 20 percent of the applicant districts have actually
9 been visited.

10 MR. FREUND: Well --

11 MR. COULTER: Over a period of years.

12 MR. FREUND: Yes.

13 MR. COULTER: Okay.

14 MR. FREUND: Yes, but -- so this audit team
15 has had a deterrent effect on certain practices out there
16 and has resulted in certain improved practices just simply
17 because they not only can go audit Safety Net school
18 districts, they can also go audit other school districts.

19 And this audit team, by the way, has been
20 training our regular state auditors that go out to school
21 districts, so the nature of our audits has changed a
22 little bit.

1 MR. COULTER: Let me just ask both of you a
2 different question, kind of change the subject a little
3 bit.

4 Both of you, I think, have spoken to the
5 issue of trying to get a better idea on specific costs,
6 not just a general excess cost. One of my concerns is
7 that the type and quantity of information that we collect
8 now about Special Education, both at state levels and
9 federal levels, is relatively gross. I mean, we don't
10 have a whole lot of information.

11 Do you have any recommendations on how to
12 improve that data collection system so that we would be
13 able, over a period of time, to get a better idea of
14 specific costs and where those costs might be coming from?

15 MR. FREUND: A later presentation, I was
16 going to make some recommendations and you're not leaving
17 much to talk about later on.

18 MR. COULTER: No, that's fine. If it's
19 current events, I'll take it. So --

20 MR. FREUND: But it has to --

21 MR. COULTER: -- I can wait.

22 MR. FREUND: But it has to do with the

1 preparation of the IEPs and I think that they need to be
2 standardized and improved so that you can tell what you're
3 looking --

4 DR. CHAIKIND: Let me add to that.

5 In about 1988, OSEP stopped the quantity
6 space to report Special Education expenditure data at a
7 national level. Even if -- and the reason was -- part of
8 the reason was that no state reported the same thing. So
9 you had a column of numbers where there were variations
10 all over the place. So, therefore, the only reliable data
11 we have are from these special studies we commission every
12 10 or 15 years.

13 If there was something like a general
14 accounting handbook for Special Education where you
15 provide a uniform way of reporting data, then it's
16 possible OSEP can, on an annual basis, begin to collect
17 these data again. So that might be another idea to
18 consider.

19 MR. JONES: Bill, I had a question.

20 Under IDEA there is an obligation for smaller
21 districts who don't receive enough federal funds to use
22 them in what's called a constructive way, at least as

1 Congress has put it; they are obligated to combine their
2 resources with neighboring districts and, in fact, combine
3 their programs. I assume there are some smaller districts
4 in Southern Washington, Eastern Washington, who might need
5 that -- or have that obligation. I'm curious if you could
6 comment about that.

7 Does it have -- from two perspectives, one
8 is, what is the effect on costs? Does it tend to increase
9 or decrease costs or have no effect; and, two, is there
10 any apparent affect on service delivery and service
11 quality?

12 MR. FREUND: You know, we've had one study
13 after another trying to figure out whether there is any
14 difference in quality from one program to another. And,
15 frankly, we're not able to capture that with existing
16 data.

17 We do have one co-op in Southwest Washington
18 that's operated by an educational service district and
19 they -- I think they have over 15 districts that are
20 involved in it, I think maybe required to have at least 15
21 districts in it in order to have that co-op.

22 And, again, we haven't studied it but I'm

1 under the impression that they are able to offer services
2 to students that individual school districts could not
3 offer because they are able to aggregate expertise, you
4 know, special personnel they are able to attract that
5 small, outlying school districts could not possibly get.

6 I'm not aware of other school districts that
7 are in Eastern Washington, for instance, that are sharing
8 Special Ed service, but they may be, I'm just not aware of
9 it. I know some of them share business managers, they
10 share superintendents --

11 MR. JONES: Thank you.

12 DR. GILL: I have a question, Steve, for you.

13 You mentioned something that -- the notion
14 that, prior to 94-142, we had a lot of service sharing and
15 things like that and we got this first-dollar
16 responsibility notion out of 94-142.

17 I was interested if you had seen any
18 differences between -- in any of your studies, between,
19 like, Part C type of approaches relative to funding versus
20 Part B type approaches where, in Part C, you have the
21 individual family services plan and you don't have the
22 same first-dollar responsibilities that you had in Part B.

1 In other words, under Part C, a school district is a
2 service provider, one of an array of service providers as
3 opposed to being sort of the sole service provider under
4 Part B.

5 And I was just wondering if, in any of your
6 studies or in any of the economic work you've done
7 relative to Special Education, has there been any
8 differentiation between Part C type services for students
9 age birth to three versus the Part B type services, three
10 through 21?

11 DR. CHAIKIND: Well, I'm trying to remember.
12 There was, in one of the recent annual reports, some data
13 on Part C. And, if I recall, they said there was some
14 kind of consistency between the shares of services
15 received under Part C and Part B.

16 And Part C doesn't share as many cases as
17 Part B but Part C tends to start at earlier age with
18 developmental disability and then that share, over the
19 next couple of years, moves into communication
20 disabilities. And then, as you get into Part B, the older
21 kids, it broadens a lot.

22 So, if I recall, those are what the data

1 show.

2 DR. GILL: But you're not aware of any
3 national studies or you've not participated in any studies
4 that compare costs between Part C and Part B?

5 DR. CHAIKIND: Not to my knowledge. I think
6 your data collects some of that but I haven't seen any
7 results on that yet.

8 DR. GILL: Jay?

9 DR. CHAMBERS: I should mention to you, Doug,
10 that we're in the process of working -- or completing the
11 Part B study, but also in the Part C study. But we're
12 just beginning that process right now where we've
13 collected most of the data for the expenditure analysis;
14 but we are at very early stages and probably a number of
15 months away from any conclusions or reports on that, on
16 the Part C.

17 DR. GILL: So to be determined; huh?

18 I mean, I think people have raised the
19 question, does a more collaborative service delivery model
20 such as Part C, which I think is kind of a follow-up to
21 what Todd was sort of asking, too, with the cooperative
22 type programs, is that more or less cost-efficient than

1 kind of a primary service provider model, which is
2 obviously Part B?

3 DR. CHAIKIND: I think the question is if
4 earlier and earlier intervention saves money later with
5 reduced needs to services at a later age.

6 A while ago I took a look at the relationship
7 between low birth rate and Special Education costs and, in
8 that study, we've showed that, if even a small percent of
9 women who have low birth rate children receive appropriate
10 prenatal care, then you could save Special Education
11 money. So I think even earlier intervention, before
12 birth, could help, as well.

13 So I think that's a legitimate question.

14 DR. GILL: Okay.

15 David, do you have a question?

16 MR. GORDON: Thank you, Chairman.

17 Our third panelist, who I understand
18 unfortunately couldn't be here, had a couple of ideas in
19 her testimony, I wanted to get your reaction to them, for
20 cost containment.

21 One idea was having the federal government,
22 through IDE, set an expected level of service defined for

1 certain high-cost disabilities along with a clear
2 delineation of what are educational versus medical
3 services; that's idea number one. Idea number two is a
4 cap on legal fees.

5 How would you react to those two ideas?

6 MR. FREUND: Well, we've had -- on the latter
7 question, we've had school districts asking the
8 legislature to provide a sort of a safety net approach to
9 legal fees, that is, to have the State share in the cost
10 of the defense. It's probably a very tough thing to do
11 politically for our legislature, and particularly to put
12 limits, since that's been a very hot topic in our
13 legislature with respect to torts. The State has been
14 sued recently, and has lost a series of cases that run
15 into the tens of millions for misappropriate treatment of
16 kids in foster homes and several other things; so we're
17 being eaten alive.

18 But, to this point, the legislature hasn't
19 been able to do anything about it because it's so
20 politically -- such a politically-charged issue.

21 What was -- the other one was?

22 MR. GORDON: The first one was the notion of

1 defining levels of service and that, in essence, creating
2 a cap on this as the defined level of service and drawing
3 the dividing line between what is an educational service
4 and what is a medical service.

5 MR. FREUND: I don't know what that would
6 solve because we're paying for both, unless the idea is to
7 take medical services out of Special Education. I'm not
8 exactly sure how that would work.

9 MR. GORDON: Well, I think the notion, I
10 suppose would be, by defining the level of service, you
11 define the level of cost and that's it; that becomes it.

12 MR. FREUND: Well, we've even had studies on,
13 as I said, from our State auditor, about -- and a
14 legislative committee about trying to figure out whether
15 it was the level of services that was causing the cost
16 differentials among students. And they couldn't even find
17 the data to support those notions, at this point. We can
18 only explain about 35 percent of the variation with that
19 kind of stuff.

20 So I supposed that, if you came up with a
21 uniform way of reporting, it may be possible to do -- to
22 establish costs.

1 DR. HASSEL: Did you say it may be possible
2 or it may be impossible?

3 MR. FREUND: Well, it may be possible but I
4 think establishing the level of services may be impossible
5 because all kids are different.

6 I don't exactly know how -- how would one do
7 this. Educational delay, we tried that; that didn't work.
8 And, by the way, I'm not a program person; remember, I'm a
9 budget person, so you're challenging me at this point.

10 But I think that there would be great
11 difficulties in trying to do this.

12 DR. HASSEL: What about you, Dr. Chaikind,
13 what do you think of the feasibility of establishing some
14 kind of scale of services, the costs attached to them,
15 related to students' characteristics that could be used to
16 guide a funding system?

17 DR. CHAIKIND: I think you need to be very
18 careful because IDEA says we need to provide the best
19 appropriate public education for kids with disability.
20 And, by precluding that -- you may preclude that by
21 setting up a scale of services and education and saying
22 that, if it cost more than this, that's it, are you

1 providing the best education possible for these kids?

2 So I think what you want to try to find out
3 is how can you provide the best education at the lowest
4 cost as opposed to saying you're not going above that cost
5 and, when the education gets up to that level, we stop --
6 or services stop.

7 I think you need to figure out how to answer
8 those questions.

9 MR. GORDON: Well -- or the other notion
10 could be that, having done that, you also have a safety
11 net which would pick up the excess costs, but you'd at
12 least have some norms and some standards to start with.

13 DR. CHAIKIND: So it has just the details of
14 each case funding --

15 MR. FREUND: All right. There is one more
16 thought that I had to your question, which is, our -- what
17 we found in our state is that, whenever we tried to pick
18 out a single category of disability and put some
19 limitation on it, what happened is, is we've gotten
20 category creep that school districts figure out how to get
21 what they needed to get. So it's very difficult, you end
22 up having unintended consequences.

1 DR. GILL: Troy, you have a question?

2 MR. JUSTESEN: You talked about the fact that
3 you have no categories in the state in terms of categories
4 of disability, in the State of Washington. That poses an
5 interesting question to me, Doug, because you're still
6 required to report to the federal government based on
7 those -- the 13 categories in the statute, but you have --
8 I mean, that seems to pose an interesting problem for
9 states to deal with, states like Washington and others, to
10 do that. So I'm curious what your thoughts are on that.

11 Secondly, by the fact that you don't have --
12 you had 14 categories and now you have none, seems to
13 suggest among some that there's a debate about whether we
14 should have the 13 categories at the federal level or not.
15 And I'd like your thoughts on that.

16 Actually, I'd like both of your thoughts on
17 that.

18 DR. GILL: Do you want me to respond to that,
19 too?

20 MR. JUSTESEN: Sure.

21 DR. GILL: Well, let me start by saying that,
22 when you say non-categorical, I think what Mr. Freund is

1 referring to is a non-categorical funding formula; that
2 does not mean we don't have the eligibility categories in
3 our regulations and we don't report by disability. What
4 we don't is, we don't fund by disability.

5 In other words, a student with a learning
6 disability does not generate more or less money than a
7 student with a communication disorder or a student with
8 emotional issues or a student with autism or anything like
9 that because part of the assumption is in the non-waiving
10 of the categories, you make the money available to the
11 school districts. So the issue, essentially, is to serve
12 the students according to their needs, not according to a
13 differential amount of funding they may generate as a
14 result of a particular label that has been applied.

15 MR. JUSTESEN: Let me ask the question
16 differently for you, then.

17 Is there any utility at the state level in
18 having those 13 categories as opposed to having less than
19 13 categories -- or more, for that matter?

20 DR. GILL: My honest answer to that question
21 would be no.

22 MR. FREUND: Well, there may be some utility

1 in that there is some notion as to what it takes to be
2 identified as Special Ed. I don't know if it could be
3 done simply on the basis of academic delay. But, you
4 know, there are a lot of students that have academic delay
5 that are not Special Ed so I -- I don't want to argue with
6 Dr. Gill, who is the expert but --

7 DR. GILL: It's okay; you do it all the time.

8 MR. FREUND: -- but I think he's lectured me
9 on -- when we talked about this in the past, about why the
10 14 categories of disability are around. And maybe you've
11 changed your mind; I don't know.

12 DR. GILL: Well, I think from a funding
13 standpoint --

14 MR. FREUND: Yeah.

15 DR. GILL: -- I think that this is -- the
16 question for me is from a funding standpoint, is there any
17 utility to differentiate between students. And I really
18 don't think there is because I think students have to be
19 eligible for Special Ed. And, unless I'm misquoting the
20 regulations here, you have to have a disability, an
21 adverse educational impact, and a need for specially-
22 designed instruction. So, in essence, there is a three-

1 part test.

2 MR. JUSTESEN: There's four; and they must
3 meet one of those 13 categories.

4 DR. GILL: And I guess my answer to that is,
5 isn't the establishment of the disability and isn't that
6 the first part of the test and I don't know if maybe
7 Social Security or SSI, maybe, has a better way of doing
8 this in a way that doesn't somehow create a financial
9 distance and if -- for students to be classified as
10 Special Education or necessarily an incident in which
11 might increase the numbers. And I think those are sort of
12 the questions that have swirled around this whole area for
13 a long time.

14 Data collection purposes is one thing;
15 funding and entitlement purposes is something else again.

16 MR. JUSTESEN: But is collecting that data
17 useful in any way? Is there --

18 MR. FREUND: Well, at this point, somebody
19 asked me, in a way, Special Ed enrollment is increasing
20 and the only way that I could begin to answer it might be
21 to look at those 1077 reports over a period of time and
22 see which categories were increasing and look for clues

1 there.

2 Other than that, from a fiscal standpoint, I

3 don't know what purpose those categories serve.

4 DR. CHAIKIND: Well, I look at things from

5 the national perspective and, if, in fact, you want to get

6 a handle on national Special Education costs, especially

7 to the federal government, presumably you would need

8 categories in every state where data is similar and

9 collecting across states, in some kind of manner or other,

10 consistent across states would be important, especially if

11 it goes into the debate at the federal level.

12 DR. GILL: Any other -- we really appreciate

13 you folks' time up here and taking the questions and,

14 certainly, the wide array of questions that you did, as

15 well. Between your exit and the next panel coming

16 forward, we'd like to kind of take a break here at this

17 point in time so we can get you off and get other people

18 on.

19 So we'd like to take about a 20-, 25-minute

20 break; so we would start the next panel at 10:10 as

21 opposed to 9:50 and, hopefully, that gives the other panel

22 to chance to get up.

1 And I'm sure there will be other questions
2 that folks on the Commission may want to ask you,
3 independently, as well.

4 But thank you, again, very much for your
5 time; I appreciate the information you've shared with us.

6 MR. FREUND: Thank you.

7 (Whereupon, a brief recess was taken.)

8 DR. GILL: If we could have the Commission
9 members and staff take their seats, please?

10 We want to move to the second phase of
11 discussions regarding cost drivers and kind of
12 specifically focus on, as best we can, regulatory and
13 administrative costs associated with Special Education.

14 And, to help us in understanding some of
15 those issues and the policy implications and
16 recommendations, et cetera, we have Dr. Jack Daray and
17 Paul Goldfinger.

18 Dr. Daray is the former Senior Fiscal Analyst
19 to the Washington State House of Representatives
20 Appropriation Committee and former Budget Policy Analyst
21 for the Office of Fiscal Management in Washington State.

22 Jack earned his B.A. in social science at

1 Sacramento State College and his doctorate in government
2 from Claremont Graduate School here in California.

3 So, welcome, Jack.

4 Paul Goldfinger is widely known as an expert
5 in school finance in California and is a popular workshop
6 presenter, as well, having conducted more than 400
7 workshops in revenue limits, Special Education finance,
8 school district reorganization, and Gann (phonetic)
9 limits, which I'm sure you will explain to us what that
10 means.

11 MR. GOLDFINGER: You don't need to know.

12 MR. GORDON: I don't want to know.

13 DR. GILL: David Gordon tells me, "I don't
14 want to know what that is."

15 But we're not going to limit your input here,
16 so please tell us what the Gann limits means.

17 Mr. Goldfinger holds a bachelor of science
18 degree in physics from City College of the City University
19 of New York, and an M.S. in engineering science from the
20 University of California at Berkeley.

21 So welcome.

22 And, Jack, you're first up.

1 DR. DARAY: All right.

2 Chairman Gill, members of the Commission,
3 please bear with me; I just returned from my first trip to
4 Louisiana and discovered that, at this time of year, there
5 is enough pollen to find any hidden allergy you may have
6 had. I notice there is someone here from Louisiana who is
7 in the medical business; I'm sure the allergists are
8 making boat payments this time of year.

9 When I was first contacted by the Commission
10 and reviewed the charges to you from the President, it was
11 really charge nine that I prepared my talking points on,
12 or the detailed talking points. And that really was for
13 you to review the experiences of states that have tried to
14 change the way they funded Special Education. Obviously,
15 Bill Freund, who was here before, covered some of that.

16 And so, what you see in my outline here is an
17 effort to kind of lead you to understand the context that
18 permitted the state to make the change and then some
19 comments about the way it looks like it's working out.

20 You will have to judge for yourself whether
21 you replicate some of those conditions in the national
22 level and you will see that I'm pretty insistent on some

1 of the things that I think have to resolve if you're going
2 to try to emulate Washington. And I'm not necessarily
3 recommending that.

4 I have -- I am in the consulting business now
5 and I consult to the three largest school districts in the
6 state. So I see it now from the other side, from at least
7 the last two years, on how it's operating and I'm not
8 going to try to be judgmental here, although I'm sure
9 you'll cuss me later on on that. But I want to make sure
10 that you understand the context.

11 So, if you will turn to page 2 on your Tab L
12 where really my review starts. And in the charge to Paul
13 and I, we were really to focus on the effect of state
14 statutes and regulations on the costs and effectiveness of
15 Special Ed.

16 So I'm going to just go through the more
17 generalized set of talking points and point out things
18 that address that particular concerns. But I do want to
19 make sure that you understand.

20 If you look at page 2 under "A Review of the
21 Experience of State Financing" and reiterate something
22 that Bill tried to set for you; and that is, that the

1 State is under the charge to fully fund a definition that
2 it creates and that's as a result of lawsuit in 1977 and
3 the finding of the courts, a term in the constitution
4 talking about the "Paramount Duty" of the State to the
5 K-12 system.

6 But one of the things you need to be
7 especially cognizant of in considering finance, is the
8 terms of that litigation was not about equal opportunity.
9 We are an 'ample funding' state; we are the first state to
10 be charged because of the, again, words in the
11 constitution from the founding fathers and mothers about
12 -- to provide ample funding.

13 And, when you add to that, a balanced budget
14 requirement, what you have for an experiment in the State
15 of Washington is, first, a big container, because you
16 can't -- you have to have a balanced budget.

17 Bill mentioned that, in the '90s, the
18 citizens put on an even tighter ring around this
19 containment, this Initiative 601, that said that the
20 government couldn't grow faster than the growth rate of
21 the population and inflation. So, obviously, from a
22 financial analysis perspective, you had to go look at any

1 program that was growing faster than those two things.

2 And I think, as Bill mentioned, one of them that came up

3 when you went and did that test was Special Education.

4 So you need to understand this thing as you

5 start to say, "Will this work on a more loose...." --

6 "...a more open-ended federal situation?" and a lot of

7 other states are not operating under that mandate.

8 One of the interesting things about the State

9 of Washington, if you go to look at statute effects,

10 costs, and the effectiveness of Special Education, you're

11 not going to find any, really, because it's all in the

12 Appropriations Act and I'm sure you could tell, from the

13 comments of my colleague, Bill Freund, that the budget has

14 an amazing amount of detail in it in terms of driving

15 Special Ed policy.

16 And so one of the issues you have to look at

17 is, if you judge the Washington experiment reasonably

18 successful, is whether you want -- whether you need a lot

19 of direction in terms of policy, best practices, those

20 sorts of things, or whether you can lead it through the

21 budget. Again, I'm not going to be judgmental; I've spent

22 that last 26 years working in various budgetary capacities

1 so don't take that as a lead to that. But it's something
2 you have to kind of consider.

3 So let's -- on page 2, under -- one of the
4 first things that comes up under B), when the courts --
5 and they've ruled several times on what is Basic
6 Education; and the second time is when the court includes
7 Special Education. But it also included another program
8 that is very important; and you'll see that in reference
9 to something called the "Learning Assistance Program."

10 And, when the state has a program that's
11 basic education, what happens is that the Appropriations
12 Act lays out very clearly that program. I mean, it's a
13 separate entity and, therefore, school districts know
14 there is a special -- a separate pot of money to do this
15 other thing. In this case, "Learning Assistance" becomes
16 fairly interesting in the sense that, if a district chose
17 to do it, this could be something of a screen, a state-
18 funded, explicit -- something that has to be amply-funded
19 -- that first screen for a student on the way to Special
20 Education -- or maybe not on the way to Special Education.
21 Some districts combine this with Title 1 to
22 have a slightly bigger program but, since the early '80s,

1 the State has had this very specific program to deal with
2 those students who are not keeping up to speed
3 academically. The districts don't have to use it for
4 screening for Special Ed but my point is here's something
5 laying there that's a layer that probably most other
6 states don't have accessed. And it came through,
7 actually, by something of statutory error, in a sense. In
8 one of the introductory statements to the legislation, it
9 said, "All children can benefit from..." and, anytime you
10 say "all children can benefit" in a piece of statute, or
11 even the Appropriations Act in the State of Washington,
12 you can bet there's going to be some litigation down the
13 road that said, "If you think it's good for all children,
14 you now have taken on the obligation to fully fund that
15 or, until you can show that that program is no longer
16 needed or has been over-funded."

17 The second, under I. C), Local Control.

18 Local control is something everyone wants to pay homage
19 to, everyone thinks is what's really critical to making
20 the K-12 system work -- and, again, I'm not going to be
21 judgmental, it's a fact -- and the legislature, because it
22 deals with the Special Education budget and Special

1 Education policy in the Appropriations Act, means that
2 anything that's in the Appropriations Act tends to -- in
3 the education section -- tends to characterize everything
4 in K-12.

5 Well they love to use the words 'for
6 allocations purposes only' because, one, they think that's
7 going to keep them out of lawsuits in terms of specific
8 requirements, so much for a high school student or an
9 elementary student or a science student and it -- so it
10 gives them a bit of an out, that is, the State. And, of
11 course, it acknowledges this desire to pay homage to the
12 local school boards. The State did not have to do that
13 and, in fact, was admonished by the court, "If you want to
14 keep school, that's your business."

15 The problem that creates is on the accounting
16 side, on the budgeting side, on the boring side; but
17 what's on the very important side in terms of your charge,
18 if you're actually going to contemplate of increasing the
19 investment -- the federal government's investment in
20 Special Education. Because when you say 'for local
21 purposes only' that means they can move the money,
22 generally, a lot of different places.

1 And, when you try to do the accounting for
2 what Bill was trying to explain, what's regular education?
3 You know, what's -- to use the politically incorrect term
4 -- what's a regular kid cost versus a Special Ed kid.

5 In the very first place, trying jut to define
6 what the average cost attributed to Special Ed kids is a
7 problem because, even though we have a fairly detailed
8 accounting system, it doesn't get down to that level of
9 detail. So there's a squishiness, again, introduced by
10 the statutory reference to 'for allocation purposes only'
11 that the best of intentions has some very difficult
12 consequences for the Safety Net, which we will talk about
13 a little bit more later, because of some of the
14 squishiness of the data.

15 I've already talked about the State budget
16 has to be balanced. And one way to be very candid with
17 you is that, one of the things you learn when you do K-12
18 finance work for the legislature, is that it's probably
19 one of the most emotional areas to deal with in terms of
20 doing financial analysis, it's along with developmental
21 disabilities. And I've done higher education budgets --
22 I've done all the budgets over my years, for the governor

1 as well as the legislature -- and I want to make sure that
2 you understand that Washington was able to take on a
3 fairly vigorous, very short-lived debate in 1995 when it
4 changed its system because of something allowed it to kind
5 of transcend the emotional -- not to pay -- but to say,
6 "We have some cost issues we simply have to deal with."

7 So that sort of forced the decision, you've
8 got to make it, and allow the discussion that usually is
9 much more emotional and hard to get to the point of,
10 "Look, we have got to pass the budget, what are we going
11 to do? We've got to stay within these constraints."

12 On page 3 towards the bottom, when I start
13 talking about the various elements or the funding change,
14 itself, the flat-rate concept, that is getting rid of the
15 14 districts, again, for financial purposes -- and that
16 was a good question about the -- programmatically what he
17 had because the districts saw the programmatic he did, I
18 can tell you because I go out and work with him on that to
19 a certain extent, mostly do you have it and do you have it
20 over time. And that can be a bit disturbing in terms of
21 the quality of that data.

22 When you have to do what I think that the

1 flat rate costs, the flat-rate policy eventually is going
2 to force, which is a discussion at the district level --
3 and I'm not sure it's happened that much yet at the
4 district level of, "Listen, we have one number that we
5 have to get. Why is it we're not getting that number? Is
6 it too much or is it too little?"

7 With the old 14 x 4 categories, and for a
8 superintendent who decided that he or she was really going
9 to take on this Special Ed issue and all the complaints
10 that it was over-funded or under-funded, it was just too
11 difficult to take on. And one of the things about the
12 flat rate concept that was introduced, again in the
13 statutory means -- setting, the Appropriations Act, is, I
14 think, at some point, it's going to force this cost
15 definition, "What is it we're spend -- what are the costs
16 in Special Education?" In place -- because you only get
17 one place in the budget where that number is and Bill, I
18 think, was stating that everybody knows what that average
19 number is.

20 And we get to the Safety Net and that's
21 affect on -- it's not a lid but it's a starting point for
22 doing cost accounting.

1 Turning to page 4 at the top, what you see is
2 a list of things that are elements of the new formula and
3 the target limit. I was a little surprised that Bill let
4 you talk about the cap of 12.7 and, depending on where you
5 were at the time, you either called it a cap or you talked
6 about it as a target. Because, what the State was trying
7 to say is, "We think that 12.7 is a reasonable number of
8 students to be in Special Education." and, again, put a
9 number right out there in the sand, along with the dollar
10 per student of excess costs, of the pure cost of doing
11 Special Education. "We're also going to limit to 12.7
12 percent. If you have a problem with that, come talk to
13 us." And the 'come talk to us' is the safety net process.

14 So you have the simplicity of a flat rate and
15 the simplicity of 12.7 percent, but you do have this
16 overflow which has an interesting affect on backing up the
17 quality of the data on everyone else.

18 And, because the safety net -- and, again,
19 the language in the Appropriations Act requires -- it just
20 has these throw-away words, they want efficient and
21 effective programs, efficient and effective programs.
22 Well, that translates, in terms of statutory language, to

1 the administrative body, the Special Ed Safety Net, as
2 they start to look for the hooks to say the simple word
3 "no."

4 Because they've only got \$12 million to
5 spend, what are the conditions we have to have before we
6 can say the words "no"? Well, one of the check-off points
7 is, "Does your program have any audit exceptions?" And,
8 if we have either the formal auditors or the Special Ed
9 review team, which is not necessarily cost accountants,
10 but program accountants, and they can't find a specially
11 designed program and here is the X-Y-Z school district and
12 saying, "You know, we're out of money and we need more
13 money, the Safety Net." And the first thing you say is,
14 "Well, wait a minute; we're looking right here and you've
15 got some audit exceptions, you're not doing some of the
16 minimum stuff already. Are we funding your inability to
17 run a program?"

18 And they can come back and say, "We can't do
19 special design programs because we really are out of
20 money."

21 My point here is, you can see how this has
22 the affect, at some point, of sort of backing the

1 districts up to have a good-enough case to go to the
2 Special Ed Safety Net Committee and say, "We're running a
3 good program and we're out of money." This benefits both
4 parties in this, the funder -- that's the State -- and the
5 program and the students and the districts, which are
6 trying to run the best program they can.

7 Let's see -- you know, on the bottom of page
8 4, you need -- point number 6 is "What about the change in
9 state K-12 system focus to performance?"

10 What that means is that, in the State of
11 Washington, like other states, is about to embrace
12 outcome-based -- that's probably not a safe term around
13 here -- but performance-based system of K-12 education.
14 And you need to be -- you need to understand that
15 everything that Bill's talked about and I'm talking about
16 today is on a system that was based on inputs and designed
17 at the time not with a clean sheet of paper and what would
18 it take to do these programs, but what are the prevailing
19 practices of district, called the 'conventional wisdom.'

20 So that other brave, new world of
21 performance, what that means, "Not enough time today." and
22 certainly not enough brain cells to solve it, but

1 something you need to pay very specific attention, you're
2 just going to change a lot of us who have been dealing
3 with K-12 finance. It's going to change the kinds of
4 issues we have to deal with in a very dramatic way. But,
5 just as a little teaser there, we'll put that one out.

6 I think one of the things I can do for you,
7 again, in trying to help you think about are the potential
8 of adding the investment of the federal government to
9 Special Education, is to repeat, I'm sure, the warning
10 you've got from many others that, to the field -- and,
11 again, on top of page 5 -- I know I'm not supposed to --

12 I'm going a little bit beyond because I'm
13 dealing with "Supplement Not Supplant" but let me tell you
14 from my experience, I spent two years in the early '70s
15 working on evaluation of a search of criminal justice
16 projects for the State of Washington, from the governor's
17 attempt and State's attempt to reform it's criminal
18 justice system, which had been funded by a very similar
19 attempt to what you're doing, in the late '60s by
20 something called the Law Enforcement Assistance
21 Administration, LEAA, where the federal government decided
22 it really wanted a fundamental change and improvement in

1 the criminal justice system.

2 And I can tell you, from that experience,
3 that the whole -- right now the field of Special Education
4 thinks the federal government owes 40 percent of the
5 excess costs of doing Special Education. And you really
6 need to resolve that issue because, if that's what this is
7 about, that you always owed 40 -- not you, but the federal
8 government's always owed 40 percent of the cost, when you
9 submit money out there, you're not going to get extra
10 effort.

11 And maybe that's the policy that you want to
12 recommend. And that's fine; I'm not recommending against
13 that. My point is, from my experience with LEAA, and
14 coming late to the party because they did a lot of
15 funding, late '60s, early '70s About 1972 or '73, the
16 folks back in D.C. said, "Gee, we need to find out what
17 happened to all that money." The trouble was, the money
18 had already been sent out. And the fundamental issue that
19 I talk about, again on page 5, are making decisions over
20 whether you want -- again, and I'm going to assume that
21 you want something extra for that money.

22 It's even more difficult than that. You have

1 to decide whether you want extra effort, more of the same,
2 or whether you want some innovation. And, if you don't do
3 that up front, I can tell you, from the person who had to
4 go around and negotiate evaluation kinds of -- evaluation
5 standards and evaluation studies with both state agencies
6 and local government, that they have already started down
7 the road and they're going to be using it -- if somebody
8 doesn't say, first of all, "This is for new innovative
9 things," what's going to happen is that an operating unit
10 is going to get some money, and it doesn't know the
11 source, it's going to say -- "By the way, that State money
12 that used to be, you're now on federal money -- there may
13 be some different standards, don't worry; get started, do
14 good things." That's a real surprise when you use a
15 criminal justice analogy to the local parole office to
16 find out that it was being funded now with federal dollars
17 that they were supposed to be innovative and experimental
18 and it was labeled as doing something like intensive
19 parole when, in fact, they just -- the local government
20 just substituted money. And all of a sudden, two, three,
21 four years down the road, someone comes and says, "Hey,
22 you know, where is that creative, new thing you're

1 supposed to be doing?" They're so far down the line, they
2 never know that.

3 So, if you don't tell them up front, if
4 someone doesn't insist on that up front and have some
5 research standards up front, you don't get extra effort,
6 or you won't get innovation. Again, I'm not recommending
7 one or the other, I'm just saying, from a policy
8 perspective, that it's really important to be very clear
9 on that.

10 Let me be a little bit judgmental here on the
11 experiment in Washington because I do think, in the long
12 run, it's going to be good; it's going to be good in terms
13 of the kind of work that I do, for my satisfaction, which
14 is, sooner or later, it's going to force something which I
15 call cost definition down the district and building level,
16 but most important to the district level.

17 Previously, I talked about the effect of the
18 flat rate and the 12.7 percent. What happens when you
19 finally get a superintendent or the board of education, or
20 a chief financial officer which says, "I've got to find
21 out about this Special Ed cost." is the effect in
22 Washington of being forced to first have a real clear way

1 to demonstrate you gave that Special Ed student all their
2 basic ed money, "We spent it all; it wasn't enough."

3 But then LAP, Learning Assistance Program,
4 wasn't enough so you have this amount of money, this
5 little graphic here, this amount of money, "We can show
6 that we spent all of it on this Special Ed kid. We tried
7 LAP, it wasn't an appropriate intervention; maybe we
8 didn't decide to..." -- and then, "We've now spent all the
9 excess costs..." -- which Bill said the whole thing now is
10 about \$8,000 -- "...and we still don't run a program,
11 we're still out of money. We haven't used a lot of levy
12 money. Well, again, the State is supposed to be fully
13 funding something called Special Education, Paramount
14 Duty; what's going on here?"

15 What happens with this contained process of
16 having to go to the Safety Net Committee, is you have to
17 show your paperwork, you have to show it in a way that
18 some folks can make some judgments about.

19 And I can tell you some of my work; I can
20 tell you the three large school districts of two years ago
21 decided they were going to declare a war on Olympia and go
22 down and get that money, executed a special contract -- a

1 separate contract with me to help them on this -- and they
2 never went to war. The reason they didn't go to war was
3 the three superintendents, all very big egos and all very
4 smart and, at least one of them very, very knowledgeable
5 in Special Education because he used to be a Special Ed
6 Director, when I did my consultant work, which is the easy
7 part -- my business is based on, "Do you have any data?"
8 My business is going to you and saying, -- my whole
9 professional career is about data-based decision-making
10 and I been working in a fuzzy world all those years that
11 rarely uses data but hope springs eternal; I still think
12 I'm a young man -- "You are going to be going down to
13 Olympia and there are some smart people down there... --
14 and you've witnessed Mr. Fryne (phonetic) who can be
15 pretty tough, on the other side -- "Where is the data?"

16 "Well, we have 14 categories in one district,
17 we have 16 categories and you really can't track the money
18 -- we've always just sort of done it this way." And so
19 after -- you know, two hours of fairly embarrassing
20 discussion but very interesting discussion because some of
21 them didn't understand the basic model. "Well, what do
22 you mean, we had to spend all the Basic Ed money first?"

1 What do you mean we can't prove that? What do you
2 mean..." -- you know, because they had the chief financial
3 officers there -- they said, "Geez, we still think that we
4 don't get enough money but we can't prove that." "Let's
5 go back and get on it." to their staff. And they're still
6 working on it, I can tell you that.

7 And, as you know, real world, I know we have
8 at least one superintendent here, all those issues come up
9 because the board of directors, board of education,
10 decides they want the school busses' color changed, you
11 know, whatever, and the focus on Special Education drifts
12 off.

13 But the process in Washington, I'm not going
14 to say it's caused it yet, but the combination of things
15 have caused a kind of accounting system that I think you
16 need to have in place, or anyone needs to have in place,
17 before you send extra money. Otherwise, you'll never see
18 any result or that extra effort.

19 DR. GILL: Paul?

20 MR. GOLDFINGER: Okay, thank you.

21 It's my pleasure to be here today. I've been
22 involved in Special Education finance to a large extent in

1 California since 1981; and I've done a lot of thinking
2 about this issue and I know that some of the remarks that
3 I'm going to make today are in areas that you've heard
4 about before, hopefully some are new ideas.

5 And, as I was preparing for today's
6 presentation, I remembered, way back in 1973, when I was
7 very young, I was working at UC Berkeley on a research
8 project, Childhood and Government project, and I did a
9 paper for their office that looked at where were the
10 places in state law that specifically authorized school
11 districts to exclude Special Education pupils. And I was
12 horrified at what was going on in California and I'm a
13 strong advocate of the Education for the Handicapped Act
14 in 1975.

15 And certainly we've come a long way since
16 1973. When I step back and look at it, I go, "We've gone
17 from a system pre-1975 where Special Education pupils had
18 fewer rights than general education pupils to a system
19 where they have much greater rights."

20 And there is an imbalance as a result of this
21 that creates a lot of frustration on the part of school
22 board members who say, "I'm elected to represent all of

1 the students in this school district." and on the part of
2 administrators and even teachers who feel that their job
3 is to serve all pupils, where there is this imbalance in
4 rights.

5 And the system is so convoluted that even
6 parents get very frustrated over this, how procedurally-
7 bound it is.

8 So my comments today are intended to help the
9 Commission work towards a better balance between regular
10 education and Special Education while still maintaining
11 necessary protections for Special Education. And the
12 comment I'm going to make early on, and later on, is that
13 funding the 40-percent level would go a long ways towards
14 resolving this imbalance.

15 In California, especially, it is not fully
16 funded, that when I look at total expenditures, I know it
17 is not costs but it is a reported expenditure for Special
18 Education, and subtract out all revenues, including the
19 revenues that school districts get for the general ed part
20 of the Special Ed population, and the state aid, federal
21 aid, that there is an imbalance of approximately \$1.3
22 billion.

1 And this imbalance means that, for school
2 districts, they are saying, "We need to take unrestricted
3 general ed dollars and we need to spend it as supplemental
4 support for Special Education." This is part of the
5 imbalance that needs to be addressed.

6 And certainly funding alone is not going to
7 do the job. It is one aspect that I'm talking about. I
8 think something -- on page 4, something that Congress
9 needs to do, is to clarify what is free and appropriate
10 public education. When I thought about it, well, there is
11 four words, and I think the first one is the only one that
12 everyone can agree on. Free means free.

13 But what is appropriate? And the Rowley case
14 speaks to this issue where it says that IDEA does not
15 require that an educational program maximize a pupil's
16 potential, that appropriate is something short of maximum.
17 But what's the dividing line between appropriate and more
18 than appropriate?

19 And one idea that I had a number of years ago
20 was maybe Congress needs to add a word and say the
21 standard should be free, appropriate, and comparable
22 public education. The word 'comparable' is one that I

1 will comment on as I go through.

2 The second issue is, what is public? In IDEA
3 '97, it made it very clear that, when families enrolled
4 their children in private and parochial schools,
5 voluntarily saying that we don't want to enroll in public
6 school; if they are in private and parochial schools, the
7 obligation of school agencies is to spend a prorata share
8 of federal dollars on that population and, after that
9 point, they can stop spending. So they can say 'no' to
10 the Special Ed pupils who choose to enroll in private and
11 parochial schools.

12 Issues that come up, kind of along the lines
13 of what is public is that, for preschoolers, a lot of
14 school districts do not operate public preschool programs.
15 But they have an obligation to serve disabled children
16 with their non-disabled peers. And so is there, then, an
17 obligation to pay for private preschool tuition in order
18 to have that integration opportunity?

19 Medically fragile children need to be served
20 at home; nobody is questioning the obligation of the
21 school agency to serve medically fragile children who
22 cannot be transported to school, and serve them at home.

1 But, as many issues for children who are physically able
2 to be transported to school, where the parents are
3 requesting home-based instructional programs, often 40
4 hours a week at home. Is this also part of the scope of
5 public education?

6 And then finally, as comments were made
7 earlier, what is education? What is the boundary line
8 between the services an educational agency needs to
9 provide versus what are really health and mental services?
10 The Garret F. decision highlights this point. And the
11 question I raise is, shouldn't other public sector
12 agencies be required to step up and to provide their
13 appropriate services within their domain? Where did
14 education have the ultimate responsibility when other
15 public agencies, as in California, say, "No, we're not
16 going to provide that service." IEP calls for that
17 service, education pays the bill.

18 On page 7, related to the scope of education
19 is, what about related services? Here in California, in
20 some cases, we're being asked to and required to provide
21 equestrian therapy, people are asking for dolphin-human
22 therapy; is this also the domain of public school

1 districts? Even music therapy. And I go, "Music sounds
2 like education." But, if a school district cannot afford
3 a music program for non-disabled pupils, why should it be
4 required to provide a music instruction program for
5 disabled people? This is the issue of comparability that
6 I wish to raise.

7 And then, in terms of education, school
8 agencies generally operate six hours a day, five days a
9 week, about 40 or fewer weeks per year. Whereas -- and,
10 also, a summer school or extended-year program on top of
11 that. Whereas some school agencies are being asked to
12 provide, in-home, 40 hours a week, 50 weeks a year, why
13 should school agencies be required to provide services
14 beyond the scope of the school day? This is an issue.

15 One idea that I put on the page that I wish
16 to modify is, if school agencies are required, because
17 other public agencies deny responsibility to provide
18 health and mental agencies -- right now, school have the
19 option of seeking insurance reimbursement from parents'
20 insurance -- I'm going to suggest the issue, how about if
21 there is requirement, if these are deemed to be health and
22 mental health services that fall in the lap of school

1 agencies, might not there be a requirement that private
2 insurance pay for that? And maybe there is a need to
3 modify in federal insurance requirements that this would
4 not impact a person's lifetime insurance benefits.

5 One of the issues that just drives me crazy
6 is Medicare is reimbursing some of the services; Medicare
7 is reimbursing nursing services, occupational physical
8 therapy, isn't this a clue that these are not educational
9 services? I mean, isn't this -- it strikes me as being
10 strange.

11 School agencies have limited resources and
12 strive to examine every expenditure and try to make every
13 expenditure be a cost-effective expenditure. Even the
14 President -- I was thinking of an analogy -- he has called
15 for the funding of the Missile Defense Shield, many, many
16 billions of dollars, in the name of national defense.
17 And, if we had unlimited resources, certainly we should do
18 that. But it's up to Congress to evaluate, is this cost-
19 effective or are there other uses of that money that would
20 be better for either national defense or in the national
21 interest.

22 There are so many areas in Special Education

1 where school agencies are precluded from evaluating cost-
2 effectiveness. And, if you look at the example on page 9,
3 suppose that a school district assesses a pupil with
4 severe disabilities and says, "We recognize the severity
5 of the disabilities and we propose this comprehensive
6 educational program that will cost \$40,000 a year." And
7 the parents or advocates say, "Well, we understand that;
8 we want this other program that costs \$100,000 a year."
9 Nothing is done to evaluate whether that \$60,000 marginal
10 expenditure is cost-effective.

11 Now, I'm a numbers guy so I think about this.
12 Suppose that there was a determination that the \$100,000
13 program was indeed a better program and that gave a
14 hundred percent of what the child needed; and the \$40,000
15 program was worth 95 percent as much, was 95 percent as
16 good. And so we're spending -- the school district says,
17 "We're willing to spend \$40,000 to get 95 percent of the
18 way." Is it reasonable that they be required to spend
19 another \$60,000 for a marginal five percent advantage for
20 this one child? Nobody is looking at, is that cost-
21 effective, is it reasonable, and nobody is looking at, are
22 there other uses of that \$60,000 that might be better for

1 other pupils with exceptional needs or other non-disabled
2 pupils. Maybe the school district had cut its music
3 program because of this kind of situation. Maybe the
4 school district cannot afford preventative (sic) services
5 for pupils who are not low-income because of this
6 situation.

7 With the EDA, there is a requirement that
8 employers provide reasonable accommodation for potential
9 employees or current employees who are disabled. Maybe
10 there is need to have a reasonable accommodation standard,
11 not unlimited. And, along these lines, in California, we
12 see on a not infrequent basis issues where individual
13 placements cost \$100,000 a year, in rare cases \$250,000 a
14 year. This is extraordinary. And there is a cap on the
15 amount that is required to be spent for pupils in private
16 and parochial schools, after which a school agency can say
17 'no'; might there be some caps imposed?

18 One form of a cap is Special Ed should not
19 cost more than 15 percent of a school district's budget;
20 and I'm just throwing out an example, 15 percent may not
21 be the right number, and you are allowed a definition, is
22 this excess cost or is this total cost, are you including

1 indirect cost, and so on. But this concept, a total cap,
2 along which you must prioritize. And so the claim of one
3 pupil doesn't have -- preempt claims that might be good
4 for all pupils. Or, alternatively, might there be a cap
5 on individual services. And, along these lines, something
6 that was talked about earlier, was a federal extraordinary
7 cost pool. Mr. Gordon, my colleague from Sacramento, was
8 talking about this and maybe, for specific disability, it
9 would be that, okay, \$40,000 would be a very high cost; if
10 the placement is above that, then there is a 50-50 sharing
11 between federal dollars and local dollars so that there is
12 still some incentive to be discreet, prudent.

13 On page 12, you're hearing a lot about
14 procedures and paperwork and I'm not going to dwell in
15 this area except to say that, in California, there were
16 analyses where the school agencies were meeting a hundred
17 percent compliance standard that was virtually impossible
18 to meet.

19 It's as though every Special Ed administrator
20 must play golf like Tiger Woods in order to be a hundred
21 percent compliant, you have to par every hole in order to
22 be a hundred percent compliant. Isn't this a clue that

1 the system is out of balance? It's frustrating for
2 administrators, it's frustrating for parents, and
3 frustrating -- there's so much of the legal proceedings
4 and the due process hearings focus not on whether this is
5 a good program but whether there were procedural errors.
6 We need to get away from this.

7 And one of the issues that I know that you
8 need to wrestle with is, how do you get away from
9 procedural compliance to accountability without adding a
10 new level of paperwork and procedures?

11 Here in California, due process issues are
12 just phenomenally expensive and are used as a club against
13 school agencies. I was talking to an attorney recently;
14 there was a hearing that went 25 days. The school agency
15 won on every single point and their legal fees were
16 \$300,000 to defend this due process. This isn't helpful
17 for anybody. It's a drain on school district
18 expenditures, the administrator is in the hearing instead
19 of dealing with parents and kids, it's not good for
20 anybody.

21 And, what we find is that those are incentive
22 on the part of some. I'm not labeling, broad-brush,

1 everybody acting in this manner but, on the part of some
2 advocates or attorneys to drag out procedures because they
3 get paid more, they get paid by the hour, or the incentive
4 to say, "We're going to take you to due process; we're
5 going to have an expensive hearing if you don't agree with
6 us in mediation ahead of time." Those are used as a club
7 against us.

8 And some ideas on due process on page 14 are
9 to put a one-year -- that should have said statute of
10 limit on compensatory education; right now, there is a
11 three-year statute of limits. And -- which means that
12 parents may have suspected that something wasn't right and
13 they wait three years -- almost three years -- to file a
14 claim against that; this isn't good for the pupils, it
15 isn't good for the system that there is litigation or
16 hearing over three years of issue. This is an issue that
17 needs to be brought to light very quickly and get it
18 resolved.

19 Use a public defender type of system so there
20 is not an incentive to drag out legal proceedings and so
21 that parents who don't otherwise have access to private
22 attorneys would have access to the legal system. So this

1 would be, I think, a win-win overall. Put a cap on
2 reimbursement for private attorneys' fees, again.

3 David, you were asking that question earlier;
4 I think there should be a cap.

5 A colleague of mine was watching CNN recently
6 where there was a debate in Congress over Washington, D.C.
7 School District. And what my colleague said was that the
8 debate was whether to extend the cap on attorneys' fees
9 which are currently \$50.00 per hour, \$250.00 per case.

10 And I go -- when Congress is paying the bill
11 for the Washington, D. C. School District, they put a cap
12 like that? And, when we're paying the bill, there's no
13 cap? I think there's something out of balance here.

14 And then, finally, hopefully, there's going
15 to be clarification on one of my earlier points; what is
16 appropriate? And, if so, then when an issue goes to
17 hearing, I think the first thing should be is what the
18 school district is offering, is that appropriate, yes or
19 no? If that is yes, you stop; the school district is
20 offering free and appropriate public education, you stop.
21 There's no need to identify whether another program is
22 better, more appropriate; appropriate means it meets the

1 standard, stop.

2 On page 15, you're hearing a lot about
3 discipline, I don't need to go into that. Just, I was
4 remembering when I was getting ready for my presentation,
5 talking to a county counsel -- and I'm sorry, I don't
6 remember what county it was -- and he was talking about
7 how gangs know about the difference in discipline issues
8 and they are recruiting pupils -- mostly high school
9 pupils with exceptional needs -- to carry weapons or carry
10 drugs, knowing that they will not get in as much trouble
11 as a gang members themselves.

12 We have a system, again, that is out of
13 balance. The issue here is balance.

14 Page 16, there is a lot of new therapies that
15 are being proposed and I think there's a need to have
16 federally-funded research, not just on best practices but
17 on new therapies, new experimental therapies. Perhaps
18 just like the Food and Drug Administration doesn't license
19 a drug until it's been tested and proven effective, maybe
20 there should be a system of testing new therapies, for
21 what pupils are they effective, what quantity are they
22 effective? Some of the new therapies, some of the parents

1 -- or some people are under the assumption that more is
2 necessarily better and we're getting requests for 40 hours
3 a week. What intensity works well? Obviously, this is
4 going to depend on the child, on the circumstances, but
5 maybe get some research out there before experimental
6 therapies in due process hearings.

7 Page 17, this item I know is going to be
8 controversial. I was recently in a school district that
9 has a real budget problem, they need to cut \$7 million out
10 of a \$90 million budget. And I was in there doing
11 consulting where in the area of Special Education could
12 cuts be made and still meet appropriate public education.
13 We identified areas where the district had overstaffing,
14 very little case loads, where cuts could be made. And
15 then I go, "Wait a minute, that's going to violate, if
16 those cuts are made, the maintenance-of-effort
17 requirement.

18 And what happened was, the school district
19 had lack of controls, or whatever reason, they overspent
20 their budget, they spent down the ending balance, they
21 need to make cuts today. And the maintenance-of-effort
22 requirement says you can't make cuts in Special Education.

1 And some people would say,
2 "That's right; why should Special Education pupils suffer
3 from fiscal mismanagement?" I go, "Why should anybody
4 suffer; why should the regular ed kids suffer from fiscal
5 mismanagement?"

6 The fact is, had the district been prudent,
7 it would have had a lower level of expenditure all along.
8 Can't they roll it back to that lower level expenditure
9 that they would have had all along?

10 States can get a waiver of the 'supplement
11 and not supplant' standard during times of fiscal crisis;
12 why can't school districts apply for that? Why is it that
13 the only cuts that can be made have to be made through the
14 non-Special Ed program? This is an issue of imbalance,
15 again.

16 Hopefully, I'm one of many speakers talking
17 about the 40-percent standard. In California, as I said,
18 our shortfall in Special Ed's funding is about \$1.3
19 billion and the 40-percent standard, funding that, along
20 with the other reforms that I'm talking about, would go a
21 long way towards eliminating the drain on general ed and
22 allow dollars for program improvements and program

1 enhancements.

2 And one of the things that I think is very
3 important is to recompute the 40-percent level. And the
4 origin of the 40-percent level -- this was talked about
5 before but I want to make this point again -- was that
6 there was a study around 1970 that identified that the
7 cost for the average Special Education pupil was about a
8 hundred percent more than for a general education pupil;
9 and the promise was to fund 40 percent of that excess
10 cost.

11 I believe that, especially on the high-end
12 cost of the spectrum, costs have shot up and I would
13 expect that, when the AIR study comes out, that the
14 average cost for Special Ed is more than a hundred percent
15 than the average -- above the average cost for regular ed.
16 If it's not, then it's because we've expanded the pool of
17 low-cost pupils dramatically.

18 And this leads to the final point on the
19 page. I support what the President is talking about,
20 improving preventative programs, improving reading,
21 keeping kids out of Special Education, teaching them to
22 read. Absolutely. And I'm hopeful it's very successful,

1 that 20 percent or more of the pupils who presently are
2 labeled Special Education can get the services that they
3 need and avoid that label.

4 But this should not mean that the cost of the
5 40-percent level go down by 20 percent just because we've
6 eliminated low-cost pupils. I think that, hopefully, the
7 study will identify costs in sufficient detail that, if we
8 eliminate 20 percent of pupils on the low-cost end of the
9 spectrum, that the -- it will allow the recomputation --
10 well, what is the ratio now? It's not going to be a
11 hundred percent more; it's going to be a 120 or 130
12 percent more, and this needs to be factored in. A 20-
13 percent reduction in the number of pupils in Special Ed on
14 the low-end cost of the spectrum should not lead to a 20-
15 percent reduction in the federal obligation.

16 And, with that full funding of the 40-percent
17 level, I think there's a need for greater flexibility.
18 Here in California many school districts have backfilled
19 the shortfall in federal dollars with the local revenue;
20 that's the encroachment that I'm talking about, \$1.3
21 billion. And, for the federal government to say, "Okay, I
22 didn't fund what I was supposed to fund, I'm going to give

1 you the dollars now but the rules are only 20 percent of
2 the new dollars can be used to offset local revenue."
3 That implies that 80 percent of the new dollars must be
4 used to -- as an augmentation, to augment funding.

5 And, for some school agencies that are not
6 doing a good job right now, absolutely, it should be
7 required to augment their programs. But, for school
8 agencies that are doing a good job, they're paying for it
9 out of their own dollars, to require that new money spent
10 -- 80 percent of the new money be spent as an
11 augmentation, on top of an already expensive program, I
12 think is unnecessary and is a bitter pill on the part of
13 many school agencies.

14 By way of summary, taken together, my hope is
15 that these ideas will help to create a better balance,
16 define FAPE, bring about a better balance on the issues of
17 attorneys' fees and due process and legal conflict, bring
18 about a better balance in the area of discipline. And
19 let's recognize that the negative impacts of some of these
20 existing conditions on the regular education pupils, as
21 well. Let's create a balance; let's create a system that
22 works.

1 Thank you.

2 DR. GILL: Thank you.

3 We're going to start with Commissioner
4 Hassel. Bryan, have you got a question or comment you'd
5 like to make?

6 DR. HASSEL: Are either of you aware of any
7 efforts to quantify the regulatory and administrative
8 costs of Special Education as opposed to, say, educational
9 costs?

10 MR. GOLDFINGER: No. This is a very
11 difficult issue. We asked our school agency constituents,
12 "What are you spending on legal fees?" and they can't even
13 give us that. But what percent of administrative time is
14 spent on excessive administration, I don't think there's
15 any way to quantify that.

16 DR. DARAY: I think your question really
17 should be, is there undocumented unreasonable costs. And
18 I can either get back to the Commission, or Bill can.

19 There's been several times in Washington
20 where the state has attempted -- committees, typical the
21 policy committees. We have a certain standard, a budget
22 committee and a policy committee. The education policy

1 committee is -- about every four or five years, depending
2 on the interest of the members, this question builds up
3 about these costs. And they -- I know there's been some
4 committee work done on that level.

5 And, actually, in terms of the budget -- we
6 had one of our last budget crisis with every 10-year event
7 in the State of Washington; obviously we're in one right
8 now -- I think there was some work done to go through
9 that. And I think, actually, the superintendent of public
10 instruction's office, which Chairman Gill works for, was
11 -- had a review of its regulatory functions and whether
12 they were affect -- and whether there was a requirement
13 that they go through and identify all those things that
14 were State rule regulation above the federal regulation.
15 And it turned out there really weren't any. But you could
16 certainly hear from the field that there was all this
17 paperwork.

18 Don't get me wrong; I'm saying that it's a
19 non-trivial issue. But there may be some way to help.
20 But the tough part of the question is the unreasonable
21 amount of administrative kind of work because the one
22 interesting thing about Special Education, as opposed to

1 all the other budgets I've done -- especially higher
2 education, those have sort of open-end entitlements -- is
3 you do have a process that starts as soon as a child or a
4 student becomes a focus of concern.

5 See, I have all this documentation that, in a
6 sense, documents the eligibility of a child, if done
7 correctly. Well, that documentation, it's a lot of
8 paperwork. But you do have an entitlement that's
9 documented, unlike most of the other areas of government.

10 Now, again, you're talking to someone whose
11 career in the finance area. I believe it's protection for
12 both the student as well as to the State. So, from the
13 clients that I've had over the years, governors -- the
14 governors that I've worked for -- and then the
15 legislatures -- the legislators that I've worked for, they
16 feel comfortable with that level of documentation. And,
17 at a certain point, they say, "You know, given the
18 programmatic kinds of issues involved, I don't mind that
19 kind of documentation in the field, if done well." But
20 (unintelligible) on that. So I know there's been at least
21 three things; I just don't have them right here and can't
22 cite them right away.

1 DR. GILL: Commissioner Gordon?

2 MR. GORDON: Thanks, Chairman.

3 Mr. Daray, I was struck by your comment that,
4 unless some of the rules of the game, how they are to be
5 changed, are set forth before new money starts to flow,
6 you've lost the game because there's nothing much will
7 change.

8 What are the key areas in the federal law
9 that you would set aside pending setting a new set of
10 ground rules before you sent the money out?

11 DR. DARAY: Well, I'm not as familiar with
12 the federal laws, enough to give you some specifics on
13 that. But let me, again, talk about some generalities --
14 some general terms.

15 If there isn't a lead by those that are going
16 to have to do the evaluation research, that is, a pause
17 before this happens, so there's a fully-articulated set of
18 research kinds of standards -- and I don't mean academic
19 research, although it can be academic research -- but the
20 -- some way to do the measurement for its experimental
21 control groups -- or you're going to have to work through
22 all these methodologies; it's not easy.

1 I know it's suggesting it's easy but, if you
2 don't have that set up ahead of time, and a monitoring
3 system -- because all the research is going to do,
4 generally, is tell you whether or not you've succeeded.
5 What you need to know is where are the elements that
6 allowed us to succeed.

7 And one of the things that was necessary in
8 the reform of the criminal justice system was to go back
9 and not only find out that crime went down -- okay, in the
10 city of Auburn, the crime went down and there's not a lot
11 more activity, what actually did that criminal justice
12 system do to make that change? What were the new things?

13 So, before -- you know, I guess my
14 recommendation would be just to spin -- and before -- I
15 have to say, I haven't heard someone dispute the claim I
16 would make is that the 40 percent is an arbitrary number.
17 So what's the rush? I mean, if you're not going to do it
18 well, why do it at all?

19 And I have to say the experience from LEAA,
20 there's still a lot of bitter -- or most of this,
21 especially -- there's still a lot of people bitter from
22 the LEAA experience who thought it was going to bring a

1 new high level of standards and got caught in the sense of
2 lack of clarity about what this change was supposed to be,
3 and some insistence that there be an improvement in
4 quality, not just quantity. And the money just
5 disappeared. So --

6 DR. GILL: Thank you.

7 MR. GOLDFINGER: I come to that issue,
8 obviously, from a very different perspective.

9 And my perspective is, there was a package
10 deal, the federal government implemented Education for the
11 Handicapped Act, later IDEA, and, in 1975 said, "We know
12 we're mandating an expensive program; we're going to pay
13 40 percent of the excess cost."

14 And school agencies go, "Okay, we can deal
15 with that." And the mandate has stayed and, in fact, as
16 one of my colleagues this afternoon will say, the mandate
17 has grown, but the promise of 40 percent funding has not
18 been forthcoming.

19 This has created, at least in California, an
20 underfunding of Special Education, a drain on general ed,
21 that needs to be rectified. This is a major imbalance in
22 the system.

1 DR. DARAY: Can I just comment on that
2 response just a little bit; something I left out.

3 DR. GILL: Jack, if you could make sure
4 you're closer to the microphone.

5 DR. DARAY: Let me just make a quick comment
6 on that. And I'll concede that, perhaps, what Paul has
7 characterized California as -- is the case. And I'm not
8 trying to be mean here; I'm just trying to be clear with
9 you about being clear.

10 I think the point that my colleague Bill
11 Freund made, and I hope that I made, is that, even in a
12 state like Washington, which has a pretty good accounting
13 system, and the data -- the kind of data that is available
14 to us is really extraordinary, especially compared to
15 other areas.

16 But the point is, even the State of
17 Washington, after five years of work with the Safety Net
18 Committee, school districts still are very reluctant to go
19 to that Safety Net Committee because they can't show they
20 actually spent the basic ed money, that all that money has
21 been committed.

22 So, if they can't show that -- they can show

1 that they spent all the excess but there's still -- you
2 didn't get to this base. And my hunch is, outside of
3 Washington, and conceding Paul's point to California
4 because I don't know the facts, there's probably very few
5 states that can document, in the first place, they spent
6 all the basic ed money.

7 So, you know, that's the piece -- in fact, my
8 recommendation number one to you, that, you know, I
9 submitted in writing, was that you require a definition of
10 some sort -- and I know this is extremely difficult, I'm
11 not being cavalier about this -- but, if you can't -- if a
12 state or district can't define what basic education is and
13 can't document, to a reasonable extent, that it spent that
14 student's right, in a sense, first, then no one knows what
15 the cost is. It's just an unknown because of not knowing
16 that base.

17 DR. GILL: Commissioner Coulter?

18 MR. COULTER: Mr. Daray, I was struck --
19 first of all, I really appreciate the candor, you know, of
20 your thoughts because I think, if we feel a strong burden
21 that, you know, in terms of public funds, that the public
22 funds are spent, you know, in a way that families are

1 getting what, in fact, the law promised them. So, you
2 know, I do appreciate your candor about, you know, not
3 about just saying, "Just send us more money." but, you
4 know, what is that money, in fact, going to purchase for
5 families.

6 Your recommendations, as they -- for number 2
7 and number 4, I was struck when you said that, do not
8 release any new funding until the policy rules and
9 monitoring methodology is developed. And, in number 4,
10 you talk about program evaluation as a tool for, in
11 effect, trying to kind of support additional funding.

12 Could you speak a little bit more to that
13 issue, maybe on experiences in Washington State or
14 elsewhere, on how this monitoring or, maybe, program
15 evaluation, it's research base, is in some way tied to
16 funding?

17 DR. DARAY: Yeah. Again, this reveals my --
18 you know, biases as a researcher and interest in research
19 questions. But, again, I'll borrow a little bit on the
20 attempt to reform the criminal system. And really what's
21 going on in current literature are the so-called best
22 practices kind of movement

1 What's needed is sort of this interim
2 process, it's more than having just good intentions; you
3 need to have some way that allows you to look at whether
4 this is really going to be -- is being effective, let's
5 try something that's effective, let's (unintelligible).
6 And I think it's a fairly simple kind of a model I'm
7 trying to lay out here.

8 And, again, I'm -- if you just want to put
9 the 40 percent out to -- an additional 20 percent to make
10 the current 20 percent whole -- I'm not recommending
11 against that, but I'm saying, in number 2, be clear about
12 your policy. And then, if you decide to go with, "No, we
13 want extra effort." to develop this process at the very
14 front end -- and the program people are going to hate this
15 because it means a lot of up-front kinds of definition
16 what this new activity is. You can't get to doing good
17 things -- and I'm not trying to be mean about this at all.
18 I'm just saying a lot of extra effort is not going to
19 lead, necessarily, to improved programs, and especially as
20 you enter the area of performance standards.

21 So I think that's what I'm trying --
22 referring to, sort of this interim process where you --

1 maybe you have to do some of this -- have a category of
2 money -- and you could do both things, it doesn't have to
3 be one approach -- but you have a special pot of money,
4 maybe a richer pot of money.

5 If you're going to do something new with
6 Special Ed and you're willing to have some up-front kinds
7 of research, and monitoring along the way, so that we know
8 what you're actually changing -- and this is a problem of
9 every reform, even in our state and most states. Every
10 reform is about a test, it's about a number changing.
11 What bothers me is what do we know that will cause that
12 change, you know, -- researcher question.

13 So, without that mechanism, you're never
14 going to know why things change; we just did a lot of
15 something and it changed, for better or for worse. And it
16 seems we owe it both to the resource provider, the
17 taxpayer, as well as to the parents of the kids who really
18 -- they want to see improvement in their kid. And that's
19 what it all kind of filters through in the end.

20 MR. COULTER: Thank you.

21 I'd like both of you to comment on Mr.
22 Daray's recommendation number 1; and that is, it does not

1 appear as though we have any adequate or uniform
2 definition of regular education costs.

3 Can you speak to that as it relates both to
4 California -- obviously, Dr. Goldfinger feels as though --
5 you know, there's already an excess there. But what about
6 this problem of there doesn't seem to be uniform
7 definition?

8 MR. GOLDFINGER: I'm going to interject. I
9 appreciate the honorary degree. As my father once said,
10 Goldfinger, yes; but doctor, no.

11 MR. JUSTESEN: I told you not to say that.

12 MR. GOLDFINGER: You see, in California, we
13 don't need to track the dollars; we don't need to say,
14 "This is a basic education dollar, are you spending that
15 dollar on basic education?" I think you can look at
16 things globally and say, "How much are you spending, in
17 total, on Special Education? How much are you getting, in
18 total..." --

19 MR. COULTER: Pardon me for interrupting but
20 isn't that a fundamental problem? If, in fact, you don't
21 know that the first dollars have been spent --

22 MR. GOLDFINGER: Well, let me go on.

1 MR. COULTER: Okay.

2 MR. GOLDFINGER: I'm going round off and
3 really tax my memory.

4 We have, in California, a counting system
5 that reports total expenditures by program. This includes
6 direct costs, allocated costs, indirect costs. And, when
7 we look at that for a statewide total, all school
8 districts and county offices, Special Education, if my
9 memory is right, it was \$4.8 billion.

10 We look at, what are the revenues that are
11 available. Now, for a pupil who is learning disabled, who
12 is in a regular classroom, we go, "The general ed dollar
13 has to pay for that regular ed teacher." and so we're not
14 counting that. This Special Education pull-out teacher is
15 the only cost that we're reporting here.

16 And so it's only the pull-out service that
17 we're showing as costs so I would say the general ed costs
18 and the general ed revenue is not part of this equation.
19 For the pupil who is in a self-contained special day
20 class, the general portion -- which comes per unit of
21 average daily attendance -- yes, those revenues are
22 restricted and should be restricted for Special Education.

1 So we count that as available funding.

2 We look at the state aid for Special Ed, we
3 look at the federal aid for Special Ed; and, when I do
4 that calculation, I come up with about \$3.5 billion of
5 revenues that includes the general ed share for the pupils
6 in the self-contained classrooms, 3.5 billion.

7 I go, "Well, if we're spending 4.8 and we're
8 only getting 3.5, then we're spending 1.3 billion of
9 unrestricted monies in support of Special Education."

10 I don't think -- you're asking a question as
11 though it's a threshold question. I don't think we need
12 to answer that question. We're already accounting for the
13 revenues, how can we not be spending the core general ed
14 dollars in support of these pupils?

15 MR. COULTER: Okay.

16 DR. GILL: Mr. Jones?

17 MR. JONES: Mr. Goldfinger, I want to explore
18 a few questions from your recommendations.

19 One, let me state as an outset point, I don't
20 necessarily subscribe to how 40 percent came into being
21 from the 1975 debate and what led to it that you
22 described. But let's say how you described it is the

1 appropriate model for considering it and that this is an
2 attempt to approximate 40 percent of the cost, excess
3 costs of Special Ed, by being 40 percent of APP, average
4 per-pupil expenditure.

5 If it turns out that, in fact, Special Ed is
6 less than twice the cost, should we actually reduce the 40
7 percent figure downward and, in the same, if it's higher,
8 we should -- I mean, let's say it's actually 1.8 times the
9 cost, should we slice 40 percent of APP to 32 percent of
10 APP?

11 MR. GOLDFINGER: Yes, and, from 32 percent,
12 it would be almost double where you are now; yes. I think
13 we say we've got a deal.

14 MR. JONES: No, I understand that. But let
15 me go on. You see, I'm also not so sure that, when you
16 aggregate Medicaid funding and other sources of funding,
17 you're not actually closer to that. But, if it slid to
18 1.5, you would be equally supportive of the model downward
19 as up?

20 MR. GOLDFINGER: Yes. And I would be
21 surprised if we're going to see a number lower than a
22 hundred percent. But where -- I'll say, let the chips

1 fall where they may. I think, especially if we're
2 successful of getting kids into reading programs and
3 keeping out of Special Education -- Dave Gordon is
4 Superintended of Elk Grove School District, they have a
5 very innovative preventative program and they have -- in
6 California, the average school agency has about 10 and a
7 half percent of their school-age population in Special
8 Education; Dave's district, it's about -- I forget --
9 either eight and a half --

10 MR. GORDON: About nine.

11 MR. GOLDFINGER: And so, yeah, it works. So
12 let's get these peoples out. But the ratio -- one of my
13 points was, if that works, then the ratio for the
14 remaining Special Education peoples, the average cost for
15 them is going to be higher because you've excluded the
16 low-cost.

17 MR. JONES: Okay. And thank you, that's
18 helpful.

19 On the payment for services at private and
20 parochial schools, where you had suggested a prorata share
21 be all that a state is -- or a local is obligated --

22 MR. GOLDFINGER: That is federal regulation.

1 MR. JONES: Well, no, I -- it's actually not
2 exactly. The obligation is only to pay pro -- to make
3 available a prorata basis of resources but not, in fact,
4 on a per-pupil basis.

5 MR. GOLDFINGER: Oh, I'm sorry if I was
6 misunderstood. No, I meant a pot of money, which is the
7 prorata share of the federal dollars. If the pupils in
8 private and parochial schools are say eight percent of all
9 Special Education pupils and eight percent of the federal
10 dollars is a pot of money, you spend that in a way that
11 you serve to maximize cost-effectiveness, you don't have
12 to serve all peoples, you don't have to serve all peoples
13 equally; at that point, you can say no.

14 MR. JONES: Well, what I'm asking, though,
15 is, if it's appropriate to limit it to that prorata share,
16 is it also appropriate, on the flip side, to permit
17 children to obtain that prorata share on an individual
18 basis? In other words, if you're saying that the pot
19 should be limited, should, then, the slices -- or the
20 pieces within that pot be proportionally out for children
21 who seek it?

22 If you have 10 kids in parochial school --

1 MR. GOLDFINGER: Right --

2 MR. JONES: -- and you divide it up into 10
3 pieces, should each of those 10 kids now have the
4 opportunity to pull their slice out of the pie?

5 MR. GOLDFINGER: I'm going to say, as we
6 discussed, it's not the current requirement and I don't
7 think that would be cost-effective because, generally,
8 you're going to need some kind of -- how much service --
9 if their share, in example, was \$10,000 and each pupil's
10 share was 1,000, how much service can you buy for 1,000?
11 You might have much more effective service to pay for a
12 fraction of a speech teacher. If eight out of the 10 kids
13 need speech, and to buy, say, 20 percent of speech teacher
14 out of that \$10,000, that's going to be much more
15 effective than each parent having a thousand dollars and
16 having to go to a private vendor and get services -- get a
17 couple of hours of service out of a thousand dollars.

18 I just don't think it would be cost-
19 effective, it would be an effective use of those
20 resources.

21 MR. JONES: I mean let's say -- I don't want
22 to belabor this too long, but a local catholic school has

1 10 kids, the proportion and share would pay for one PT to
2 come in twice a week. Under current law, that parochial
3 school can't go to the district and say, "Hey, I've got
4 eight of your kids; if they came back to you, you'd have
5 to provide full faith for them. Instead they are at our
6 school; we would like to suggest that you provide that
7 prorata share and we'll be able to hire the PT." and,
8 instead, the school district can say "No. We actually
9 provide -- we make available those resources to you by
10 allowing your teachers to attend our summer training
11 institutes that we spend federal dollars on."

12 That's within their limits right now and
13 that's what happening at most of those schools.

14 MR. GOLDFINGER: Okay --

15 MR. JONES: Would it be appropriate to allow
16 those private schools to have the ability to access those
17 proportional funds on behalf of their students?

18 MR. GOLDFINGER: It's my understanding --
19 you're stretching my area of expertise, but it's my
20 understanding that a school district does not make a
21 unilateral decision that it meets with the private and
22 parochial school agencies, identifies areas of needs, and

1 comes up with a group decision on the best use of those
2 dollars. If it were the instance that you said, where
3 it's either teacher training or nothing, I would go -- I
4 don't think that's appropriate. But it's my understanding
5 it's much more collaborative than that.

6 MR. JONES: Okay.

7 The last question I want to ask you is, I
8 guess, almost a philosophical one; and I'll extend this to
9 Mr. Daray, as well.

10 The origin of 94-142 in '75, was at a point
11 in the civil rights movement where we were a good 10 years
12 after the passage of the original Civil Rights Act, we're
13 well into the court battles over bussing, and there's an
14 argument that part of the reason IDEA had the support to
15 get through Congress was because of the fear of what had
16 developed under the litigation without funding that came
17 out of the Civil Rights Act. So there were no carrots
18 inside the Civil Rights Act.

19 And further, the constitutional litigation,
20 as part of desegregation, that was leading to the bussing
21 conflicts and so on, was short-circuited by providing some
22 of these carrots inside IDEA so that, in absence of IDEA,

1 you would have had a stream of litigation that would
2 probably continue until today that would make most of the
3 desegregation and bussing litigation look like a debating
4 society, it would go on for years and be in levels of
5 minutiae that made that look like small time.

6 My question is, in considering the
7 obligations that school districts view IDEA is imposing on
8 them, is there any recognition among the policy-makers
9 that you talk with that IDEA is also, in a sense, a shield
10 for them, that it's -- it proscribes of service for
11 children within their systems that otherwise would be up
12 to the vagaries of federal court judges and state court
13 judges over definitions of terms like equity and access
14 and proper service?

15 MR. GOLDFINGER: You're asking a very good
16 question and only response that I can think of is that it
17 was my understanding that the State of New Mexico at one
18 time was the only state that did not opt into Education
19 for the Handicapped Act and they found that they were
20 subject, I guess, to that kind of litigation and that kind
21 of, just -- they decided that, since we have to do all of
22 this anyway, we may as well opt into the program and get

1 the federal dollars. And so that may be your one test
2 case, to look at that.

3 DR. DARAY: My experience has been in terms
4 of that kind of understanding IDEA as a shield -- is the
5 way you characterize it -- and as a way to think about
6 what the K-12 system, especially the Special Education
7 works, is a real world sophistication that's just not
8 evident at state-policy-makers in Washington right now.
9 It's just not a level of interest; these things kind of go
10 in waves, you know, it goes from higher-ed to K-12 to --
11 and there's also -- let me take this opportunity to make a
12 comment on the whole scale change of policy-makers in
13 states like, say, Washington, there's really not much --
14 when you go back to things in the '80s -- I know for Bill
15 and I, the '80s are just the other day and we keep
16 thinking -- the problems we deal with -- ever-changing.
17 We don't have term limits, it doesn't -- we don't -- we
18 don't need it in the State of Washington, there's such
19 high turnover.

20 But there's really no one left from the '70s
21 or the '80s. So, from a -- so, for a policy issue like
22 Special Education, they're just overwhelmed and they don't

1 put in the six to eight years they used to before they
2 even felt, you know, like taking on the tough issues,
3 which is higher education, something like Special
4 Education. You know, it just takes a level of
5 sophistication.

6 So, in a sense, you have an opportunity to
7 start a new message in this. I mean, I don't think --
8 those old issues -- you can redefine that original terms
9 of entitlement; and I don't know what's so sacrosanct
10 about that. You're not going to find anyone in the
11 Washington legislature and you -- but you would have,
12 probably eight years ago. You certainly would have -- ten
13 years -- "Wait a minute, I don't remember what that was."
14 I mean, it's just sort of academic argument now, it's sort
15 of, "What do you want to do?"

16 And that's why -- I don't know if you can
17 tell where I'm leading in my recommendations; I'm working
18 against my professional long-run, which is, I've always
19 been on the finance side. And what I suggest to you both
20 in my talking points, and my recommendations, in the end,
21 in an ideal world, policy would drive things, not the
22 finance side of things. You would have a clear idea of

1 what are best policies and best practices and then you
2 could fund that.

3 But, in the absence of that, you just don't
4 know what you're getting. So here is the opportunity --
5 maybe it's a little chunk of -- I think Commissioner
6 Gordon asked this question and maybe I didn't answer it
7 well enough -- I mean, here's your opportunity to maybe
8 set a little bit of it aside and require this to be to the
9 place where we really know what happened to the money we
10 spent -- not to say the other money is not well spent; I'm
11 not implying that at all.

12 But here's a part where you would know. And
13 these are the practices you could -- you take down to the
14 classroom and disseminate. I think that answers one of
15 the Commissioner's questions.

16 DR. GILL: Which actually, I think, is a
17 pretty good segue for a question that I have. And,
18 actually, I have a question for each of you and they are
19 not the same question. And I know the Commissioners will
20 appreciate that I didn't do that this time; I usually ask
21 both of you the same question and give you an equal
22 opportunity to respond.

1 What I'm interested in, and this question is
2 for Mr. Goldfinger. You used an example on page 9, I
3 believe, where you talked about allowing the cost of
4 services to be weighted, the \$40,000 program versus the
5 \$100,000 program, and normally, I suppose, IEP teams would
6 decide which one is most appropriate.

7 MR. GOLDFINGER: Well, I was talking more of
8 a due process hearing, at that point.

9 DR. GILL: Well, I think it's under Allow
10 Costs of Services to be Weighted (SIC) (cont.), number
11 two. The question you ask at the bottom is, "Are we being
12 prudent with taxpayer's money?"

13 MR. GOLDFINGER: Right.

14 DR. GILL: Follows is, "Is there a
15 `reasonable accommodation' standard that can be used?"

16 What would the elements of that standard be?
17 How would you approach the reasonable accommodation notion
18 of differentiating between a \$40,000 program and a \$60,000
19 (sic) program, I am interested in. So what would some of
20 those standards be? What would some of those service
21 delivery standards, or questions you might raise about the
22 differences between those two programs?

1 MR. GOLDFINGER: Well, I would ask that a
2 consideration be allowed on the part of the hearing
3 officer -- this type of issue generally goes to a due
4 process hearing where the parents offer one thing -- I'm
5 sorry -- the school agency offers one thing, the parents
6 request something else. There is a lack of agreement
7 anywhere in the process until it gets to a due process
8 hearing.

9 And I would like to see the due process
10 hearing officer allowed to evaluate not only these dollars
11 for this individual, but also, is this a prudent use of
12 money. It's going to be very subjective, in some cases.
13 I can make it objective by having the hearing officer give
14 a numeric score, like I suggested. Well, if the \$100,000
15 program, well that's a hundred; and, if the \$40,000
16 program is 95 or 85 or whatever they say, then they can
17 evaluate, is the marginal cost worth the marginal
18 improvement.

19 If what the school agency is offering is
20 inappropriate, gets a score of 10, you'd say, "That
21 doesn't qualify at all."

22 DR. GILL: If it's inappropriate, I think it

1 would score a zero.

2 MR. GOLDFINGER: Right. Or just is not very
3 good; it gets part of the way there. Or, going back to
4 the other issue that I raised, is the school district's
5 program appropriate; and the answer is yes. So that gets
6 a hundred. Is the other program better? So that's 110.
7 And so are we getting an extra 10 percentage points for
8 \$60,000? Nobody is asking that question, is this an
9 appropriate use of money; and nobody is asking the
10 question, where does the money come from. School
11 districts don't print dollars; we don't have deficit
12 spending.

13 What are the consequences on the rest of the
14 educational program --

15 DR. GILL: So, in essence, you would let the
16 courts, basically, or the hearing officers or the
17 administrative law judges determine point values for
18 appropriateness of programs and assign a cost to them?

19 MR. GOLDFINGER: Well, I'm a numbers guy; it
20 sounds reasonable to me.

21 DR. GILL: Okay.

22 Again, my question for you, Jack, is could

1 you talk a little bit about what your perception of the
2 differences between system accountability and student
3 accountability -- as it relates to Special Ed, of course.

4 DR. DARAY: Tell me a little more about your
5 question, make sure I understand.

6 DR. GILL: I think one of the things that
7 we've heard bits and pieces of today, if one of the
8 charges is to look at the finance, the cost-effectiveness
9 associated with Special Education and then, is that, in
10 fact, accountability, does that drive improved educational
11 outcomes or whatever. It sounds to me like there are some
12 measures of system accountability that have to be affixed
13 to that.

14 Now, maybe it isn't the traditional
15 compliance system; maybe it's another way of looking at
16 growth rates, outcomes, in relationship to state test
17 scores, whatever that happens to be, versus the notion of
18 the individual entitlement and the student accountability
19 that may come from part of what Mr. Goldfinger was just
20 talking about, assessment of cost on a student-by-student
21 basis.

22 And I guess what I'm interested in is, do you

1 see differences between the dynamics of a systems
2 accountability system versus a student accountability
3 system? I mean, the systems are --

4 DR. DARAY: Well the student accountability
5 -- really what you're asking has to do with the general
6 education reform movement. And, you know, for it to work
7 correctly, in the end, the most important employee in all
8 this business is not employees of the U.S. Department of
9 Education or the State Superintendent of Public
10 Instruction, or school district administrators, it's the
11 classroom teacher.

12 And so a system of accountability, if it
13 doesn't -- I hate to use this term -- but, if it doesn't
14 provide some real time kind of information back at some
15 point to cause some teacher to change his or her
16 practices, then it really doesn't -- you know, and that's
17 when -- what Washington is struggling with right now, what
18 do you do with these scores?

19 You know, we can publish them in the paper
20 about how different districts are doing, and that makes
21 policy-makers feel certain ways, but what the whole
22 enterprise is about, the whole education and formal

1 movement, that is improving education. If the classroom
2 teacher doesn't change his or her behavior then the thing
3 hasn't worked. It's just more of what used to be.

4 So, you kind of need to hand-in-hand these
5 two things and it's formative data and summative (sic)
6 data and you've got to have both. And the formative data
7 is the stuff that goes to the classroom at the program
8 level, and the summative data is the stuff that will keep
9 administrators and state policy-makers and federal policy-
10 makers -- sort of generally tuning where the system is
11 going, or feeling good or not so good about where they're
12 investment is going.

13 So those -- so I think it's the same issue
14 that's all -- all that K-12's got to deal with is, or we
15 come in with both kinds of data. I think we're coming up
16 really short on the formative side. And, again, I've had
17 a very lucky career and since I've always sort of been
18 places, and when you had reform, I did a lot of that and
19 -- I mean, welfare reform of the '80s -- one of the things
20 that happened, I was around during all the debates,
21 whichever was convinced would go any place in Washington.
22 But, when both sides, it was real clear it was going to be

1 -- the deal was, data for both. I'm willing to go through
2 the paperwork to send information to Olympia or to
3 downtown as long as I will get something that helps me
4 with Johnny or Susie, whether they're getting better or
5 not.

6 Because -- I don't know, they just go off
7 some place, I never get any feedback, I'm just going to do
8 what I learned in my school of education and I learned in
9 some training.

10 But to have actual, verifiable data to do
11 that, those two elements have to go together.

12 DR. GILL: Thanks, Jack.

13 Commissioner Chambers?

14 DR. CHAMBERS: It's kind of good and bad
15 being at the end of the row here because most of your
16 questions have been taken by the time you get down to me.

17 Actually, a couple of comments and then some
18 questions.

19 Paul, I've got good news for you; the first
20 of many reports is out, it's on the web; it was about a
21 week ago. The new number, if there is a single number, is
22 1.9. Now it says it costs about 90 percent more to

1 provide -- or -- let me step back.

2 We're spending about 90 percent more on the
3 typical -- I violated my own definitions here --

4 DR. GILL: Thank you for the clarification.

5 DR. CHAMBERS: We're spending about 90
6 percent more on the typical Special Education child as we
7 are on the plain vanilla general education, or regular
8 education child right now in this country.

9 If I exclude capital facilities -- our best
10 estimate of what that is, the number is 2.08 -- if I just
11 look at current expenditures, for example, it doesn't take
12 that much more space to provide the services on average
13 than it does other kinds of services.

14 So we're still around the number that Dick
15 Rossmiller (phonetic) and his colleagues, 30 years ago in
16 the late '60s, said it was 1.9 and it went up to 2.17 in
17 the mid-'70s, it went to 2.3 in the '80s, and, you know,
18 now our numbers are showing about 1.9 or 2.08, depending
19 on how you measure it.

20 So, if nothing else, it's a bit of a
21 clarification. The other issue, I don't -- I'm not
22 convinced that the 40 percent has any relationship to that

1 number. I mean, the 40 percent, as I see it, is 40
2 percent of excess costs, whatever the -- and I'll use the
3 term, everybody seems to know what excess costs means --
4 but it's actually additional expenditures. But 40 percent
5 of additional expenditures as opposed to 40 percent of
6 APPE.

7 APPE, the average per-pupil expenditure, is
8 just a way of estimating the cost of a general ed or a
9 regular ed child.

10 Here's another point of clarification. We
11 estimated that we are spending \$77-plus billion to provide
12 educational services to students with disabilities who are
13 eligible for Special Education. \$50 billion of that were
14 funds that were marked for Special Education resources and
15 services, whether that be administration of the program,
16 transportation of service -- special transportation, and
17 then the instructional and related service programs.

18 Now, what's the excess costs, additional
19 expenditure? It's somewhere in the neighborhood of less
20 than 35 billion because the \$50 billion, a lot of -- some
21 of what Special Education is expended on is things that
22 are really part of the general education curriculum.

1 So, when we talk about Special Education
2 expenditures and we look at accounting systems and try to
3 figure out what those amounts are, some of the
4 expenditures that are for Special Education resources,
5 resource teachers, special class teachers, are for things
6 that would be provided if this child was in the general
7 education program.

8 So, to talk about Special Education spending
9 and excess expenditure or additional expenditure, whatever
10 term you want to apply to it, are two different concepts.
11 And I think we've agreed today that we need to think of
12 the general -- what's spent on a general education child
13 as kind of a benchmark here. So I think that
14 clarification is very important.

15 Part of the reason we have compliance-minded
16 funding system is because different levels of government
17 don't trust one another. Maybe for good reason; I'm not
18 going to make that judgment. I look back over a career of
19 working in this area for some 25 years and words like
20 "appropriate," "thorough and efficient," "efficient,"
21 "adequate" we've been using in the finance community for
22 years. And they are all, in my view, almost meaningless

1 concepts; they don't tell me anything about what's being
2 provided in terms of outcomes to kids.

3 Appropriate, efficient, and adequate ends up
4 being whatever we can afford.

5 I'll step down off my soapbox for a moment --

6 MR. GOLDFINGER: It's more than we can
7 afford.

8 DR. CHAMBERS: Well, I'll pass on that
9 comment.

10 I guess I'm trying to figure out, is
11 ultimately we're concerned about results for children and
12 I'm still struggling how we measure that, how we get at
13 results for children without, at the levels we're talking
14 about, whether it's a federal or state level, resorting to
15 the bean-counting mentality, the compliance mentality.

16 You've got to have these kinds of services
17 for these kinds of children, you've got to be spending the
18 dollars only on this kind of child, as opposed to, let's
19 put the dollars out there and allow local school
20 districts, or schools, to try to decide, in their local
21 community, given the needs that are out there, how do we
22 best serve these children in order to provide outcomes,

1 results, independent living, whatever the set of outcomes
2 are.

3 So I guess I'm trying to think -- I heard
4 people talking -- or you mentioned reduction in paperwork,
5 how do we take off some of these burdens that we've
6 imposed at the federal level and provide some kind of a
7 context of trust at the state and local level to serve
8 children and get results? What are the results? I mean,
9 how do we measure this?

10 DR. DARAY: Let me take a quick -- actually,
11 on page 5 of my talking points, point C) which is almost
12 the last one -- things I think are important as you get to
13 towards the end -- so almost the very last thing I talk
14 about is that -- this technical issue.

15 And the underlying technical issue, we need
16 some -- as I say -- "explicit consideration" because we
17 have an area that's already got a lot of documentation, a
18 lot of paperwork, whether it's successful or not, it's --
19 but there's a lot of it.

20 To do some of the things that the State of
21 Washington has done, on a national level, probably isn't
22 reasonable. And what I recommend are a couple of things

1 that, we sort of have to let go. As policy-makers, you
2 have to let go and maybe operate like the private sector,
3 to a certain extent, and that is, do some sample -- you
4 know, when you've got a production line, you don't pull
5 out everything on the line and sample, I mean to do a
6 hundred percent sampling of whether that product is
7 complying with what we think it ought to be to be a
8 successful product.

9 And one of the things that you can do is talk
10 about some very heavy emphasis on some pilot programming
11 where -- basically sampling -- rather than this hundred
12 percent sample that government thinks it has to do.
13 That's a tough step. You've got to do it right up front,
14 explicit -- and it means you're going to have some
15 spillage, it means you're going -- and I'd argue, you
16 don't even know if you've spillage right now.

17 So why not go into those states or those
18 districts that want to engage in a fairly thoroughly-
19 researched -- from an operation standpoint, we're doing a
20 good job and we are going to make the changes and to have
21 all the formative and summative stuff -- give them some
22 extra level of funding so you can start to find out --

1 it's going to be an interim process over a long time to
2 get to the changes.

3 But, you know, I can't agree more with what
4 your issue is. It makes us budget folks a little
5 uncomfortable because we like having -- we think we know
6 who have big data systems. Well, I can tell you as a
7 former budget director of Evergreen State College, and now
8 as a consultant who gets to see the other set of books,
9 that there is a struggling to try to find out how they're
10 doing, they're just struggling. These are good people and
11 they're overwhelmed with the job; they're trying to find
12 out, what's my real cost -- my cost definition I talked
13 about earlier.

14 So perhaps a sampling kind of approach would
15 be an answer -- a way to go. And then you generalize from
16 that to the extent you're disproven.

17 I mean, that's --

18 MR. GOLDFINGER: That's outside my area of
19 expertise. I'd be afraid to talk on that.

20 DR. GILL: Troy Justesen?

21 DR. CHAMBERS: I wanted to follow-up with --

22 DR. GILL: Oh, go ahead; follow-up.

1 DR. CHAMBERS: I waited this long --

2 DR. GILL: You bet. We will start with you
3 first next time, Jay; how about that?

4 DR. CHAMBERS: Regarding the -- I want to go
5 back to the Safety Net concept of the -- it seems to me,
6 if I understand it correctly -- and I'm not saying I do --
7 that it's a process of looking from one year to the next
8 and saying, "Gee, our expenditures have changed very
9 dramatically from the previous year and we struggled
10 through our accounting system to try to figure out why
11 they have changed."

12 I'm wondering, to what extent -- I mean,
13 we've been thinking about, as you mentioned, I think, the
14 notion of the very high-cost child. And I'm wondering to
15 what extent this kind of concept or approach could be
16 applied on the basis of individual children as opposed to
17 looking -- trying to dig through an accounting system.

18 In other words, I can go through and say,
19 "Here's a couple of children in our district who are
20 extremely high cost; here's the kinds of services that are
21 being provided to these children." And, instead of
22 thinking about it as a safety net for the whole system,

1 trying to focus it a little bit more on a very small group
2 of children who can bankrupt a small school district.

3 DR. DARAY: That's the long range, I think I
4 suggested earlier, the long-range impact of a safety net
5 process.

6 Again, in a state like Washington -- which is
7 kind of contained -- but as you sort of back the whole
8 system up, the problem at district level is, the person
9 who has to do the work on the safety net application often
10 is from the business office and the connection to the
11 program side is not there. In fact, it's interesting to
12 watch them when they finally get together, you know, "Gee,
13 I didn't know you knew that."

14 So it's to a point -- and again, I'm not
15 trying to be mean spirited -- I'm going -- what I'm trying
16 to say, if you want good management and a dollar spent
17 well, the most services to the kids, well what you do
18 first is you press this system down -- the district has to
19 get the program person together with the finance person
20 and say, "Well, what are our costs?" because they do and
21 don't talk together and they certainly don't warn each
22 other, I can tell you that. It's a world of surprise. One

1 of the things you learn when you work for the legislature,
2 never surprise a member with any of your testimony.

3 I'll tell you, with the districts, there's
4 this time of the year -- it's about this time of the year,
5 it always happens with the budget -- all of a sudden the
6 program people will say -- and I get the -- I really like
7 what I do, I get to watch them say, "We would like to tell
8 you, we've decided to do a lot more contracting with
9 Children's Hospital for a bunch of things and the grid is
10 not going to look quite right." "Oh, yeah?"

11 So I would suggest, at least in the case of
12 Washington, over time -- I'm not saying it's happening now
13 -- as you start to force that decision back in terms of,
14 if we're successful in saying to someone, "We're out of
15 money; we've got to show we've spent all our money right
16 now." -- well, if that process, they've got to go in front
17 of that Committee -- which, again, is their peers, it's
18 not budget people, but they know they've got to -- that's
19 forcing a lot -- it is starting to force, I would suggest
20 -- I couldn't prove this but I think I've seen it --
21 because ultimately, I think, was your best chance to get
22 Special Ed directors to act like managers and not program

1 advocates. Because, you get a good manager, the best kind
2 of program advocate there can be because it means you know
3 what you're doing. And that's the problem.

4 And that's why my -- again, my last
5 recommendation is on my whole thing -- if you never do
6 anything else at all, go out and require Special Ed
7 directors to have to be firmly grounded in good management
8 and good financial information and skills so they can go
9 and make sure they're getting all the money that they're
10 supposed to be getting and that they are managing things
11 as tightly as possible. So then they can make their case,
12 there isn't enough money.

13 And, if you can't do that, if you can't show
14 that, then the appeals to the Safety Net Committee or to
15 the taxpayers is not going to be successful over time.

16 DR. CHAMBERS: It's kind of satisfying to
17 hear you say that because then -- and some 20 years ago in
18 some papers that Tom Parrish and I have written together,
19 one of the leading comments is, we need to figure out ways
20 to bring programmatic or curricular decision-making
21 together with fiscal decision-making.

22 And I, frankly -- I'm still trying to figure

1 out how to do that because, literally -- I think you'll
2 back me up on this -- if you walk into a school district,
3 the fiscal decision-makers, the business officers are
4 literally in one wing of the building and the programmatic
5 people are in the other wing. If you go into a school of
6 education, the finance guys, the economists and those --
7 the green-eye-shade folks are literally in one section of
8 the building and the people who do programmatic research
9 are in the other section of the building.

10 And it's not through maliciousness, it's just
11 they are trained differently, they have different
12 backgrounds. One group is psychologists and education
13 specialists and the other are economists or finance or
14 policy specialists. And there's not much of a motivation
15 to get together.

16 If you walk into school districts and ask a
17 Special Ed director how much they're spending on their
18 program, sometimes they don't know, they have to go to the
19 business officers to ask that question. And --

20 DR. DARAY: Most times they don't know --

21 DR. CHAMBERS: Well, maybe in Washington --

22 DR. DARAY: Not because they don't want to;

1 they're busy, they are very busy people. But --

2 DR. CHAMBERS: -- folks, they have an awful
3 time trying to ferret out some of the data.

4 I guess the question is, how do you bring
5 that together? I'm not convinced -- oh, you said we
6 should be doing that but I've been working on it for 25
7 years and I haven't figured out the mechanism that brings
8 those folks together in the policy mixture in the local
9 district.

10 And I'm not sure the federal government --

11 DR. DARAY: Well, that's -- I mean, that's
12 the problem. That's why I was trying to caution you; I'm
13 talking from the Washington State experience.

14 DR. CHAMBERS: Maybe there is one last
15 question here. Maybe this is the wrong group to ask it of
16 but I'm going to ask it anyway.

17 From a funding perspective, what is -- or
18 what should be the federal role in funding Special
19 Education, or IDEA? How would we structure that? What is
20 our first -- what is the responsibility -- I say "our"; I
21 mean, it's our government -- but what is our
22 responsibility? What should the federal role be in this?

1 (No response.)

2 DR. CHAMBERS: That's the same answer I had.

3 DR. DARAY: I would recommend, be the change
4 agent. You know, some states have got their act together
5 and have the right sort of policies, legislative
6 committees that focus on this, or maybe a governor's
7 office that focuses on this; but, in the world of Special
8 Ed and K-12 finance is filled with a lot of very busy,
9 overworked people. And if you don't, at some point, do
10 some prioritization and say, "We're not going to continue
11 to work -- this is the most important thing we need to
12 focus on."

13 Because one thing you're going to have --
14 it's most important -- you're going to have, perhaps, some
15 money, and some new money coming; that's the chance --
16 that's your chance to be in the role of change agent. So,
17 if you want to get to this money and you want to see these
18 new -- then you've got to decide what you want those new
19 things to look like.

20 Right, that would be my recommendation; see
21 yourselves as the -- I recommend be as a change agent,
22 that little part of investment.

1 MR. GOLDFINGER: I'm having a real hard time
2 answering that question in isolation because the federal
3 government is not only party to Special Education in terms
4 of providing a portion of the funding, albeit a small
5 percent of total funding, it's also the party that has
6 established, through IDEA, a series of mandates that some
7 school agencies are finding very, very expensive to
8 implement as written or as interpreted in this state or by
9 the courts.

10 And I think your job is not just how many
11 dollars should go out there but what should the federal
12 role in prescribing the program look like. And many of my
13 comments were addressed on that aspect.

14 DR. GILL: Troy Justesen.

15 MR. JUSTESEN: Well, Jay read my last
16 question off my notes and asked it in place of me, you
17 know --

18 DR. CHAMBERS: You think I actually read from
19 that --

20 MR. JUSTESEN: Well, you had your glasses on,
21 you know.

22 I just want to make one brief comment that

1 seems interesting to me. We've had a discussion here
2 about Special Education and the Commission's
3 responsibility beyond that in looking for students with
4 disabilities, including those that don't receive Special
5 Education services, students, for example, who would be
6 possibly 504 kids.

7 I'm curious about -- and this is just
8 rhetorical, but I see no assistance in terms of research
9 being done or questions being able to be answered about
10 how state VR (phonetic) agencies are -- how much they
11 spend per child in helping transition services from high
12 school to post-high school activities and that sort of
13 thing. And I think that's one agency that is, besides the
14 public school system that you talked about earlier, that
15 should be asked some of these important questions in terms
16 of serving students with disabilities.

17 That's just an open question.

18 DR. GILL: Any of you like to respond to
19 that?

20 DR. DARAY: Well, I'd say that -- you know,
21 it may be some comfort but two of the more -- the bigger,
22 more sophisticated school districts, in fact, try to

1 maximize -- they know the issue, this is not just an
2 education issue and we need to look at these other sets of
3 services. But -- and that's one of the problems trying to
4 deal with a one-size-fits-all solution in K-12.

5 And you've got, again, to understand my
6 current main clients are the three biggest school
7 districts in the State of Washington and so I tend to kind
8 of see -- and they have, because of just where they're
9 located, both politically in terms of -- and also because
10 they understand the politics better, they do, from time to
11 time, try to find out where all these other sources --
12 resources we can use. But, you know, once you get beyond
13 the big districts, you know -- you raise a really good
14 issue -- they tend -- everything is in isolation and it's
15 got to be terribly frustrating for the parent of that
16 child trying to figure out where our service is.

17 So there's no one trying to broker that for
18 them. Some of the big districts, again, you've get a
19 creative Special Ed director, a creative superintendent,
20 they'll say, "You know, there's a lot of other people --
21 folks doing the same thing, that related stuff that we
22 ought to be a part of." But, beyond that --

1 MR. JUSTESEN: Well, I guess I mean our state
2 VR agency as being more proactive, just as an example of
3 an agency in terms of not the schools being placed with
4 all the responsibility, but are these other agencies
5 fulfilling the responsibilities that I think they have.
6 And are they spending their dollars as well as they should
7 be, or could be, on serving students with disabilities in
8 the areas the public school system relies on them to do?

9 DR. DARAY: There's been three -- the last
10 three superintendents of public instruction in Washington
11 have all tried, going back -- I don't know how many years
12 that is, 25 or 30; we had one that was there for four
13 terms -- they all come in wanting to turn it from a
14 regulatory agency to an agency that can essentially be
15 issuing -- the best practice, helping the field, and they
16 just never get there.

17 Between the legislature -- the legislative
18 thinks they've got a handle and the kind of personnel
19 that's able to attract, just the data -- at least in the
20 State of Washington, the desire's always been there,
21 especially the current superintendent. They always come
22 in saying, "I just want to change -- I want us to be

1 helping districts and teachers and kids." And, instead,
2 it's -- all of a sudden four years have gone by, you've
3 had four horrible sessions of the legislature and they
4 want you to spend overtime on data system -- whatever, and
5 you just never get there.

6 MR. GOLDFINGER: I'm assuming you're going to
7 see a huge variation from state to state. We see it from
8 county to county, wherein in some counties, mental health
9 is very cooperative in providing services jointly with
10 school agencies, cooperative with school agencies; in
11 other counties, they just can't be found. And so just a
12 very difficult issue.

13 DR. GILL: Thank you both very much for your
14 comments and your willingness to take our questions and be
15 patient with us as we labor through some of those
16 questions ourselves; we appreciate it very much.

17 Todd Jones has some announcements he'd like
18 to make.

19 MR. JONES: The first announcement is for the
20 members of the public. If you have parked here in the
21 building, we have validation stamps out at the front -- at
22 our front desk, just outside the door. You simply need to

1 take your parking ticket to them, they'll stamp it, and
2 it's validated. I do want to tell you, though, it doesn't
3 mean you have in and out privileges; you can't go -- you
4 can't leave and then come back and get another stamp. But
5 you can go out and get a stamp now for parking validation.

6 The other announcement is that we're going to
7 be closing -- everyone is going to have to leave the
8 hearing -- the room. We're going to be closing the door
9 over lunch and reopening it at 12:55 when -- or just
10 before 12:55 when we start the afternoon session. So
11 please take anything you want with you and we'll reopen
12 the doors at start-up.

13 DR. GILL: We are going to adjourn for lunch
14 now; we'll be back and we will try to start the next issue
15 at 12:55.

16 (Whereupon, at 11:59 a.m., the hearing in the
17 above-entitled matter was recessed, to
18 reconvene at 12:55 p.m., the same day.)

19
20
21
22

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

AFTERNOON SESSION

18

1:05 p.m.

19

DR. GILL: I'd like to begin our third panel

20

of the day. This panel deals with alternative state and

21

federal funding structures. And our single panelist is

22

Dr. Eric Hanushek.

1 Eric Hanushek is the Paul and Jean Hanna
2 Senior Fellow at the Hoover Institution of Stanford
3 University here in California and a Research Associate of
4 the National Bureau of Economic Research.

5 He is the leading expert on the educational
6 policy with an emphasis on the economics and finance of
7 schools. He is a distinguished graduate of the United
8 States Air Force Academy and completed his Ph.D. in
9 economics at the Massachusetts Institute of Technology.
10 He proudly served in the United States Air Force from 1965
11 to 1974.

12 So, welcome, Dr. Hanushek; we appreciate you
13 taking time out of what I know is a busy schedule to be
14 with us today. So if you would like to begin your
15 presentation for us, we'd sure appreciate.

16 DR. HANUSHEK: Well, thank you very much for
17 having me here. I'm a little bit embarrassed by being
18 here because I think all of you know more about Special
19 Education than I do. And I'm here to tell you something
20 but I think you know everything I'm going to say -- maybe.

21 My role here -- or my view and where I come
22 from is as an economist who has studied the issues of

1 educational performance and educational policy for a
2 number of years and, increasingly, Special Education
3 becomes mentioned any time you want to talk about any
4 aspects of schools.

5 I'll try to -- I provided some written
6 testimony; I'll try to summarize and go through that and
7 hit the highlights.

8 From my perspective, it's quite clear that
9 nobody thinks the Special Education system is working
10 well. And that's the starting point. But, then, as soon
11 as you press people on that, they come up with very
12 different views about why it isn't working well.

13 The one that I think I hear most often is the
14 overall expense of the system and that it might be
15 draining money away from the regular education system.
16 Others fix on the growth of the number of people
17 classified as Special Education students. Some talk about
18 the potential stigma and labeling of Special Education.
19 And then it's down, until fairly recently, at least, to a
20 very small number that ever talk about the performance of
21 the system and what the kids in Special Education are
22 getting from the system.

1 As a little anecdote, maybe six years ago I
2 was having dinner with a State Education Commissioner who,
3 in the middle of the dinner, started on some set speech
4 about the cost of Special Education and it was damaging
5 all the schools, and went on; and I finally said to you
6 him, "Well, what do you know about how well it's doing for
7 the kids in Special Education?" And he looked at me,
8 stunned, like I was from Mars; and the State Commissioner
9 had never, ever, thought about this.

10 So that gives you an overview of where I'm
11 coming at, is to give some economic insights into some of
12 the issues that I see that go across this range of topics.

13 I was originally asked to talk about the
14 finance of the system but I believe you cannot talk about
15 finance without talking about the performance and outcomes
16 of the system at the same time, that these two have to go
17 hand-in-hand. And so you will see that these two themes
18 are interwoven in what I provided.

19 Let me start quickly with a summary of
20 recommendations or conclusions that I draw and then
21 provide you with some details.

22 The first is that, a satisfactory system is

1 possible only if there is a distinct focus on the outcomes
2 of the system. As long as the main focus is on process
3 and classification, it's going to be an expensive system
4 that's just a regulatory knot and no one is going to be
5 happy with the outcomes. And that's why I think that you
6 have to talk -- when you talk about finance, you have to
7 talk about finance of what.

8 Secondly, I'm not an expert in all of the
9 measurement of outcomes that might be relevant here,
10 particularly in Special Education. But I think that
11 defining the outcomes of Special Education will require
12 significant analysis and discussion on its own. And this
13 is, in my mind, a particularly important place for federal
14 leadership in defining what are the relevant outcomes and
15 how to measure them and how to proceed on that.

16 Thirdly, outcome accountability should be
17 linked directly with an effort to learn more about what
18 are effective Special Education programs; and this is
19 going to be a second area that is very important for
20 federal leadership. This is the role of providing
21 knowledge, creation, and research about the things that
22 work in which situations, the expense of different things,

1 and so forth. This knowledge about outcomes and how they
2 relate to programs and the definition of various
3 activities in Special Education, and in regular education,
4 is lacking, in large part from everything I can see. And,
5 without that information, it's going to be hard to reform
6 the system in any significant way.

7 Now, on the finance issues, the finance
8 issues are partly from general, simple economic theory.
9 The first one is that, I think, as a summary statement,
10 the federal government should assume responsibility for
11 full funding of the most expensive students. And that
12 comes because the most expensive students are, from the
13 schools' standpoint, sort of a random event that occurs to
14 them and it's a high-risk event. And, for individual
15 school districts to absorb the cost of the most expensive
16 schools (sic) is very difficult and the federal government
17 should be the insurer of pooling the risks and insuring
18 against very large expenditures.

19 Secondly, on lower-cost services, a lot more
20 effort has to be made throughout the system to try not to
21 distort the decision-making of who is classified as
22 Special Education. The obvious way to do this, for an

1 economist, is to provide, essentially, block grants that
2 do not change the price for labeling somebody as this or
3 that but, instead, provides the funding for school
4 districts and lets the local districts make decisions
5 about the programs and activities that they should provide
6 for Special Education students.

7 Next, there is some uncertainty about exactly
8 what the costs are of Special Education and different
9 kinds of programs. But it would appear that there are
10 economies of scale in some kinds of programs where, in
11 fact, to effectively treat students, the cost of providing
12 effective treatment of students goes down as you get more
13 students involved in them.

14 The reason I bring this up is that there
15 seems, I hear, different discussions about, where should
16 Special Education services be provided; should we -- for
17 example, should all charter schools provide a full range
18 of Special Education services. Well, this does not make
19 sense if there are large economies of scale.

20 Then finally, from my standpoint of looking
21 at policies that relate to education outcomes of students,
22 it seems like a number of Special Education activities in

1 schools should be merged with other kinds of programs in
2 the schools. For example, if you think that reading
3 disabilities -- or poor reading ability is an important
4 element of some parts of Special Education, but you also
5 believe that that's part of the problems of regular
6 education in many schools, instead of classifying people
7 and worrying about the classification of where they are,
8 you should deal with the reading problems and submerge
9 programs in a variety of ways where the subjectives and
10 the diagnosis doesn't have anything to do with how you
11 will treat the program, for a large part.

12 So those are the overall recommendations that
13 I'm going to make. Let me provide you a few details and
14 fill in some of that and then take your questions.

15 I should also say, if you have questions
16 while I'm giving this, I'd be happy to answer them if that
17 makes it easier.

18 As way of background, the way I look at
19 Special Education programs, I think that there are three
20 basic, underlying principles that are important. The
21 first is the objectives of the original Education for All
22 Handicapped Children Act, the predecessor of IDEA. And we

1 shouldn't forget it. And that is, that we want to provide
2 and ensure that all children receive a full and
3 appropriate education, regardless of any accidents of
4 birth or development or life that places obstacles in
5 their way.

6 I have had trouble finding the actual data
7 but there's always the statement that, before 94-142,
8 there were lots of children who, essentially, didn't get
9 services in the schools and that this Act, in fact,
10 provided for schooling. And I think that's an important
11 role, the equity role.

12 Secondly, in guiding principles, the
13 incentives that are set up in the system should work to
14 produce what we care about, and that is outcomes and the
15 learning of students and their ability to be integrated
16 into society. And so we should look at incentives,
17 whether they promote the outcomes that we're interested
18 in.

19 Thirdly, I think, as a public finance
20 economist, that we should always be concerned that the
21 incentives we set up promote efficient governmental
22 programs. There's a concern, frequently, of the

1 efficiency of government programs and we ought to look at
2 that.

3 Now I have to stop here because economists
4 use efficiency in a very specific way and I want to make
5 sure that it's understood. Efficiency is not an issue of
6 making costs as small as possible because we know how to
7 do that, we don't run any programs. Efficiency is always
8 defined as the relationship between outcomes and
9 expenditures. So, in simplest terms, for any given
10 expenditure, we want to get the most outcomes for the
11 students. Or, alternatively, if we have some set of
12 outcomes that we expect students to obtain, and they
13 obtain that, we want to do that at least cost. But it's
14 always conditional upon knowing the outcomes.

15 So those three principles guide the way I
16 think about this. Now the actual -- when I spent some
17 time trying to look at the cost of programs -- and, again,
18 here is a case where I am embarrassed to do this in front
19 of Jay Chambers, who has spent a lot more time looking at
20 the costs and expenditures on Special Education than I
21 have -- but there is no doubt -- we can't say precisely
22 what's happened but Special Education costs more than

1 regular education, sometimes wildly more than regular
2 education.

3 And the first problem that I talked about --
4 or one of the problems of this is that the current
5 operations of Special Education, which makes it a civil
6 right to children, says that any expenditures on Special
7 Education come before expenditures on regular education.
8 And so this has some serious problems. Now I should say,
9 at the outset, again reinforcing -- I guess I'm coming
10 with a chip on my shoulder because people misinterpret
11 economists -- just because Special Education costs more
12 does not mean that we should indict the current program.
13 We knew it was going to cost more, to the extent that
14 we're trying to provide extra services to a set of people
15 that need more extra services. So it's not that.

16 Our concern is more that's there's a
17 suspicion that the way we're spending our money now is not
18 getting the outcomes we want or the best outcomes.

19 Now let me take on first the issue of what
20 happens when you have this system of Special Education
21 taking precedence over regular education programs, which
22 it does by federal law. One of the issues, particularly

1 for smaller districts is that they cannot anticipate some
2 of the expenditures of Special Education. So, if you get
3 a particularly expensive child coming into your district,
4 you have to accommodate that child. And, if you thought
5 \$75,000 a year of expenditures is a regular education
6 teacher, and that's the way lots of districts view it and
7 I think that it's an appropriate way, you have to either
8 come up with the extra resources or take it out of your
9 other programs.

10 This is a particular problem that we all
11 face, is that there are unlikely events that are very
12 expensive and we go out and we buy automobile insurance to
13 deal with that problem. And it's the same with school
14 districts, in some sense, except that school districts
15 can't quite buy the insurance about this and it's hard for
16 them to self-insure if you are a small school district
17 because of very large expenses.

18 To me, this is a clear case where the federal
19 government should take some fiscal leadership and provide
20 risk-pooling and insurance for the most expensive cases.
21 Now the reason I also say that is, from what I see in the
22 data, the most cases are for providing programs for our

1 well-identified, if not the ambiguity about the
2 classification, who is eligible or not, but that you, in
3 fact, provide funding for the most expensive kinds of
4 students that you want to take care of in your schools.

5 Now, some large districts or states could,
6 presumably, do this on their own but, as a general rule,
7 you'd always want to pool the risk over the largest group
8 you can; and that's what makes sense in the federal
9 government. You can also make an equity argument about
10 it, also.

11 Now, one of the problems -- let me return to
12 the efficiency issue -- what leads to the concern of the
13 efficiency of the current system? For the most part,
14 until fairly recently, there's been very little
15 measurement of the performance of the Special Education
16 system. And, in fact, one of the reasons why there's been
17 pressure on increasing assessment of Special Education
18 students is that that was a handy way to deal with the
19 accountability of the regular education student system by
20 moving some students out of the normal accountability in
21 the regular education system into Special Ed and not
22 counting them -- accounting for them.

1 That's changing recently. I mean, I noticed,
2 for example, Texas has made a great effort to cut down on
3 the abilities to escape the regular testing system by
4 reaching accommodation for -- if people are involved in
5 some combination of education regular services, they will
6 be tested under the existing testing system -- maybe in a
7 different grade level than they are classified in but they
8 will be under the testing. And then they've been
9 developing other separate testing programs to try to do
10 this.

11 The fact that that's existed in the past and
12 nobody's had measurements of the performance of the
13 students in terms of outcomes we care about, makes you
14 immediately suspicious that there is, in fact, an
15 efficiency problem. Because if you are looking at
16 outcomes, it's hard to get the programs and expenditures
17 right.

18 Now, what I can say is that, you know, this
19 is not the -- the limited amount of research that I've
20 done in that, again, in the State of Texas, suggests that,
21 on an average, Special Education programs have beneficial
22 impacts on reading and math performance of the kids who

1 are tested in the system, at least, so that it's not
2 saying that there is no impact of Special Education in
3 terms of what we care about, it's just that we don't
4 believe that it's necessarily related to the programs and
5 expenditures.

6 Secondly, another reason for worrying about
7 this is that there is some clear evidence that, in fact,
8 the identification of people, and classification of
9 people, in Special Education depends upon the financial
10 gains to the districts. So, when they're faced with an
11 incentive that gives them more funding for classification,
12 you find that there are higher classifications. And so
13 that doesn't suggest that this is a system that's designed
14 to be the most efficient educational program.

15 So, with that background, what would I say?

16 Let me summarize. I'm going to repeat myself a few times
17 here but let me try to summarize it.

18 First, an outcome orientation. Until we
19 change from looking at just the process of providing
20 education or inputs of particular services, and pay
21 attention to whether kids are learning or getting some
22 advantages out of these programs that carry through later

1 on, we're going to have this problem. And then we're
2 going to have classification taking precedence over
3 performance. And so, at the very beginning, I think
4 that's clear.

5 This, in part, implies that there are, in my
6 mind, that, to the extent that the existing accountability
7 and testing systems can be applied to these students with
8 some accommodation, we should be pushing very hard to do
9 that.

10 Secondly, that there should be a serious
11 research effort -- and this is a research question --
12 about how we measure outcomes for different kinds of
13 students with different disabilities. It's not obvious,
14 in many areas -- it's outside my area of expertise, but I
15 think that's a research program.

16 Once you have an outcome orientation, I would
17 suggest that you start rewarding and punishing schools,
18 depending on how they're contributing to these outcomes.
19 Now that's an easy statement to make and it's harder to
20 actually apply in reality.

21 There are always difficulties -- let me get
22 out of Special Education and just talk about regular

1 education -- if we go into a school system and we see that
2 the kids aren't reading well in a school system, regular
3 education kids aren't reading well, should we give them
4 more money or take money away from them? This is the
5 classic question.

6 And the question comes down to the fact of,
7 is the low performance of these kids due to the fact that
8 they come with bigger deficits and they come with --
9 less-prepared to learn than in other school systems where
10 the reading is higher, or is the school system doing a bad
11 job? And these are hard questions to differentiate
12 because we see that performance is not very high in some
13 school district and the normal argument is made, well we
14 have tougher cases here.

15 So I think the ultimate answer is moving
16 incentives toward rewarding school systems that contribute
17 the most to the learning of students. But how you
18 actually measure that and set up the rules is, again,
19 something that's going to take a lot of work. It's not
20 something that you can just write down and say we're going
21 to reward schools or not.

22 Then secondly, what happens with an outcome

1 orientation as to incentives, is that schools start to
2 look at how they deal with the outcomes more than this
3 classification. I'm persuaded, in part, by the work by
4 Reid Lyon and Jack Fletcher, that reading is one of the
5 larger problems that turns up in the learning disabilities
6 category of Special Education. It's often, as I
7 understand the whole problem, easier to diagnose that
8 somebody has a reading problem early, when you can have a
9 better chance of treating it, than to diagnose whether
10 it's because of some specific learning disability.

11 So, if you can provide incentives for schools
12 in relation -- Special Education and regular education --
13 to improve the reading of students, then they start to
14 diagnose reading problems earlier and try to deal with
15 reading problems earlier. And then, later on, to the
16 extent that classification under some learning disability
17 category, is useful in the diagnosis and that, if that
18 diagnosis is useful in programmatic terms, then the school
19 districts will come back and do that to try to figure out
20 if there are specialized things that should be done to
21 improve the reading ability.

22 So that's one example that's actually, I

1 think, been worked on for some time. And I think that
2 that's something that you get when you start looking at
3 outcomes of the process.

4 Now it's also clear to me that just saying,
5 "We're interested in outcomes and we're going to provide
6 incentives," doesn't get you away from a lot of regulatory
7 issues because, first, it's hard to get incentives right,
8 it's hard to make them so that they work in the way that
9 you want them to and so there is going to be some
10 regulatory environment that stays forever, I think, in
11 reality. But it's a different clime because it's a
12 regulatory environment that's linked to, also, the
13 performance measurement and making sure that people aren't
14 just being provided what they should be.

15 Now, on the fiscal side, there is the outcome
16 adjustment, there's the fiscal adjustments that I think
17 are made. I've already talked about the insurance aspect
18 of this; I'll just say a couple other things about the
19 insurance aspect.

20 I think there, if you viewed the federal
21 government as insuring the high-risk, high-expense kinds
22 of problems, you have to worry about what the payment

1 structure is, also, on this. You probably don't want to
2 just say, "Okay, if you're in the high-risk category,
3 we'll pay you whatever you spend." because we know the
4 properties of systems that say, "We'll pay you whatever
5 you want to spend,"; these are well-defined in economics.
6 You have to have some sort of cost-sharing, I think, have
7 some way where you might have a set fee that goes with a
8 certain diagnosis.

9 I think of just an anecdote that comes from
10 my formerly-local newspaper, the New York Times. I had
11 meant to look up this story before I came but I didn't so
12 I'll give you my recollection of what this story was.

13 This story was on the front page of the New
14 York Times and I believe it was about eight years ago.
15 There was a picture; and some parents were protesting the
16 change in Special Education treatment of their children.
17 There were six children who were blind and deaf, in
18 Buffalo, that, for a number of years, had gone down to the
19 Buffalo airport; got onto a private plane; were flown
20 across to, I think it was Auburn, New York; they went to
21 school there; and then, at the end of the day, they got
22 back on the plane and flew home.

1 The New York Times -- my memory of this
2 number -- you might know all this story better than I do,
3 or have a better memory -- but at this time, eight years
4 ago or so, that it was labeled as \$186,000 per kid per
5 year. And what happened was that New York State changed
6 the law from full reimbursement to a combined payment
7 system where -- a shared payment system at the end -- and
8 the City of Buffalo changed its policy and decided they
9 would provide some of these services in Buffalo and that
10 they could provide some of them. And the story was about
11 whether this was in an infringement of civil rights of
12 these kids, that they were no longer being provided their
13 plane to fly them over there.

14 To me, this is an example of, you want to
15 make people aware of the relationship between costs and
16 benefits and outcomes and that, if you fully reimburse
17 spending, we know -- as I say, we know the answer to what
18 happens in that system. It probably never is as bad as
19 this example -- or it would be hard to find them.

20 So, secondly, as I said, when you start
21 thinking about outcomes and spending and efficiency of
22 systems, I think it leads you to try, as best you can, to

1 not distort the decision-making of local school districts.
2 You want to hold them responsible, reward when they do a
3 good job; you do not want to reward them for things that
4 are unrelated to doing a good job, like getting more kids
5 classified in some category because that changes the
6 expenditure payment.

7 So you want to not change the prices that
8 they face. There's a certain price for the education
9 that's provided and you reward them in outcomes but don't
10 distort those decisions.

11 Now that, again, is going to take some effort
12 but it basically says that, for lower-price systems, the
13 first thing to think about is providing block grants to --
14 perhaps calculated on the basis of demographics of
15 districts; it puts a little bit of risk on the district if
16 they have more or less but, at the same time, it has great
17 beneficial things that, if they can provide good outcomes
18 for lower-prices, they get rewarded for it, they get to
19 take some of this grant and use it for other purposes or
20 even to improve the education of Special Ed kids more.

21 But it's all, then, trying to mobilize the
22 local districts to make good decisions in terms of the

1 outcomes of kids.

2 Let me come back to talk a little bit about
3 this service provision issue and where it should be. I
4 see this debate because I've looked at a variety of
5 elements of schools of choice, charter schools, and
6 discussions about vouchers and a variety of other things.

7 And, in that debate, I see one of the
8 elements that is always brought up is Special Education,
9 you know. And the argument is, as I see it in the papers,
10 all schools should be required to take any Special
11 Education kid if he comes knocking on the door; charter
12 schools -- what's behind this?

13 I don't think that I see anybody concerned
14 about the outcomes of Special Education kids in those
15 discussions. What I think is going on is that these are
16 people that basically don't want charter schools to exist,
17 that are trying to provide them -- make them absorb more
18 expensive kids in an effort to try to sink schools of
19 choice and charter schools, but it's not a concern about
20 the outcomes of Special Education kids.

21 So what I -- in my own view on this issue,
22 that the decision should be made on the basis of the

1 programs and the ability to provide services to these
2 kids. They might come from private organizations,
3 private, even for-profit firms -- an awful thought in
4 terms of education that for-profit firms might provide
5 education -- but, to the extent that they find that they
6 can, through the economies of scale, mount programs that,
7 in fact, serve kids cheaper; and they take some rewards
8 from the fact that they can do it better than the public
9 schools, I think we should encourage that.

10 And so one of the things I would recommend is
11 a sort of neutrality on where and how Special Education
12 services are provided and more of an emphasis on making
13 sure that you get the outcomes that we want for disabled
14 kids, of one sort or another, wherever that can be
15 provided.

16 Now, I say that part of that is open to some
17 question because we have very little solid research on
18 what it actually costs to provide different kinds of
19 outcomes. So I'm assuming that, in some areas, that there
20 are real serious economies of scale where it makes sense
21 to have groups of kids together, learning together; but
22 that's an assumption that requires some more research

1 because we don't know about the cost of different ways of
2 doing this.

3 And that brings me to the -- sort of the last
4 set of issues that I have, and that is one of the reasons
5 why this debate on how to provide Special Education can go
6 off in so many directions, is that we lack a lot of
7 information about the functioning of Special Education
8 programs and outcomes of them.

9 Providing that information is clearly a role
10 that falls on the federal government. The federal
11 government should be the provider and the supporter of
12 research on Special Education, and other things. Local
13 school districts, even with an outcome-orientation, have
14 an incentive to try to find out what's working for them;
15 if you reward schools, they have that incentive. But
16 their incentive doesn't take into account the fact that
17 other school districts can capitalize on anything they
18 learn; they aren't going to pay attention to the fact that
19 the neighboring school district might find it useful to
20 know what they know and they're not going to do as much on
21 providing the information and research as they should.

22 That's why -- this is one area where we know

1 that there are huge economies of scale and that, in fact,
2 the federal government should be the provider and
3 supporter of this research.

4 Let me, at the end of discussing that, talk
5 about one little nitty-gritty issue that is -- may seem
6 down in the workings of this whole thing and farther than
7 you want to go.

8 But finding out about what works in Special
9 Education is a particularly difficult problem. We have
10 Special Education because we think that some kids are
11 different than regular education kids. So we have trouble
12 learning about what works by comparing the performance of
13 Special Ed kids to regular ed kids. And that's not going
14 to be very useful because we know that they're inherently
15 different.

16 Now, sometimes you can follow individual kids
17 who have identified disabilities or are in Special
18 Education programs and look at what was happening before
19 they got into Special Education programs and what's
20 happening afterwards and get some information about that.
21 But -- and that's what I have done in Texas, is try to do
22 something like that -- but that has limited ability to

1 uncover the value of Special Education programs, too.

2 This leads me to believe that one of the
3 aspects, and one of the ways that, if you really want to
4 improve the information on Special Education in your
5 report, you might push. And that is the use of,
6 essentially, medical technology here of random assignment
7 of kids to different programs, which has great advantages,
8 where you have a couple of alternative ways of treating
9 Special Education kids and you randomly assign different
10 kids to different programs and see which one is working,
11 exactly how we find out how that pill that we take every
12 morning, whether that's good or not, is by randomly
13 assigning pills and placebos for some people, but, here,
14 it's randomly assigning different programs.

15 The reason why I bring that up is that, for
16 some reason, education -- not Special Education, education
17 as a whole -- has decided that such random assignment
18 experimentation is immoral because it, in fact,
19 potentially denies some kids of services and gives it to
20 others and, "How could you possibly do that?"

21 Well, the problem is, in Special Education,
22 and in regular education, I should say, we often don't

1 know what works and we're not denying them known things
2 that work, we're assigning people to different treatments
3 to try to figure out whether one systematically does
4 better than the other and whether it costs differently.

5 This, I put in as -- in some sense, as a
6 footnote to this topic, but I think as an extraordinarily
7 important issue of how do we learn about Special Education
8 and go forward.

9 That really summarizes what I have decided:
10 Pay attention to outcomes and that that ought to drive our
11 thinking; that you need information on outcomes in order
12 to make decisions about efficiency of operations of the
13 system; you need information on outcomes in order to
14 provide the right incentives for schools to do well.

15 There is a lot of uncertainty about how to
16 measure outcomes in some areas and I'm not going to be the
17 one to help you, necessarily tell you how to measure
18 outcomes, but I think that's something that you have to
19 push for; and the federal role is to ensure that there is
20 equitable provision of education for all kids -- I think
21 that's extraordinarily important, we don't want to lose
22 sight of that;

1 It's to provide incentives for schools to do
2 well but not to tell them exactly how to do this, not to
3 get into the operations of schools; that's particularly
4 what you don't want to do when there's uncertainty about
5 how best to provide services; and, finally, that the
6 federal government role should think squarely in terms of
7 improving our knowledge about how to operate Special
8 Education and how to serve kids.

9 DR. GILL: Thank you.

10 Sensing that there probably won't be any
11 shortage of questions for you, and if the morning has been
12 any example, I'm going to start with Troy Justesen.

13 Troy, why don't you ask your first question,
14 please?

15 MR. JUSTESEN: My first question or
16 questions?

17 DR. GILL: Well --

18 MR. JUSTESEN: The first thing is a comment.
19 I think it's valuable to hear from a non-Special Ed
20 economist, if there is such a thing, Jay.

21 DR. CHAMBERS: Most of them --

22 MR. JUSTESEN: Most of them. So I think

1 there is some value in hearing from you, even though this
2 doesn't appear to be your major focus of research.

3 But I'm curious about one thought and I know
4 this argument is full of holes but, if you allow parents
5 to choose, in terms of the charter schools and your
6 argument in that respect, do you not envision a problem
7 for all children with disabilities seeming to be left in
8 the public schools by themselves? And is there any -- I
9 mean, I'm just curious about your thoughts on that.

10 DR. HANUSHEK: I think that the evidence from
11 the first operations of charter schools is that they tend
12 to have a lower enrollment rate of Special Education but
13 it's not zero, that there is some exclusion.

14 I think that, in almost all worlds that I can
15 envision, schools of choice, charter schools, or voucher
16 schools, and so on are still going to be a very small
17 minority of the total provision of education and that, in
18 fact, public schools will tend to have a higher proportion
19 of Special Education kids. But it's not like we have this
20 one little, small room in which we pack in all Special Ed
21 kids, it's going to be 80 percent of the schools in the
22 country.

1 Now the concern here is that, of the public
2 school systems, are we being somehow -- can we afford this
3 and what does it do to our other programs, and so on. And
4 that's part of the whole fiscal support of schools and
5 equity problem and that there is an argument that, at
6 least some of the funding ought to come from higher levels
7 of government.

8 But I don't think that that's -- I don't
9 think it's going to be a major issue, frankly, that that's
10 -- it's not going to be like de jure segregation or
11 southern schools, it's going to be that they are scattered
12 across large numbers of schools.

13 MR. JUSTESEN: In Florida, for example, the
14 dollars follow the kid; what are your thoughts about
15 scaling that on the national level, having the dollars
16 follow the kid? And do you -- and, you know, that's a
17 typical phrase --

18 DR. HANUSHEK: Well -- I mean, at the
19 national level, the problem is that the federal
20 government, for the most part, is not very heavily
21 involved in education, in the actual provision of services
22 or the funding of education, at seven percent of the total

1 funding. I could see clearly that any federal support,
2 and particularly if you went to something like what I
3 suggested, that there was full federal support for the
4 most expensive kids, that that should go with the kid;
5 there's no doubt about it, wherever that kid went, if he
6 went to charter school or went across a state line or
7 whatever.

8 Once you get past that, it seems clear that
9 the federal government is never going to be, you know,
10 full-funder for large portions of the school. And so,
11 thinking from the federal standpoint, I don't think that
12 will go far past the most expensive.

13 MR. JUSTESEN: And just one last question.

14 Can you expand a little bit on your block-
15 granting idea?

16 DR. HANUSHEK: Well, the simplest way at the
17 top would be that you'd say that we expect that, for kids
18 -- if you take a group of kids with various
19 characteristics -- and I'm not sure what characteristics
20 you use, to the extent that you have characteristics to
21 predict on an average whether it is more likely to be
22 disabled populations or not, that you have sort of a

1 prediction of how many Special Education, on average,
2 should appear in a district and then you fund them for
3 that number of kids so that the block grant moves with the
4 population to the extent that the demographics give us
5 information about the likelihood. But, after that, it's a
6 flat amount that stays --

7 (Outside interruption.)

8 DR. HANUSHEK: I thought all I had to compete
9 with was the calories from lunch.

10 DR. GILL: It's just sound-effects for the
11 meeting.

12 DR. HANUSHEK: So that it may not be that
13 it's \$400.00 per kid in the school district is the amount
14 that goes, it might be varying by the particular
15 characteristics of the kids in a school district to the
16 extent that we can predict more likely occurrences of
17 Special Education needs.

18 I don't know the extent that we can do that,
19 frankly. I've never tried to do that and other people can
20 help me on that. But it's basically the idea that you try
21 to give a transfer of income rather than payments if the
22 school districts make some decisions that may or may not

1 be related to education.

2 DR. GILL: Commissioner Chambers?

3 DR. CHAMBERS: Eric, I'm thinking about the
4 idea that you've suggested regarding the high cost of the
5 insurance role that the federal government might play.
6 And I guess I'd like to get your reaction. I mean, you
7 sort of talked about cost-sharing and suggested there
8 might be ways of, perhaps, sharing the cost with the
9 states. I'm not exactly sure what you had in mind, but
10 something like, first we have to decide what a high-cost
11 child is. I can come up with three or four right off the
12 top of my head, without thinking too much about it. And,
13 second, we have to figure out a way to get the money out
14 to the states and what an approach might be to have the
15 states establish these risk pools.

16 I guess one of the issues is, in your view,
17 would the states be large enough to establish the risk
18 pools with the idea of the federal government might
19 provide x-dollars and require a matching amount on the
20 part of the states and expect them to provide that kind of
21 a safety net, whatever word we might want to use to
22 describe it, and then enforce that?

1 DR. HANUSHEK: Well, it's clearly possible
2 for larger states, and California or New York is a large-
3 enough risk pool that you don't get much advantage by
4 going nationally. Wyoming has 400,000 people, total; not
5 in their schools, but 400,000 total. You know, you can
6 get to some fairly small states that -- you know, that's
7 smaller than the school districts of New York City,
8 Chicago, and Los Angeles, for the total population in that
9 state.

10 So my suggestion was to think about a
11 national risk pool. Now, whether you ask the states to,
12 in fact, contribute or -- I mean, how you actually finance
13 it between the states and the federal government, I don't
14 think I have any strong opinions about. You know, you
15 have a certain amount of funding that you want to cover,
16 then -- and you could have states contribute some
17 proportion and so on and do it. But you're always better
18 off by contributing to this larger risk pool, having this
19 one, big insurance company.

20 DR. CHAMBERS: So, in a sense, you are seeing
21 the states -- instead of having their own funds, the
22 states contributing some portion to a national risk pool,

1 in which case the implication that money is going to be --
2 potentially, but not for sure -- redistributed among the
3 states in some fashion.

4 DR. HANUSHEK: Yes, there might be some. I
5 mean, I suppose there might be the case that some states
6 are -- have higher risks of certain high-expense kids. My
7 presumption to start with is that the risk for across the
8 states is about even of having these high-expense kids.
9 And so, the way I conceptually think about it is the
10 states, if they were going to share part of the cost,
11 would pay some into this national fund and the federal
12 government would pay some in and then anybody could draw
13 on this fund wherever the kids were found and wherever
14 they were being served.

15 Now that -- those kind of abstract arguments
16 often fail when you actually try to write the legislation
17 behind them but that's the abstract argument that I'm
18 trying to make.

19 DR. CHAMBERS: At this point, I'm going to
20 relinquish and continue to listen to my colleagues.

21 DR. GILL: Okay. I want to kind of follow up
22 with the block grant notion here for a second because I

1 think a lot of people in my state, and other states that
2 I've been in, would say, "Well, if you block grant
3 something like an entitlement, like Special Education,
4 that generally is the first thing that gets cut when
5 states find themselves in deficit spending patterns or
6 whatever."

7 Do you have any notions or ideas about maybe
8 some super block grant, or something like that, that
9 doesn't prevent that from happening? Because I can
10 imagine that that's the first set of arguments, is yeah,
11 as soon as you block grant it, guess what, there goes your
12 entitlement, and the first thing that's cut is your block
13 grant and it gets reduced and we're going to put more
14 things into it than just Special Ed.

15 DR. HANUSHEK: Well, the nitty-gritty
16 political questions are important, there's no doubt about
17 that.

18 DR. GILL: I think so, too.

19 DR. HANUSHEK: And we can't quite ignore
20 them; they're not the usual expertise of economists come
21 up with good answers of how to get around them.

22 I think earlier in the morning, when I got in

1 late at the morning session, Jay mentioned that lots of
2 our rules and procedures are based on a distrust of every
3 -- all other form -- levels of government. So the federal
4 government distrusts the states and the states distrusts
5 the localities.

6 And I'm not sure how to deal with that
7 because we don't have rules that allow buying future
8 legislatures; it's the problem with the federal government
9 and deficit spending and so forth. And, no matter what
10 rules you have, it can bind another legislature in the
11 future, I understand, because of the states.

12 I don't think I have any easy answer. I
13 should not speculate on --

14 DR. GILL: And my second question is -- we
15 pointed out all day long some issues with Special
16 Education in terms of financing and costs and
17 accountability relative to whatever measure you want to
18 pick; benchmarking is a notion of what's an appropriate
19 service and cost differentials, et cetera.

20 Since a lot of your work is in education, is
21 Special Ed disproportionately unique in that regard or --
22 I mean, I don't think many people would argue that, well

1 basic education and general education has already answered
2 all these questions and Special Ed lags behind. And I
3 just want to get a sense of, are the issues that we
4 pointed out in Special Education really all that
5 disproportional from the issues that exist in the result
6 of education reform?

7 DR. HANUSHEK: I don't believe so. I mean,
8 that's -- you've hit on something, that this is a general
9 issue and, in the written version of my testimony, there
10 are lines at several points that say, you know, this is
11 just -- Special Education is, in my view, an extension of
12 regular education and, the same debate school of regular
13 education, should we mandate or provide large subsidies,
14 as the State of California does, to provide for smaller
15 classes across the board and we pay people if they get
16 classes down to 20 students or not or should we pay
17 attention to whether kids are learning or not, and trust
18 the local districts to do that?

19 So that the benchmarking ideas and the
20 services and so forth, I think, fall in the category of
21 trying to regulate the processes and the way that we
22 provide education. It's something that the federal

1 government is particularly inept at. And it is something
2 the state governments are generally inept at, too, in my
3 opinion, of telling local school districts exactly how to
4 mount programs as opposed to saying, "We want kids to be
5 learning in your school district; you figure out how to be
6 doing this."

7 And so I think that it's the same. The
8 difference is that, you know, there's still a lot of
9 controversy about how we measure performance and that's
10 part of the newly authorized ESEA that came along of
11 trying to measure performance; and people object to
12 various kinds of tests and accountability and so forth.
13 Those problems exist in Special Education, but to a larger
14 extent; they're magnified because we haven't paid enough
15 attention as to trying to measure performance in a number
16 of areas of Special Education, so that it makes it a
17 little more difficult.

18 But I think it's all on a continual and that
19 much of my thinking about Special Education is, in fact,
20 the same thing that I would apply to regular education.

21 DR. GILL: Thank you.

22 Todd Jones?

1 MR. JONES: I just want to ask one question.

2 I guess, when you mention that continuum, it
3 really goes to the root of my question. And, in a sense,
4 IDEA is a block grant; it is a block grant which has more
5 strings attached to it than any other federal program I
6 can think of that's a grant to states.

7 So, presumably, when you're moving down the
8 scale to something that is structured differently, you
9 would look at certain basic components of that program
10 that are inherently necessary for the operation of the
11 program, presumably one is financial controls, for
12 example, and grant obligations.

13 But I think I also heard you say, goals of
14 the program, as expressed through outcome measures and how
15 those are defined; are there any other pieces that would
16 be appropriate for the bones of that kind of structure
17 upon which you would -- which you could address?

18 DR. HANUSHEK: Let me say first -- I mean,
19 IDEA has moved more toward a block grant program but, as
20 you say, with all kinds of regulations exactly what goes
21 into it. So maybe there's no room left in the block after
22 you try to meet these requirements.

1 Many of the state programs are not that; many
2 of the state programs are not -- that are much more
3 specific and there are rewards, pluses and minuses to
4 different categorizations and you can calculate the
5 profitability of having a kid of a given kind, given the
6 state reimbursement program, and that -- so it's a system,
7 it's not all block grants. But you've got all that when
8 you're done.

9 I think that the -- what are the bare bones?

10 I mean, I think that there are still -- I come back to the
11 fact that I'm, in many ways, an intellectual supporter of
12 94-142 in saying that we want to take care of, and provide
13 for, the equity of all kids and we don't want to send
14 certain kinds of kids off and not provide them services.

15 And so the bare bones has some regulatory
16 aspect to making sure that, given the incentives that we
17 set up in the system, that we don't have school systems
18 just ignoring certain kinds of kids. So I think that
19 there's always going to be some sort of audit oversight
20 kinds of thing.

21 But it's a very different system than the way
22 I understand the current Special Education system because

1 it's a system that, instead of arguing tooth and nail
2 about exactly what program is going to be provided, you're
3 going to sort of talk more -- pay more attention to
4 whether the kids are learning or not, at the end and, to
5 the extent we know how to help them learn, can we find out
6 that.

7 DR. GILL: Commissioner Coulter?

8 MR. COULTER: You mentioned -- in your
9 written testimony and also in your oral testimony, you
10 talked about the federal role, in part as being paying for
11 the unusual costs. And I think the term that I read here
12 was "...unusual but very costly students."

13 Do you have any other -- any further
14 definition or clarification on that? That's not an idea
15 -- that's an idea that we've heard before but I guess
16 we're still struggling with, where would you draw the line
17 -- unusual but costly?

18 DR. HANUSHEK: Well, economists never think
19 that lines are there, that you should never draw a line
20 any place, that everything is a continuum and that it's a
21 decision -- it's really a policy decision about how far
22 down you want to go. I don't know if the most expensive

1 five percent, the most 10 percent? I don't know. And
2 these are really policy decisions to go -- I struggle, by
3 the way, and I still doubt that the word "unusual" is the
4 right word. I mean, it's -- what I mean is, in a
5 statistical sense, rare events that are costly; that's
6 what I mean by "unusual."

7 And my suspicion is that there is enough
8 information now available on the sort of average treatment
9 cost of different categories of treatments, that you come
10 down to some level that you -- it's really somewhat of an
11 arbitrary decision. But it's how much risk should
12 individual school districts be expected to absorb and how
13 much should be covered by any insurance plan.

14 So I don't think that there is any magic
15 number, that these are all political decisions that are
16 arbitrary from a technical standpoint, in my mind.

17 MR. COULTER: Thank you.

18 DR. GILL: Commissioner Gordon?

19 MR. GORDON: Thanks, Chairman.

20 Dr. HANUSHEK, I'd just like to make one
21 comment and two quick questions.

22 On the issue of charter schools, it's been my

1 experience that people aren't trying to hurt the charter
2 schools or cause them not to stay in business, the
3 difficulty in charter schools doing Special Education is
4 the public school retains the responsibility for making
5 sure the service is provided. And the transactions
6 between public school districts and charters have been
7 difficult, to begin with and, when it gets to Special Ed,
8 you have a real liability issue and it can be very time-
9 consuming. So I think, personally, I would be fine on
10 seeing charter schools take more Special Ed children if
11 they could provide the appropriate service.

12 Two quick questions. On the whole issue of
13 due process and compliance, Dr. Chambers' report is going
14 to reveal we're spending about \$1100 per child simply for
15 the assessment component and the meetings and all of that
16 sort of thing.

17 How do we get a handle on reducing those
18 expenses?

19 And, related to that, when we talk about the
20 high-cost pool, within a particular disability, we've got
21 services provided which vary wildly from 10,000 to 50,
22 100,000, for the same disability.

1 How could you get a handle on the
2 comparability or the consistency of service? Because, I
3 sense that would be necessary in trying to create that
4 kind of cost pool.

5 DR. HANUSHEK: Right. On the first issue, we
6 do, by all that I know, spend a huge amount of time trying
7 on the identification and classification. My impression
8 is that a large part of that expense is not at all helpful
9 in assigning treatments, that it's not a diagnostic
10 service that tells you what kind of programs necessarily
11 are going to be the best or that helps you in designing
12 programs.

13 So that the system I see would be that people
14 would spend a lot of time diagnosing, you know, reading
15 problems, to the extent that that helps us know what kind
16 of services to mount; and those are legitimate expenses.
17 And there's obvious decision rules.

18 The problem with the -- working so hard on
19 the classification that now exists is that that's kind of
20 wasted money, as far as I can see, and so that's what you
21 want to try to get away from.

22 The -- the second question now eludes me.

1 MR. COULTER: Was in creating some kind of
2 high-cost bag. Let's say you identified the areas you
3 were going to fund; how would you deal with the wide,
4 almost often wildly varying --

5 DR. HANUSHEK: Sure --

6 MR. COULTER: -- treatments that are being
7 provided and their costs?

8 DR. HANUSHEK: Part of the question is how
9 well can you define individual categories that have
10 relatively homogeneous treatment processes with small
11 variance. And I don't know -- I, frankly, don't know how
12 well you can do at that, whether that gets you into the
13 same classification bind as exists here.

14 To the extent that there is a lot of
15 heterogeneity in categories, then you might want to have a
16 system that has some sort of shared cost reimbursement so
17 that the district pays 50 percent of the excess costs
18 above some threshold and the federal government, or the
19 insurance pool, pays another 50 percent. So the co-
20 payments on your private -- and your health-insurance kind
21 of plan, because what you want to do is, in fact, allow
22 for this variation but you want to also have school

1 districts paying attention to what services they provide
2 and not automatically saying, "Well, we always provide the
3 Cadillac," whether it's the right thing or not.

4 MR. COULTER: Thank you.

5 DR. HASSEL: Jumping ahead.

6 DR. GILL: Congressman Hassel?

7 DR. HASSEL: I was jumping ahead.

8 A couple of other questions about the risk
9 pool idea. One is, do you have any theories about why a
10 private market for insurance for high-cost Special
11 Education hasn't emerged in this county, to the extent it
12 hasn't, and if there are implications of that for the
13 development of a federal one, or design problems that
14 would bedevil a federal program, as well?

15 DR. HANUSHEK: Why hasn't? -- I'm not sure
16 why there's -- there would be apparently nothing that
17 precluded school districts from, in fact, buying
18 insurance, they buy insurance on other things -- for some
19 things and self-insure on others. And, given that part of
20 its large cost, I'm not sure exactly why it is. I guess
21 you'd have to look at individual states and look at it
22 from states that put most of the costs on school districts

1 and why it did that there.

2 In states that, in fact, pay large -- a
3 larger fraction of the high expense, then you can see why
4 it wouldn't work. But -- I'm not sure. That's a very
5 good question.

6 DR. HASSEL: Another question about high-
7 risk, high-cost pool that I have is, if you set up a
8 system in which you, say, are paying \$100,000 for a
9 certain type of disability, and that's assumed to cover a
10 certain package of services that is assumed to be the
11 right package for that kind of disability, one danger, I
12 would think, is that you lock in that package of services
13 as the -- there's no incentive to create a better package
14 that costs \$80,000. On the other hand, if you give -- if
15 you say, "Well, you can do the \$80,000 version instead of
16 the \$100,000," then you have an incentive to kind of
17 skimp.

18 Is there any way to balance that out and make
19 the incentives outright for innovation and doing the right
20 thing for the kids?

21 DR. HANUSHEK: The balance comes if we can,
22 in fact, measure -- have developed some performance

1 measures. If we know -- if we don't say, treating these
2 students with the \$100,000 provides for this A, B, and C
3 in these proportions but instead says, what we're trying
4 to do is get the kid who has some level of reading
5 ability, some ability to, perhaps, participate
6 independently in the labor market and so on, and so forth,
7 and then have some incentives and rewards and regulation
8 in terms of whether they are performing. Then you get
9 away from trying to monitor whether they provided the
10 right number of teachers in the right number of rooms, and
11 so forth, and combinations.

12 But you're trying to pay much more attention
13 to whether it's working or not, something's working
14 because, right now, we don't know the difference,
15 necessarily, between the \$100,000 and \$80,000 program to
16 the extent that we don't measure what happens to kids at
17 the end and try to relate those.

18 And I think that that's the general
19 indictment, that we -- somebody comes in and they've said,
20 "Well, the right way to do this is this." And the right
21 way seldom has to do with -- in the assessment of the
22 performance of the kids, or the outcomes that you're

1 getting out of it.

2 DR. GILL: Troy?

3 MR. JONES: Just a comment.

4 If find it interesting that everyone that's
5 talked to us today, if I'm following everyone well, is
6 that they're all proposing a catastrophic federal coverage
7 of some kind. And I think that's just very intriguing and
8 everyone's made that recommendation, to use -- I think
9 that's interesting.

10 That's all.

11 DR. GILL: Jay Chambers?

12 DR. CHAMBERS: I've got some comments and
13 then a question.

14 First let me -- it has been alluded to
15 several times -- we're in the process of working on a
16 number of reports right now, from the Special Education
17 Expenditure Project we call SEEP at AIR. And one of the
18 things we're doing, we're doing some analysis of the
19 relationship between expenditures and disability
20 categories and also the relationship between expenditures
21 and functional abilities, not that we have any corner on
22 exactly how to measure that. But we've been using some

1 tools developed by Runa Simonsen (phonetic) and Donald
2 Bailey (phonetic) at the University of North Carolina for
3 that purpose.

4 And one of the things that was intriguing
5 about that -- and it was developed by folks who are much
6 more knowledgeable about measuring these kinds of things
7 than I am -- was the idea of getting away from classifying
8 children, themselves, as much classifying the needs of
9 children. In other words, a child is a set of
10 characteristics that have a whole collection of needs and,
11 if you look at the diversity with respect to, at least,
12 these measures that Runa and Dr. Bailey have come across,
13 the diversity within the disability categories are
14 absolutely phenomenal, which tells me that disability
15 doesn't tell me a great deal about children's needs.

16 So I think that's one issue I just wanted to
17 lay in -- lay out and urge you to -- kind of talk to you
18 about this. It was moving away from classifying children
19 and more towards classifying children's needs. Because,
20 every time somebody talks developing -- you know, whether
21 it's a fee structure or a set of delivery systems, I'm
22 trying to think, "For what?" -- you know, here's a child

1 with a speech or language impairment of some sort but also
2 has issues with emotional disturbance or -- I mean, you
3 can go through a variety of things that are even at a much
4 finer level than that.

5 At any rate, that's just a comment.

6 One thing that I think is important to maybe
7 just get on the record because the staff have entered it
8 into the record by David Gordon's comments about our
9 study, is the -- I think you used the word "assessment" --
10 was \$1100 per child?

11 Actually, what we did, to be very clear about
12 that, is that that includes dollars for assessment,
13 evaluation, and the IEP-related activities. And we simply
14 took the total estimate of the dollars spent on those
15 activities and divided it by the number of Special
16 Education students. Does that mean that it costs \$1100.00
17 for -- to do these things? No, it does not because, in
18 the first place, not every Special Education student gets
19 the same degree of assessment and evaluation every year,
20 number one.

21 Number two, the denominator in that division
22 doesn't even -- or in that ratio, doesn't even include

1 some of the children who were evaluated and assessed but
2 didn't end up in Special Education.

3 So I just want to clarify that for the
4 record. That point is made in the report for those who
5 get into it but you know how these numbers start getting
6 bandied about. The 2.3 cost number is almost like --
7 somebody told me that number was 20 years old the other
8 day, in the report that had the 2.3 cost number in it. It
9 was published in 1988. So, it's amazing, these numbers
10 get a life of their own.

11 Another comment that I think is worth just
12 putting out on the table, we talked about high-cost kids,
13 I took our sample -- this is for the '99-2000 school year
14 and we said, "Well, let's arbitrarily define a high-cost
15 child is the highest cost one percent."

16 Our estimate is, if you took the dollars and
17 subtracted off what this child would be entitled to from
18 basic education, we're talking about an investment of
19 somewhere around \$4 billion for those children. So, just
20 to put the number out on the table. And it goes up
21 dramatically when you start including the top five percent
22 or 10 percent, as you might imagine.

1 Now to my question. In talking about the
2 federal grants, I'm thinking that, a lot of the concepts
3 could equally well apply at the state level, even though
4 you talked about a national insurance program. But the
5 idea of block grants and a number of states have already
6 tried to implement what we call, in the Special Ed finance
7 vernacular, are census-based systems.

8 I mean, one of the things that the federal
9 government could do as part of IDEA, even though they,
10 right now, state that the program should be placement-
11 neutral and identification-neutral, means there is no
12 incentives to do those two things -- which, by the way,
13 there's no such thing as an incentive-free funding for
14 everybody but I don't have to tell an economist that.

15 I mean, would that be an appropriate thing
16 that IDEA could do to mandate the states implement to
17 block-grant funding systems for Special Education within
18 the states?

19 DR. HANUSHEK: My concern about the federal
20 mandating that in the states is that the states vary
21 dramatically in the way they fund schools and how any
22 Special Education funding might be wrapped in with the

1 regular education funding, from the weighted pupils to
2 special categorical programs to this and that and the
3 other thing, to the state provides 30 percent of the total
4 based funding to states that provide a hundred percent.

5 And I don't think that you're going to be
6 able to simply write a set of fiscal formulae that works
7 with the state funding systems and tell them how to do
8 that, even if it's legal; I'm not sure if it's legal to do
9 that but that's not my area of expertise.

10 But, even it were, I'm not sure that that
11 would be the thing that you would want to do.

12 DR. CHAMBERS: So leave it at a block grant
13 and some kind of an insurance program for the federal
14 financing system and let it go at that?

15 DR. HANUSHEK: Well, I think that's part of
16 it; or the federal government could, in fact, get more
17 involved in providing performance incentives, too, if it
18 wanted to pick up part of a larger proportion of the total
19 amounts spent on Special Education. There's nothing magic
20 there other than somebody once wrote 40 percent into a
21 law. I mean, there's nothing magic about what number you
22 choose of how much the federal government pays.

1 But it could, in fact, provide some incentive
2 grants or it could provide incentives for, you know,
3 specific outcomes, you know, kids reading or something
4 like that. And that would be fine. And you could
5 probably make that work.

6 DR. GILL: Actually, I want to follow up on a
7 little notion because I think I have heard a little
8 something different than I've heard before.

9 And I think what I've heard a little
10 differently, and you can correct me if I'm wrong, is I
11 think the notion of the federal government, in terms of
12 some sort of risk-pool manager or whatever for high-cost
13 kids, is a little different than the notion of an
14 allocation of 40 percent of whatever excess costs is
15 determined to be.

16 And the reason I'm saying that is I think
17 what I heard you say was, as responsibility for costs,
18 very similar to an FDIC-kind-of notion, as opposed to
19 assuming that it's 40 percent and going ahead and
20 allocating those monies now. And I just want to make sure
21 that I'm understanding that you are distinguishing between
22 a responsibility versus an allocation; is that correct?

1 DR. HANUSHEK: Sure. And I'm -- what I'm
2 advocating on the high-cost side is that the federal
3 government could actually pay for some of -- whatever mode
4 it chooses for various kinds of high-cost disabilities,
5 wherever they reside and they would go to the individual
6 school districts. And it's not based upon any particular
7 number proportion or anything like that; it's based upon
8 taking -- paying off when the high-risk event happens.

9 DR. GILL: Which is --

10 DR. HANUSHEK: Yeah --

11 DR. GILL: -- the responsibility for it as
12 opposed to go ahead and pushing the money out front --

13 DR. HANUSHEK: Yes.

14 DR. GILL: -- and saying, "Here it is..." --

15 DR. HANUSHEK: Yes, yes.

16 DR. GILL: -- like you say, "...spend
17 whatever level we give you." and we know what happens --

18 DR. HANUSHEK: Right.

19 DR. GILL: -- when that occurs.

20 DR. HANUSHEK: Exactly, exactly.

21 DR. GILL: All right.

22 Todd Jones?

1 MR. JONES: I just want to make one point for
2 the members of the public who are here. If you are
3 interested in looking at a copy of the SEEP report, you
4 can e-mail the Commission and we'll direct you to the
5 proper website where it's available.

6 DR. CHAMBERS: -- www.seep.org, there should
7 be something right on the front page there that will
8 direct you to the report, which is right behind that.

9 DR. GILL: Todd, do you have any further
10 questions?

11 MR. JONES: No, that's it; thank you.

12 DR. GILL: Commissioner Coulter?

13 MR. COULTER: No, thank you.

14 DR. GILL: I'm not going to say Commissioner
15 Gordon again; that makes me -- I feel like Batman, you
16 know, Commissioner Gordon. I mean, the one that is better
17 than that is Commissioner Hassel; right?

18 But I'm going to ask David Gordon if he has
19 another question.

20 MR. GORDON: Thanks, Chairman.

21 Just one quick question. Along the lines of
22 creating this block grant, do you suppose it might help in

1 sending the right message to perhaps combine an IDEA and
2 an ESEA block grant?

3 DR. HANUSHEK: Sure. I mean, I think, from
4 my standpoint, that would make sense. And, then, in some
5 of the programmatic terms, as we go deeper, you might have
6 at least portions of what goes for IDEA -- currently IDEA
7 through Title 1 services or other things that are designed
8 to, you know, support special kinds of compensatory
9 programs.

10 Because, as I said, I view -- I mean, there
11 are exceptions and really -- at the ends. But much of the
12 debate about Special Education is really where do we draw
13 some borderline in the center of this distribution; and it
14 doesn't seem very helpful.

15 MR. GORDON: Thanks.

16 DR. GILL: Thank you very much, Dr. Hanushek,
17 we really appreciate your time and your paper and we'll
18 consider all of our recommendations, which I think we're
19 trying to run through a filter of, is it definable, first
20 of all, in terms of a recommendation; second of all, is it
21 defensible; and third of all, is it equitable. And I
22 think those are kind of a litmus test for the

1 recommendations that we're, I think, trying to move
2 forward with.

3 Thank you very much.

4 We're going to maybe take about a 10-minute
5 break and that allows you to field some questions, I
6 suppose, from others outside of the microphones and for
7 our other panel to get forward. So thank you very much.

8 We will reconvene at 2:35.

9 DR. HANUSHEK: Thanks for having me here.

10 (Whereupon, a brief recess was taken.)

11 DR. GILL: I'd like to ask the staff to take
12 their seats, please and we will begin the final panel of
13 the day.

14 And I just want to remind everyone that our
15 public comment will start about 4:30. We've been running
16 pretty close to time all day so we should be able to start
17 that process at 4:30. And I think a couple of us are
18 going to have to try to get out of here by 5:30 to catch
19 flights at LAX but that, in no way, diminishes the public
20 comment and it will also be part of the record and
21 Commission members will be here to hear every commenter
22 who is scheduled to present.

1 MR. JONES: That's right. We have a list and
2 it's approximately 24 names. At three minutes apiece, 20
3 names go to the hour so that -- given that it's 23 names,
4 Commissioners who are available will be remaining to hear
5 the remainder of the public comments.

6 DR. GILL: Thanks, Todd.

7 Our final panel of the day is on Using Money
8 Differently: Can Changes in Resource Deployment and Flows
9 of Funds Improve Desired Student Achievement and Outcomes?

10 And our panelists are Bill Freund, Steve
11 Johnson, and Dr. Tom Parrish.

12 Bill, I've introduced once today already.
13 He's an expert in K-12 finance; he is currently serving as
14 a Senior Budget Analyst for the Senate Ways and Means
15 Committee in Washington State. He's worked for the State
16 Legislature since 1973; he's held numerous assignments in
17 both the House and the Senate including public school
18 budgets for 21 years, the capital budget revenue, and
19 financial institutions.

20 In 1977, after the State's finance system was
21 found unconstitutional, he played a lead role in the
22 design and implementation of a new K-12 finance system

1 over a number of years and has made, obviously,
2 adjustments to that system over the years, as well.

3 In the area of Special Education, Mr. Freund
4 participated in the development of two new funding
5 formulas in Special Education in 1981 and again in 1995.

6 Steve Johnson has been the Assistant
7 Superintendent for Business and Operation for Bozeman
8 Public Schools in Montana since 1986. He is a native of
9 Montana and a graduate of Montana State University, where
10 he earned a bachelors in accounting in 1980 -- I bet
11 that's come in handy.

12 Steve has also been involved with
13 governmental accounting his entire professional career
14 with the Montana Legislative Auditor, Helena Public
15 Schools, and Bozeman Public Schools. He also serves as
16 Adjunct Professor at Montana State University.

17 Steve is an active member of the Montana
18 Association of School Business Officials and has served as
19 its President. Steve is also past president of the
20 Bozeman Area Chamber of Commerce and currently serves as a
21 Green Coat Ambassador for the Chamber.

22 Dr. Tom Parrish is a Director of the Center

1 for Special Education Finance and Managing Director of the
2 American Institutes for Research where, over the past 20
3 years, he has participated in and directed numerous
4 research projects conducted for federal, state, and local
5 agencies. Dr. Parrish combines expertise in education
6 research and project management with direct experience as
7 an educator.

8 In addition to more than 20 years of
9 experience leading and participating in a variety of
10 educational policy studies, he spent five years teaching
11 students with learning difficulties from diverse ethnic
12 and cultural backgrounds; education cost analysis and
13 finance are areas of specialization for Dr. Parrish. He
14 has a broad range of experience directing and providing
15 leadership for projects in this area.

16 He received his doctorate at Stanford
17 University in education policy and administration where
18 his dissertation focused on Special Education cost and
19 funding issues in the State of California.

20 So welcome.

21 We'd like to start with Steve Johnson. So,
22 Steve, if we can start with you and what we'd like to do

1 is, as we've done all day long, your presentation; Tom,
2 your presentation; Bill, your presentation, and then
3 questions for all of you; okay?

4 MR. JOHNSON: Thank you all for the
5 opportunity to present, before the Commission, and I also
6 thank you for the opportunity to get out of Montana for a
7 while. I called my wife at noon and it's five below and
8 snowing in Bozeman. So it is nice to be here.

9 What a challenge you have. I've sat here all
10 day and listened to the various presenters and it is a
11 challenge. You should all be commended for your
12 participation on the Commission.

13 I look at Special Education funding as a
14 partnership. And, in Montana, that partnership has
15 changed significantly over the last decade and my
16 presentation will point that out.

17 To give you a little bit of perspective,
18 Bozeman Public Schools is a school district of
19 approximately 5200 students. Bozeman is a college town,
20 Montana State University is in Bozeman. As a result, our
21 community has high expectations of our educational system.

22 By almost any measure that you could come up

1 with, we are a fairly high-achieving school district;
2 we're a low-poverty school district, which I think we're
3 between 12 and 15 percent free and reduced lunch, which is
4 a poverty measure Title 1 uses. But that doesn't mean
5 that we have -- that we don't have financial needs.

6 Just because your community is fairly low-
7 poverty, the State of Montana's funding system has placed
8 caps on school districts' budgets to equalize spending,
9 statewide and, therefore, we certainly don't have a blank
10 check by any means from our local taxpayers.

11 There is a couple of key points that I would
12 like you to take from this presentation. First of all,
13 and probably more importantly for this presentation, is
14 that Bozeman's local funding for Special Ed has increased
15 from six percent in 1990 to 52 percent in 2001.

16 Bozeman, in 2001, is paying 52 percent of our
17 Special Ed costs. Again, in 1990 that number was six
18 percent.

19 Eighty-two percent of Bozeman's identified
20 Special Ed students are enrolled more than 50 percent of
21 the time in regular ed classes which may or may not be --
22 I don't think that's abnormal. But I think a lot of

1 people that look at Special Ed don't realize the fact that
2 such a high percentage of students are simply taking
3 resource classes or speech, you know, here and there, and
4 most of their time is spent in regular ed classes.

5 Increased Special Ed funding is needed to
6 relieve the local burden. And I'll tell you quite
7 frankly, I don't care whether that's federal money or
8 state money, but you'll see that, because of our increase
9 in local share in the local funding, it has hurt our
10 overall program.

11 And the maintenance-of-effort rules, I
12 believe, must also be changed in conjunction with this
13 increase in funding.

14 This chart depicts, first of all, the -- this
15 line here (indicating overhead display) is our actual
16 enrollment, the percentage of students enrolled in special
17 ed programs. And, as you can see, it is fairly -- you
18 know, it hasn't gone up substantially; it's bounced around
19 between eight and nine percent for the last decade. So
20 there hasn't been a substantial change.

21 We have noticed a change, however, in the
22 students that are identified and the services that they

1 require. And I'll get into that a little bit more.

2 (Second slide)

3 This yellow line represents the percent of
4 our general fund; and I'll just make a quick note that, in
5 Montana, the general funds, it's a little bit unique from
6 other states. The general fund does not include
7 transportation and it also does not include what we call
8 retirement costs, which is Social Security, teachers'
9 retirement, unemployment insurance; those are all paid in
10 a different fund so they're not included in the general
11 fund.

12 So this is only the general fund's share of
13 Special Ed. Again, it's gone from six percent of our
14 general fund budget being spent on Special Ed in 1990, up
15 to about 10 percent of our total Special Ed budget (sic)
16 being spent -- I mean our total general fund budget being
17 spent on Special Ed in 2001. And that, basically, is a
18 recap of what that previous chart said.

19 (Third slide)

20 Now, this chart depicts those actual costs --
21 the actual expenditures in Special Ed in the general fund.
22 So the total that we were spending on Special Ed in 1990

1 was about \$900,000. In 2001, that was 2.5 million. This
2 chart does -- let me just -- and I should have pointed
3 this out in the title -- it does include general fund and
4 federal funds which are not included in the general fund,
5 they are a special revenue fund. But, in order to show
6 this increase in local contributions, I had to put this
7 federal amount -- and this line (pointing) depicts the
8 state amount. So our local expenditures for Special
9 Education have gone from about \$47,000 in 1990 to 1.1
10 million in 2001.

11 This morning, when I stepped out of my room
12 there and they had the USA Today sitting on the floor and
13 the first thing I saw was the price of a postage stamp
14 going up to 37 cents effective June of this year. It was
15 -- in 1992, the price of a postage stamp was 29 cents. If
16 you take that and apply that same analogy to our rise in
17 costs in Special Education at the local level, that 29-
18 cent stamp in 1992 would now be \$6.50 today.

19 So, as I said earlier, we need relief at the
20 local level; whether that comes from the federal or the
21 state government, it really doesn't matter.

22 Six percent of our Special Ed was paid,

1 again, in dollar numbers, that's about \$47,000 up to about
2 1.1 million. As you can see, the state's share -- now the
3 state has increased their funding from about 750,000 up to
4 a million dollars in that time frame. So they've
5 increased by \$275,000 or about 37 percent increase.

6 The federal government, in the same time
7 period, has increased by about \$261,000, or about 258
8 percent. So the federal government is actually doing a
9 lot better job than our state government as far as funding
10 Special Ed in Montana.

11 Now, last year during our state legislature,
12 our Special Ed Director and myself went up there to
13 testify on an appropriations bill and we were basically
14 told that this is a federal problem. "This is a federal
15 problem; you need to go and talk to the feds about this."
16 So I'm here. And all I'm saying, is I'm telling you the
17 same thing that I told them; we are in the middle of this
18 -- you know, of this underfunding by the state and the
19 federal level. And it doesn't matter to me whether it
20 comes from the feds or the state; but I think it's
21 important that it be increased to relieve the local
22 burden.

1 (Fourth slide)

2 This chart depicts the actual increases in
3 cost in the Special Ed programs, that blue line, and -- I
4 don't even know what color that is -- but this line
5 depicts the regular ed, or the non-Special Ed program cost
6 increases. So the way to read this, in 1990 -- I guess
7 this starts in 1991, 12 percent increases in Special Ed.
8 So the total Special Ed cost we had in 1990, they
9 increased by 12 percent for 1991. And then they increased
10 again by 14 percent in '92, et cetera. So those are
11 increases in Special Ed costs and this is the non-Special
12 Ed program.

13 So, as you can see, 10 out of the 11 years,
14 the Special Ed cost increases have far exceeded the
15 regular ed program. And, obviously, the obvious
16 conclusion you reach there is that it's put pressure on
17 our non-Special Ed programs. We've had to cut -- increase
18 class sizes, cut programs in order to accomplish this.

19 (Fifth Slide)

20 In our budget process at the local level,
21 basically we take all the requests from all the
22 departments, including Special Education, and we

1 administratively analyze those and basically safety issues
2 and any mandates or accreditation standard issues that we
3 have to implement, we will do first. And as a result of
4 that process, the Special Ed costs have grown faster than
5 general ed and Special Ed is rarely one of the items that
6 are cut.

7 (Sixth slide)

8 Now, on to maintenance-of-effort. Under the
9 current law, only 20 percent of any year's increase in
10 federal Special Ed Part B funding can be treated as local
11 funds for purposes of maintenance of effort. So that
12 limits our ability to reduce our spending when the federal
13 government's spending is increased. In order to reverse
14 that disproportionate increase that we have experienced at
15 the local level, I am recommending that the maintenance-
16 of-effort should be changed to allow us to decrease 100
17 percent our local share by the amount that we receive from
18 the -- the increase we receive in federal contribution.

19 Now, you know, people are going to argue,
20 "Well, that's going to take money out of Special Ed." but
21 you need to keep in mind, 82 percent of our identified
22 students are more than 50 percent in regular ed classes.

1 So the regular ed classes are going to benefit from that,
2 that increased support -- increased effort that we can put
3 into the regular ed programs will help all students,
4 including the Special Ed students.

5 (Seventh slide)

6 And now I've got a couple of slides that will
7 demonstrate how. Number one, obviously, is trying to
8 maintain low class sizes. Low class-student ratios are
9 going to benefit Special Ed students more than they are
10 going to benefit regular ed students but it's going to
11 benefit the entire educational program.

12 Provide professional development and
13 mentoring help for regular general ed teachers that deal
14 with Special Ed students all the time in their classrooms.
15 And they need development, professional development, they
16 need training on how to deal with some of those issues.

17 (Eighth slide)

18 And then the last point of the benefits, is
19 to allow -- and actually, I think, loosening some of the
20 regulations to allow us to use some of the federal funds
21 for some early-intervention type programs is important.

22 In summary, provide more money from the

1 federal and/or state level to relieve the local burden;
2 provide local school districts the ability to reduce their
3 maintenance-of-effort dollar for dollar to help rebalance
4 the partnership; and provide local trustees the
5 flexibility needed to provide early intervention and other
6 safety nets to address the unique needs of all students,
7 including Special Ed students.

8 There's a couple of other points that I would
9 like to make. Again, on this poverty issue, I think it's
10 important -- when the ESEA reauthorization occurred, and
11 there's been some discussion about, you know, maybe piggy-
12 backing on that or whatever, I was very disappointed in
13 learning that a lot of the ESEA programs are now poverty-
14 based, or at least a percentage poverty-based. I think
15 it's important to note that school districts that are not
16 at those poverty levels still have financial needs to
17 educate kids.

18 In Montana, as I said, our state government
19 has capped our general fund budget so we can't raise the
20 money locally that we need. And yet the federal resources
21 are going more and more to the high-poverty -- and I'm not
22 taking away from their needs, they need money, also, but

1 so do the lower-poverty districts. So I would hope that
2 IDEA never gets tied to that type of a funding formula
3 that is partially poverty-based.

4 And then the other point that I would like to
5 make -- I'm kind of piggy-backing on the last presentation
6 -- but there's been a lot of talk today about measurement
7 and assessment and testing and the point I would like to
8 make is, don't lose sight of the fact that those
9 measurements and assessments and tests cost money.

10 And what has happened in Montana is, the
11 State of Montana has pushed those costs down to the local
12 district and, last year, they funded a state-wide test and
13 we got an e-mail two weeks ago that said that that money
14 isn't going to be available next year; and so it's now the
15 local government's responsibility to do that.

16 So, you know, they may be a good idea -- you
17 know, I'm not arguing against that -- but I'm just saying
18 that, if you recommend or if they're implemented, help
19 fund them.

20 Thank you.

21 DR. GILL: Thank you, Steve.

22 Tom?

1 DR. PARRISH: Okay. I'd just like to start
2 out by saying I'm honored to be here and I'm awed by the
3 magnitude of the task you have, as perhaps you are as
4 well, I would imagine. I'd like to just start out by
5 saying I'm not another Special Ed economist because I'm
6 neither a special educator nor an economist; so I'm sure I
7 don't fit into that category, although I've dabbled in
8 both for quite a few years. So I suppose I know enough to
9 be dangerous in both, perhaps.

10 At the time of reauthorization, when we're
11 spending more federal dollars than ever before and
12 substantial increases in federal allocations are being
13 considered, there's naturally a time to question our
14 nation's Special Education system to ask how we can make
15 it better.

16 This questioning process is important and
17 will be the focus of my remarks today.

18 At the same time, it is also important that
19 these observations be prefaced with a clear acknowledgment
20 of the many phenomenal successes associated with the IDEA.
21 The high priority we have placed on providing appropriate
22 educational services to students with disabilities in this

1 country is something in which we can take pride.

2 At the same time, I suspect that all of us in
3 this room see ourselves as advocates for all children.
4 Given this, we must be concerned that too many children
5 are still not successful participants in American
6 schooling. We face serious questions if we are to meet
7 the challenge set by this administration, which I believe
8 all can agree with, that no child should be left behind.

9 Too many of these are children with
10 disabilities. Despite an impressive investment of
11 resources over the past 25 years, and despite a major
12 alteration of the schooling enterprise to recognize
13 students with disabilities and develop individualized
14 education programs for each and every one of them, the
15 system is failing these children at much too high a rate.
16 In addition, their success after schooling is much too
17 low.

18 At the same time, other populations of
19 children with special needs have received far too little
20 additional attention. Having taught elementary school for
21 five years, having conducted research in education for 25
22 years, and as an advocate of children -- as I'm sure we

1 all are -- I would argue that all children have some form
2 of special needs. However, some populations of children,
3 in addition to children with disabilities, especially come
4 to mind. In California, one-third of all elementary-aged
5 children come from families from whom the primary language
6 spoken at home is not English.

7 I'm currently directing a study of English
8 learners mandated by the California Legislature. After
9 extensive interviews with parents, students,
10 administrators, and teachers, I am convinced that we are
11 doing far too little to meet the special needs of this
12 population. These students are attempting to learn
13 English at the same time that they are being asked to
14 master the core curriculum -- in English, by the way -- at
15 the same pace as all other learners.

16 Children in poverty and/or those who find
17 themselves in severely underfunded schools also warrant
18 special attention. We find large discrepancies in
19 spending in school districts across the nation with
20 children in poverty often facing the daunting challenges
21 of deprivation at home, less-prepared and -experienced
22 teachers, and inadequate educational facilities,

1 equipment, and materials. Foster children are also a
2 particular concern.

3 I'm also directing a legislatively-mandated
4 study of foster-group-home children in California. These
5 are children who, for the most part, have no parent
6 advocates who are actively involved in their education,
7 who have not been able to find placement in foster family
8 homes, and who are, as a consequence, are living in
9 larger, more institutionalized group settings. Fifty
10 percent of these children are designated as Special
11 Education.

12 In California, 25 percent of them are being
13 educated in private Special Education schools and yet the
14 educational and life outcomes for these children are
15 appalling. They are wards of the State and, despite the
16 considerable investment of up to 80,000 per year for some
17 of these children, we have utterly failed in our
18 stewardship of them.

19 One major study showed that four years after
20 leaving the system at 18 years of age, only one-half had
21 completed high school and 40 percent were incarcerated or
22 on public assistance.

1 As a part of this large group of home study,
2 I had dinner last night with an incredibly articulate
3 young woman I'll refer to as Jane. After eight years in
4 the foster care system and under all of the protections
5 offered through Special Education, where she was diagnosed
6 as emotionally disturbed, upon turning 18, she had
7 accumulated zero credits toward graduation. Upon leaving
8 the system, she was advised to seek shelter in a home for
9 adults with mental retardation.

10 Despite the total failure of the system for
11 this child, she was able to turn her own life around after
12 leaving school. Currently a law student at a top-notch
13 California university, she turned into an incredible
14 success story despite the fact that the elaborate system
15 we have developed totally failed to recognize and develop
16 her considerable talents.

17 Given this background orientation, I offer
18 the following observations and recommendations about using
19 money differently. Number one, we must define adequacy of
20 educational services for all children. I'm not advocating
21 IEPs for all children, and I'm not advocating that all
22 children become involved in the procedures that we have

1 created, but all children fit somewhere on a continuum of
2 special needs.

3 Given this, I worry about the bifurcated
4 system we have created in which some children are granted
5 a legal entitlement to an individualized education program
6 appropriate to their needs and which costs cannot be taken
7 into consideration, as compared to all other children who
8 receive no guaranty of adequate or appropriate educational
9 services.

10 Number two, legal entitlements are not
11 enough. Within this bifurcated system, the legal
12 entitlements we have created for children who qualify for
13 them seem to do little to assure high-quality educational
14 services or success in life. Despite eight years under
15 the substantial protections provided for Jane, after eight
16 years of protection and legal guarantees, she had no high
17 school credits despite her considerable academic talents
18 and abilities, as evidenced by her success later in life.
19 The system had failed her and yet she was made to feel
20 that she had failed the system.

21 Three, the current accountability system is
22 misguided. It has always been a great deal of

1 accountability within Special Education, perhaps too much.
2 There are at least three kinds of accountability, fiscal,
3 procedural, and results. All three are important and need
4 to continue in one form or another. But the first two are
5 only important in relation to the third.

6 If we are failing students in terms of their
7 not receiving an education, we are failing them, period.
8 It does not matter if we are spending the money on them in
9 the legal manner and it does not matter that all of the
10 specified policy and procedures were followed.

11 Number four, and a meaningful discussion of
12 accountability must include a full consideration of,
13 accountable for what? A two-year process to identify
14 desirable results for young children in California
15 resulted in the first goal -- one of three -- of producing
16 children who are personally and socially competent.
17 Emphasis on test scores alone will not necessarily lead
18 to, and may, in fact detract from, the full set of desired
19 results we want for all children.

20 Number five, with outcome accountability in
21 mind, we need to allow greater flexibility in the use of
22 funds. If Special Education is the only game in town, or

1 the best game in town, the remedial services, Special
2 Education enrollments will continue to grow as a
3 percentage of total enrollments, as they have done every
4 year since the passage of IDEA. I think we need to
5 consider flexibility in the use of funds to provide some
6 services to students prior to referral to Special
7 Education.

8 Six, for many children, Special Education is
9 not the best program to provide remedial services. The
10 cost of eligibility determination is high. If eligible,
11 we only start services once these determination costs are
12 incurred. If not eligible, we incur the cost of
13 determination anyway and the child receives no additional
14 service. For example, it makes no sense to spend a
15 thousand, 2,000, whatever number you want to put on it, to
16 determine if the child is eligible to receive \$800.00 of
17 reading intervention.

18 Once children get into Special Education,
19 they tend not to get out. And, last, the labels for
20 learning disabled are stigmatizing.

21 Number seven, we need to direct more money
22 and services to young children. Research consistently

1 shows that we have a great window of opportunity to
2 intervene with children at risk in the early years. And
3 yet our funding patterns show that we are much more likely
4 to spend after failure has occurred.

5 Number eight, we need to stop spending money
6 in ways that promote segregation. Although some children
7 will need more restrictive services during part of their
8 school experience, we know that socialization is a vital
9 part of the education of all children. Far too many
10 children are receiving educational services in isolated
11 settings because ways in which we allocate funds for these
12 services encourages this segregation.

13 And, last, I'd just like to comment on 40-
14 percent funding. I, with some hesitation, enter as a
15 pariah among the august people who have spoken already.
16 But I'm not sure I agree in the notion of federal funding
17 being targeted for high-cost for so-called severe
18 students. I would like to see substantially increased
19 federal support for children with special needs. However,
20 I would be concerned if considerable new funds were
21 restricted to added Special Education spending without the
22 flexibility to use some of these funds on other types of

1 interventions for children.

2 If these funds were to be targeted, in my
3 view, rather than directing them to cover the costs of the
4 nation's most severe, or highest-cost children, I would
5 urge consideration allowing at least some of these dollars
6 to be spent on better early intervention and alternative
7 intervention services.

8 Thank you for this opportunity.

9 DR. GILL: Thank you, Tom.

10 Bill Freund?

11 MR. FREUND: Thank you again for the
12 opportunity to testify. And I have to admit at the outset
13 that the topic of using money differently and
14 contingencies in resource deployment and flows of funds to
15 improve student desired achievement and outcomes is a
16 foreign one since, until this year, federal funds were
17 something that was appropriated in our budget because they
18 had to be and it wasn't something that we knew much about.

19 But a \$1.6 million shortfall in our budget
20 has changed all that and we're now integrating federal
21 funds, to some extent, in our funding formulas. And I
22 have to say, I had the pleasure of reading, probably more

1 than a thousand pages of federal laws and regulations and
2 all sorts of things.

3 So, having been challenged, I've jotted down
4 some things that people have complained about over the
5 years and some concerns that occurred to me as I
6 considered this discussion topic in light of the changes
7 in Title 1 under the No Child Left Behind Act and,
8 finally, some thoughts relating to federal Special
9 Education increases for states that are fully funding
10 Special Education, like Montana.

11 My first topic is red tape; and I think that
12 you've heard a lot about it. But, in Washington State,
13 school districts and teachers complain constantly to the
14 legislature about the burden of Special Education
15 regulations and paperwork requirements. And the claim is
16 that substantial portions of a teacher's day are spent
17 doing paperwork.

18 And, upon investigation, it turns out that
19 most of the complaints concern federal requirements,
20 changing roles of service providers, inclusion and
21 building-based management. And, if possible,
22 simplification of federal requirements without affecting

1 procedural requirement -- or from safeguards, excuse me --
2 could improve the disposition of teachers and might
3 increase teaching time per day.

4 I have to say that, in our own funding
5 formulas -- for example, we used to have salary controls
6 over all three types of staff, certificated instructional
7 staff, certificated administrators, and classified staff.
8 And, in 1987, the legislature decided what was important
9 was the classroom and they let go of the salary controls
10 for the -- for administrators and for classified staff;
11 and it did not matter to the legislature whether they paid
12 double and had half the staff or paid half and doubled the
13 staff.

14 And so there may be some opportunities for
15 you to assess your requirements and maybe you can let go
16 of some of the ones that are not all that important.

17 With respect to assessment costs, a frequent
18 complaint is that districts are not eligible for state or
19 federal education funds unless an IEP has been prepared
20 for a student. Allowing federal reimbursement may curb
21 the potential for over-identification of students as
22 Special Education. And I make this comment because

1 districts may treat this as a sump cost. You know, once
2 they've committed the -- maybe the \$1100 for assessment,
3 they can't recover any of it unless they identify the
4 student as IEP. And they cannot recover from the state
5 because we don't allow that; and they can't recover from
6 the federal government. And I'll cover that part a little
7 later.

8 Well, I'll cover it now. You may be
9 wondering why the state doesn't allow the reimbursement
10 from our own Special Education funds and the reason is, is
11 that we view federal funds as enhancement funds and we
12 kind of like to have the federal government pick up the
13 cost since those are enhancements and they can be used for
14 that purpose. So it's a different kind of view from some
15 other states, I would imagine.

16 With respect to student outcomes, data
17 linking Special Education expenditures and outcomes -- and
18 by outcomes, I mean test results -- is not available in
19 our state. It may be possible to generate some high-level
20 information soon but it may turn out to be counter-
21 intuitive and that the data will probably show that, the
22 higher the expenditures, the lower the student outcomes.

1 And, for that reason, linking expenditures and outcomes
2 may not be useful unless other variables are also
3 considered.

4 And we've looked at the cost of developing
5 some other variables and one of our audit committees
6 recently concluded that it would be quite costly to be
7 developing other variables.

8 Our state does not specify desired student
9 outcomes for Special Education students and neither does
10 the federal government. My impression is that, what is
11 available, our state and federal procedural requirements
12 serve as proxies for outcomes. And expected student
13 outcomes are individually determined through the IEP
14 process and they probably vary by state, by school
15 district, and by school building.

16 I'm not aware of any federal uniformity
17 requirements for the preparation of IEPs. So it's one
18 thing to try to help school districts improve Special
19 Education student outcomes through various means but it
20 may be quite another to try to determine whether student
21 outcomes have actually improved given the lack of
22 uniformity in IEPs and the lack of definition of what

1 "outcomes" means in a Special Education context.

2 Another thought is that standardizing the
3 required content of IEPs and other federal forms may aid
4 in minimizing differences among states in accounting,
5 service delivery styles, and local district program
6 decisions. It may also help when students transfer from
7 one state to another.

8 Finally, an unintended consequence of state
9 education reform efforts and state and federal adequate
10 yearly progress requirements may be some increases in
11 Special Education enrollment due to movement of some
12 underachieving students into Special Education programs.

13 And, to prevent this potential, one
14 possibility may be to require one or two research-based
15 instructional interventions before labeling a student SLD.
16 But care needs to be taken when considering singling out
17 one category of disability for special treatment because
18 our experience has been that that leads to category creep.

19 Regarding state and local maintenance-of-
20 effort requirements and "supplement not supplant," from
21 the state's point of view, Washington is fully funding
22 Special Education. So federal funds become enhancement

1 funds if they cannot be fully taken into account. And
2 federal/state maintenance-of-effort and supplement-not-
3 supplant requirements affect the ability of our state to
4 take the federal funding increases into account.

5 One of the things that you talked about a
6 little earlier was -- in doing things differently, was
7 providing additional funding for districts with innovative
8 programs or funding pilot programs. And I have to let a
9 little bit of a budget analyst and the frustration of a
10 budget analyst just come out a little bit because there's
11 thousands of school districts; we're not the only country
12 that does Special Ed. How many more pilot studies need to
13 be done on how to do Special Ed appropriately?

14 And we do have quite a bit of experience with
15 pilot studies in our state, and with special innovative
16 programs. One that comes to mind is 21st Century Schools,
17 which was providing about \$8 million a year for, I think,
18 four or five years in the late '80s. And what do we have
19 to show for it? Nothing, absolutely nothing. Why?
20 Because it was not -- the way the money was used in those
21 school districts, it was not replicable, it was not
22 scalable, it depended on some inspired individuals; and,

1 when those individuals moved away, we had nothing to show
2 -- you know, three or four years later, there's nothing --
3 you can't tell that the program came and went.

4 Also, I think that care has to be taken with
5 pilot programs because there's the Hawthorne effect. You
6 know, you start putting extra money in, call a school
7 district "special" or, you know, certain things happen
8 and, all of a sudden, things improve. But, after three or
9 four years, they just kind of dissipate and it goes away.
10 So, that's the old budget analyst coming out in me.

11 Now, I do have to tell you about our Ed
12 Reform Program. Our state's been engaged in reform since
13 1993 and we're trying to inculcate best practices in our
14 teachers. And, you know, from that -- since 1993 to this
15 school year, the state has invested \$280 million on just
16 providing extra days for teachers so that they could
17 learn, first, the curriculum and then how to use the
18 assessments that we have in place. So it's a costly
19 proposition.

20 So, if there's going to be innovative
21 programs or you try to do best practices, then you have to
22 come up with a means to get it out, otherwise, these

1 programs just don't do anything, they're just nice
2 programs and then they go away.

3 So recommendations regarding using money
4 differently, any contemplated changes in resource
5 deployment and flows of funds should focus on system
6 accountability for results but not result in increased
7 paperwork at the local level. And I don't have any
8 problem, I think, with requiring more paperwork of state
9 agencies. I don't know what Doug thinks, but requiring --

10 DR. GILL: (unintelligible).

11 MR. FREUND: Oh, yeah -- but requiring more
12 paperwork of local school districts, you know, there's
13 resistance to that.

14 So federal regulations requiring paperwork
15 should be eased if it is determined that sufficient
16 procedural safeguards exist. And I happen, by the way, to
17 like quite a bit of the paperwork. There have been
18 studies on paperwork in our state -- in fact, several --
19 and, in reviewing those, I considered them a roadmap for
20 school districts to keep out of trouble, for one thing.
21 But maybe something can be simplified.

22 Next, limitations on the use of federal

1 education -- Special Education funds -- for assessment of
2 students that become a focus of concern should be changed
3 and, blending of federal funds should be permitted and
4 encouraged -- I think, Title 1 with IDEA -- and maybe
5 that's already a possibility.

6 In our state, we talked about allowing the
7 blending to go the other way, Special Ed to the regular ed
8 program, that is, to use some of the Special Education
9 money to train teachers to deal with Special Education
10 students that are in the classroom. And I don't know the
11 extent to which that's being done but there may be some
12 mutually beneficial things that can be done between the
13 two programs.

14 Next -- and I debated about whether I should
15 leave this in or not, and that concerns using a small
16 portion of federal funds to create regional risk
17 management pools for high-cost students and also for legal
18 costs. And it occurs to me that that could be a very
19 problematic thing, having a regional safety net, or even a
20 -- not even a huge safety net for this because what it
21 does, is it allows school districts to cry uncle too fast.
22 That is, they may not challenge, for instance, sending a

1 student to Hawaii; I think there's a nice program in
2 Hawaii and we've had to send a couple of kids there.

3 And the school districts determined that,
4 rather than take on the legal costs, they'd just as soon
5 just send the student out. And it becomes a question of
6 responsibility and that is, has the school district
7 exercised due diligence and tried everything that it can
8 prior to coming into your regional pool?

9 As an alternative, I did talk to you about,
10 in Southwest Washington, that we have a school district
11 co-op, 15 school districts. That co-op takes all of the
12 students of the school districts, including -- and they
13 have some very high-cost students, and the costs are
14 absorbed by all 15 school districts when that happens. So
15 they have a regional risk-management pool. And, you know,
16 what our educational service districts do with respect to
17 other things like insurance, for instance. So there may
18 be some possibility to maybe foster some more of those
19 kinds of arrangements; and that would be an alternative to
20 having some regional risk-management pools.

21 Finally, the federal government should
22 consider standardizing forms and report requirements to

1 enable greater comparability between the states, amongst
2 other reasons.

3 Thank you.

4 DR. GILL: Okay, thanks. Thank you, Bill.

5 I think the Committee certainly recognizes
6 that we put this panel in a difficult position, to talk
7 about using money differently, when we would probably all
8 agree, we don't know how we use the money that we have
9 now. So, to use it differently is kind of a tough
10 position to put you folks in; and we appreciate you taking
11 that on a little bit.

12 So we're going to start with our questions
13 from our staff and Commissioners and, following the
14 afternoon model, we're going to start with Troy Justesen.

15 And, Troy, you have the first question.

16 MR. JUSTESEN: Well -- sorry, I know, the
17 microphone -- Bill, to you it seems the paperwork is a
18 good thing for purposes of protection against litigation.

19 MR. FREUND: Yes.

20 MR. JUSTESEN: Well, that shouldn't be the
21 primary goal of having an IEP and following the procedures
22 of an IEP and services for a child through that IEP, just

1 to protect a district from litigation.

2 MR. FREUND: No. And I didn't mean that --

3 MR. JUSTESEN: No, I know you didn't --

4 MR. FREUND: -- exclusively and I -- well, go
5 ahead.

6 MR. JUSTESEN: Well, I guess my question is,
7 do you -- if that's the primary concern to an
8 administrator, then, for all three of you, what is the
9 recommendation to have paperwork that protects the
10 interests of the child but is useful for educating the
11 child?

12 MR. FREUND: Well, when I used the words
13 "procedural safeguards," I mean the interest of the child;
14 and that's what I mean. And so, in relaxing paperwork
15 burdens, I think what has to be taken, to make sure that
16 what is provided to the students is appropriate.

17 MR. JUSTESEN: Okay.

18 Steve?

19 MR. JOHNSON: Well, I guess, from my
20 perspective, I'm -- if you look at it from a perspective
21 of the student's best interest versus protecting the risk
22 of the district, you know, dotting all the i's and

1 crossing all the t's is kind of what the emphasis is now,
2 it seems to me, and not just sitting down and coming up
3 with a plan that's going to work. You know, it's like
4 you've got to go from step A to step Z and you've got to
5 do it in this order, rather than just, you know, randomly
6 collecting the thoughts of the educators that are in the
7 room and the parents and everybody and doing it as a
8 collective process, rather than saying, "Okay, we've got
9 this form to fill out now, guys. You know, we've got to
10 make sure all this stuff is done."

11 I'm not sure I have any specific
12 recommendations but it seems like there's a lot of time
13 consumed in making sure those i's are dotted and t's are
14 crossed.

15 MR. JUSTESEN: Does the current requirements
16 for paperwork meet the best interests of the child or, at
17 least, can we improve on that system or should we leave it
18 alone?

19 MR. JOHNSON: I don't know if I want to go
20 there. You know, from my perspective, I think that our
21 school district is doing an excellent job of educating
22 these students. I mean, they are getting educated and

1 they are learning. And sometimes it frustrates the heck
2 out of all of us because we can't use money -- but -- when
3 we want to use it, early enough, and those types of
4 things, and we're putting out fires after they're ablaze
5 rather than dealing with them early.

6 But, as far as the paperwork issue, I guess
7 I'm not sure that that's -- you know, limiting or changing
8 that is going to, at this point in time, save enough to
9 warrant it. I mean, the processes are in place and, you
10 know -- but it also, from a local perspective, is
11 frustrating because, you know -- the costs that I showed
12 you, those are direct Special Ed costs; that doesn't
13 include any of the indirect costs of all the people that
14 are involved in the teams, the principal, the regular ed
15 teacher, all of those costs that are extraordinary in
16 filling out -- in making sure that all of those forms are
17 completed.

18 So it seems like the process could be
19 streamlined a little bit but I don't know if that's in the
20 best interest of the student or not; I can't answer that.

21 MR. FREUND: There may -- I'm not an expert
22 on the paperwork but some of the frequency of the

1 paperwork, I heard, maybe can be cut out and not hurt
2 anything.

3 DR. GILL: Jay Chambers?

4 DR. CHAMBERS: Sounds like one of the things
5 we heard when we visited some schools in Houston, asking
6 what the major issue was and, in unison, a group of them
7 said, "Paperwork. If we could just reduce the amount of
8 time we spend involved in unnecessary paperwork, that time
9 then could be devoted to program planning and working with
10 children and, hopefully, improving learning." But that's
11 kind of an outsider's observation.

12 Steve, I was trying to look at your numbers
13 and I know it's late in the afternoon and so I wasn't
14 quite calculating as fast as I usually do. But -- and I
15 thought I heard you say something about the fact that the
16 increase, which has been substantial in your district, and
17 you were going to make some mention of the cause of the
18 increase, not just the relative numbers. But it appears
19 that the dollars per child being spent have gone up
20 considerably; but I couldn't -- without more calculations
21 in my head at 3:00 o'clock in the afternoon can handle, I
22 couldn't quite figure out what that was and what the

1 nature of the increase was.

2 Can you elaborate on that?

3 MR. JOHNSON: Well, I can and -- primarily,
4 it's as the chart showed, the percentage of students in
5 Special Ed programs has not grown significantly; where the
6 increases have come in, in primarily two categorical
7 areas, is autism and emotionally disturbed. And we have,
8 over the last two or three years, been dealing with some
9 very severe emotionally disturbed issues that we didn't
10 previously deal with.

11 And, at the same time, we've had cutbacks in
12 other support agencies, in mental health, primarily; and
13 so we're like it -- you know, fix the problem. And we
14 don't have the help from other state agencies to support
15 that, so those two areas. And then, related services, you
16 know, has become a pretty huge issue, and OT and PT and
17 technology -- assistant technology for students.

18 So those are the primary areas that we're
19 seeing those rapid cost increases in. So it's really not
20 from more students, it's from the cost of educating the
21 ones we have.

22 DR. CHAMBERS: So it sounds -- I mean,

1 looking at the national data where a lot of the increases
2 and their portions of budgets going to Special Education
3 can be counted for, for the most part, by increases in
4 child count.

5 You've had some unusual circumstances
6 affecting your district through a couple of categories; am
7 I hearing that correctly?

8 MR. JOHNSON: Well, I wouldn't call them -- I
9 don't know if I'd call them unusual circumstances because
10 there's a decade-long trend here. I mean, it's like -- I
11 don't think it's a blip that's going to go away.

12 I was visiting earlier with one of the
13 Commissioners about, you know, there's a lot of little
14 school districts in Montana, little -- real little ones.
15 I mean, we're talking eight students, you know. We have
16 430-some school districts and, over the past five or six
17 years, I think there have been probably 40 or 50
18 consolidations of school districts.

19 Well, what happens is, the larger school
20 districts -- and we're only 5200 students but we're the
21 sixth largest district in the state -- well, we -- those
22 students know that our services -- our Special Ed services

1 are good and their parents really like that so they move
2 -- you know, they move to our district, or they will move
3 out of those smaller districts and come to us.

4 And so, you know, that has become a trend, as
5 well. I mean, more for the kids that really need it than,
6 you know, just the resource type students.

7 DR. CHAMBERS: Your other comment -- well,
8 among many -- is, "I don't care where the money comes
9 from; we just need more." but let me put it back to you,
10 if you were in our position and somebody said, "Well, we
11 will provide more money, more federal money." with what
12 accountability should that additional money be provided?

13 MR. JOHNSON: From my perspective, very
14 little accountability; and I'll tell you why. Because I
15 firmly believe, and I deal with them every day, our local
16 school board is accountable to the local people and
17 they're accountable to the parents; and they're offering a
18 good educational program. And, you know -- I mean, it's
19 easy for me to say, "Trust them," but, you know -- we deal
20 with this at the state level all the time, they want to --
21 you know, with more money comes more mandates or more
22 requirements or more accountability. Well, how much more

1 accountable can you be than the local trustees that are
2 elected by their constituents to provide the programs?

3 That's where the accountability is.

4 And so I don't think we need more
5 accountability to the federal government that's providing
6 x-percent of our funding; I think the accountability is
7 there, it's there at the local level.

8 DR. CHAMBERS: I appreciate your candid
9 remarks; thank you.

10 This is a question that really could be any
11 one of you can answer. I'm thinking about how one might
12 structure federal funding and, if we were to increase
13 substantially, or recommend -- we're not going to do
14 anything, that's up to the Congress -- but if we were to
15 recommend to move towards -- I don't even want to say 40
16 percent because I don't know whether that number is --
17 that's even meaningful -- but a substantial increase in
18 funding, one could imagine that one could divide that
19 funding into a number of different pieces.

20 One might be something related to what we've
21 heard talked about today is some sort of high-cost risk
22 fund; I'm not sure exactly how to manage that -- I hear

1 some comments that Bill is making about it -- something
2 that would be block grant that could be used, perhaps with
3 some flexibility, in combination with other federal
4 programs.

5 And then something else that I haven't heard
6 mentioned much is some funding that the federal government
7 might earmark specifically for professional development,
8 and professional development not only for folks that are
9 providing to special educators, but to general educators
10 who are now pushed to include children in the regular
11 programs and who are not equipped, or prepared, for the
12 obligation.

13 MR. FREUND: Well, I think the third part is
14 important if someone has identified best practices and you
15 want to promulgate those. And it may be that you want to
16 foster some seminars in every state and try to get the
17 word out; and that's a costly proposition, a very costly
18 proposition. But it may be of some use. As for the block
19 grant concept, I think that you already do a block grant
20 so I don't know how that would be any change.

21 I forgot the first part --

22 DR. CHAMBERS: The high cost --

1 MR. FREUND: Oh, the high-cost. Yeah, the
2 high-cost, however you do it, whether it's regional safety
3 net or some other thing, that could be problematic. But
4 -- and it could turn into a big, black hole if it's not
5 properly controlled.

6 You know, it's a tempting thing to go to but
7 somewhat dangerous.

8 DR. CHAMBERS: Well, let me challenge you a
9 little bit -- I'm not disagreeing, but more trying to
10 think -- I mean, if we're trying to provide some relief
11 and we think the basic concept or principle is good --
12 that's a big "if," perhaps -- but are there ways of
13 designing that that might avoid some of the concerns or
14 problems that you're suggesting?

15 MR. FREUND: Well, I'm thinking of our
16 safety-net approach, which you have a jury of peers making
17 those decisions, and the money pool is limited. And I
18 think that the group would be given a set of operating
19 criteria, much like we do our Safety Net people, to make
20 sure that school districts have explored all the
21 alternative modes of treatment, that they weren't -- I
22 hate to use this word but -- another occurs to me right

1 now -- are "profoundly stupid"; because I'm thinking of
2 one particular school district in our state that lost a
3 law suit then incurred a huge amount of expenditures for a
4 student -- and I mean huge -- and had they dealt with the
5 parents in a reasonable manner, this whole matter could
6 have been avoided.

7 And I don't know whether the federal
8 government wants to pay for things of that nature.

9 DR. CHAMBERS: Let me comment because I have
10 concerns about charging these dollars -- I mean, I would
11 urge that the federal government allow more flexibility
12 for local school districts. I think they need to waive
13 some maintenance-of-effort requirements and I think they
14 need to allow more flexibility in the use of funds. And I
15 guess I would disagree with Steve, that I think we need to
16 place more emphasis on accountability.

17 I have no doubt that the kids in Steve's
18 districts are doing great; I think probably the kids in
19 Palo Alto Unified, where I come from, for the most part
20 are doing great. But the national statistics, as reported
21 by (unintelligible) is not promising and so a lot of kids
22 are not doing great. And I'm concerned we are paying a

1 lot of attention to things that are not related to kids'
2 outcomes.

3 But, in terms of targeting money to severe
4 kids -- I mean, we just completed a study in California a
5 few years ago trying to define the whole concept of
6 severity; I mean, it's a very slippery concept to try to
7 define and it's very easy to come up, it seems to me, with
8 the simple solution of, "Let's just sort them into the
9 severe ones and the non-severe ones."

10 But, as Eric said, it's a continuum. And I
11 think, when you draw the line, number one, you create an
12 incentive to move kids on the top side of that line, which
13 worries me and, secondly, it seems to me you're saying to
14 the districts then, "If you don't move kids on the top
15 side of that line, you don't get federal money; but, if
16 you do, you do get federal money."

17 So -- you know, I agree with you with the
18 risk pool but I think it can happen at the state level. I
19 don't think the federal government should be in the
20 business; I think it is counter to your whole notion of
21 accountability saying, "I'm going to target and tell you
22 how to spend these dollars."

1 MR. JOHNSON: I guess the only comment that I
2 would add is that, of the three that you proposed, or
3 talked about, is the block grant concept with flexibility,
4 from the local standpoint, would be a priority, would be
5 number one.

6 DR. GILL: Actually, I have three questions,
7 one for each of you; and they are not the same question.
8 So that's a switch.

9 Tom, I'm going to start with you. I've read
10 your work, I know you're history, background, and I know
11 that you've spent time in a classroom and I know that you
12 spent time researching and I know you spent time talking
13 to a lot of people around the country regarding Special Ed
14 finance and all this kind of stuff.

15 DR. CHAMBERS: Including some economists
16 here.

17 DR. GILL: And Jay says, "Including some
18 economists here." and that may well be true. But that's
19 really not the question I'm asking here.

20 If you were to pick three -- let's say three
21 of your recommendations, if we said to you, you know, "We
22 can entertain three of your recommendations," what do you

1 think are the three most important recommendations you
2 would make to this Commission and why would you think they
3 were the most important recommendations?

4 DR. PARRISH: -- I can read them and see what
5 they were --

6 DR. GILL: Yeah, you might want to check them
7 because I've got seven and you said eight. Maybe it's
8 the eighth one is the most important one; I don't know.

9 DR. PARRISH: I talked to my wife before
10 giving this speech and she edited it a little bit, so I
11 got one in there. So I'll give you the abridged version
12 later.

13 But I think -- to me, the major focus and my
14 major concern, I would say, over the last 10 years, since
15 I first got in this business and really started thinking
16 about that dilemma of, you know, do we earmark money, do
17 we tell people exactly how to spend it, how do we divide
18 kids into groups, and how elusive all that is, and it
19 seems to me the way that we get around all of that, and a
20 lot of the procedure and paperwork that I think you spend
21 a lot of time on because nobody trusts anybody. And why
22 don't we trust anybody? Because we don't know what we're

1 trying to do with these kids, we really don't have a good
2 sense of how to measure it.

3 So I guess the bottom line for me, has been a
4 long time, if we can figure out the accountability part, a
5 lot of the rest of it would kind of fall by the wayside.
6 And so that would be one recommendation, in my view, is
7 we've got to figure that part out.

8 I guess the second part would be, I don't
9 think accountability is test scores. See, for a long
10 time, we talk about accountability as if, "Just got to get
11 those test scores up there; we do that, we've solved every
12 problem." but we still see a lot of kids who graduate from
13 high school weren't getting any jobs, they are not
14 prepared for life after school.

15 So I think, thinking about what it is we want
16 to measure and what's important, to really thinking about
17 what we mean about accountability, we place importance on
18 what we measure and I think we place importance on what we
19 write down. So I also get worried about the paperwork,
20 that I think a lot of it's not towards the things we
21 really care that much about. So I would say the second
22 has got to be -- the first one is accountability and maybe

1 the second one is accountability, in my view, in terms of
2 thinking about what we really mean about accountability.

3 And then the last one, I guess, would be --
4 if I place the third one, it would be flexibility in the
5 sense that, if I get those first two nailed down, I agree
6 with Eric a hundred percent, I don't think it ought to be
7 the part of the federal government or the part of the
8 state to tell a school district -- because we don't really
9 know -- I mean, this isn't building a car here, we're not
10 sure how to do this.

11 So I guess I'd want to say to school
12 districts, "There are certain things that I expect that
13 these kids to be able to do and to know when they leave
14 and it's up to you to use your best professional judgment
15 to figure that out. And, since I know whether you are
16 achieving or not, I don't have to worry about -- I can
17 give you flexibility and let you do that."

18 DR. GILL: Yeah, I just want to make sure I'm
19 understanding. I agree, the first two might be
20 accountability. But, with an accountable system,
21 flexibility follows the accountability, or flexibility
22 precedes the accountability, in your mind?

1 DR. PARRISH: Ideally, it would follow. But,
2 given the fact that, in my lifetime, are we going to
3 define accountability? Well, I guess I wouldn't want to
4 wait. But I would say that we need to start moving
5 towards thinking about what we mean about accountability,
6 in a larger sense, and, in the meantime, we probably
7 should allow some flexibility because we don't know enough
8 about how this is best done.

9 At the same time, we're starting to do things
10 in the way of accountability; we need to do flexibility,
11 in my view, hand in hand.

12 DR. GILL: Thank you; I appreciate that.

13 Steve, I've got kind of a numbers question
14 for you because it's late in the afternoon and I don't
15 quite understand, either. I don't want to take you back
16 to anything in particular but, the chart you show on page
17 3, you were talking about percentage of -- you know, State
18 Special Ed, Local Special Ed, Federal Special Ed, Total
19 Special Ed, it looks to me like the difference between the
20 Federal Special Ed from 1990 to 2001 is fairly constant;
21 is it not?

22 MR. JOHNSON: Yes.

1 DR. GILL: And the State level Special
2 Education from 1990 to 2001 is also fairly constant; is it
3 not?

4 MR. JOHNSON: Uh-huh.

5 DR. GILL: So the distance between those two
6 points is virtually the same over that 10-year period of
7 time and, if that's true, explain to me what you mean by
8 the cost variation at the local level. I mean, it looks
9 to me like the locals have always had basically that
10 obligation of making up the difference between those two
11 points. But you're saying it's escalating at like --

12 MR. JOHNSON: Well --

13 DR. GILL: Maybe I just don't understand --

14 MR. JOHNSON: What you have to look at is the
15 top line; that's the total cost. And that top line is
16 nowhere close to being parallel to the federal or the
17 state line; and so the district has had to make up that
18 difference.

19 DR. GILL: Yeah, but the district is not --
20 do you still -- there is a huge gap between where the
21 district is spending and Total Special Ed expenditures,
22 unless I'm just misreading the table.

1 MR. JOHNSON: Yeah, the district is now
2 spending more than 50 percent.

3 DR. GILL: So how is the gap that you're
4 showing here in Total Special Ed in Bozeman Public Schools
5 between 1990 and 2001 -- how is that gap being filled?

6 MR. JOHNSON: (No response.)

7 DR. GILL: You didn't have that issue in '90;
8 you start to see an admission-creep, if you will, between
9 '91 and 2001, but I guess what I don't understand, from
10 this chart, is, if you know what the costs are -- which I
11 guess is what this explains -- how is that being filled?

12 I don't get it, I guess.

13 MR. JOHNSON: The local taxpayers are filling
14 it. You add those three up and they add up to the top
15 line.

16 DR. GILL: Oh, okay; okay. Now maybe I
17 understand it because, before, I didn't get that. I'm
18 seeing this growing gap here and I'm seeing federal
19 funding approximately the same, state funding
20 approximately the same, and local funding increasing from
21 about -- well, less than \$200,000 --

22 MR. JOHNSON: It's about --

1 DR. GILL: -- to about \$1.1 million. When I
2 see the cost expressed at almost \$2.5 million. I guess I
3 didn't understand the difference there.

4 MR. JOHNSON: Right. In 1990, the district
5 was paying about 50,000 out of about 900,000, but we were
6 paying 50,000 out of 900,000, you know, that's six percent
7 or whatever it was that I --

8 DR. GILL: Uh-huh.

9 MR. JOHNSON: -- the percentage. And today
10 we're paying a million out of 2.5 million. So we're
11 paying 50 percent now.

12 DR. GILL: Well, I appreciate the fact that
13 you didn't blame the federal government for that.

14 I would agree that, if I were you, I'd think
15 you ought to be making this presentation in your state --

16 MR. JOHNSON: I've got it --

17 DR. GILL: Bill, I've got a question for you,
18 too. Do you know, I think this notion of cost variance
19 and all of those things has come up; and one of the issues
20 that we've seen in Washington State clearly is, is the
21 difference in cost as an expression of local district
22 philosophy, is it simply an expression of -- as some

1 people have alluded to -- access to additional funds --
2 you know, we actually had a district who came to us in the
3 Safety Net and said, "If you give us more money, we
4 promise we will spend it."

5 My response was, "That is exactly the same
6 thing my 18-year-old says to me; and I expect a little
7 more accountability from him so I expect a little more
8 accountability from you." I know, if we make money
9 available, it will be spent; I don't have to be an
10 economist to understand that particular point.

11 What I want to know is what you think the
12 differences would be between rewards, if you will -- and I
13 think Eric Hanushek mentioned that a little bit, rewards
14 for people doing a good job meeting their outcomes, et
15 cetera -- versus incentives. And I know you alluded to
16 this a couple of times that there may, in fact, be funding
17 incentives or unintended consequences of a high-cost model
18 or anything else. And I know where your heart is on the
19 paperwork; I don't think you mean -- not IEP, I think what
20 you mean is IEPs that actually enable us to benchmark
21 outcomes that are meaningful, rather than procedural
22 safeguards four times a year whether you need them or not.

1 MR. FREUND: Right. I mean, I think how Tom
2 put it on accountability was pretty good. We don't know
3 what it is that we're trying to do; we can't measure it,
4 it's not on the IEPs -- maybe start trying to read IEPs,
5 what can you tell what the expected outcome is?

6 Our people, when they've read thousands of
7 IEPs -- and I think that our J-LARD (phonetic) Committee
8 read 9,000-and-some, that they studied 9,000; they just --
9 they couldn't see any clear pattern and they couldn't make
10 determinations of anything, really. It's a big problem.

11 DR. GILL: So would you suggest, in terms of
12 comparability, at least, a set of federal forms, perhaps,
13 that delineate what the items are so that there's less
14 debate when kids transfer from one district to another or
15 from one state to another, sort of like a, let's say, a
16 1040EZ?

17 MR. FREUND: Yes, I would. I think that
18 certain things shouldn't be on IEPs and, in reading them,
19 I find them to be very specious documents, actually, and
20 they're intended to provide maximum flexibility to the
21 school district. And many -- you know, I'm not a
22 practitioner, but I have read, you know, several hundred

1 of them; and that's my finding. I don't think that
2 they've changed very much. So, if one is expecting to
3 provide incentives or rewards or whatever it is, I think
4 this has to be straightened out, otherwise, how can you do
5 that?

6 DR. GILL: So part of the -- I think you
7 mentioned it this morning, that there was only about 35
8 percent of the cost variation that could be explained; the
9 other 65 percent, I think, is in the variability and I
10 think that --

11 MR. FREUND: Right.

12 DR. GILL: -- the point you bring up is a
13 good one, to me, in the sense that that does have
14 something to do whether or not that's a \$100,000 student
15 or a \$40,000 student or a \$60,000 student because I think
16 a lot of the costs for Special Education, at least in
17 Washington, are negotiated annually, 118,000 times in
18 IEPs.

19 MR. FREUND: See, it's really interesting
20 that we're using costs here, and expenditures. Actually,
21 an IEP should be an expression of cost, and they are not
22 expressions of cost, they're -- I don't know, expressions

1 of nebulousness, you know, right now. If we try to put a
2 dollar on them -- you know, we've tried to use -- what do
3 we call the delay? -- instructional -- what's the word?

4 DR. GILL: Educational --

5 MR. FREUND: Thank you -- educational delay.

6 We tried to use that to cost out the IEPs and
7 we found out that that didn't explain much of the
8 variation, so that doesn't help you. And that's about the
9 only thing that's available when you starting looking at a
10 particular student. And you should remember, I'm not a
11 practitioner of Special Ed, so maybe I'll stand corrected
12 if somebody wants to correct me. But that's my
13 impression.

14 DR. GILL: Thanks, panel; I appreciate it.

15 Jay, you want to ask a follow-up question,
16 because I'm limited to time.

17 DR. CHAMBERS: Just on the IEP issue and,
18 again, I come at this as somebody who is -- other than
19 visiting my wife's classroom a couple of times, and being
20 in them for 12 years, I've really not spent any time, on a
21 day to day basis, as an educator but -- I mean, what I've
22 heard from you and a couple of other folks today, and Eric

1 Hanushek earlier, about the relationship between IEPs and
2 services and expenditures and outcomes, if we haven't
3 figured out how to do this after 25 or 27 years, is the
4 IEP of any value or am I hearing you say -- maybe we
5 should -- is there any -- should we retain the IEP?

6 MR. FREUND: I think the IEP is an expression
7 of intent, you know, what it is that we're going to do,
8 we're just not going to tell you how much we're going to
9 do in what length of time; it's kind of general.

10 And I don't know if the reason that school
11 districts do that -- it probably is because they want to
12 protect themselves. That is, if they say that they want
13 to have an outcome and they can't get to the outcome, then
14 there's a problem. So maybe that's why this is being done
15 that way.

16 But, you know, if you're trying to --

17 DR. CHAMBERS: It could be done -- that they
18 are not really --

19 MR. FREUND: Quantifiable.

20 DR. CHAMBERS: -- quantifiable --

21 MR. FREUND: Right.

22 DR. CHAMBERS: I mean, that kind of suggests

1 they are not a very -- and I'm not suggesting this, I'm
2 just asking the question -- that it's not a very useful
3 document from what I'm hearing.

4 MR. FREUND: Not for fiscal reasons and not
5 for incentive and rewards, if that's -- and that's what
6 we're talking about. There may be other -- there may be
7 some other purpose for which they are useful.

8 DR. CHAMBERS: But then we need to think
9 about the aspects for which they are useful and focus on
10 just getting the information -- that information. And,
11 again, I would like to hear the folks in the public
12 comment, have some comment; I would like to hear about it.

13 MR. FREUND: I'll tell you. You know, our
14 auditor, when this Special Ed audit team that we sent, and
15 they actually did fine. In some school districts, they
16 had the same IEP for multiples of students and, you know,
17 they just cranked them out and they all read the same.

18 But the kids weren't the same, they didn't
19 have the same problems and they weren't receiving the same
20 services. So what was the IEP telling anyone?

21 DR. CHAMBERS: I mean, it sounds to me like a
22 lot of resources that could have been used somewhere else;

1 that's kind of where my question --

2 MR. FREUND: Well, they didn't have much by
3 way of assessment cost, maybe; I don't know.

4 DR. GILL: Todd Jones?

5 MR. JONES: Steve, I want to pick up on a
6 theme that came from an earlier question and it's actually
7 one I've heard after the session, from a superintendent
8 last week in Des Moines, that we heard from folks in the
9 public comment period. And that is the issue of cost as
10 burden.

11 IDEA is a grant program with civil rights
12 trackings. But underlying that are some other civil
13 rights laws, 504 and AEA (phonetic), which impose
14 accommodation obligations. And the only folks I've heard
15 today talking about the nature of cost as burden have been
16 folks at the local level. Now those are the folks
17 actually spending money so I won't say it surprises me.

18 But I also think about, in contrast to other
19 civil rights context and will throw out one. The
20 demographic shifting in rural America related to
21 immigrants working at, whether it be feed lots or packing
22 houses, in areas that traditionally didn't have to deal

1 with a variety of languages. It's like Grand Island or
2 rural Arkansas. And they're not just dealing with
3 Spanish; they need to deal with Farsi and languages they
4 can't even identify from West Africa.

5 And those costs, when described, all are
6 significant, certainly. And, when representatives of the
7 legislature -- it's a need for help because of the
8 demographics. But I've yet to hear anyone describing the
9 need to help those folks as a burden imposed by federal
10 law. But, in my other hat, the other job I have as
11 enforcement director for OCR, that is, in fact, the real
12 reason; ultimately they do have to serve those folks in
13 certain ways and that's from Title 6, which is a federal
14 civil rights obligation.

15 But I haven't heard any -- I don't hear
16 anyone describe that as burden. Yet, when I -- and I have
17 to say this, it's become a bit of a recurring theme here
18 from superintendents and school-level people -- that the
19 costs of students with disabilities are effectively
20 described as burden.

21 My question to you is, is there a distinction
22 between these different types of civil rights obligations,

1 one a burden and one not, and is it parts of IDEA which,
2 themselves -- whether it be paperwork or something --

3 I'm not saying this is a trap because I think
4 there are answers in IDEA but is it pieces in there that
5 are burden that is distant from other general civil rights
6 obligation to educate every child in your district?

7 MR. JOHNSON: I think that's an excellent
8 question and I guess the first thing that comes to mind
9 when I try to respond is the diversity of, not only this
10 -- I mean, diversity of school districts around this
11 country; and we're all going to be different, obviously.

12 As far as the immigrant thing, the burden, in
13 our district, it's been fairly constant. It's -- we have
14 Montana State University and that brings in, you know,
15 some non-English-speaking students and we have an ESL
16 program that services those students and there hasn't been
17 significant growth in that program; it's been the same --
18 I've been in the district 16 years now and it's been the
19 same program. So there hasn't been the growth in that
20 program.

21 504, we have had a little bit of influx; we
22 have, in my opinion, an excellent 504 program. We've got

1 an 1800-student high school with a half-time 504
2 coordinator, that's all she does is coordinate those 72 or
3 73 kids that we're accommodating. And it's been fairly
4 consistent.

5 So I think the burden, from our level, has
6 been the significant change in specific categories of
7 students, as autism, emotionally disturbed, and the
8 related services things that I talked about that has put
9 the pressure on us, specifically in the Special Ed
10 program.

11 MR. JONES: Okay, but let me see if I can
12 refine it a little bit to get at it. When a small rural
13 Arkansas district, or North Carolina district, goes from
14 having three percent LEP kids to 28 and 35 percent LEP
15 kids, and they go from having two languages to 10 or 30,
16 the description I hear from it is not, "This is a burden
17 that's being imposed." As you're saying, here's the share
18 the federal -- the feds or the states need to pick up --
19 this is our burden. It's described as -- we've had a
20 demographic shift and we need assistance in the education
21 of these kids and we need assistance in doing that, it's
22 not an obligation.

1 Whereas, in the context of Special Ed -- I
2 mean, if you scrap IDEA, you'd have 80 percent of the same
3 obligations and zero percent of the dollars that you get
4 under IDEA now. The obligation is still there. Does the
5 burden go to what is within IDEA? Is it the additional
6 kids -- I mean, autistic kids are autistic kids, whether
7 they are in IDEA or 504; and you have to serve them one
8 way or the other. Is it the increasing number of kids?
9 Is it the paperwork? I mean, what's driving that and is
10 that -- does that make it a burden as opposed to just a
11 difference in obligation?

12 And maybe I'm not explaining my question
13 well.

14 MR. JOHNSON: I don't know how to answer
15 that; I mean, if you --

16 MR. JONES: What's driving your cost? Why is
17 the gap there from 1990 till now? Is it more --

18 MR. JOHNSON: Driving the cost -- okay. Well
19 -- I mean, for example, with the emotionally disturbed
20 kids, it's contracted services to deal with those. As I
21 said, the mental health services aren't available in our
22 community and, in our state, are very poor. So those

1 services get pushed onto the school district. And that
2 has changed over the last decade.

3 I mean, our mental health in Montana was
4 better; those agencies were doing a better job. But, as
5 the State's budget is tightened, they've been eliminated;
6 those programs have been eliminated and so they've been
7 pushed to us.

8 MR. JONES: So the cost shift from other
9 agencies onto yours --

10 MR. JOHNSON: Definitely part of it, yes.

11 MR. JONES: -- has been a piece of it?

12 MR. JOHNSON: Yes, yeah.

13 MR. JONES: Okay.

14 DR. PARRISH: Can I just say something
15 because we're looking at English language instruction in
16 California very carefully for two years.

17 I mean, basically, they don't have a whole
18 lot of guarantees or rights. I mean, if you come in not
19 speaking English, you might argue that there ought to be
20 an IEP, that there ought to be process. If we specified
21 an individualized appropriate education for children --
22 the child who does not speak English, I think you'd find

1 that the burden would be much larger; and maybe it should
2 be.

3 But, in fact, districts can largely ignore
4 the fact that this child does not speak English if they
5 choose to. And they find different ways to inculcate
6 these programs. But the requirements are just so
7 disparate, I think that has to be recognized.

8 MR. JONES: So do you think my 80 percent
9 description -- if we did away with IDEA, the residual
10 obligation would still be 80 percent of the current
11 expenditure? In fact, maybe that's more like 30 percent
12 or 50 --

13 DR. PARRISH: No, I agree with that. But I
14 think IDEA and the other -- 504, ADA, all of those things
15 you cited are all for children with disabilities. I know
16 of no comparable legislation for English learners so I,
17 you know -- I don't think it's IDEA and I'm not even
18 saying that the disparity is -- well, I would argue it's
19 inappropriate, the disparity between the challenges faced
20 by children with disabilities in relation to the challenge
21 faced by English learners; to me, they're both pretty
22 daunting challenges.

1 And, in one, we have legal guarantees; you
2 can sue the school district if they don't address your
3 needs. For an English learner, you can sit there and
4 languish for four or five years and try to figure what's
5 going on in the classroom; that's kind of your problem. I
6 mean, that's kind of what it boils down to, at least in
7 California.

8 MR. FREUND: If I could get a chance -- I've
9 got a little different view.

10 In our state, the various programs that you
11 mentioned are basic ed and, should the federal government
12 do away with every one of its regulations, laws, and
13 everything, the state would still have to do what it does.
14 And the distinction in here is -- and it's kind of a funny
15 one -- you take a fire department, its job is to fight
16 fires. Now, if the state comes along and mandates that
17 that fire department fight fires, then the local fire
18 department now says, "Well, state, you need to pay for it
19 now."

20 That's kind of what's going on. You know, we
21 have a Department of Fisheries. "Oh, you want us to grow
22 fish? Oh, well, now you've got to pay for it." It's kind

1 of an interesting dynamic.

2 MR. JONES: And I guess that was, in a sense,
3 my point, is that they're still your kids so --

4 MR. FREUND: Right. So, if you did away with
5 all of the paperwork, I think my point would be, I think
6 school districts would be doing the same kind of
7 paperwork, whether it was required or not, by the way.

8 DR. GILL: Commissioner Coulter?

9 MR. COULTER: Well, Steve, we've kind of put
10 you on the spot because you furnished us with a good
11 example of the problem as it relates to funding. And I
12 guess what I'm interested in, and you may not be able to
13 answer this, is to explore a little bit the comparability
14 of your example, maybe with lots of other places. And
15 that is a concern I think has been raised to us in the
16 past is that, in some instances, when people do a very
17 good job of offering a program of services, especially to
18 a particular group of kids, they may become a magnet, so
19 to speak, for families to move into that district in order
20 to get those services.

21 Do you have a sense that the shift that you
22 depicted of the cost burden from, really what appears to

1 be from the state to the locals, are you pretty typical of
2 other school districts in Montana or is your -- the
3 percent or magnitude of the shift much greater for you
4 than for other districts?

5 MR. JOHNSON: No. In fact, I forgot to make
6 that comment. We're very typical. I have a chart that
7 was produced by the State of Montana that kind of depicts
8 the same thing. And I don't know if you can see it from
9 there but this top part is local contribution, and this is
10 on a statewide basis.

11 So states -- on a statewide basis, the state
12 from -- in 1990, the state was paying \$33,300,000 for
13 Special Education; in 2001, the state is paying
14 \$33,900,000. So it's gone up 300,000 -- or \$600,000 in 11
15 years, from the state.

16 So, you know, it's very typical in Montana.

17 MR. COULTER: Okay. So I guess what you've
18 heard from us is, you know, the admonishment -- it sounds
19 like the state's dodging, you know, some of their
20 responsibilities and they pointed their finger at the
21 federal government, which is an easy task to do.

22 Do you have a sense, because I know measures

1 are hard to come by -- do you have a sense that you're
2 doing a better job with kids in 2001 than you were in
3 1990? In other words, are you getting more -- are you
4 getting as much or more for the money being spent, 11
5 years later?

6 MR. JOHNSON: I don't think so. I think
7 we're -- I think we're doing as good a job now as we were
8 then; I don't think it's necessarily improved. You know,
9 this whole concept of encouraging districts to identify
10 kids and all that, obviously, when you look at our
11 numbers, that's not happening.

12 MR. COULTER: Right.

13 MR. JOHNSON: I mean, it's quite the
14 opposite.

15 MR. COULTER: Right.

16 MR. JOHNSON: But I don't think we're doing
17 any better or worse job than we were a decade ago.

18 MR. COULTER: The reason I ask is because,
19 you know, I think, in some respects, people are willing to
20 pay for quality. So, if they thought they were getting a
21 good deal more for that increased amount of cost, that
22 that might help. But that's a different -- I mean, that

1 is a fundamental problem that this Commission faces, is a
2 real lack of outcome measures over time to see what we're
3 getting.

4 Let me just -- one quick question/comment for
5 Bill. And this relates to the discussion that's sort of
6 been ongoing about the IEP.

7 Some of the Commissioners -- several of the
8 Commissioners, I think, including myself -- have tried to
9 take a very careful look at the current federal law as it
10 relates to IEP. It's really very interesting if you read
11 the law, although it's rather clumsily written. But, if
12 you read the law and boil it down to its essentials, the
13 IEP that the statute requires is relatively circumscribed.
14 I mean, you could efficiently develop something -- and,
15 when I compared the law to a local IEP or even from
16 different states, it's obvious that locals and states have
17 imposed additional paperwork requirements in the sense
18 that they've added on things.

19 So your comment about a federally-developed
20 form is intriguing. I guess what I'm interested in,
21 especially knowing your colleague to my right as I do,
22 when you talk about any kind of federal imposition, for

1 instance, of a model form, how does that stack up against
2 this issue of state flexibility and local -- you know,
3 local account -- local -- not local accountability so much
4 as local rights to sort of do things the way they want to
5 do. How do you measure those two things?

6 MR. FREUND: You know, there's always
7 competing goals. And, I mean, this is the situation, one
8 of those situations.

9 The thing about if the federal government
10 starts paying a much greater share of Special Education,
11 in essence, it becomes, - not a majority stockholder, but a
12 large stockholder. And then, as with our state, with an
13 increased funding, it comes with increased expectations;
14 there are increased controls and all sorts of things
15 happen.

16 So that's one of the problems that comes with
17 increased funding. An entity that is providing expects
18 something out of it.

19 MR. COULTER: So, in other words, we'd be
20 sort of paying for the privilege of providing a more
21 efficient form? That sounds like an accountant's
22 explanation, but I --

1 DR. GILL: David Gordon?

2 MR. GORDON: Thanks, Chairman. I have
3 several questions but, in the interests of time, I will
4 pass because I don't want to have us intrude into the
5 public comment and I know you got a --

6 DR. GILL: Okay; thank you.

7 Bryan Hassel?

8 MR. JONES: Let me offer; we do have a bit of
9 time flexibility. If --

10 DR. GILL: If you want to ask a question,
11 David, you should ask the question. I mean, we could
12 shorten --

13 MR. GORDON: Okay, I'll just try to make it
14 brief. In this whole argument between flexibility and
15 some specificity of the federal government saying, "We
16 need to do these things," as superintendent, I'm all for
17 flexibility; that helps me a lot.

18 But the fact of the matter is, the places
19 that don't do a good job hurt all of us a lot and I think
20 you made the comment, the \$3 million law suit, that money
21 is coming out of my pocket if it's something happening in
22 California. And it strikes me that accountability is

1 essential, even if it's simply counting how many FARE
2 (phonetic) hearings that you've had and how much they cost
3 and how can you send someone to do something about it;
4 that's number one.

5 Number two, Tom talked of pre-school, early
6 childhood prevention and early intervention. How do we
7 help this law, as it is changed, send a message that we
8 need accountability, even if it's only a rudimentary kind,
9 we need prevention and intervention. And that's not just
10 an IDEA function, that's ESEA and many other things.

11 And then, thirdly, protecting districts from
12 these catastrophic costs, the high-cost kids -- because I
13 think Steve hit it on the head. Our district, to a
14 degree, is becoming a magnet for the high-cost kids.

15 So, if you simply have an equitable portion
16 that you don't take into account, that some districts are
17 getting harder hit than others, so that's where the bank
18 appeals to me, or the -- what did you call it --

19 MR. FREUND: The safety net.

20 MR. GORDON: The safety net. So I'm just
21 wondering, as this law gets recrafted, how do we address
22 things like that and make the statement that, whether it's

1 the state or a district, you need to pay attention to
2 these because those are the kinds of things that will make
3 a difference.

4 MR. JOHNSON: Let me just address this, I
5 haven't talked anything about the safety net issue.

6 In Montana -- the way that Montana funds the
7 Special Ed at schools is a block grant and then they have
8 a safety net that, if a district spends -- we're required
9 to match the state funds by 25 percent. Well, you know,
10 as you can see, we're way over matching that.

11 But, if you spend more than 10 percent of
12 your required match, then there's a disproportionate cost
13 that you get that -- you're supposed to get 60 percent of
14 that cost back. Well, the problem is, last year, our
15 disproportionate cost was, instead of 60 percent, it was
16 six percent, because they don't fund it. So, whatever
17 safety net you establish, you know, the rules for funding
18 it -- usually what happens, is you allocate the money
19 based on the money -- you've allocated back based on
20 what's available.

21 And so, you know, it's a good concept to have
22 this pot of money out there the districts could go to; but

1 my guess is nobody is going to be able to fund it at the
2 level it needs to be funded for the -- you know, to
3 relieve the districts of the burden.

4 MR. FREUND: Well, I think that, in our
5 state, that we are providing sufficient safety net funds
6 and that it does cover high-cost students and it does
7 cover school districts with excess enrollment. And we do
8 have some school districts that are magnets for Special Ed
9 and we deal with it with the Safety Net.

10 So I think it is possible -- and when you
11 start thinking about how much Safety Net money you need,
12 you can actually calculate that; and I did calculate it
13 when we first put that new formula in and I had it
14 calculated -- I thought it would be around 15 million,
15 maybe 18 million, and it turned out to be a lot less than
16 that. And that is because school districts didn't come
17 forward. And I was basing my calculations on the
18 expenditures and the difference between our new formula
19 and the old formula and figured that school districts
20 would come forth and claim the difference; but they did
21 not.

22 So I still say that we're funding it and, if

1 they really needed the money, they would come and get it.
2 And it is about three percent of our total funding.

3 MR. GORDON: Thank you.

4 DR. GILL: Bryan?

5 DR. HASSEL: First of all, Todd, it seems
6 like there is enough interest in this idea of some kind of
7 high-cost pool that it would be great if the Commission
8 could get some sort of light paper or some kind of expert
9 analysis of that idea because there's so many design
10 issues that would have to be grappled with. And we've
11 heard a lot of potential problems with that idea and how
12 can -- how could they be dealt with; I think that would be
13 helpful.

14 MR. JONES: Absolutely, and I'm glad you
15 suggested that; and we can do --

16 DR. HASSEL: But, as far as the question, I
17 wanted to pick up on one of the Commissioner Gordon's
18 points about prevention, the importance of prevention and
19 early intervention. And I'm interested in the question of
20 how could -- what kind of federal policy could effectively
21 encourage more attention to that. And it seems like one
22 idea is -- which I think Dr. Hanushek put out -- is that,

1 if the incentives were right, say a block grant program,
2 districts would want to do early intervention and
3 prevention programs.

4 But then I heard Mr. Johnson say that, even
5 though you have really powerful incentives to do early
6 intervention, because it would save you funds, you feel
7 like you can't because of restrictions or other reasons,
8 that you are prevented in some way from taking those
9 actions. And so -- maybe it's not quite as simple as
10 that.

11 I wondered what are your thoughts, or any
12 other panelist's thoughts, are about how a federal policy
13 could be constructed that would encourage that?

14 MR. FREUND: Well, to start with, the pre-
15 school programs, zero through 2, is an optional program.
16 So many of our school districts -- not many, but some
17 school districts -- choose not to participate even though
18 we provide state funding; and it is 1.15 of the regular
19 education or the basic education amount.

20 My understanding -- that these kids don't get
21 regular education. And our funding level for these
22 students used to be much greater than that but we did a

1 study, one of our many studies, and we found out that we
2 were over-funding when one took into account all of the
3 alternative services that were available. Yes. And so it
4 seemed to be somewhat of a cash cow.

5 But that isn't the case now with our new
6 funding formula and so the reluctance of school districts
7 to get into it may be that they think that the costs are
8 more than what the state and the federal dollars combined
9 are.

10 DR. PARRISH: I would just like to say that,
11 you know, you go back to the 40 percent and back when IDEA
12 was passed and, at that time, somebody had the idea of 40
13 percent, and just sort of made it up, and, at that time,
14 somebody said the age span -- from three to 22. But, you
15 know, later, we realized we've got a better idea, really
16 think about infants through toddlers and so we created the
17 Part C program. But the fact we made that a separate
18 program, I think, in retrospect, we can see now was a big
19 mistake. And so that separate program kind of gets left
20 behind and that 40 percent, if it were to apply, is going
21 to apply all to Part B.

22 And, to me, that may be that Part C continues

1 to just kind of toddle along, if you'll excuse the pun.
2 But I think it's a major problem because, if we're going
3 to do anything based on research, everything that we know
4 in research tells us that that's the time to intervene.

5 So, if we want to use our money effectively,
6 I think we've -- the recommendation I would say is, we
7 need to think about combining those two programs at the
8 federal level, we need to think about putting some of that
9 new money into where we know it's going to be effective.

10 MR. JOHNSON: Again, this diversity is an
11 amazing educational experience for me, between the states.
12 Montana puts zero into pre-school programs, zero. We have
13 16 pre-school kids and we get 16,000 bucks from the
14 federal government; so the rest of it's all local
15 contributions.

16 So what I'm saying -- you know, we can't do
17 it -- we could do it but we have no money to do it. I
18 mean, we don't get any money from the federal government
19 to do that and we can't use our Part B money for those
20 programs until those kids are identified. And so I think
21 the flexibility is -- you know, give us the flexibility to
22 use that money for those early programs, because we know

1 they work, and, you know, let us use that money for that
2 rather than having to have a, you know, a separate pot for
3 that.

4 DR. GILL: Steve, Tom, and Bill, thanks a
5 lot. I know it's been a tough day, a tough afternoon; and
6 we appreciate it.

7 We're going to take a break now. We are a
8 little bit behind but we're going to start the public
9 comment right at 4:30; okay?

10 (Whereupon, a brief recess was taken.)

11 MR. JONES: Folks, if we can get started, we
12 will go over the rules for the public comment period so
13 that everyone understands before we get started.

14 As you all know, there is a sign-in sheet
15 this morning. The procedures we operate on for public
16 comment are simply ones the Commission's adopted for -- to
17 facilitate the greatest number of people in the fairest
18 length of time.

19 Everyone has three minutes. Ms. Varissa
20 (phonetic) here will be showing you a series of time
21 sheets that are three-minute, two-minute, one-minute, 30-
22 seconds, and stop. Stop does mean stop; she will ding on

1 the little glass here. And we would ask as a courtesy to
2 the other members -- or the other folks of the public who
3 have come here to speak that you let them go.

4 I will say that there are a few folks who
5 have signed up; and, if you will take a look at the
6 obligations outside, such as folks who are repeating from
7 organizations that have spoken before. Everyone will get
8 a chance to speak but, if you've signed up and it wasn't
9 in conformance with the rules that are outside, you get to
10 speak last, after all of the other folks have had a chance
11 to speak.

12 So, as we go here, Mr. Coulter is going to
13 read names and he'll read the person who is up and the
14 person who is coming next. And, if you don't hear your
15 name and you think you're supposed to, just remember, we
16 have the list here, some folks are going down to the
17 bottom. Because we have a limited number of people here
18 today, everyone gets to speak who wants to speak.

19 MR. COULTER: Let me say that, from the
20 Commission members, we strongly believe that the period
21 for public comment is very important to us and we also
22 want to emphasize that, in addition to hearing people

1 speak, we actively solicit written comment in any form and
2 the staff distributes those comments to us and we spend a
3 lot of time reading it. So we're very interested in the
4 input.

5 So our first speaker, three minutes, is
6 Gerald Hime, to be followed by Ed Amundson.

7 MR. GERALD HIME: Good afternoon.

8 I'm Jerry Hime; I'm here representing the
9 California Supervisors of Child Welfare and Attendance.
10 We deal with both regular and Special Education pupils.
11 I'm also a member of several organizations that are also
12 represented here, the Council for Exceptional Children,
13 Pupil Personnel Administrators, and Special Ed
14 Administrators, as well.

15 You are here during the week when we will be
16 having our Academy Awards on Sunday, so my three minutes,
17 I'll try to do an Oscar-winning performance.

18 In my files at home, I had a document that
19 goes back to the summer of 1976. It was a training
20 document at which time they presented the 40-percent
21 funding mandate. And it indicated the steps that it go
22 through to be fully implemented by 1981. This is 26, 27

1 years later, we're still waiting.

2 I know we've heard a lot about the mandated
3 funding and I'm not going to belabor that this afternoon
4 because you're going to be hearing more from others.

5 I would like to concentrate my
6 recommendations in a couple of areas, primarily in Part C,
7 which was mentioned earlier. Part C is the toddler --
8 infant/toddler program and, as was mentioned earlier,
9 money needs to be permanently authorized for those
10 programs in order to ensure that the early intervention
11 will take place.

12 Part B is also a very important part of our
13 programs in that it provides the funding for the research,
14 the professional development, and the technical
15 assistance. Because in this area, with our dire shortage
16 of Special Education personnel, we need to have the funds
17 available to train them.

18 And also there was mentioned earlier about
19 the 20 percent, that we feel that it should remain
20 earmarked for the school district budget in order to
21 provide some of the preventive measures that will ensure
22 that students who are not currently identified as Special

1 Education can be provided some services that will enable
2 them to be successful in their regular programs.

3 So I encourage you to take a hard look and
4 listen carefully to those who will be speaking to you this
5 afternoon in order to move ahead with the reauthorization
6 process.

7 Thank you very much.

8 MR. COULTER: Thank you, sir.

9 Ed Amundson, to be followed by Andrew
10 Barling.

11 MR. ED AMUNDSON: Good afternoon,
12 Commissioners.

13 My name is Ed Amundson; I'm a Special Ed
14 teacher at the secondary level in Sacramento, California.
15 And I'm the past-chair of the Caucus for Educators for
16 Exceptional Children and, as such, I've worked a great
17 deal on the authorization in 1987. I'm also a member of
18 the National IDEA Resource Cadre through the Federal
19 Partners.

20 What I would like to talk about -- it was
21 interesting today, I was reminded of my favorite author,
22 Jonathan Cosel (phonetic) who once said, "Why is it that

1 we allocate money to defense and we throw money at
2 education?" And, as our discussions went on today, I was
3 hearing us talk about excess costs. However, I always
4 look at it as, it's not an excess cost -- if my life was
5 happy, we would no longer have encroachment, we would talk
6 about entitlement for the monies the children are truly
7 entitled to.

8 And I think that leads us to where we need --
9 is the cultural shift in how people view the Special Ed
10 programs and the funding, in particular, when they talk
11 about how are we going to fund these programs, is without
12 the increased dollars, the local districts are impacted by
13 trying to provide services at fewer and fewer and fewer
14 dollars. If we do have more money, that would allow us to
15 do the creative and innovative things.

16 I have heard a lot of discussion today about
17 flexibility and innovative programs. Well, one of the key
18 parts of IDEA '97 did allow flexibility and creativity
19 with incidental benefit, permissive use of funds; but we
20 can bring those services to bear at an early time. If we
21 were to find a way to begin services at a young age, as
22 the Part C talks about, but also allow the permissive use

1 of funds, Commissioner Gordon, the things you do in Elk
2 Grove which allows a lot of flexibility in how Special Ed
3 teachers are delivering services.

4 I come from the time when I remember the
5 general ed kid could not touch my Special Ed eraser. Now
6 we allow those things to happen. It will not occur unless
7 we have increased dollars to allow people to do those
8 innovative-type of programs.

9 And, finally, when we talk about
10 accountability, California with the exit exam and the
11 requirements that are being put on students, we're finding
12 more and more students are -- what is going to be the
13 outcome, they won't be receiving diplomas. How are we
14 going to meet the needs of those students, as well as
15 general ed students? And, if we start getting
16 partnerships and combining the monies of other groups,
17 looking at the vocational opportunities, the monies will
18 go farther.

19 However, parents will realize, if their child
20 does not receive a diploma at the age of 18, they are
21 still eligible for services until they're 22; and parents
22 are beginning to request the districts to pay for their

1 students to go to the community college.

2 So, as we get more accountability, those
3 dollars will go fewer and fewer places, and districts
4 won't be able to do the progressive and the creative
5 things that they can do. So, I want you just to look at
6 that and, again, I think the IEP process is incredibly
7 valuable.

8 What has happened today is we now focus on
9 the IEP product. And I've traveled around the country
10 and, as you said, the documents you see today are state
11 and local enhancements, not what the federal government
12 said in the reauthorization because I stopped there and I
13 know what the discussions were about.

14 Thank you for your time.

15 MR. COULTER: Thank you.

16 Andrew Barling, to be followed by Irving
17 Lebovics.

18 MR. ANDREW BARLING: Thank you; good
19 afternoon.

20 Thank you for allowing me to speak. Yes, my
21 name is Andrew Barling; I am a California State
22 Educational Therapist. Secondly, but probably most

1 important, I have a diagnosed learning disability and am
2 ADD. Also, I do have a mentally-gifted daughter who has
3 inherited my gifts.

4 In June, she will celebrate her 21st birthday
5 but her mother and myself were forced, due to unfortunate
6 and severe educational circumstances in our area, to pay
7 for her college education and away from our home in
8 Bakersfield, and sacrificially financed her living
9 expenses in Santa Barbara because the City College there
10 was the only closest college to acknowledge her learning
11 disability and to give her accommodations.

12 Due to the inappropriate educational
13 evaluations, our daughter was embarrassed and ashamed to
14 let others know of her specialness, especially her
15 teachers in grade school. And, by the time she finished
16 her high school education, this 135-IQ young adult
17 graduated with barely a C average and moved out of her
18 home to move in with a boyfriend, with an under-aged
19 drinker and smoker and, unfortunately, had lost her
20 virginity due to her low self-esteem and unable to deal
21 with his flattery. And, as you know, birds of a feather
22 will flock together.

1 I mention her only because she is typical of
2 the thousands of students I have seen professionally in my
3 20 years of private practice. I'm speaking as a parent
4 and a concerned citizen regarding our outlandish and out-
5 of-control public school system that is more of a
6 dictatorship than a democratic institution putting the
7 needs and the care of its students of primary importance.

8 I want to thank the Commission for the
9 opportunity in gaining all this information.

10 As a professional and peer, I am urging the
11 President's Commission on Excellence in Special Education
12 to carefully consider their impact, either intended or
13 unintended, their recommendations might have on the rights
14 and educational outcomes of individuals with learning
15 disabilities. Major changes in current law and/or
16 regulations should be only considered after extensive,
17 thoughtful, and broad longitudinal research and study, as
18 well as consultation with all stake holders.

19 Another step forward is what these
20 individuals with learning disabilities deserve, not two
21 steps backwards. Our society benefits when students with
22 special needs are taught appropriately.

1 Public law 94-142, as you know, attempted to
2 ease the cost of providing services for Special Education
3 students by paying up to 40 percent of the national
4 average per-pupil cost for educating students overall.
5 And I would like to point out that the major
6 responsibility for ensuring an appropriate education for
7 students with disabilities lies within the state and local
8 governments.

9 However, I do oppose any further flexibility
10 in the use of IDEA funds until state and local educational
11 agencies have shown that the flexibility that they now
12 have under the State Improvement grants, the removal of
13 incidental benefit requirements, and the 20 percent of
14 increased funding have not lowered the outcomes and
15 results of students with disabilities.

16 In conclusion, I, as a parent of a learning-
17 disabled daughter, private citizen, and educational
18 therapist do urge the Commission to recognize that many
19 innovative programs presented will be well --

20 Thank you.

21 MR. COULTER: Thank you, sir.

22 Irving Lebovics, to be followed by Dwan

1 Bridges.

2 DR. IRVING LEBOVICS: I have copies that will
3 be helpful.

4 MR. COULTER: Thank you.

5 DR. LEBOVICS: Good afternoon.

6 And thank you for allowing this public
7 comment. My name is Dr. Irving Lebovics, I'm the Chairman
8 of (unintelligible) of California, a Jewish advocacy group
9 and also board member of the Etta Israel Center in Los
10 Angeles, which is a community-based institution involving
11 Special Education group homes and teacher training.

12 I would like to speak for a few moments to
13 the unique problems that our community has experienced
14 since the last reauthorization of IDEA.

15 As background, the Orthodox Jewish community
16 of Los Angeles has a school system, K through 12 of
17 approximately 20 schools and 5500 children. While some
18 families have placed Special Ed children in public schools
19 and MPS programs, approximately 250 identified special
20 needs children attended our private schools and received
21 some Special Education services under IDEA before the last
22 reauthorization.

1 These services ranged from speech OT, all the
2 way up to assistive technology. These children were LD,
3 and DD children. Often these children have gone to local
4 public schools for part of the day to receive these
5 services. The cost to the public to educate these
6 children was significantly less than if these children had
7 gone to full-time public school programs.

8 The cost to educate, as you're well aware, of
9 a special child in a public school can range from \$30,000
10 and up. The district in Los Angeles is expending
11 somewhere in the area of one-fifth of that amount on most
12 of these children.

13 When IDEA was reauthorized, any individual
14 entitlement to services for these children enrolled in
15 private schools was removed. LA's Unified School District
16 has, therefore, taken the position that they will no
17 longer serve this population. Many parents have since
18 been forced to remove their children from successful
19 programs at a cost that were significantly less, and
20 placed them in state programs, which cost the taxpayer
21 considerably more. Some of these children had previously
22 been in these programs and had failed to progress in those

1 programs.

2 Because of the reauthorization of IDEA,
3 should we restore the individual entitlement to services
4 for all children, whether enrolled in public, private, or
5 parochial schools? It is a more cost-effective and
6 educationally-effective way to do it. It worked before;
7 let's put it back to the way it was.

8 And, secondly, one other issue under IDEA,
9 under the new reauthorization, the formula for determining
10 the amount of money that goes -- that is used for the
11 private school population is based on a ratio of private
12 to public school IEPs. In other words, children in the
13 public school of IEPs versus the private school of IEPs.

14 Our parents have realized that, if they
15 enroll their child in a private school, there are no
16 services available and, therefore, have opted not to go
17 for IEPs; there was no reason to do that. Therefore, we
18 find that we have significantly under-counted under this
19 formula. And, going back to the old or the way I -- what
20 I understood used be done, and make the total counts of
21 total -- summations of total students in public versus
22 private, or some other child-find method that properly

1 identifies the children, even though we brought, on
2 occasion -- these children, we brought lists to the
3 district, it still hasn't helped.

4 Some other formula which would equitably give
5 that proportion of federal funds to the private school
6 student would be in order.

7 MR. COULTER: Thank you, sir.

8 Dwan Bridges, to be followed by Vicki Gordon.

9 MS. DWAN BRIDGES: Good afternoon.

10 I'm Dwan Bridges, Associate Professor at
11 California State University Los Angeles at the Department
12 of Kinesiology and Nutritional Science. There, I am
13 Program Coordinator for the Adapted Physical Education
14 program. In addition, I represent a professional
15 organization which is The Southwest District Alliance for
16 Health, Physical Education and Recreation and Dance. The
17 places that are impacted by this particular organization
18 are California, Arizona, New Mexico, Nevada, Utah, and
19 Hawaii. In this organization, I am the Vice President for
20 Adapted Physical Education.

21 I would like to express my sincere thanks to
22 the Commission for this opportunity to be able to share my

1 comments regarding the impact of finance for our Special
2 Education programming and for recommendations of the
3 reauthorization of IDEA.

4 As a pre-service program provider for a
5 discipline that transcends all disabilities, I pose a
6 question: If you should be in the room where you are
7 asked to identify your greatest personal assets, I have no
8 doubt in my mind that health and wellness would rank the
9 highest. There is only one discipline in the arena of
10 Special Education that is devoted entirely to the health
11 and well-being of persons with disabilities; and this is
12 adapted physical education.

13 Federal legislation has consistently impacted
14 physical education services; just look at the laws, the
15 Education of All Children's Act and also IDEA. Within
16 those laws, the definition identifies physical education
17 as a direct service curriculum to be provided to all
18 persons with disabilities.

19 On behalf of my professional organizations, I
20 would like to make the following recommendations: To
21 ensure the continuance of adapted physical education in
22 the laws; to ensure that SAFE and LEAs (phonetic)

1 implement the spirit of the federal legislation; and that
2 related services such as occupational therapy and physical
3 therapy are not used as substitutes for adapted physical
4 education; to ensure empowerment of the IEP and mandate
5 that there will be a requirement for APE placed on that
6 form because, often, the adapted physical educator who is
7 providing that direct service has to look at placing their
8 name on the line that says, "Other"; to ensure that a
9 designated percentage of personnel preparation grants are
10 allocated for personnel training.

11 Thank you.

12 MR. COULTER: Thank you.

13 Vicki Gordon, followed by Fred Shaw.

14 MS. VICKI I. GORDON: Good afternoon.

15 My name is Vicki Gordon and I hold a masters
16 degree in education from Temple University. I am a former
17 Special Education teacher, having worked in the field for
18 nearly 20 years.

19 I have found the majority of my students to
20 be without basic academic skills. For example, during my
21 initial assessment of my last group of students, I
22 discovered that six out of 13 had never fully mastered

1 saying and writing the alphabet. These sixth-graders had
2 arrived with test results placing them as first- and
3 second-grade readers. None even knew the alphabet song, a
4 basic in teaching children.

5 Within a few hours, they were able to master
6 the song, which started them on the road to literacy.
7 Only a small handful, over the years, have arrived in my
8 classroom with the ability to give the sounds associated
9 with the 26 letters of the alphabet.

10 By putting in basic academics, children who
11 were never able to learn or advance academically,
12 especially as readers, were now able to learn. I found
13 countless students over the years that thought they were
14 stupid and that something was wrong with their brain and
15 that they could not learn. This is false.

16 Often, I found parents, who were told by
17 mental health professionals that there was something
18 organically or biologically wrong with their child, yet
19 never having seen any tests or medical evidence to
20 substantiate this.

21 Once these children were given the basic
22 tools, it was amazing to see not only their self-respect

1 return but also their confidence in their ability to learn
2 restored.

3 I have had parents break down in tears once
4 they found that there was an academic reason for their
5 child's failure to learn as opposed to a label which
6 insinuated no solution and some type of malfunction or
7 deficit on the part of the child.

8 When I first started teaching Special
9 Education classes with the L.A. Unified School District in
10 1991, there were about four to five Special Education
11 classes. When I left, in 2001, there were some 20
12 classes. Of these, only one was for children with
13 medically-established physical disabilities; the remaining
14 19 classes were all children with subjective psychological
15 or psychiatric diagnoses.

16 I fully support President Bush's Leave No
17 Child Behind Act as it promotes the achievement of true
18 literacy for all children, something that is desperately
19 lacking in our current educational system. The majority
20 of children with whom I have worked should never have been
21 categorized as Special Education students. It was a
22 disservice to these students to fail to ensure that they

1 had mastered basic academic skills which subsequently
2 deprived them of the fundamental right to a proper
3 education.

4 I ask this board to consider these facts in
5 reforming Special Education so that this disservice to our
6 children does not continue and that Special Education be
7 restored to its original purpose, to provide equal
8 education under the law for children with provable
9 physical disabilities, not to label children with, quote,
10 "disabilities" that are, in fact, a result of a failed
11 educational system.

12 Thank you.

13 MR. COULTER: Thank you.

14 Fred Shaw, to be followed by Judy McKinley.

15 REV. FRED SHAW, JR: Hello; I'm Reverend Fred
16 Shaw, Junior. I am a former Los Angeles County Sheriff
17 Deputy. I am presently co-founder and president of the
18 World Literacy Crusade and Basic Life Institute which
19 educate children and, at the same time, deal with troubled
20 youth in our community.

21 I, personally, want to talk a little bit
22 about the juice of the system with Special Education. I

1 have personally witnessed the damage done to minority
2 students with psychiatric labels and drugs, especially
3 where it was later discovered they had no educational
4 basis and the children simply could not read or study.
5 This is especially the case with Black children who are
6 normally over-represented in the Special Educational
7 system.

8 The National Research Council issued a report
9 on race in Special Education earlier this month, reporting
10 that Black children are two to three times as likely as
11 whites to be labeled mentally retarded which means, they
12 are not only assigned to Special Education classes but,
13 also, very often never make it back to regular classes.

14 Over half of the five million African-
15 American public school students are in Special Education
16 programs where psychiatrists and school psychologists have
17 sentenced at least 38 percent of them to the category of
18 educationally mentally retarded. More than 18 percent
19 have been diagnosed as seriously emotionally disturbed.
20 In our program, we have not found children who are
21 emotionally disturbed, even though they came to us with
22 those labels.

1 Many of our children diagnosed as such have
2 mind-altering drugs administered to them which do nothing
3 to address their educational problems but actually mask
4 them. These children in the Special Education classes for
5 reading problems should be addressed with standard
6 academics and reading programs, not subjected to
7 psychological labels and drugs. These labels stigmatize
8 them for life.

9 As a manager of a group home, I find it
10 appalling that children are labeled attention deficit
11 disordered or learning disordered when, time and time
12 again, I find they have no lack of attention or any
13 disorder.

14 We had a young man come to our group home who
15 was given the label of attention deficit disorder and,
16 when I did basic questioning of this young man -- and I
17 asked questions like, how long have you talked to a girl
18 on the phone?, how long have you play a Nintendo game? --
19 we found that this kid had talked to girls at least two to
20 three hours or sometimes five hours, and he played
21 Nintendo about eight hours. So he could pay attention to
22 anything that he was interested in.

1 So I just want to say that we're asking that,
2 for the children's sake, that we don't give them these
3 labels, we don't administer them these drugs, and we apply
4 the proper educational study technology and teach them
5 properly their ABCs, how to do math, and things like that.

6 Thank you very much.

7 MR. COULTER: Thank you, reverend.

8 Judy McKinley, to be followed by Loeb Aronin.

9 MS. JUDY MCKINLEY: Good afternoon.

10 My name is Judy McKinley; I've been an active
11 member and volunteer of a state advocacy organization for
12 over 25 years. I am a Special Education instructional
13 assistant in a first-grade inclusion class.

14 IDEA and California Special Ed laws do not
15 need fixing. Yeah, there may be some problems but they
16 really are okay.

17 I strongly urge the President's Commission on
18 Special Education to recommend that IDEA be fully funded
19 at the 40-percent level. I believe that the California
20 Department of Education and local education agencies must
21 be held accountable for every Special Education dollar
22 they receive.

1 Students with LD are being denied the
2 opportunity to meet high performance standards because
3 school districts are not providing them with quality
4 intensive instruction, accommodations, assistive
5 technology, and appropriate programs necessary for them to
6 succeed. Students who are mentally retarded, severely
7 emotionally disturbed, autistic, or who have other
8 disabilities are being improperly placed in learning
9 disability programs. None of the students are being
10 provided an appropriate education.

11 California is suffering from a severe lack of
12 credentialed teachers. Special Education credentials in
13 California are not disability-specific; they are "mild to
14 moderate" and "moderate to severe." Quality assessments
15 are the key to children with learning disabilities and
16 ADHD receiving an appropriate education.

17 Rumors say that teacher assessments are being
18 considered as an alternative to assessments performed by
19 qualified school and clinical psychologists. Some seem to
20 believe that providing quality reading instruction to
21 young children will greatly reduce the number of students
22 being identified as LD. LD includes a number of learning

1 disorders that last a lifetime and they don't go away.

2 The Los Angeles Unified School District law
3 suit that led to the Shanda Smith (phonetic) consent
4 decree was intended to secure rights for an LD teenager
5 from South Central Los Angeles. It has become a vehicle
6 for the inclusionist movement to dismantle the full
7 continuum of services in L.A.USD. Inclusion for
8 inclusion's sake is an absurd waste of Special Education
9 dollars.

10 The cost of non-public schools is an issue.
11 If public schools refuse to provide a full continuum of
12 appropriate quality services, parents have no other choice
13 but to seek NPS placement. And estimated 80 percent of
14 incarcerated youth and adults are reported to be LD, ADHD,
15 or have other related disorders. It is much less
16 expensive to meet student's needs in the K-12 system than
17 it is to pay for the failure of schools later.

18 Children are not being placed in Special
19 Education so that school districts can get more money.
20 Parents of children with LD have to fight to get children
21 identified and placed in appropriate educational settings.

22 MR. COULTER: Thank you.

1 Loeb Aronin, to be followed by Kimberly
2 Brandt.

3 MR. LOEB ARONIN: Thank you.

4 I'm Loeb Aronin; I'm past-chair of the State
5 Advisory Commission, in California, on Special Education,
6 also past-chair of the Special Education Committee in the
7 California Association of School Psychologists.

8 One major goal of the State Advisory
9 Commission on Special Education is to ensure that the
10 needs and rights of students receiving Special Education
11 services are carefully considered when individuals and
12 groups make decisions on significant issues that impact
13 children with special needs.

14 To give you an idea of the size of the
15 programs in California, California's Special Education
16 program is greater in size than the entire educational
17 program in 21 states; between December 1st, 1991 and
18 December 1st, 1996, the Special Education program
19 population in California grew by 94,000 students; that's
20 the growth greater than the entire Special Education
21 programs in 30 states; there are more than 600,000 Special
22 Education pupils currently being served in California

1 today. So we have great concern about what is happening
2 with IDEA.

3 We listed a whole series of issues -- and you
4 have it in writing -- and some of our concerns about IDEA
5 in terms of reauthorization. First is adequate funding;
6 renewed staff development I think is extremely important;
7 and in-service training -- we haven't had a major program
8 in depth for a considerable period of time; state and
9 district compliance with Special Education laws;
10 recruitment and retention of qualified teachers -- and I
11 won't go down the rest of that list.

12 As you can see, the California Commission has
13 identified many important issues. However, I need to
14 stress that, above all, the issue before California, and
15 the nation, is one of fiscal support. Because raising the
16 issue of money is so common an issue, it becomes kind of a
17 cliché that is easily dismissed as, "we just can't throw
18 money at the problems." The Commission has argued that we
19 simply cannot afford to succumb to such simplistic
20 thinking.

21 The truth of the fact is that the federal
22 commitment to Special Education is causing some of the

1 problems we are facing today. We went and looked at some
2 of the training institutions, we looked at a number of
3 things going on in the classroom; class size has exploded
4 because of the fact that people are trying to save money
5 so they're putting more youngsters in the programs.

6 We've had hearings on that, we've had
7 hearings which included having people coming from various
8 support organizations, speech and language, psychological
9 services, and they just can't get the job done in terms of
10 what's being asked of them. So the recruitment of
11 personnel is important.

12 There needs to be laws which allow the kinds
13 of training for Special Education personnel, other than
14 teachers, to get loan forgiveness. We have those laws on
15 the books now for teachers; if we want to encourage more
16 specialty people to go into Special Education and serve
17 them, we need loan forgiveness programs in that area.

18 In closing, the Commission implores you to
19 see the forest for the trees, no minor fine tuning will
20 change the underlying problems in Special Education; it's
21 under-funded and, until such time as we commit necessary
22 dollars, states will continue to absorb incredible costs

1 in assisting these children before they become adults.

2 Thank you.

3 MR. COULTER: Thank you.

4 Kimberly Brandt, to be followed by Jacqueline
5 Shohet.

6 MS. KIMBERLY BRANDT: Thank you very much
7 for this opportunity. My name is Kimberly Brandt; I come
8 to you not as a professional but as a parent of three
9 children in Special Ed.

10 I have gone through the basic process, all
11 the way up to, now, due process. It's not the route I
12 would have enjoyed going. My main concern for children
13 and for other parents that were not able to attend today
14 is that we have a quality education. I want my children
15 to learn to be as independent as possible and I want them
16 to be able to go out there and fill out that job
17 application, and to be able to hold a job.

18 If they cannot read, if they cannot write, if
19 they cannot fill out a job application, it's going to cost
20 the government even more money because then you're going
21 to be supporting them on unemployment and other social
22 services.

1 My kids will prosper in engineering; they
2 have a very high intelligence. But they do not work well
3 with the type of education they are being given; they have
4 auditory and visual processing problems. And everything
5 that is given to them is verbal; they cannot survive in
6 the system they are in right now. And teacher says,
7 "Well, you don't do the work. You can't do it, you can't
8 keep up with the class; you just don't do it." What
9 happens next year when the child goes in the next grade,
10 and on and on?

11 And I have one that's in early developmental.
12 Now the school didn't offer that, the state came down and
13 told us about it and told us about Regional Center. We
14 had no problems. Our three-year-old has received
15 wonderful programs through, not the school district, but
16 through early developmental that has been provided by the
17 Literman (phonetic) Act.

18 Now, I don't understand why the districts
19 cannot perform at the same level; they're receiving the
20 same type of funding, the same type of money. But it's
21 not happening. The IEP, I loved what the gentleman said,
22 let's put a federal format; it would be wonderful. The

1 form is confusing to parents. And it doesn't show the
2 progress.

3 They tell me the progress that needs to be
4 done, the goals that need to be done and then I find out,
5 from the teacher that wasn't at the meeting, that's got
6 the responsibility, this child isn't even able to perform
7 those goals because they don't have that developmental
8 level. And I'm just baffled. Why do these people put
9 this goal down when the child wasn't even able to do it?

10 So I'm glad that your committee is here; I
11 hope you have a chance to really take in what these folks
12 said because what they said is truly happening. And I
13 think that, if some of their suggestions are followed,
14 this system will improve and you will leave no child
15 behind.

16 Thank you very much.

17 MR. COULTER: Thank you very much.

18 Jacqueline Shohet, to be followed by Barbara
19 Thomas.

20 DR. JACQUELINE SHOHET: Good afternoon.

21 My name is Jacqueline Shohet and I have a
22 doctorate in psychology. I've worked 40 years as a

1 psychologist in schools and now in independent practice
2 with handicapped persons and their families.

3 I offer the following suggestions for saving
4 taxpayer money. First of all, train Special Education to
5 understand and use appropriate teaching methods based upon
6 contemporary research those recommended by organizations
7 such as CASP, the California Association for School
8 Psychologists, NAESP, and the American Psychological
9 Association, International Dyslexia Association, Marine
10 Disabilities, and Linda Mood Bell and other multi-sensory
11 organizations that specialize in teaching;

12 Appraise the cost to society of a flood of
13 people who cannot read, write, or compute and who enter
14 welfare, homelessness and the justice system. According
15 to research, California has more individuals incarcerated
16 than any country in the world. This was given out at a
17 conference I went to where Judge Milliken (phonetic) from
18 San Diego mentioned this particular statistic;

19 Three, teaching the handicapped to read,
20 write, and compute is not the basis for Special Education
21 costs. Major costs are related to the law and to the
22 problems that the parents have when they seek services

1 from the schools and when they encounter educator
2 ignorance in depriving the children of the opportunities
3 to learn. The schools use taxpayer funds to fight the
4 parents seeking teaching for their children.

5 Parents must use their own money to defend
6 their children's rights to a free public education but
7 their taxes provide funds for the schools to hire
8 attorneys, often at \$350 to \$400 an hour, to fight the
9 parents who wouldn't have even -- wouldn't it be cheaper
10 to train teachers and provide smaller classes and provide
11 appropriate materials for the young people?

12 The reason for IEPs, paperwork, and many
13 discipline problems is that the Special Education programs
14 are inadequate to serve the children. Schools defensively
15 block requests for services that the children need to
16 learn. A blind child that I worked with, who had been
17 denied appropriate education teaching for 11 years,
18 finally sought a FARE hearing. The school hired two
19 attorneys to oppose me and to block the student's access
20 to Braille instruction and computer training. I have the
21 documentation for this case in my garage. The case
22 continues on for an eight-month period.

1 It isn't education that costs, it's
2 ignorance.

3 Thank you.

4 MR. COULTER: Ms. Shohet, thank you very
5 much.

6 Barbara Thomas, to be followed by Brett
7 McFadden.

8 MS. BARBARA THOMAS: My name is Barbara
9 Thomas and I'm here representing Fresno County Board of
10 Education. When I retired from my job, I ran for School
11 Board so they wanted me to come and present.

12 For the past two and a half years, I've been
13 working as a consultant for the California's Fiscal Crisis
14 and Management Assistance Team; I've been in about 12
15 different school districts and this technical team was put
16 in place when Richmond went bankrupt.

17 Most of the fiscal management that we look
18 at, at this point, is management, not crisis, about 85
19 percent. But, when a school district feels their Special
20 Education is out of control, they may ask for a fiscal
21 crisis management team to come in. So some of my remarks
22 will be based on that experience from these 12 studies

1 that we've done.

2 And I just want to give you a couple of, sort
3 of generic, recommendations that we make when we go in
4 because it doesn't -- we usually find it hasn't happened.
5 And one of them is that the Special Ed Director should
6 meet with the Finance Director on a regular basis -- I
7 thought you would like that one.

8 The second issue is that, a good assessment
9 is cost-effective. We go in and find these districts sort
10 of giving away the store and we say that -- do an
11 assessment for need and then develop an intervention that
12 goes with it.

13 And the last thing -- and none of this is
14 related to what I've written but these are remarks that I
15 wanted to say based on what I've heard today -- early
16 intervention, I think it's a great thing but it should not
17 be Special Ed early intervention. We shouldn't have an
18 entitlement, it should be for your ESEA, Title 1, special
19 types of kids. Do the early intervention but don't tie it
20 down to all the regulations we have with Special Ed. So
21 put it outside of Special Ed.

22 There are two reasons why costs have

1 increased; one is that we're serving more severe children.
2 And I'll give you the statistics from California. We're
3 serving more autistic, seven times more than in 1992,
4 today. Our TBI kids, five and a half times, and our
5 emotionally disturbed, twice as many. And I've listed for
6 you the mandates that we've had without any specific
7 funding tied to those mandates.

8 I think that the federal government, when
9 they add these mandates, should give us money to go with
10 it.

11 Thank you.

12 MR. COULTER: Thank you, Barbara.

13 Brett McFadden, to be followed by Vivian
14 Lura.

15 MR. BRETT McFadden: Good afternoon.

16 My name is Brett McFadden; my day job is with
17 the Association of California School Administrators; but
18 today I'm actually testifying on behalf of eight different
19 statewide groups, ranging in the spectrum from Special
20 Education Teachers all the way to County Superintendents
21 and District Superintendents. Also included in that are
22 school psychologists, speech and hearing representatives,

1 and other groups throughout the state.

2 And, as you can imagine, trying to put eight
3 different statewide groups on the same page is an endeavor
4 I never want to go through again. But we do have a
5 handout there that does provide some issues and some
6 hindsight into kind of what we view as the top issues, not
7 only in the reauthorization process, but in the
8 examination of the issues you're currently looking at.

9 First, let me pause, though; I don't think
10 anyone today has said "thank you" to -- I know I've worked
11 with many of you throughout the years, I know that you
12 have private jobs and families and so I appreciate all the
13 work you're doing and the time that you're taking to do
14 this, very much; and I think I probably speak on behalf of
15 everyone here in the room, as well. So thank you very
16 much; I appreciate being here.

17 MR. COULTER: We orchestrated that.

18 MR. McFADDEN: I will talk on three issues
19 and you can see on the letter how that funding continues
20 to be a top issue. I know there is a considerable amount
21 of dialog today regarding whether it's mandatory, whether
22 it's an entitlement, what is exactly 40 percent. Well, we

1 say that -- we urge the Commission to look at the funding
2 issue from a whole list of perspectives.

3 Second, FAPE; what is FAPE? Is it a medical
4 model, is it an education model? What we've noticed
5 lately, in the last ten years for instance, is there's
6 been significant medical advances and so that children
7 that, ten years ago, would not initially come into the
8 school setting in the general ed setting are now able to
9 do that because of medical technology. That is certainly
10 a good thing.

11 However, IDEA now, perhaps, is funding
12 medical services as opposed to educational services. And,
13 as long as the definition of FAPE continues to be
14 broadened, that, of course, drives a lot of the cost.

15 Finally, over-proceduralization is what we're
16 calling this issue; and that, basically, is a lot of
17 paperwork. We feel that the process now is focused more
18 on process as opposed to outcomes. We believe that
19 greater flexibility and alternative modes are probably the
20 better way to go.

21 Finally, our eight associations stand ready
22 to assist you with any sort of information, data, or any

1 sort of additional assistance that you may need as you go
2 through this process.

3 Thank you very much.

4 MR. COULTER: Thank you.

5 Vivian Lura, to be followed by Sally Shake.

6 MS. VIVIAN LURA: Good afternoon.

7 I'm here speaking for Oakland Unified School
8 District, one of the big eight in the State of California.

9 Currently, our Special Education costs are
10 encroaching \$15 million into our general purpose fund. We
11 are now trying to make, literally, today, tomorrow, next
12 week, the next Board meeting, \$15 million in cuts to our
13 general purpose budget. That means a lack and a cut of
14 programs.

15 You spoke earlier briefly about, should we
16 use the full federal funding at 40 percent. Oakland's
17 share would be over \$14 million; that's why I'm here
18 today. My Board and Superintendent think that's important
19 for you to hear.

20 Things that I need from you, as a SELPA
21 (phonetic) director, things that are currently being
22 defined in courts and hearing offices which literally give

1 me no control. I need a better definition of
2 "disabilities", specifically SLD, other health impaired,
3 and autism.

4 Within the last five years, we have included
5 ABD, ABHD, autism spectrum disorder and, in Oakland, we're
6 currently on our third generation now of drug-exposed,
7 neurologically-damaged children whose grandparents were
8 the first generation, whose parents were the second and
9 who are literally destroying many classrooms.

10 I want to support the need for a better
11 definition of FAPE in terms of what is appropriate.

12 And, three, rather than early intervention --
13 you know, your own U.S. Department of Ed statistics shows
14 that the greatest number of referrals for Special Ed in
15 the last 10 years are for kids 12 to 17. We've had early
16 reading initiatives and programs and training in
17 California for the past five years. My referrals in
18 elementary schools are down significantly; I've closed
19 three to five Special day classes every year for the past
20 three years. However, what I have instead are kids 12,
21 14, 16, being identified as autistic. Your suspension and
22 expulsion rules have resulted in many last-minute

1 referrals to block or delay discipline procedures. Once
2 in Special Ed via the juvenile system, they are labeled ED
3 and needing NPS placement, and we have the California high
4 school exit exam which now means that the kids are getting
5 -- being referred to get accommodations for passing the
6 test.

7 You've said -- quickly, the last three points
8 -- that you don't know what you're spending your money on.
9 You're spending your money on staff development, you're
10 spending your money on programs, and compliance. And I
11 think you need to look at -- instead of having everyone do
12 all three of those areas, look at block grants, one
13 compliance to the district -- I mean, compliance, give
14 back the state direction, let them streamline it; the
15 programs to the districts; and see teacher and parent
16 training to the universities.

17 Thank you.

18 MR. COULTER: Thank you.

19 Sally Shake, to be followed by Bennett Ross.

20 MS. SALLY SHAKE: Thank you very much.

21 My name is Sally Shake; I'm president of
22 Education Legislative Services. We are a federal

1 legislative advocacy firm that works with a number of
2 California public school districts, especially those with
3 a number of high-needs kids.

4 I guess I would like to support what most of
5 the California local educators have mentioned. But I
6 would like to emphasize what Dr. Parrish and Paul
7 Goldfinger talked about in terms of balancing meeting the
8 needs of all California children because, in California,
9 we have increasing child poverty and that child poverty
10 rate is high.

11 We have high numbers of English-learners; we
12 have a widening gap between the poor and the wealthy
13 despite an average per capita income that is on the higher
14 rather than the lower side. We have mobility of kids and
15 we have high costs, as a state, whether that's for pencils
16 or computers or services. And what the job of local
17 school districts is, is to balance all of those needs.

18 Second, I would like to comment about what
19 you promise needs to be realistically, reasonably,
20 delivered. And I would urge you not to promise what you
21 do not sincerely believe can be delivered, and delivery on
22 the promises that you make because where a lot of the 40-

1 percent push has come from and the suggestion for
2 mandatory funding, that has come from a disjuncture
3 between what was perceived, at least, to have been a
4 promise made by the federal government in terms of funding
5 to local school districts and what has actually been
6 provided.

7 And so, in the name of credibility and
8 support for local school districts, I think the
9 requirements and the perspectives that you adopt need to
10 be realistic, reasonable, and made with integrity.

11 I'd also like to urge you to look at the data
12 elements. Because this would be the year to look at data
13 since the No Child Left Behind Act has certain data
14 requirements, it would make sense to have these mesh
15 together. I'd also like you to look at 504 because Troy
16 mentioned before that it hadn't been a discussion here.
17 When school districts do not have transportation systems
18 in place, 504 transportation costs are an issue.

19 And, finally, I would like you to see how you
20 can merge the ESEA requirements with the IDEA so we have a
21 more unified system and that can be done in many different
22 ways but I think it's important because, in the Title 1

1 requirements, it does specify IDEA children in terms of
2 desegregated data but it does not specify 504 children.

3 And there are a number of those disjunctures
4 that exist and I think that you could work to put together
5 a comprehensive system that is cohesive and works together
6 for all kids.

7 Thanks.

8 MR. COULTER: Thank you very much.

9 Bennett Ross, to be followed by Bob Hoffman.

10 UNIDENTIFIED AUDIENCE MEMBER: Let somebody
11 else take mine; I'll go at the end.

12 DR. BENNETT ROSS: Hi, I'm Bennett Ross; I'm
13 the Executive Director of the Frostig Center. We are a
14 non-public school here in Los Angeles. And I don't have
15 any prepared comments but I've never passed an opportunity
16 to speak my mind.

17 There is a comment about what would happen to
18 these kids if there were not federal safeguards. We are
19 an NPS program, we see the kids who have failed in the
20 public schools and the parents have gone through a very
21 difficult, adversarial process with the schools.

22 So I think our past history in this field of

1 Special Education and my history at the Frostig Center
2 shows me that, if there were not federal safeguards, we
3 would not be serving 80 percent of the kids, we'd be
4 serving 30 or 40 percent of the kids, that the kids would
5 just not get served. So I think there needs to be some
6 kind of very careful federal safeguards.

7 However, I'm also around for a lot of IEPs
8 and, at the point that we have -- we are involved with
9 IEPs, they are clearly an adversarial process between the
10 district, who is concerned about costs, and the parent who
11 is concerned about dreams. And I think both of them are
12 unrealistic. The parents want to get whatever they
13 possibly can; the district wants to give as little they
14 possibly can.

15 So I don't see the amount of time that we
16 spend on IEPs as being a useful expenditure of our time;
17 and I've heard from the attorney who represented L.A.
18 Unified in the Shanda Smith law suit that L.A. Unified
19 spends about 50 cents out of every dollar on identifying
20 and tracking kids through the IEP process and 50 cents of
21 every dollar serving them. I think something needs to be
22 done there.

1 And I think accountability is a wonderful
2 thing but I think we need to be very careful when we talk
3 about accountability. For the kids with learning
4 disabilities, you want to look at outcomes, you want to
5 look at how these kids are doing; but you don't want to
6 really be looking at whether or not they are passing the
7 high school exit exam, you want to look at whether or not
8 they are functioning as adults in the community. You want
9 to look at what are the attributes that predict success
10 that lead to that.

11 And so I think we need to be very careful
12 when we set up guidelines and accountability standards
13 that those standards are in keeping with what it is that
14 we really want to achieve.

15 Since I've got another minute, let me think
16 of something else to say.

17 Sufficient funding and early intervention,
18 those are my two key points; so thank you for your time.

19 MR. COULTER: Thank you, sir.

20 John Lucas, to be followed by Doreen Lohmes.

21 MR. JOHN LUCAS: Good afternoon.

22 My name is Jack Lucas and I'm a Special

1 Education local plan area director here in California and
2 representing 116 of my counterparts.

3 In the State of California, we serve over
4 650,000 kids in Special Education. To put it in
5 perspective, that's about six times the number of kids in
6 Washington, about 30 times the number of kids in Montana.

7 In 1998, in this state, we put into place a
8 new funding system for Special Education. It's a
9 population-based system, there is no longer a financial
10 incentive to identify students for monetary purposes. We
11 feel that if, in fact, we had over-identification problems
12 in the past, those problems have been solved.

13 In spite of that, we still continue to see
14 significantly growing Special Education costs and I would
15 fully support what Mr. Johnson said about what's happening
16 in Montana, to a magnitude of about 30, in terms of what
17 is contributing to that.

18 I think the most significant contributing
19 factor to Special Ed costs increases is the lack of the
20 definition on what is an appropriate level of service.
21 The IDEA calls for free, appropriate public education but
22 there is no definition on what "appropriate" is.

1 What happens, and what has been happening
2 today while we've been speaking here, is that parents come
3 to IEP meetings wanting the best program for their child;
4 that's what they're supposed to do. They are not doing
5 anything wrong. School staff comes to the IEP meeting
6 knowing that they have a finite number of dollars in which
7 to provide those services. And I can guarantee you that
8 the parents' idea of what "appropriate" should be and the
9 school staff's idea of what "appropriate" should be is a
10 total mismatch.

11 And, again, it's not the fault of parents;
12 they're doing what they're supposed to do, they are
13 advocating for their children. But they're being left in
14 the middle because there is no definition or standard. I
15 really believe that there are needs, in terms of reform
16 for Special Ed, are reforms related to the IDEA. We need
17 to develop what is a standard level of service for Special
18 Ed students. That's easy to say; it is not, at all, easy
19
20 to do.

21 It was also said earlier -- the question was
22 asked earlier, what should the federal role be for Special

1 Education and Special Education funding? I think it
2 should be directly proportional to what the federal
3 government requires in terms of service requirement. If
4 the federal definition continues to be totally open-ended,
5 then I think it's not unreasonable to say that we should
6 be able to expect 40 percent of the average per-pupil
7 expenditure in order to fund that totally open-ended
8 service delivery system.

9 If we're going to provide a standard, then
10 maybe we can look at something less than that. Or, if the
11 federal government is not willing to provide a standard,
12 then maybe it's time to let the states, where 85 to 90
13 percent of the money is coming from, be able to set those
14 standards and leave the major requirements at the federal
15 level and then allow us to build in the details locally.

16 One final thing, in terms of Section 504,
17 which was mentioned just before the break, I would
18 disagree that we would still have 80 percent of the cost;
19 I think it would be something less than 50 percent. And,
20 as someone who has worked in Special Ed over 28 years, if
21 I could today, I would prefer to go under the 504
22 standard.

1 MR. COULTER: Thank you, John.

2 Doreen, followed by Alnita Dunn.

3 MS. DOREEN LOHMES: Good afternoon and thank
4 you so much for the opportunity.

5 My name is Doreen Lohmes, I am the Associate
6 Superintendent for Capistrano Unified School District and
7 a former Special Education teacher and a speech
8 pathologist.

9 Now Capistrano is that place where the
10 swallows come back. Well, the people are now following
11 the swallows and, as a result of that, we are the eleventh
12 largest school district in California. And, as our
13 experience has shown in paying \$242,000 for one student
14 only, IDEA has mandated a full array of services with very
15 realistically limited budgets that we all have.

16 Our fiscal experience mirrors, very much,
17 that of Mr. Johnson for Bozeman School District. Our
18 local contribution, in 1994-95, was \$3 million, which was
19 nine percent of our expenditures. In 0001 (sic), it's
20 15.6 million, and it's 37 percent of our expenditures.

21 At the same time, our enrollment in Special
22 Education has just gone from eight percent of our total

1 enrollment to about nine percent. And what I'm telling
2 you is mirrored by the other people; our expenses for our
3 severely-handicapped youngsters and our autism population
4 has grown from about 1.3 percent of our Special Education
5 enrollment to about 4.9 percent of our Special Education
6 enrollment.

7 And I have to tell you, we are very proud of
8 the programs that we're offering for our autistic
9 children. But, for our autistic children, in order to
10 meet the standards that are being set by the hearing
11 offices, in terms of what is appropriate in California, we
12 are paying for 1.5 percent of our total enrollment, 18
13 percent of our expenditures, for our 64 young autistic
14 children.

15 Okay. As a result of this shortfall, we are
16 facing, in our school district now, as other school
17 districts in California are, a \$6 million shortfall and
18 our Board is looking at cutting -- at increasing the class
19 sizes and cutting the number of instructional periods for
20 high school students. This is not good.

21 I echo what other people have said about
22 defining "appropriate." We have a 15-day-old hearing

1 decision in a neighboring school district; the hearing
2 officer ordered a \$105,000 program, 40 hours home-based,
3 for a young pre-school autistic child. The school
4 district had offered a 30-hour school-based program,
5 similar speech therapy hours, but with their own people,
6 served at school. And this was a 16-day hearing and it
7 cost \$60,000 in attorneys' fees. Let's define
8 "appropriate."

9 Rowley had not been manifested with the
10 hearing officer's decisions; Rowley said what is
11 reasonable rules.

12 Thank you.

13 MR. COULTER: Thank you.

14 Alnita Dunn to be followed by Bruce Wiseman.

15 MS. ALNITA DUNN: My name is Alnita Dunn; I'm
16 a coordinator of psychological services in the Los Angeles
17 Unified School District. I, myself, am a school
18 psychologist and have worked as one for 20 years.

19 I'm thinking in support of maintaining
20 qualified school psychologists as an integral component of
21 school teams. As you are aware, school psychologists
22 provide mental health services and conduct mental health

1 programs in schools. They actually are a special link
2 between providing services, not only to Special Education
3 students, but to regular education students and, by far,
4 the best funding that you have spent have been spent on
5 these personnel, those school psychologists who work in
6 the schools with parents, with the teachers, and with
7 other school personnel in order to mate mental health
8 services with improving academics.

9 What do we do? We provide Special Education
10 consultation, we provide consultation in pre-referral and
11 referral situations. School psychologists go into the
12 classroom and work with teachers to give them strategies
13 and instruction on improving services to students so that
14 they will not be referred. They monitor the progress of
15 students who are in Special Education programs, and who
16 are in regular education programs, so that they can
17 achieve their maximum potentials.

18 They broker with outside agencies for mental
19 health services and also tutorial services. They conduct
20 and supervise professional development programs, working
21 with parents in order to increase their skills and in
22 order to minimize some of the apprehension that parents

1 feel when they enter to school culture, which has proved
2 to be kind of intimidating for some parents.

3 We are also data-gathering individuals so
4 that, when we make decisions, they are data-based
5 decisions. We partner with universities and, in the Los
6 Angeles Unified School Districts, we have partnered with
7 three to 10 universities in hiring their interns and in
8 conducting pilot programs which are aimed towards
9 increasing improved mental health among students, as well
10 as in increasing their achievement.

11 As I said before, you get the best bang for
12 your buck when you maintain the number and percentage of
13 qualified school psychologists.

14 MR. COULTER: Thank you.

15 I want to pause for just a moment; we've got
16 to make a little shift here. Good flying, fellows.

17 Okay, Bruce Wiseman?

18 MR. BRUCE WISEMAN: My name is Bruce Wiseman;
19 I am the U.S. President of the Citizens Commission on
20 Human Rights and the former Chairman of the Department of
21 History of John F. Kennedy University.

22 While many speak of the need for more federal

1 funding to handle the problems of Special Education, and
2 for Congress to keep its promise to fund 40 percent of the
3 costs of Special Education -- costs which now run at an
4 estimated \$50 billion a year -- there are two important
5 points to be made in response to these demands.

6 First, Part B of IDEA permits a maximum
7 federal expenditure of up to 40 percent. While 40 percent
8 may have been a goal, there is no exiting Congressional
9 mandate to provide 40 percent of Special Education
10 funding.

11 A more important point, however, if
12 addressed, would help solve the soaring costs at both
13 state and federal levels. That point is the critical need
14 to provide an objective, scientifically-based definition
15 of "disability."

16 When Congress passed the original Special
17 Education law, its primary purpose was to provide a free
18 and appropriate education for children with hearing,
19 sight, speech, and other physical handicaps.

20 Over the ensuing 27 years, the funding has
21 been funneled, instead, to children with learning
22 disorders so subjective in scope that children who fidget,

1 butt into line, or interrupt their teachers are labeled
2 with psychiatric learning and attention disorders and, in
3 most cases, prescribed cocaine-like, mind-altering drugs.
4 Of the 5.5 million children categorized under IDEA, 3.2
5 million have been placed due these scientifically unproven
6 learning disabilities, costing an estimated \$28 billion a
7 year.

8 These disorders have been used to threaten
9 parents that, unless their children take a psychiatric
10 drug as a requisite to remaining in class, the child will
11 be refused schooling and parents criminally charged.

12 The definition of "learning disabled" is so
13 ambiguous that researchers at the University of Michigan
14 found that 85 percent of students they tested, who had
15 previously been identified as normal, would have been
16 classified as learning disabled. The results of this one
17 flawed aspect of the law, the subjectivity of who is
18 classed as disabled, has resulted in more than 60 percent
19 of Special Ed funding being channeled away from the
20 children who really need it, the physically handicapped.

21 Fix this one aspect of the law, mandate that
22 Special Ed funds go to children who have objectively-

1 verified physical disabilities and we will not be
2 needlessly labeling and drugging millions of American
3 school children, and the funding of Special Education will
4 become quite manageable.

5 Thank you, gentlemen, for this opportunity to
6 address you.

7 MR. COULTER: Thank you.

8 Robert Lee Griego, to be followed by Deb
9 Ziegler.

10 Robert Lee Griego?

11 MR. ROBERT LEE GRIEGO: Yes.

12 MR. COULTER: Thank you.

13 MR. GRIEGO: Good evening, gentlemen.

14 My name is Robert Griego; my son -- his name
15 is Bryant, who is now 11 years old. When Bryant was four
16 years old, he attended pre-school Della Pheta Head Street
17 States Pre-school (phonetic) in Los Angeles.

18 When my son was there, we never had any
19 complaints from any of the teachers regarding his
20 behavior; he behaved like any other child his age. When
21 my son was six years old, he started to attend school to
22 do his first grade; this was the Stone Elementary School

1 In Culver City, California. After starting there, his
2 mother was called in for an interview with the teacher who
3 told her my son was very hyperactive, he didn't focus his
4 attention in class, and he fooled a lot with the other
5 kids in class and that he didn't pay attention to her.
6 She was also told that my son would probably need some
7 sort of medicine and Special Education so that can change
8 and that the medicine would help him focus more in class.

9 A few days later, she received a call from
10 the school that we were requested to meet and discuss what
11 was happening with our son. She went to the meeting at
12 the school; the principal of the school, my son's teacher,
13 and school psychologist were in attendance.

14 Bryant's teacher went over the same thing as
15 before. The outflow was, he was going to be sent to
16 another school. At that meeting, he gave her a form to
17 sign which said, "Individual Evaluation Plan." They told
18 her that my son had to go to another clinic in order to
19 receive medicine because the psychologist couldn't
20 prescribe it. When she signed it, she had no idea this
21 would cause so much harm to my son.

22 The psychiatrist used a nurse to translate my

1 son -- to my son's mother. He said that, based on the
2 evaluation he was given by the school, my son's behavior
3 was not good and he needed some sort of medicine that
4 would help him be well and calmer. No neurological tests
5 were performed to confirm his illness. The medicine that
6 was prescribed was Ritalin.

7 They sent my son to the Arrow Center
8 (phonetic) in Culver City, a Special Education school.

9 When Bryant started taking the drug, we
10 started to notice a change in him; he seemed different,
11 very angry for any reason, nervous, he didn't eat well, he
12 had insomnia, he had bags under his eyes, his lips were
13 purple, he was quite like a zombie. And he didn't want to
14 eat. He would get hungry at 7:00 p.m; and I also noticed
15 that my son wasn't learning anything in school. He
16 couldn't even read. But the school told us that he was
17 doing fine and that he was learning.

18 My son was at the Arrow Center for three
19 years and he was there to be helped but it didn't happen.
20 I finally decided to visit the school and ask what was
21 going on. At the meeting I attended, the school
22 personnel, including the vice-principal, the psychologist,

1 and Bryant's teacher, I asked them what grade level was
2 Bryant on as he arrived? They said, "First grade." as a
3 response. "And what grade is he in now?" "Fourth grade,"
4 they said. "What grade level is he in now?" They said,
5 "First grade." I heard the response. I expressed my
6 dissatisfaction with the lack of progress in my son's
7 education and blamed the school.

8 The school's representatives replied that it
9 was Bryant's fault, rather. This started an exchange with
10 the psychologist, "Do you know my son; do you know what's
11 wrong with him?" She replied, "He has attention deficit
12 disorder, a learning deficit disorder, and emotionally
13 disturbed." And I asked, "How do you know that; have you
14 met him?" She said, "No."

15 I asked, "How can you diagnose a patient you
16 haven't seen?" Her answer was that, half the time, she
17 didn't even meet with the kids she was diagnosing.

18 Thank you very much for letting me up.

19 MR. COULTER: Thank you, sir.

20 Deb Ziegler?

21 DR. DEB ZIEGLER: Good afternoon; I'm Deb

22 Ziegler. I want to thank the panel members for their

1 insightful comments today on financing of Special
2 Education.

3 Today, I'm representing the Full Funding
4 Coalition for IDEA. And this coalition has a membership
5 consisting of national, Washington, D.C.-based
6 organizations, including the American Federation of
7 Teachers, the National School Boards Association, the
8 National Secondary School Principals, the American
9 Association of School Administrators, the National
10 Education Association, the National PTA, the National
11 Association of Elementary School Principals, the Council
12 for Exceptional Children, the Council of the Great City
13 Schools, and the American Speech-Language-Hearing
14 Association.

15 IDEA Full Funding Coalition is committed to
16 the achievement of successful outcomes for children and
17 youth with disabilities through the promotion of
18 professional excellence in Special Education and the
19 provision of high-quality professional supports and
20 quality conditions for teaching and learning.

21 The basics of the proposal include, make IDEA
22 funding mandatory, increase the federal contribution from

1 17 percent to 40 percent, accomplish full funding
2 gradually over six years, require states to maintain their
3 level of effort, encourage schools to intervene early in a
4 child's life, and provide developmentally-appropriate
5 programs and services. Developmentally-appropriate
6 intervention during the early years can dramatically
7 reduce later referrals to Special Education and eventually
8 help curb the cost of Special Ed.

9 What is full funding of IDEA? Part B of IDEA
10 originally authorized Congress to contribute up to 40
11 percent of the average per-pupil expenditure for each
12 Special Education student. In 2002, the average per-pupil
13 expenditure is expected to be \$7,320. With 6.1 million
14 students being served under IDEA, schools are qualified to
15 receive 18.01 billion in federal funds.

16 Unfortunately, schools are only receiving 7.5
17 billion. In other words, schools are currently receiving
18 only 17 percent rather than the federal commitment of 40
19 percent of APPE.

20 Federal funding is 10.5 billion short of full
21 funding this year and would need a 139 percent increase to
22 be fully funded. For 26 years, Congress has promised to

1 fully fund IDEA, yet funding is roughly 17 percent. And
2 increases of a billion, which we've been getting over the
3 last several years, plus inflation, 2.5 percent per year,
4 Congress is on course to fully fund IDEA in fiscal 2035.
5 School children cannot wait.

6 Who supports mandatory full funding of IDEA?

7 In addition to this group, there's a bipartisan support,
8 the National Governors Association and the National
9 Conference on State Legislatures strongly support this.
10 Currently, 35 states have passed state resolutions urging
11 Congress to fulfill. Last year, the Senate enacted, on a
12 unanimous voice vote, on the Hagel-Harkin amendment to
13 provide mandatory full funding of IDEA. In the House,
14 more than a 120 members from both parties have sponsored
15 bills.

16 Yesterday, the Senate Budget Committee
17 included mandatory full funding of IDEA in its resolution,
18 therefore, we recommend the Commission recommend mandatory
19 full funding of IDEA.

20 Thank you, Marissa, for the time.

21 MR. COULTER: Thank you, Dr. Ziegler.

22 Bob Hoffman?

1 UNIDENTIFIED AUDIENCE MEMBER: Well, I hope
2 -- charged for this because our CEO is going to talk to
3 you, or talk to those who will be there on the Commission,
4 in Nashville -- or can I give this as a preview? Let
5 somebody else go.

6 MR. JONES: You're the last one and,
7 essentially, the restriction is, you sign up and, if you
8 or someone from your organization, you would end up going
9 to bottom of the list. So, if you did testify now, he
10 would go to the bottom of the list in Nashville.

11 If there's enough time --

12 (Many asides from the audience.)

13 MR. COULTER: Okay, Bob, we don't want to get
14 you in trouble with your boss; we'll listen to him in
15 Nashville.

16 Folks, we want to thank you very much for
17 staying with us the whole day and we appreciate all of
18 your input. Remember, we take written comments, as well,
19 and we wish you good luck and get home safely tonight.

20 (Whereupon, at 5:43 p.m., the proceedings in
21 the above-entitled matter were closed.)

22 oOo

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION in the matter of:

Name of Proceeding:

FINANCE TASK FORCE

PUBLIC MEETING

Place: LOS ANGELES, CALIFORNIA

Date: THURSDAY, MARCH 21, 2002

were held as herein appears, and that this is the original transcript thereof for the file of the President's Commission on Excellence in Special Education, and is a full, correct transcription of the proceedings.

Official Reporter