

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

UNITED STATE DEPARTMENT OF EDUCATION

PRESIDENT'S COMMISSION ON

EXCELLENCE IN SPECIAL EDUCATION

\* \* \*

THE ROLE AND FUNCTION OF THE

OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)

IN THE IMPLEMENTATION OF SPECIAL EDUCATION

HEARING

Wyndham Hotel

1400 M Street, N.W.

Monticello Ballroom

Washington, D.C.

Friday, April 26, 2002

8:10 a.m.

The hearing was held pursuant to notice, on  
Friday, April 26, 2002, at 8:10 a.m., Alan Coulter,  
presiding.

1           ATTENDEES:

2           DR. ALICE D. PARKER, Assistant Superintendent and  
3           Director of Special Education for the California  
4           Department of Education

5

6           BARBARA GANTWERK, Director, New Jersey Department  
7           of Education's Office of Special Education Programs

8

9           THOMAS HEHIR, Ed.D., Director, School Leadership  
10          Program at Harvard Graduate School of Education.

11

12          PAULA GOLDBERG, Executive Director, Parent Advocacy  
13          Coalition for Educational Rights Center (PACER),  
14          Minneapolis, Minnesota

15

16          LESLIE SEID MARGOLIS, Managing Attorney, School  
17          House Discipline Project, Maryland Disability Law  
18          Center (MDLC)

19

20          RICHARD "DICK" D. KOMER, Senior Litigation Attorney,  
21  
22          Institute for Justice, Washington, D.C.

23

-- continued --

1

1 ATTENDEES (CONTINUED):

2 DR. PHILIP J. BURKE, Professor and Chairman of the  
3 Special Education Department at University of  
4 Maryland

5

6 MARTIN GOULD, Senior Research Specialist, National  
7 Council on Disability

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

## P R O C E E D I N G S

(8:10 a.m.)

DR. COULTER: (Presiding) Good morning.

My name is Alan Coulter. I'm a member of the President's Commission on Excellence in Special Education. Welcome to our hearing on the role of the Office of Special Education Programs and its functions in the implementation of special education.

The first thing that I need to say is that, as you can see to my immediate right and your left, we do have interpretive services available. We have two interpreters here for people who are deaf.

I am the chair of the task force on the Office of Special Education Programs Role and Function, which is one of several task forces of the President's Commission on Excellence in Special Education. I want to welcome you to today's hearing. The focus of our hearing is the implementation of special education programs by the Office of Special Education Programs within the U.S. Department of Education. That office is commonly called OSEP, and you will probably hear that term a number of times

1 throughout the day.

2 OSEP is the federal government's primary  
3 entity for implementing the Individuals with  
4 Disabilities Education Act. We must make sure that  
5 this office is equipped to respond to the many  
6 challenges we face. In doing so, we can help ensure  
7 that no child is left behind.

8 Before we begin our hearing, I would like  
9 to briefly provide you with background about the  
10 Commission. President Bush established the  
11 Commission last October to collect information and to  
12 study issues related to federal, state and local  
13 special education program. The Commission's goal is  
14 to recommend policies to improve the educational  
15 performance of students with disabilities so that no  
16 child is left behind.

17 Our work is not designed to replace the  
18 Congressional reauthorization of the Individuals with  
19 Disabilities Education Act. Rather, the report we  
20 produce and issue this summer will not only provide  
21 vital input into the reauthorization process but also  
22 into the national debate on how to best educate all

23

1 children.

2           The Commission's examination of OSEP is  
3 part of its expansive review of all facets of special  
4 education. Over the past two months, the Commission  
5 and its task forces have held hearings in Houston,  
6 Denver, Des Moines, Los Angeles, Coral Gables, New  
7 York City, Nashville, San Diego and Washington.

8           The Commission has also looked at issues  
9 such as teacher quality, accountability, funding cost  
10 effectiveness, parental involvement, identification  
11 of children with learning disabilities, research,  
12 paperwork, litigation and now federal programs.

13           As part of today's hearing, the Commission  
14 will hear a variety of perspectives on the role and  
15 function of OSEP. For example, the Commission will  
16 hear how states can partner with the federal  
17 government to improve special education programs.

18 The Commission will also hear whether OSEP is  
19 becoming more effective in its delivery of programs  
20 and their implementation, whether OSEP is improving  
21 special education through a focus on the consumers  
22 who are families of children with disabilities, and

23

1     how federal leadership can help improve the  
2     implementation of special education programs.

3             We will hear presentations from experts  
4     and educators on these topics. We will also have a  
5     public comment period this afternoon, and we will  
6     attempt to learn all that we can from all these  
7     sources in order to provide us with valuable input  
8     that we need in order to develop our recommendations  
9     for the President.

10            Thank you for your interest in the  
11     Commission. We will now begin today's hearing. It's  
12     important for me to also note that all of today's  
13     hearing is being recorded and transcribed and becomes  
14     a part of the record. So I need to remind everyone  
15     that when they address the Commission, they need to  
16     speak directly into the microphone. Hopefully I'm  
17     providing a good model to start out with, because  
18     it's important for us to be sure that all that is  
19     said is recorded and is made a part of the record.

20            We want to begin today with the testimony  
21     of two witnesses on the topic of State and Federal  
22     Partnerships to Improve Special Education. Our first  
23



1 speaker is Dr. Alice D. Parker. Dr. Parker is the  
2 Assistant Superintendent and Director of Special  
3 Education for the California Department of Education.

4 Our second speaker today and the second  
5 member of our first panel is Barbara Gantwerk. She  
6 is the Director in New Jersey of the New Jersey  
7 Department of Education's Office of Special Education  
8 Programs.

9 Welcome Dr. Parker and Ms. Gantwerk. Dr.  
10 Parker?

11 DR. PARKER: Thank you. Chairman  
12 Branstad, Commission members, Committee chair member,  
13 Dr. Coulter, and Executive Director Jones, I want to  
14 thank you for the opportunity to speak today.

15 As Dr. Coulter introduced me, I am Alice  
16 Parker and I'm an Assistant Superintendent of Public  
17 Instruction and the State Director of Special  
18 Education for California. I'm very pleased that we  
19 have this opportunity to share some of our successes  
20 and some of our challenges as we seek to provide  
21 services to children with disabilities and their  
22 families.

23

1           I've been asked here today to talk about  
2           our experiences in California with the Office of  
3           Special Education Programs, OSEP, and to offer any  
4           suggestions we in California may have to improve how  
5           we and they all work together so that children with  
6           disabilities and their families have the benefit of  
7           the best that we all have to offer.

8           Specifically, I want to share with you our  
9           experiences with monitoring and communication about  
10          compliance issues, including the effectiveness of  
11          special education conditions and special conditions  
12          applied to California. And I want to make  
13          recommendations about changes that we need to clarify  
14          expectations, provide technical assistance and  
15          achieve results.

16          Let me share up front that because of the  
17          special conditions placed on California's IDEA  
18          grants, we've had a very close working relationship  
19          with OSEP and OSEP staff over the last couple of  
20          years. I find their staff to be committed,  
21          professional and caring. I think that their  
22          knowledge of IDEA requirements and their personal  
23

1 integrity is beyond reproach. Any suggestions that I  
2 make that my staff have made, we are making with a  
3 clear intention to focus on the organization and not  
4 on any of the individuals in that organization.

5           That said, I think a bit of levity might  
6 help you understand the context in which we've been  
7 working in California. Now there are some folks on  
8 the Hill there, if you can't see them, and two  
9 cowboys, and there's someone in the middle that seems  
10 to have arrows through them. And it says, now stay  
11 calm. Let's hear what they said to Alice. And  
12 sometimes after their visits, it was the guillotine  
13 and whether I wanted paper or plastic. And this one  
14 is for Alan from Bernie, one of my staff people,  
15 because Dr. Coulter has provided technical assistance  
16 in California, and we deeply appreciate it.

17           Then I said to Alan, you know, as long as  
18 we're under siege, one of us ought to moon these cats  
19 and dogs. And finally, this is pretty much how we  
20 feel in California over the last several years.  
21 We're sort of in the belly of the snake, and we're  
22 not sure which way we want to come out.

23

1           So let me tell you a bit about myself. I  
2           came to the California Department of Education from  
3           the San Mateo Foster City Elementary School District  
4           in November 1997. At that time, California had more  
5           than 1,100 school districts. We were serving 640,000  
6           students with disabilities. We used a monitoring  
7           system that was based on procedural compliance. We  
8           had a decreasing number of staff, only 16 doing on-  
9           site monitoring in California, and we had no data to  
10          answer the question how effective is special  
11          education in California?

12                 With the advent of IDEA 97, it was very  
13          clear we needed to have a major shift in direction  
14          from a system that focused solely on the procedural  
15          elements of IDEA to a system that placed emphasis on  
16          access to and progress in the general education  
17          curriculum. My staff used to roll their eyes when  
18          I'd talk about putting the E back into IDEA. They  
19          don't roll their eyes anymore. We are about outcome.

20                 We instituted a number of changes. First  
21          -- I'm going to back. First we convened a group of  
22          stakeholders, and we established clear goals and

23

1 indicators.

2           Next, we took stock of the data we already  
3 had on hand to identify districts most in need of our  
4 attention and assistance. Then we reengineered the  
5 methods we were employing to work with districts to  
6 assess their compliance with procedural guarantees,  
7 to assess success in reaching statewide goals, and to  
8 provide guidance, training and technical assistance.

9           Lastly, we implemented a new quality  
10 assurance process, a process we believe that was data  
11 informed, that integrated all of our monitoring  
12 efforts under one umbrella, including local policy  
13 and procedure review, complaints, due process,  
14 monitoring reviews, review of student level and  
15 district data. And we focused our technical  
16 assistance and enforcement areas based on that  
17 analysis.

18           In this process we gave particular  
19 attention to our on-site monitoring and technical  
20 assistance. One thing that had become clear to us  
21 was that the old way of doing business was not  
22 working. It seems kind of silly to say this out  
23

1 loud, but if you want other people to pay attention  
2 to outcomes for children with disabilities, then you  
3 as a state agency and as the federal government have  
4 to pay attention to outcomes for children with  
5 disabilities. And we found that we were only paying  
6 attention to procedural guarantees.

7 Our analysis of IDEA 97 and the Rally  
8 decision, for that matter, was that it called for a  
9 more balanced approach to ensuring both procedural  
10 guarantees and educational benefits for children.

11 In addition to the types of on-site and  
12 self-review processes that most states use, we  
13 instituted a pilot project to focus on those  
14 districts whose key performance indicators were the  
15 lowest 15 percent of districts of similar size and  
16 type. And in this process, which also included a  
17 review and correction and procedural guarantees,  
18 district teams, including both regular and special  
19 education staff and parents, went through a process  
20 to examine their data, explore their practices and  
21 implement changes focused on priority performance  
22 areas.

23

1           Through our state improvement grant and  
2           the generosity of the Schwab Foundation -- and I want  
3           to take a second here to talk about how important  
4           those two issues are. We had funding through a state  
5           improvement grant and Larry Wexler from the Office of  
6           Special Education Programs has been extraordinarily  
7           helpful in giving us feedback and support through the  
8           implementation of our SIG. Our Western Regional  
9           Resource Center has been exemplary in their support.  
10          They're funded through the Office of Special  
11          Education Programs, and their technical assistance  
12          has been stunning.

13                 And then you can't ever forget about the  
14          one person who happens to be in this room and I'm  
15          glad, who has provided technical assistance through  
16          documents, presentations, training, that we all  
17          jokingly say at the National Association of Special  
18          Ed Directors, that there's only three women in the  
19          world that you know by their first name. There's  
20          Cher, there's Madonna, and there's JoLeta. And  
21          without her support and wonderful technical  
22          assistance, we all would be in a lot of trouble. And  
23

1 so, thanks, JoLeta.

2           Anyway, through our SIG and the generosity  
3 of the Schwab Foundation, we have also been  
4 identifying and assembling districts with exemplary  
5 practices. These two groups, the ones who have the  
6 most difficulty and the ones who have exemplary  
7 practices, have been joined with our SIG dollars  
8 through biennial conferences into a kind of ongoing  
9 technical assistance group that has produced  
10 tremendous gains for all of the districts in both  
11 procedural guarantees and educational outcome.

12           We have found that it is critical that all  
13 of the components are aligned: Monitoring, technical  
14 assistance, training, the state implementation  
15 grants, and that all of the stakeholders, and  
16 especially our parents, are involved in each aspect  
17 of that which we do and are clear on the alignment,  
18 and our efforts have resulted in several statewide  
19 improvements.

20           The number of overdue annual IEP reviews  
21 and three-year reevaluations has declined  
22 dramatically, dropping by 65 and 68 percent

23



1       respectively.

2                   The percent of overdue annual IEP review  
3       and three-year reevaluations has declined  
4       dramatically, dropping by 8.4 and 4.6 percent,  
5       respectively.

6                   The percent of students scoring at or  
7       above the 50th percentile in math has increased  
8       steadily each year for both general ed and special  
9       education students, and the gap between the two  
10      groups has decreased only one point.

11                  The percent of students scoring at or  
12      above the 50th percentile has increased steadily each  
13      year for both general education and special education  
14      students. The gap between the two groups has  
15      decreased by four points.

16                  And the percent of students receiving  
17      special education and educated with their non-  
18      disabled peers, 80 percent or more of the time has  
19      increased steadily. We have set goals and benchmarks  
20      for these areas, and things are improving. We still  
21      have a long way to go.

22                  National data strengthens these findings.

1 In the last 10 years, California's special education  
2 population has grown faster than the national  
3 average, and I have a graphic for you that was  
4 provided through the Office of Special Education  
5 Programs data review and recently given to data folk  
6 from all the states in the United States.

7 I'm showing you the seven biggest states  
8 in the United States, and I want to say right now  
9 about data that it's really important to understand  
10 that Florida, Texas, New York, California, Illinois,  
11 Ohio and Pennsylvania all have different data field  
12 definitions for each piece of data they provide. So  
13 it's important to look at data across time for each  
14 state to look for improvement, and the issue of rank  
15 ordering, unless data have common data definition, is  
16 very difficult.

17 So in the last ten years, we've grown. We  
18 are now one-tenth of the population in the United  
19 States. And as of our December 1 count this year, we  
20 have 660,242 students in special education in  
21 California.

22 California has reduced the number of  
23

1 students served in separate facilities. We have  
2 really made an effort in the area of LRE, and we've  
3 increased the number of students who spend more time  
4 in regular classrooms. We need to do a better job.

5 California has the largest special  
6 education caseloads of any of the large states in the  
7 country. Despite the huge class sizes and the  
8 elimination of differential standards, California has  
9 made dramatic increases in the percent of students  
10 with disabilities graduating with a diploma.

11 And California has reduced the dropout  
12 rate of students with disabilities by almost one-  
13 third since 1993-94, almost half of the rate of the  
14 United States as a whole.

15 Now you might be thinking, she's lost her  
16 marbles, she's off the topic. She's only tooting her  
17 own horn, but here's the point. In order for OSEP to  
18 complete the change in its focus and oversight  
19 approach to a more result-based focus, it may have  
20 to, as my friend Bill East has put it, just get on  
21 with it, and let some of the old stuff go.

22 Let me be more specific. I have a chart

23

1 for you all to take a look at at a later time, but  
2 you will see that the chart, which was prepared by  
3 one of my staff members, depicts general supervision  
4 events over the last several years. And you can see  
5 that it is rich, and this is an intended pun, with  
6 the Whitewater of change.

7 As you can also see, we have been working  
8 on corrective action plans for many years, as far  
9 back as 1992. We have had special conditions on our  
10 Part B grants for the last three years. We've had a  
11 state implementation grant since 1999. Staff of OSEP  
12 have spent a week or so in our offices and in local  
13 school districts throughout our state one to three  
14 times per year for the last four years.

15 And we have prepared two to four reports  
16 of substantial length on our activities and the  
17 activities of 10 to 25 school districts each year.

18 Now the special conditions are very  
19 difficult to understand, and OSEP's involvement in  
20 California has been met with mixed reviews.  
21 Interaction with OSEP staff, OSEP technical  
22 assistance materials, as I have said, and OSEP-

23

1 sponsored technical assistance events have been  
2 lauded. People love that work.

3           The overall result of their efforts,  
4 however, are seen as focusing our attention back on  
5 the nonsubstantial procedural details of compliance  
6 and not a balance of procedural guarantees and  
7 educational results. In thinking about this, I think  
8 there are several things that have contributed to  
9 this. And I'd like to tell you a bit about what we  
10 think may be happening. We wonder if we're making an  
11 impact. And we wonder if we're going to be allowed  
12 to think outside the box. Sometimes it's not a good  
13 idea.

14           So here are my recommendations. There  
15 needs to be emphasis on procedural details. I'm  
16 going to skip through, because I'm going to run out  
17 of time, folks. We need to decrease procedural --  
18 let me start here. Overall recommendations to you:

19           Please clarify the purposes of IDEA.  
20 Clarify that the overall purposes of IDEA are both  
21 protection of rights and improving outcomes. Right  
22 now the statute, because of the regulatory process

23

1 and how it's being interpreted, is almost entirely  
2 focused on procedure. We need to increase emphasis  
3 on educational issues and access to effective  
4 instruction.

5 OSEP needs to increase their emphasis and  
6 knowledge on pedagogy and research-based  
7 instructional practices. The staff at OSEP, many of  
8 whom are special educators, really do need to  
9 understand what are the practices that affect change  
10 in classrooms. What are the scientifically-based  
11 research practices that we need to be emphasizing for  
12 school districts and states around the United States  
13 so that children's educational benefit continues to  
14 improve.

15 So we need people who are knowledgeable in  
16 pedagogy and what we can do as educators to improve  
17 outcomes.

18 OSEP needs to disengage the Office of  
19 General Counsel from the process so that educators  
20 can talk to educators. Much of our special  
21 conditions are legalese. And just a bit of levity  
22 there, the saints are talking about how I used to do

23

1 it myself, but now I have my lawyers handle it. We  
2 need to have educators talking to educators and  
3 parents and staff people who are serving children  
4 with disabilities.

5 We need to decrease procedural  
6 prescription. The procedural prescription that talks  
7 about timelines have the same weight and value as  
8 improving outcomes, we need to look at what our  
9 balance is, what are our goals, what are the  
10 benchmarks of what is acceptable and move to that.

11 We need to increase the focus on ensuring  
12 that parents receive notice of substantial and  
13 substantive action so that they know what's going to  
14 happen when they come to meetings, whether it's a new  
15 IEP, whether it's a placement issue, whether it's  
16 eligibility and that they have the right of refusal.  
17 They need to know that they have a right to  
18 participate in those decisions and to disagree with  
19 something substantive in the action, and they need to  
20 know how and be able to act on their rights.

21 However, a 17-page procedural rights  
22 document takes forever to explain, and it's a very

1 difficult issue. And I know because I've read  
2 testimony from other people, you have heard this  
3 story before.

4           We need to reconceptualize data collection  
5 and analysis. In order to support increased emphasis  
6 on outcomes, data collection needs to focus less on  
7 standardized testing from states for the purposes of  
8 cross-state comparisons because we have different  
9 standards. We need to have national ideas of where  
10 you want the states to move and measure for that. We  
11 need to focus more on making data useful to states,  
12 and states need to do it, conversely, making it  
13 useful for districts in guiding and assessing the  
14 effectiveness of their own improvement efforts.

15           We need to ensure that all children are  
16 included in the accountability system. We need to  
17 require that state general education data systems  
18 ensure that the entire population of students served  
19 in special ed can be identified for purposes of  
20 accountability and governance. And we need to  
21 acknowledge that some children have very different  
22 learning needs and different ways are needed to

23



1 assess them.

2           We need to support OSEP to get on with  
3 their results-oriented oversight process and  
4 research-informed technical assistance. If rights  
5 protection is simplified and we're looking at more  
6 substantial issues, OSEP will have more opportunity  
7 to work on outcomes, and the outcomes focus should be  
8 on ensuring that states use information on every  
9 child to guide and evaluate the effectiveness.

10           We need to support them in modeling  
11 interagency collaboration, and this is so important,  
12 distributing funds in a more effective fashion. All  
13 states need improvement grants. There needs to be  
14 goals for those, but the dollars need to flow and  
15 competitive nature of funding is very difficult for  
16 states.

17           We need to support states to have  
18 sufficient resource capacity to undertake the  
19 governance job that is expected of them. States  
20 lack, in many cases, that ability. And we have to  
21 assign a realistic level of money to the state for  
22 administration and then allow it some discretion in

23

1     how systems are set up.  And in California, it can be  
2     a challenge.

3                     We have to remember, folks, that we're  
4     here for children.  And I want to tell you that I  
5     think we've created a lot more chaos than we should  
6     have, and it was not necessarily our intention or the  
7     fact that we have not clarified what we need to do,  
8     but we cannot forget the essence of why we're here.  
9     Children, in particular children with disabilities  
10    and their families, and improving their opportunities  
11    in life.

12                    Thank you again for this opportunity.

13                    DR. COULTER:  Thank you, Dr. Parker.  Dr.  
14    Gantwerk?

15                    MS. GANTWERK:  Good morning.  I want to  
16    thank the Commission members very much for inviting  
17    me to participate today.  I was asked to address the  
18    state and federal partnerships in special education  
19    strengths as well as the opportunities for  
20    improvement.

21                    Additionally, my e-mail did say that I  
22    could provide suggestions for improvement in the IDEA

23

1     itself.  Actually, I think they're connected, but I  
2     appreciate the opportunity to provide some of my  
3     impressions, even though I don't think I have all the  
4     answers to the difficult tasks that you are facing.

5             Just to tell you a little bit about me,  
6     I've been the Director of Special Education in New  
7     Jersey for more than seven years now and have worked  
8     in the Department of Education and Special Education  
9     for 23 years.  I do know what it's like to work in a  
10    large government agency and the constraints and the  
11    difficulties therein.

12            From my experience, the partnership  
13    between the Office of Special Education, OSEP, and my  
14    office, NJOSEP, as we refer to ourselves, has changed  
15    pretty dramatically over the past few years, perhaps  
16    three or four years.  And since that time, I would  
17    say it has been outstanding in a very different way.  
18    Previously, I would have called it adversarial and  
19    nonproductive.  I would not call it that at all.  I  
20    think it's quite collaborative and quite productive.

21            I find the people I work with, and this  
22    feels to me a little like the Academy Awards where

23

1 I'm going to say JoLeta Reynolds and Lois Taylor and  
2 Merrill Taylor and Ruth Ryder and Larry Wexler and  
3 Larry Ringer, just a few of the people that I have  
4 worked with, have all been extremely supportive and  
5 focused on assisting us in any way that they can, and  
6 I stress any way that they can.

7           There is a collaborative relationship.  
8 It's not a gotcha relationship, even though they get  
9 us. And I do believe that they're on our side and  
10 that in fact we're on the same side and that's what  
11 it's supposed to be. We're all supposed to be on the  
12 same side.

13           Now much of this change is due to the new  
14 but ever-changing monitoring system known as the  
15 Continuous Improvement Monitoring Process. I will  
16 admit that when my staff and I first were notified  
17 that we were to be included in the monitoring process  
18 and attended a meeting, we had a slightly less than  
19 joyous reaction. The Continuous Improvement model  
20 was presented with many circles. We saw lots of  
21 circles and continuous arrows, and some people were  
22 comparing it to the Circle of Life. Our table

23

1 compared it to the Wheel of Misfortune.

2 But I have to say, we were wrong. We were  
3 wrong. The process was indeed a very good one. It  
4 allowed for state flexibility and has led to many  
5 changes in our state. We allowed it to do that  
6 because of the intense work that we put into it, but  
7 the process was a good one. It has moved somewhat  
8 away from the compliance model to more of a program  
9 improvement model, not entirely but certainly it has  
10 moved in that direction, and it is certainly helped  
11 us to focus our efforts on specific areas, organize  
12 our resources, enlist department support, which we  
13 have definitely had. We've reorganized and  
14 restructured to meet our needs.

15 And another very positive aspect was the  
16 development through the process of successful and  
17 collaborative partnership with the critical  
18 stakeholders in our state.

19 Now because the model was such a good one  
20 for us, not an easy one, but a good one, we  
21 completely revised our own oversight system and  
22 monitoring system to replicate that model. We

23

1 included all of the concepts of district self-  
2 assessment, steering committees, focus groups, and we  
3 encourage them to do what we did on their steering  
4 committees, which was to include anyone who had sued  
5 you at least three times. And we had lots of  
6 members, and it made a difference. On-site visits,  
7 database decisionmaking and improvement planning.

8           And it is important to note that we've  
9 received a great deal of positive response from the  
10 districts that have participated in this new  
11 monitoring process at the state level. We've  
12 completed it now -- well, actually, we're  
13 implementing it now in 276 of the 680 districts that  
14 we have in the tiny state of New Jersey, 60 of those  
15 being charter schools, and those charter schools are  
16 LEAs in our state. And it is not that the process  
17 was easy, and that's why districts liked it, all of  
18 the districts had noncompliance. But the process led  
19 to improvement in a manner that was assumed to be  
20 very positive, and we believe it.

21           The development of our state improvement  
22 plan for personnel development was the basis for our

23

1 state improvement grant. And this, along with the  
2 provision of the data enhancement grant, are very  
3 positive ways to support the state's effort in a very  
4 coordinated approach. Additionally, the capacity-  
5 building funds enabled us to target specific problems  
6 in specific districts.

7           The RRC network is another way that the  
8 federal government provides us with support. Years  
9 ago we received a transition grant which has led to  
10 systemic change at the state level. Now it has not  
11 been easy. Difficult issues were raised. There were  
12 problems. There still are problems. We don't deny  
13 that. We are looking to continue to improve. We had  
14 conditions placed on our grant as well. Those  
15 conditions were removed, and I think the results of  
16 all of our efforts have been in the best interests of  
17 children, that it has made a difference.

18           So I believe that the new direction that  
19 has been taken is very positive and it has served us  
20 well and that we are in fact true partners.

21           I also believe that if -- well, I hope --  
22 that if you talk to some of the other constituencies

23

1 in our state who have worked with us on the process,  
2 that they too would agree that the model has led to  
3 significant changes in the relationships and in the  
4 results.

5 Now nothing's ever perfect, so there's  
6 always room for improvement, and I want to talk about  
7 some of the areas for improvement. And I think one  
8 of the areas for improvement, and certainly Alice has  
9 talked about this, is the law itself that we're all  
10 trying to implement. The partnerships are affected  
11 by the law, obviously. The highly procedural nature  
12 of the law and the regulations affects the way OSEP  
13 relates to the states in many different ways. This  
14 is a great law.

15 We all agree with the goals of this law.  
16 One of the important goals is collaboration between  
17 families and schools, state and district, state and  
18 federal office, and this collaboration I believe is  
19 somewhat undermined by the incredible complexity,  
20 specificity and prescriptiveness of the law. And  
21 instead, sometimes adversarial relationships are  
22 created.

23



1                   Many aspects of this law are very  
2                   difficult to understand. And if this is so for  
3                   districts with attorneys and OSEP with the Office of  
4                   General Counsel, it is even more so for parents  
5                   trying to navigate the system. It is difficult for any  
6                   district or state to be in complete compliance,  
7                   because there are many opportunities to slip up.

8                   Clearly it's a litigious issue. While we  
9                   are very proud in New Jersey that our mediation  
10                  system, which has been in place for many years, is  
11                  very successful, the entire process creates a fear of  
12                  litigation. Too frequently, districts start from a  
13                  calculation of what it will cost to win, and like  
14                  everywhere else in the legal world today, people give  
15                  in if it's going to cost more to win.

16                  There often exists a lack of trust, and  
17                  that is in fact contrary to the intention of the law  
18                  and is not in the best interest of children. It is  
19                  so complex that we have many questions. I certainly  
20                  know I do. I call all the time. Discipline is a  
21                  prime example. It is so complicated that any  
22                  question requires a review by general counsel, and as

23

1 a result, it takes the department months to answer  
2 questions that in the states we must answer right  
3 away since district cannot wait.

4 I must say I find it sad that districts  
5 and parents must so often consult their attorneys and  
6 advocates when making educational decisions. I  
7 believe and hope that as an example, the discipline  
8 section could be simpler while maintaining important  
9 principles that schools should be safe for all.  
10 Students should not be punished for their disability.  
11 Beyond ten days, you get services. The major focus  
12 should be on identifying and providing the  
13 appropriate program rather than a manifestation  
14 determination. Whether it is or it isn't a  
15 manifestation, the key issue is what is the right  
16 program for this child?

17 Sometimes the interpretations by the  
18 general counsel are such that they don't make sound  
19 educational policy and have considerable unintended  
20 consequence. An example of this for us was that the  
21 OGC determined that the law does not allow a district  
22 to use mediation or due process to overturn a  
23

1 parent's refusal to consent to initial services. We  
2 disagreed strongly. But since the receipt of our  
3 funds was dependent on changing our rules, we changed  
4 them. This was not in the best interest of our  
5 students, and I believe it was contrary to the intent  
6 of IDEA and that some students could in fact be  
7 denied services without recourse on the part of the  
8 districts.

9           The districts really need to be able to  
10 advocate for the child as well. We then asked if the  
11 child is still to be considered a child with a  
12 disability for discipline purposes after the parent  
13 refuses services. I have been waiting seven months  
14 for an answer. Our office has provided an answer to  
15 the districts, but we've told them the caveat that we  
16 are still awaiting the real response.

17           The IEP is too long. We need IEPs. But  
18 currently, they have become long legal documents as  
19 opposed to instructional tools. It is so time  
20 consuming that districts all look to have some  
21 computerized IEP that spits out hundreds of  
22 objectives but which are hardly blueprints of

23

1 instruction. I think that in many cases they may be  
2 written but not actually read a whole lot.

3 We need to revisit this issue to ensure  
4 that the IEP is designed to be an effective tool for  
5 informing instruction.

6 There is so much formality about the law  
7 that it even addresses when staff may talk about a  
8 child and not have it considered a meeting. So now  
9 we have regulations telling us when a meeting is not  
10 a meeting.

11 I'm not going to go into all of the  
12 recommendations that I made for modifications because  
13 I have to believe that you've heard them all ten  
14 times already and many more. But I do have copies of  
15 the letter that I sent to Washington with all of  
16 them. My point in making them now is that I believe  
17 that the partnership between OSEP and the states is  
18 related to the complexity of the law itself.

19 Additionally, the law is not sufficiently focused on  
20 compliance -- I mean on outcome, and is more focused  
21 on compliance. While it changed in '97 and moved us  
22 forward, we still have an overall focus on compliance

23

1 in the law, and they and we are implementing that  
2 law.

3 I do want to make certain that I mention  
4 that I'm very aware of the difficult task of  
5 balancing rights and protections with flexibility and  
6 simplifying the law. This is a difficult task. I  
7 also want to mention that sometimes the technical  
8 assistance and guidance that we receive is a  
9 repetition of the law because sometimes it's  
10 difficult to interpret.

11 What we need is more help and guidance, as  
12 Alice talked about, in implementing important  
13 concepts. And I'll use the alternate assessment as  
14 an example. This was required, and every state  
15 approached it differently, and we had to just work it  
16 ourselves hoping that we'd get it right. We're now  
17 required to include these scores in the  
18 accountability system. This is good. Across the  
19 country we are all talking about how to do this.

20 It would be helpful to have assistance and  
21 direction as to how to do this in an educationally  
22 appropriate way, and in a way that will be acceptable  
23

1 to all the monitors that are going to come in from  
2 the various programs and tell us if we've done it  
3 right. We'd like to have that before, understanding  
4 that states will do things differently

5 This is also an example of the need for  
6 OSEP to work with other units and clarify the impact  
7 of those other laws clearly such as No Child Left  
8 Behind on students with disabilities.

9 The other area I think that has been  
10 mentioned is that requests for major pieces of  
11 documentation from the states tend to be works in  
12 progress, and the request may change midstream. The  
13 eligibility documents for the grants took us over a  
14 year to get together, and I think all states were  
15 doing it differently, and I'm not sure any of us did  
16 it right.

17 So I think it's critical to have clear  
18 directions from OSEP. We all agree that we're trying  
19 to move in the direction of a focus on results and  
20 less on compliance. We support all of OSEP's efforts  
21 in this and want to continue to move forward. We  
22 don't yet have clarity on what exactly this means.

1 As I said, the law is still mostly focused on  
2 compliance.

3 So what are the results that will be used  
4 to identify progress? OSEP will need to ensure that  
5 the indicators they use in comparing states to  
6 identify potential problems are in fact based on  
7 comparable data. This is often not the case as each  
8 state has a different assessment system, varying  
9 levels of difficulty, different graduation  
10 requirements, graduation rates and dropout rates are  
11 good examples of information that is collected very  
12 differently across the country.

13 In closing -- I am closing now. I wanted  
14 to make sure you knew -- that the partnership is  
15 extremely positive and has effected significant  
16 positive change at the state level. Even the  
17 conditions were useful to us. I realize that  
18 partnerships go two ways, and that we have a great  
19 deal of responsibility to focus on improving  
20 instruction and educational outcomes for students,

21 With great respect for all the work that's  
22 being done in OSEP, my suggestions for improvement in

23

1 the partnership would be streamlining and simplifying  
2 the law that we're all working to implement. Moving  
3 forward with the new monitoring process to a greater  
4 focus on accountability for results and less on  
5 procedural compliance. Providing additional guidance  
6 on implementing important concepts. Identifying that  
7 which OSEP has the authority to require and that  
8 which they do not prior to asking for it. And I  
9 could not go home without saying giving us additional  
10 dollars to support the increased administrative  
11 activities at the state level, and of course  
12 additional funds to support the costs at the local  
13 level.

14 Partnerships really do well when you give  
15 extra money. And I want to thank you again for  
16 inviting me and giving me this opportunity.

17 DR. COULTER: And the Commission would  
18 like to thank you both for your formal testimony.  
19 We'd like to now move to the portion of our agenda  
20 where Commissioners ask questions, and I want to  
21 emphasize that for us, we find not only your formal  
22 testimony very helpful but also answers to questions.



1 It helps us clarify issues.

2           However, we have, just like you have  
3 limited time, we also have limited time. So  
4 Commissioners, we've allocated roughly five minutes  
5 per Commissioner for questions and answers. So  
6 Commissioner Fletcher, would you like to begin?

7           DR. FLETCHER: I'd like to follow up on  
8 some of the issues that involve the issues of  
9 alternate exams in the accountability system, because  
10 I heard both of you testify that inclusion of  
11 children with disabilities is very important from a  
12 general view but has also been very important in both  
13 your states.

14           And I heard very clearly that New Jersey  
15 has an alternate assessment?

16           MS. GANTWERK: Yes.

17           DR. FLETCHER: Is the state exam, state  
18 accountability exam, a criterion reference test?

19           MS. GANTWERK: It's a performance-based  
20 portfolio assessment based on our state for  
21 curriculum content standards designed individually  
22 for each child.

23

1 DR. FLETCHER: I see. Sorry I asked.

2 What's the alternate assessment?

3 MS. GANTWERK: That is the alternate.

4 DR. FLETCHER: I'm sorry. What I was  
5 asking is, I'm trying to understand the relationship  
6 between the alternate assessment and what would  
7 happen with a child who didn't have a disability.

8 MS. GANTWERK: Oh. We have state tests  
9 that test the state standards and the standards -- we  
10 have graduation test, a required graduation test. We  
11 have fourth and eighth grade tests.

12 DR. FLETCHER: Criterion reference tied to  
13 state standards?

14 MS. GANTWERK: Tied to the state  
15 standards. And the state standards are the basis for  
16 the alternate assessment as well, but there are  
17 different indicators since the students who are  
18 taking the alternate assessment cannot in a sense  
19 enter the level of the state test.

20 DR. FLETCHER: Right. But you said it's a  
21 portfolio assessment. So it's not a formal  
22 assessment?

23

1 MS. GANTWERK: It's not a paper and pencil  
2 test at all. Right.

3 DR. FLETCHER: So how do you explain to  
4 OSEP the relationship of the alternate assessment and  
5 the state assessment?

6 MS. GANTWERK: Well, they're based on the  
7 same standards, so it's connected to the standards  
8 that everyone is addressing. However, the indicators  
9 of levels of performance are different. They are  
10 essentially lower. The state test started at a third  
11 grade level. These are students who are not  
12 participating in the same academic level of  
13 instruction. So we explain it to them.

14 DR. FLETCHER: But if we don't have the  
15 same expectations for children with disabilities, how  
16 can you possibly talk about whether children with  
17 disabilities are meeting the same -- have the same  
18 sorts of expectations as children who don't have  
19 disabilities ?

20 MS. GANTWERK: We have the same  
21 expectations for all children, but not all children  
22 can participate in the state assessments at the level

23

1 they are given. And so by the very nature that  
2 they're not participating in those, it's different,  
3 and we were required to implement the tests because  
4 there are some kids that are not going to be able to  
5 participate. So we have a different level.

6 We have not yet -- we were only  
7 implementing it this year for the first time, and now  
8 we are determining how we will put those scores into  
9 the accountability system. Most states -- many  
10 states have not yet put those scores into the  
11 accountability system.

12 DR. FLETCHER: I wish you luck.

13 MS. GANTWERK: Yes, we need it.

14 DR. FLETCHER: Dr. Parker, I had the same  
15 question for you. I know what California does for  
16 state accountability. How do children with  
17 disabilities participate?

18 DR. PARKER: children with disabilities  
19 are participating in the STAR assessment, which is  
20 the state assessment grades second through 11. And  
21 they participated in the KC, the California High  
22 School Exit Exam last year and this year with

23

1 accommodations and modifications that are on their  
2 IEPs or their 504 plans.

3           Additionally, we just let a contract  
4 yesterday to ETS to take over our state assessment as  
5 well as the development of an alternate assessment  
6 that is indeed aligned to our accountability  
7 assessment. So that we're looking at at least 95  
8 percent as is in NCLB, but we really hope that we're  
9 not going to leave 5 percent of kids out.

10           DR. FLETCHER: Now I'll ask the relevant  
11 question that I was really curious about, and that  
12 is, at least in New Jersey, you talked about needing  
13 technical assistance from OSEP in designing  
14 assessments and things of that sort. I'm wondering  
15 if other OSEP programs like the National Center for  
16 Educational Outcomes, is of any assistance to either  
17 of you?

18           DR. PARKER: Absolutely.

19           MS. GANTWERK: I think they've been of  
20 assistance. I just want to say, when I spoke about  
21 our assessment system, we have over 95 percent of our  
22 students with disabilities participating in our

23

1 traditional assessment. That needs to be understood.

2 DR. FLETCHER: Oh, okay.

3 MS. GANTWERK: This is just for a very  
4 small group, the one I was talking about. The  
5 National Center has been helpful, but I think  
6 sometimes what it's been doing is looking at what the  
7 other states have done and giving us the information  
8 on what is being done. There's a difference.

9 This is a difficult issue. No one has led  
10 the way.

11 DR. FLETCHER: Do you get any technical  
12 assistance from any OSEP program around assessment  
13 issues?

14 MS. GANTWERK: Yes.

15 DR. PARKER: We do from NCEO.

16 MS. GANTWERK: We do.

17 DR. FLETCHER: And even in terms of things  
18 like test design and how to count students with  
19 disabilities and things of that sort?

20 DR. PARKER: Yes we have.

21 MS. GANTWERK: Yes. We get information  
22 definitely.

23

1 DR. FLETCHER: So they're pretty useful to  
2 you?

3 MS. GANTWERK: Yes.

4 DR. PARKER: I think they're pretty  
5 useful. And we actually have an interloper who  
6 escaped from NCEO who is an assistant superintendent  
7 of special ed in California now.

8 DR. FLETCHER: Thank you.

9 DR. COULTER: Dr. Pasternack?

10 DR. PASTERNAK: Good morning, Mr.  
11 Chairman. I apologize for my tardiness this morning.  
12 My former colleagues, nice to see both of you. I  
13 guess the first question that I have, Dr. Parker, you  
14 mentioned I believe this is a direct quote, you were  
15 expecting OSEP national ideas on where you want the  
16 states to move. So my first question is, who do you  
17 think knows best about some of these issues, the feds  
18 or the states? And what do the feds know best and  
19 what do the states know best? I'd like to ask both  
20 of you a quick response to that.

21 DR. PARKER: Okay. My quick response is  
22 that closer to home knows better about your

23

1 individual differences and needs and styles.  
2 However, you need to know what is sufficient. So a  
3 federal standard of sufficiency of what is  
4 acceptable, of where your goals are and clearly is  
5 coming through NCLB. So, you know that I'll preach  
6 to the choir about literacy and reading and  
7 scientifically based approaches and all of that,  
8 because that's my background as well.

9           But what's the level that people expect us  
10 to aim toward? What is acceptable, what is  
11 sufficient, and then know that the individual  
12 differences are understood best by the states, and  
13 even more particularly by the districts within the  
14 state, and the differences therein.

15           MS. GANTWERK: If I understood your  
16 question, I would say that there's a role both close  
17 to home and on a national level. If you were asking  
18 about identifying great practices and what we should  
19 be doing, I think OSEP has a role in identifying  
20 nationally-based research and guiding us, and at the  
21 same time we at the local level are doing a lot. I  
22 think it's a partnership in that way and that we can

23



1 benefit from what you learn.

2 DR. PASTERNAK: Thanks. And that's kind  
3 of the next set of questions that I wanted to get to  
4 is the nature of that partnership and what it should  
5 be.

6 The next question I'd like to ask both of  
7 you is that what are the most difficult problems that  
8 you're facing in your states and how has OSEP  
9 specifically helped you with those issues?

10 MS. GANTWERK: Well, there are many  
11 issues. I would say, first of all, what they've  
12 helped us with a lot is the entire oversight system.  
13 I mean, it was determined that it wasn't working in  
14 our state, and so they helped us to really set in  
15 place a new system of oversight to be effective with  
16 the district, having so many districts in our state -  
17 - I mean, California has even more -- was a difficult  
18 issue.

19 So I think the oversight system, how we  
20 move forward in looking at results is a critical  
21 problem, and I think we're going to need more help in  
22 saying what are we looking at, what are the data that

23

1 we're going to be comparing, and how can we gather  
2 that in a nationally comparable way?

3           Certainly I think giving us the  
4 dissemination of good practices in different programs  
5 clearing including kids in regular classrooms and  
6 different areas, I think that's been effective as  
7 well. Our problems now I think do have to do with  
8 matching No Child Left Behind, how we're going to  
9 deal with the new accountability system, how we're  
10 going to include the alternate assessment into the  
11 accountability system. Are we going to have to have  
12 alternate assessments for third through eighth grade  
13 now that we're going to test in every grade?

14           So some of those are issues that I think  
15 we need guidance in.

16           DR. PARKER: Similar areas. The areas of  
17 where are things going really well that have a  
18 balance between procedural guarantee and outcome.  
19 Point us to places where it's really working and it's  
20 really happening. That's a critical need, and at  
21 times it's been very helpful to have the research to  
22 practice people attend meetings with their colleagues

23

1 from MSIP so that both sides of OSEP are working  
2 together really.

3           When that happens, that's when you get the  
4 best support and information. The technical  
5 assistance that's provided through the regional  
6 resource centers and through your office. I don't  
7 know if you heard my comment about JoLeta, but the  
8 staff development activities are really wonderful,  
9 wonderful activities. We really need to get clarity,  
10 though, about what are the expectations without  
11 things changing in midstream, what's the reasonable  
12 amount of data, and we need to understand our  
13 timelines.

14           We get timelines that we have to turn  
15 around so quickly and then we don't hear back for a  
16 long time. And by the time we get a response back,  
17 it's not one that we can use to inform our practice  
18 and to understand that if there are issues that show  
19 up in the general data, that it's not something  
20 that's specific in each school district or in each  
21 schoolhouse in our state.

22           DR. PASTERNAK: I know time is short.

1 I'm going to try to get to a couple of other quick  
2 questions. One difficult question, and I know both  
3 of you, and I know I'll get an honest answer. Do you  
4 think the expertise exists within OSEP to be able to  
5 provide you the kind of technical assistance that  
6 you're saying you need, particularly in light of HR-1  
7 and No Child Left Behind?

8 DR. PARKER: I don't think so, Bob. Just  
9 like I would tell you the same thing about my staff.  
10 I drive my staff crazy because I tell them if you've  
11 been in this office for more than six weeks and you  
12 haven't been out in the field practicing, you're not  
13 an expert anymore. Figure that out and figure out  
14 where you go to get the expert help. And I think  
15 that's happened with OSEP staff as well.

16 MS. GANTWERK: I would say the answer is  
17 yes, because the expertise is not that you have to  
18 know everything. No one knows everything. The  
19 expertise is that you know where to go to find the  
20 people who can be helpful and negotiate them to be  
21 working with us as states. I don't think there could  
22 be an organization that had people who knew the

23

1 answers to everything. It's people who know how to  
2 get them. And I think they do.

3 DR. PASTERNAK: Mr. Chairman, if you'll  
4 permit me just a couple of quick yes/no questions.

5 DR. COULTER: Quick.

6 DR. PASTERNAK: I don't want to take Dr.  
7 Sontag's time for sure. The special conditions that  
8 your state's been under. Helped or not helped? I  
9 guess I should be more specific with the question.  
10 Helped improve services and results for students with  
11 disabilities and families in your state, yes or no?

12 DR. PARKER: Yes and no.

13 DR. PASTERNAK: Yes and no, huh?

14 DR. PARKER: Yes and no. The fact that it  
15 helped me make a systems change effort move more  
16 rapidly than it would have otherwise, yes. But we  
17 would have gotten there in a longer amount of time.  
18 So the timeframe helped me, yes.

19 DR. PASTERNAK: Okay. Thanks.

20 MS. GANTWERK: Yes, it did help us. And  
21 it speeded us into time warp zone to make some of the  
22 changes that we needed to make.

23

1 DR. PASTERNAK: And even though I've got  
2 a bunch more, one last quick one. The eligibility  
3 document process that's currently in place, helpful,  
4 not helpful?

5 DR. PARKER: It's terribly unhelpful.

6 DR. PASTERNAK: Thank you.

7 MS. GANTWERK: Well, the eligibility, it  
8 wasn't helpful last year, but now that we got through  
9 it, this year we have very little to do. So I think  
10 once we got through it, it's okay now. I mean, once  
11 we figured it out, we gave in seven boxes of material  
12 and took back eight boxes of material, and now I  
13 think we understand the system. So now I think it's  
14 pretty easy unless we still don't understand it.

15 DR. COULTER: Commissioner Sontag?

16 DR. SONTAG: Thank you, Mr. Chairman. I  
17 have just two general questions. First, both of you  
18 were very complimentary of OSEP staff and how they  
19 had facilitated your work. Both of you were also  
20 critical of the Office of General Counsel. I'm  
21 interested, were there differences in opinions  
22 between the Office of Special Education and the

23

1 Office of General Counsel? And if so, how did you  
2 become aware of those?

3 DR. PARKER: One of the things that I  
4 would say is that the language that comes -- you have  
5 a conversation with the OSEP staff and I tend to  
6 write down everything, so I've written down what our  
7 agreements are when we finish the meeting. And I get  
8 the response, we'll send it to you in writing. And  
9 by the time I get it several months hence, therein  
10 you begin to understand that maybe some attorneys are  
11 doing this if it takes several months.

12 It's this long sentence that has a lot of  
13 words that are hard to define that includes very  
14 difficult information together, that's very different  
15 than the concept we had when they left. And I  
16 frankly asked, who wrote this, and was told that it  
17 was Office of General Counsel.

18 MS. GANTWERK: I'm not sure exactly what  
19 they think or what their disagreement is all the  
20 time. I do know when they can't answer and it has to  
21 go to general counsel and I don't agree with the  
22 answer, I know that I don't agree with the general

23

1     counsel.  I assume it takes so long because it's so  
2     complicated and they don't have the ability to answer  
3     the questions.  I can't speak to their disagreements  
4     with it, only my own.

5             DR. SONTAG:  So it appears essentially  
6     you're dealing with two different entities?

7             MS. GANTWERK:  Mm-hmm.

8             DR. PARKER:  Yeah.  You start out but then  
9     it winds up someplace else.

10            DR. SONTAG:  My second question also goes  
11    to the issue of the relationship with OSEP and your  
12    experience with monitoring.  But I need to make a  
13    statement essentially as part of my question.  In the  
14    fall of 1998 I was a university professor at the  
15    University of Wisconsin.  OSEP announced a monitoring  
16    visit late fall, held what was called a facilitating  
17    meeting or something like that.  I had a group of  
18    teachers, graduate students who submitted a pretty  
19    lengthy report on IEP's quality thereof or the  
20    lacking thereof primarily, and later in that year I  
21    moved to the office of Governor Tommy Thompson as a  
22    policy advisor and kept an eye on the OSEP

23



1 monitoring.

2 But almost two years later we received a  
3 monitoring report in the state. Do you find that's  
4 typical? What rationale could be behind such a  
5 tardiness in a key aspect of IDEA? In other words,  
6 if the feds are not monitoring in a timely manner, is  
7 the law going to work?

8 MS. GANTWERK: I can speak first. I think  
9 it's typical that the reports take a long time. Ours  
10 took over one year to get back, and by the time we  
11 got the report, we had had another monitoring visit.  
12 So the report was on a visit prior to the one that we  
13 had and had to sort of update with another visit. So  
14 I think that is a problem.

15 The reason for the tardiness I can only  
16 assume that it takes a long time to get anything  
17 through and that probably it has to -- we always  
18 think it goes to the Office of General Counsel. You  
19 can see that's where we think things get stuck. I  
20 mean, we don't know, but.

21 DR. PARKER: I would respond similarly.  
22 We get reports later than one can use them. But

23

1 being in a large behemoth bureaucratic situation as  
2 well, it's workload and the amount of staff you have  
3 too. And cranking it out. So I feel for them,  
4 because I know how I have to pound on people to get  
5 reports out in a timely manner in California. But  
6 it's not helpful if it comes two years later.

7 DR. SONTAG: It was certainly not helpful  
8 in Wisconsin. By the time the report came out it was  
9 essentially mush. It didn't focus on IEPs, a major  
10 problem in Wisconsin. Thank you.

11 DR. COULTER: Commissioner Takemoto?

12 MS. TAKEMOTO: Thank you so much for your  
13 testimony. I'd like to follow up on Dr. Sontag's  
14 question. The last round that I participated in in  
15 Virginia, the parent training information centers  
16 were required to participate. Parents were required  
17 to participate. There was a whole stakeholder group,  
18 and it was a continuous improvement monitoring  
19 process.

20 We had help from the regional resource  
21 center to come up with a process so that we as a  
22 state did not have to do that ourselves. And our

23

1 report in Virginia, and I don't know how it is in  
2 your state, but our report in Virginia really said  
3 this is what we did, this is what we identified needs  
4 to be done, and this is what we want to do. And I  
5 don't think that we're waiting for blessings from  
6 OSEP to say, okay, now you can go fix it. In fact,  
7 OSEP told us as soon as that report's out, we expect  
8 you to continue to do this. Is that how things are  
9 working in your state? And I have a lot of  
10 questions. So I need a yes/no and short answer here.

11 DR. PARKER: I'll give you a quick one  
12 here. It sort of is working that way in California.  
13 We've been looking at data and identifying through  
14 our monitoring process including parents as major  
15 stakeholders and all parts of our educational  
16 community what our areas are of need. And I've  
17 talked to my state contacts and said these are the  
18 three areas that have been blessed by our stakeholder  
19 groups. We're moving on these.

20 MS. GANTWERK: For me, yes. The answer  
21 is, as you said, we did not wait for the report. We  
22 felt that the exit conference gave us a lot of

23

1 information. We moved right into the improvement  
2 planning, and we began the activities of improvement  
3 planning. So that's why I say it was the process  
4 that was useful to us, not necessarily only the paper  
5 report.

6 DR. TAKEMOTO: Yes. And the stakeholders  
7 own, the issues the stakeholders own the process for  
8 fixing it. And I know in our state we said, well I  
9 said, don't look at what OSEP is telling you to do  
10 here and how they want it back. Look at how this  
11 fits into the improvements that we're already working  
12 on.

13 Dr. Parker, this is a real quick one but  
14 one of concern to me. In the process of these  
15 hearings we've heard a lot about what works in  
16 special education, what is possible. I've also been  
17 distressed to hear from many families about how it's  
18 not happening for them. In fact, there has been  
19 perceived damages to the child because of their  
20 experience in special education, as well as some  
21 experts who said if you don't do the intervention  
22 there is this downward spiral and unfortunately the  
23

1 other end has things like dropouts, juvenile justice  
2 involvement and substance abuse.

3 I agreed with much of your testimony.  
4 This is kind of an either/or. You said that rather  
5 than focusing on process, we need to focus on  
6 outcome. But then I was concerned when later on that  
7 you said and that you would have to prove substantive  
8 loss as opposed to adequate yearly progress?

9 DR. PARKER: I didn't want to leave out  
10 adequate yearly progress. Certainly there needs to  
11 be a balance of adequate yearly progress, improved  
12 outcomes and procedural guarantees.

13 MS. TAKEMOTO: Okay.

14 DR. PARKER: We can never ever get that  
15 right. This is a civil rights law that I believe in,  
16 so if that was what you heard, that was not clear.

17 MS. TAKEMOTO: That's what's written in  
18 the record. So Dr. Chair, if we can make sure that  
19 substantive loss is not a part of a recommendation  
20 that we would have, trading process for substantive  
21 loss.

22 And on the other, in San Diego we met with  
23

1 a group of parents, and I've heard that this is not  
2 taking off kid gloves to ask this question --

3 DR. PARKER: No. Go right ahead.

4 MS. TAKEMOTO: That from parents we heard  
5 that there have been years and years and years of you  
6 rassing with the county or city, I'm not sure which.

7 DR. PARKER: City.

8 MS. TAKEMOTO: To make changes that you  
9 see, that the monitorings have seen. What could OSEP  
10 do to help you do your job better so that children in  
11 San Diego would not be sitting in group homes without  
12 education, sitting at home without education,  
13 dropping out, and parents fearing retaliation and  
14 putting their kids in private school, the regular  
15 kids in private school, because they're afraid of  
16 retaliation?

17 DR. PARKER: Well, I actually have talked  
18 with the secretary's regional representative about  
19 beginning to meet with us and the Office of Civil  
20 Rights with San Diego City and possibly joining with  
21 us in a lawsuit.

22 MS. TAKEMOTO: Could OSEP help? Because

23

1 I've heard lawsuit and I've heard two sets of  
2 attorneys from different --

3 DR. PARKER: They're there already. I'm  
4 being deposed next week.

5 MS. TAKEMOTO: There are lots of ways of  
6 putting off progress with lawsuits. Is there  
7 anything that OSEP could do in terms of sanctions, in  
8 terms of taking over from you the responsibility for  
9 looking at these very, very few performing schools  
10 but troubling school systems? Is there anything that  
11 OSEP could do so that this is something that is  
12 quicker and kids aren't in the meantime floundering?

13 DR. PARKER: I don't know that an OSEP  
14 takeover would be the answer. I don't think they  
15 would want to do that first of all.

16 MS. TAKEMOTO: Because you know how hard  
17 it is, and you wouldn't wish it on anybody else.

18 DR. PARKER: I do know how hard it is.  
19 And I know how hard it is when we have in our sights  
20 right now the possibility that we will be taking over  
21 a district because of bankruptcy in special education  
22 programs. It's a very small district in our state,

23

1 but we're going to court about that to take them over  
2 in June.

3 And to think about taking over a district  
4 as large as San Diego without being in partnership  
5 with the state and the local folks would be I think  
6 next to impossible. It's like putting in a monitor  
7 to take over a district that's gone bankrupt. And  
8 we've had experience with that fiscally in  
9 California. It's not necessarily a clean solution.

10 I think the solution is to look at how we  
11 build partnerships with the community activists, with  
12 various agencies that want to be involved with us.  
13 We have a partnership with OCR right now in that  
14 district. We need to get in and do what we're doing.

15 The question is that I think one should  
16 probably look at in this situation, withholding some  
17 of the fiscal resources to the administration, not to  
18 children. One of the problems with withholding  
19 dollars for programs is it then has a pervasive  
20 effect on all children who have a smaller fiscal base  
21 to handle the educational costs. And so it hurts  
22 more children.



1                   But to look at who are the responsible  
2 parties, the superintendent and a board of trustees  
3 is something that I think we need to seriously look  
4 at it. I don't know, to be perfectly blunt, and I  
5 may get my head handed to me for this, but in a state  
6 the size of California with its interesting politics  
7 and the election year with it being a gubernatorial  
8 election, it would be a popular time to withhold  
9 superintendent salaries. Yes, that would be me with  
10 the arrows in me, yes.

11                   DR. COULTER: Thank you, Commissioner.  
12 Commissioner Berdine?

13                   MR. BERDINE: Thank you, Mr. Chair. I  
14 really enjoy your testimony. I appreciate it when I  
15 hear state directors talk with such clarity and with  
16 such accuracy. So I really do appreciate your taking  
17 the time to come here and visit with us.

18                   Most of my questions have been answered  
19 through my fellow Commissioners. And one of the  
20 advantages of being at the end of the table like this  
21 is that they can do the work and I can really focus  
22 on why I'm here.

23

1           I'm on the Commission primarily because of  
2   my interest and experience in personnel preparation.  
3   And your states are just so interesting to me. The  
4   diversity that you offer is amazing. In California,  
5   your African American population alone would be the  
6   fourth largest city in the Commonwealth of Kentucky.  
7   And your students served in New Jersey would be the  
8   population of the largest city of Kentucky,  
9   Louisville. So we're very different.

10           So I have two OSEP-related questions, one  
11   to do with use of dollars, OSEP dollars, and the  
12   other to deal with something that nobody's mentioned  
13   today, which is personnel and what OSEP can do about  
14   personnel. Neither of you noted any shortages, so  
15   I'm assuming that California and New Jersey have no  
16   shortages in personnel.

17           DR. PARKER: No. It's because Dr. Coulter  
18   was going -- and so I had to skip that part of my  
19   testimony.

20           MR. BERDINE: Just ignore him like we do.

21           (Laughter.)

22           MR. BERDINE: With dollars. Could you

23

1 give us some advice or OSEP some advice? States with  
2 a population and the diversity and the numbers that  
3 you have, is there a formula or another way that the  
4 available budget can be expended and still assure  
5 states like Kentucky with a population only 7.4  
6 million equity with states such as New Jersey and  
7 California? That's a question for both of you.

8 I'm going to ask you both questions and  
9 then I'll just be quiet and listen. The second  
10 question is, with regard to personnel preparation,  
11 are there recommendations that you could make for  
12 OSEP with regard to personnel preparation from the  
13 leadership or doctoral level all the way to the  
14 classroom practitioner? I'm fairly familiar with  
15 California's higher education system, and I know that  
16 within the last five years you've only had either two  
17 to five doctoral graduates in special ed.

18 DR. PARKER: We had two last year.

19 MR. BERDINE: And I don't know the numbers  
20 of teachers. So I'm sure that Mrs. Lee here, sitting  
21 here who's in charge of OSEP would be very curious  
22 about what your recommendations would be to increase

23

1 OSEP's ability to facilitate personnel preparation.

2 So two questions. One with dollars and  
3 one with teachers.

4 DR. PARKER: Well, I'll start.

5 DR. COULTER: And quickly. Thank you.

6 DR. PARKER: Quickly. Thank you, Dr.  
7 Coulter. Dr. C is after me again. There's a lot to  
8 be said about putting together the pieces of money to  
9 flow to a state that then will go to personnel prep  
10 and CSPD and retention training pre-service/in-  
11 service, into one larger bucket instead of the  
12 splintered pieces so that states can look at what  
13 their specific needs are in collaboration with their  
14 IAGs.

15 The other thing that OSEP could do, very  
16 quickly, is to identify creative solutions to teacher  
17 recruitment and training programs, the seven pack.  
18 It sounds like beer run amok, but those are the seven  
19 large states. And we meet a couple of times a year,  
20 and we include once a year the largest urban district  
21 from each of our states, and that is our topic that  
22 we cover every time is what are creative solutions to  
23

1 bringing more folks into the profession, both  
2 administrative, teaching and support staff.

3           And so we do it from that standpoint of  
4 looking at creative relationships with IAGs, with  
5 places and ways to train folks close to where they  
6 are, and how to bring people in in alternative ways.  
7 And there's some great solutions. But if OSEP could  
8 help identify those and help fund and replicate  
9 those, that would go a long way. And we have  
10 currently 23,000 teacher openings for special  
11 education in California that are noncredentialed --  
12 they're credentialed but they're on emergency  
13 waivers, and we don't know how many 20-day subs are  
14 in our special ed classrooms. We've got a problem.

15           MR. BERDINE: Ms. Gantwerk?

16           MS. GANTWERK: Well, I would just agree  
17 with everything Alice said in terms of the money,  
18 coordinating the personnel prep grants so that we in  
19 the department know what's going out and know that it  
20 can be geared to the needs that we have.

21           We have significant shortages in New  
22 Jersey similarly in teachers, special education

23

1 teachers. And actually the biggest problem we have  
2 is in speech language specialists, which seems to be  
3 the thing that districts cannot find. So those are  
4 two areas that we need help in.

5 And I would agree with what has been said  
6 in terms of the coordination of the funds and helping  
7 us in identifying the strategies. Sometimes it is  
8 not only, and I think Al said this, the issue of  
9 finding teachers, it is the retention, that teachers  
10 seem to be going out and leaving the field. There's  
11 been some research on why, and maybe we need to look  
12 at the research on why people are leaving to see how  
13 we address it up front.

14 MR. BERDINE: Thank you.

15 DR. COULTER: Thank you. I have one quick  
16 question, because like Commissioner Berdine, I think  
17 a lot of my fellow Commissioners have answered the  
18 questions. And I want to compliment you on doing a  
19 very good job of providing us with constructive  
20 information. It's often difficult to put things in a  
21 way that does not bite the hand that feeds you, and I  
22 am aware of who's in the audience and the fact that

23

1 this is public record.

2           Let me ask you with regard to both of you  
3 I think have spoken to the issue of continuous  
4 improvement and the focus that you've attempted to  
5 apply in continuous improvement, and certainly Dr.  
6 Parker was very data oriented and quite impressive  
7 about the improvements, albeit modest, but  
8 nonetheless you can speak quantitatively to those  
9 improvements. Do either of you feel any anxiety as a  
10 state in focusing on outcomes as you have described  
11 as opposed to paying more attention to process? Or  
12 do you see that -- how do you dance sort of that  
13 delicate balance between the two?

14           MS. GANTWERK: I think, as I said, there  
15 is some anxiety in terms of focusing on results,  
16 because we have to decide what those results are.  
17 And we have to make sure that we're comparing  
18 ourselves in similar ways and what are the results.  
19 Some of the indicators that were originally  
20 identified in the monitoring process were data  
21 results based on placement. And I'm not sure those  
22 are results. Those are facts about where kids are  
23

1 placed, but results seems to me more related to what  
2 happens after that placement and post-school  
3 outcomes.

4 So we have to decide if really we find out  
5 after children leave school what our results were,  
6 are we going to be able to collect that data? Will  
7 results still be focused on procedural kinds of data  
8 as if they are outcomes?

9 I also think the issue of the assessments  
10 are critical ones for us in figuring out how we give  
11 results. Including the alternate assessment is going  
12 to be a very tricky issue in the accountability and  
13 reporting results. If one state is reporting  
14 proficiency on an alternate assessment as proficiency  
15 on their traditional assessment and those are  
16 reported as the same, it's going to look very  
17 different from a state that does not report them as  
18 equal scores. So equating scores that are not from  
19 equal tests, it's going to be difficult. And with  
20 ESEA and No Child Left Behind, rather, requiring us  
21 to have 100 percent of subgroups achieving the same  
22 levels, I think there's some really interesting  
23



1 challenges for us ahead.

2 DR. COULTER: Dr. Parker?

3 DR. PARKER: I would say that some of the  
4 most important things to do for any group of parents  
5 and educators working to improve things for kids is  
6 to look at what are those few really key focused  
7 elements. And that's what I will not waiver from. I  
8 want kids to learn how to read. I want kids to learn  
9 how to behave in school so that they can be  
10 successful in life. I want kids to have opportunity  
11 to access the general curriculum, and I want them to  
12 be taught by qualified staff.

13 We have goals for our kids that are  
14 aligned with our standards. We have eight key  
15 performance indicators that our steering committee  
16 and our stakeholder groups have blessed and agreed  
17 are critical, and we're focusing on that.

18 Now some of the downside of not  
19 necessarily focusing as much on all 814 of those  
20 elements that are on our memorial list in California  
21 for monitoring, thanks to our special condition, is  
22 that if you don't know which are more important than

23

1 others, you can end up in some situations that are  
2 litigated. And so you've got to balance that as  
3 well. So tie back those procedure elements to  
4 outcome elements as well, but you have to have key  
5 focused ones.

6 DR. COULTER: Should OSEP make decisions  
7 about what's important or should states make  
8 decisions about what's important?

9 MS. GANTWERK: I think it's a partnership.  
10 I think we at the state level gather together our  
11 stakeholders and identified what worked for us, the  
12 key elements, the key results that we wanted to look  
13 at. And they were very similar to what Alice said.

14 We said those are the ones we're going to  
15 address. But I think that OSEP has to do the same,  
16 because their monitoring is based on identifying  
17 those issues, and we should be looking in a  
18 comparable way.

19 So I think we both have to do it and we  
20 both have to gather the appropriate constituencies  
21 together to come upon agreed results that we're going  
22 to look at.

23

1 DR. COULTER: Dr. Parker?

2 DR. PARKER: I think I'd lean more to the  
3 local issue. The state determining what their goals  
4 are for the children in their state, and, though, to  
5 know what our national agenda clearly is and to align  
6 the state specific agenda to the national agenda for  
7 outcomes.

8 DR. COULTER: I was struck -- you can't  
9 make good decisions if you don't have good data. I  
10 was struck by your comment that, if I heard this  
11 correctly, that OSEP permits different definitions as  
12 data are reported?

13 MS. GANTWERK: Absolutely.

14 DR. COULTER: Do you have any feelings  
15 about -- should that be permitted?

16 DR. PARKER: Well, it shouldn't be  
17 permitted if we're going to be ranked. However, if  
18 states are compare -- and I don't know a solution for  
19 OSEP to do that, because we're all a bunch of  
20 different folk out there, as you well know. I have a  
21 friend who's a state director in a fairly small state  
22 whose definition of dropout is radically different

23

1 than California's definition of dropout, and so they  
2 report what their state's definition is and we report  
3 ours.

4 I don't want to be compared to them. I  
5 want to be compared to California over time. Are we  
6 making progress in that area.

7 MS. GANTWERK: I think the issue is, what  
8 are the data used for? If they're going to use it to  
9 compare states to states and then identify problem  
10 states, then the data have to be comparable.

11 DR. COULTER: Okay. Thank you. Executive  
12 Director Jones?

13 MR. JONES: Just one short question. The  
14 issue of resources. You brought up the need for more  
15 state resources. To what extent are your staff paid  
16 for by federal funds and what extent by state funds?

17 DR. PARKER: We could have said in unison  
18 100 percent.

19 MS. GANTWERK: Except for me, I'm on state  
20 funds.

21 DR. PARKER: I'm a federal employee.

22 MR. JONES: I mean, in my mind, which begs  
23

1 the question, in a desire to have more resources,  
2 don't you think your states have at least some  
3 responsibility for providing the resources to operate  
4 state agencies?

5 DR. PARKER: Yes I do. But that's not  
6 going to happen in my lifetime in this administration  
7 in California, nor did it happen in several directors  
8 before me.

9 We retain less than 3 percent of the  
10 federal grant right now. The rest flows through to  
11 our local agencies, and it needs to go to kids. But  
12 I agree with what I believe you were saying is I  
13 believe the state also has a responsibility to  
14 provide us with the resources to do our job.

15 MR. JONES: Should that look like a match,  
16 perchance, or do you have any idea?

17 DR. PARKER: I was hoping that you all  
18 would recommend to Congress that there be a formula  
19 that requires a certain federal dollar percentage  
20 stay at the state level for administration.

21 MR. JONES: That's actually a different  
22 question than I asked you. Should the state be

23

1 required to put up money to --

2 DR. PARKER: The match. It would get to  
3 the same end point, yes. I could live with that  
4 easily.

5 MS. GANTWERK: I don't know. I'm not sure  
6 if it should. I think many of the state activities  
7 that we're engaged in are a result of the federal  
8 requirements, and as such, it would be helpful to  
9 provide the funds. Additionally, the state is  
10 providing a tremendous amount of funds to the local  
11 districts, and as they see it, a lot of that is the  
12 result of the federal requirements as well. And  
13 since the state is providing the greatest share of  
14 the funds totally, I'm not sure it's such an issue to  
15 have it. I don't know. I wouldn't mind it.

16 DR. JONES: But it's somewhere, the things  
17 your state office does, it's somewhat less than 100  
18 percent federal imposed. In other words, there's  
19 some percentage you might do on your own? Ten, 20?

20 MS. GANTWERK: There's probably some  
21 percent, sure. There are some things in our  
22 regulations that are ours that are not yours. That's

23

1 true.

2 DR. COULTER: I want to thank you very  
3 much for your testimony. And I've had requests from  
4 Commissioners. Dr. Parker, could you leave with us a  
5 copy of your images that you show? And Ms. Gantwerk,  
6 we'd also like a copy of your written testimony, what  
7 you spoke from, okay?

8 MS. GANTWERK: Okay.

9 DR. COULTER: Once again, we very much  
10 appreciate the difficult spot in which you found  
11 yourself, and yet you rose nicely to the occasion.

12 I need to say to the audience that despite  
13 all my compulsiveness, we are approximately now 34  
14 minutes behind our schedule, and I have to respond to  
15 a logistics request. So we're going to take a ten-  
16 minute break, and we will come back. The nice thing  
17 about this is we have generous time this afternoon.  
18 It looks like we're going to use it. Thank you very  
19 much.

20 (Recess.)

21 DR. COULTER: Dr. Thomas Hehir is the  
22 Director of the School Leadership Program at the

23

1 Harvard Graduate School of Education. Most pertinent  
2 and important to today's discussion is that he served  
3 with distinction as the Director of the Office of  
4 Special Education Programs from 1993 to 1999, and we  
5 asked Dr. Hehir to come and speak today on the Office  
6 of Special Education Programs what works and how OSEP  
7 is becoming more effective.

8 Thank you, Dr. Hehir.

9 DR. HEHIR: Thank you. Good morning. I'm  
10 very pleased to address the Commission today, and I  
11 thank you very much for this invitation.

12 I am Tom Hehir, and as Alan said, I run  
13 the School Leadership Program at Harvard University.  
14 I also teach courses in disability at Harvard to  
15 predominantly general educators. I tell my friends  
16 that after 30 years in special ed, I finally got  
17 mainstreamed.

18 In 1993 I became the director of OSEP.  
19 When I came to OSEP I had a largely positive view of  
20 federal leadership and of OSEP itself. There were  
21 many people who had served both political and career  
22 roles within the Office of Special Education and

23



1 within OSERS, Office of Special Education  
2 Rehabilitative Services, who I felt had made a major  
3 impact on improving education for children with  
4 disabilities. People like Madeleine Will, Tom  
5 Bellamy, Judy Schrog, and many career staff like Lou  
6 Danielson and Patty Guard and Mike Ward, Bill  
7 Halloran, were all people that I knew before I came  
8 to OSEP.

9 I had felt as a local director and  
10 previously a teacher of kids with disabilities that I  
11 was a consumer of OSEP's products and good offices.  
12 As a local director prior to coming to OSEP, I was  
13 Associate Superintendent of Schools in Chicago and I  
14 could see as a local director the important impact  
15 that OSEP made on making my job, which was a very  
16 difficult job, a little easier.

17 Specifically in the areas of research and  
18 technical assistance, I felt that I benefited  
19 tremendously by the work that OSEP was doing at the  
20 time around the education of children with severe  
21 emotional disturbance, a very neglected group of  
22 students, and OSEP had taken a strong lead in

23

1 improving services for those kids through research  
2 and technical assistance.

3 I also benefited very significantly from  
4 the state systems change grant and inclusion. When I  
5 came to Chicago in 1990, it was almost a totally  
6 segregated system for children with disabilities,  
7 very inappropriately segregated, and the statewide  
8 inclusion grant helped tremendously in moving the  
9 system forward.

10 I also benefited enormously from the  
11 wonderful work that parent training centers did in  
12 Chicago in educating parents of kids with  
13 disabilities in Chicago, and I benefited quite a bit  
14 from the transition work that OSEP was doing at that  
15 time.

16 So when I came to the federal government,  
17 I strongly believed in both the capacity of OSEP and  
18 the important it had. I also believed in the  
19 importance of a strong federal role in special  
20 education. When I entered the field, there wasn't a  
21 federal special education law. I remember the days  
22 when thousands of kids were in institutions. I also

23

1 remember the days when parents were turned away from  
2 schoolhouse doors and refused access to any education  
3 for their children with disabilities. That didn't  
4 change, from my perspective, until a strong federal  
5 role was established in special education.

6           So when I came to OSEP in 1993, I  
7 considered it a great honor to have been offered the  
8 job, and I look forward to assuming the position.  
9 Like all political appointees, I believe, I came with  
10 a lot of ambition. I had some thoughts about what  
11 needed to be reinforced, but also what needed to be  
12 changed. As a special educator, as I mentioned  
13 before, I felt pride in the progress that we had made  
14 in this field over the 20 or so years before I took  
15 the position at OSEP.

16           However, I felt that we had a long way to  
17 go, that we had yet to reach the point and we still  
18 have yet to reach the point where children and  
19 families get what they need for their children with  
20 disabilities naturally. Specifically, some of the  
21 issues that I felt very strongly about is I felt  
22 strongly that we needed to move more aggressively in

23

1 the area of inclusive education. There has never  
2 been data that supports the segregation of children  
3 with disabilities. The data is quite the opposite.

4 And I also felt philosophically and  
5 continue to feel philosophically that children with  
6 disabilities should be part of their communities and  
7 be part of their schools and have the natural access  
8 to education that all children should be assumed to  
9 have as a right.

10 I also felt as many people, I was very  
11 pleased to hear the testimony of two very excellent  
12 state directors of special education. As many people  
13 in the field felt and feel, I felt the field needed  
14 to move toward a greater outcome orientation than it  
15 currently had. One of the first experiences I had  
16 when I came to work for the federal government was  
17 being called to Secretary Riley's office in which he  
18 asked me how well the kids with disabilities did on  
19 the NAEP, the National Assessment of Educational  
20 Progress. And I said, well, Mr. Secretary, I can't  
21 tell you that. And he said, well, Tom, would you  
22 come back and give me a report? And I was sweating.

1                   This was one of my first meetings with  
2           Secretary Riley, a truly wonderful man who I have  
3           developed a strong friendship with. But I really  
4           didn't know him at that time. And I said to  
5           Secretary Riley, no, Mr. Secretary, I can't provide  
6           you with that report. Not a good thing to say to  
7           your new boss. And he said, well, why, Tom? Why  
8           can't you do it? And I said because the kids with  
9           disabilities weren't part of the NAEP. And he was  
10          incredulous. Secretary Riley had been a governor of  
11          a state. He didn't come with an educational  
12          background. But from his perspective, how could you  
13          assess what's happening with American education and  
14          keep 11 or 12 percent of the kids out of the  
15          assessment measure?

16                   So like all of us, like Alice and Barbara  
17          said before, and like I think probably many people  
18          have said to this Commission, I'm very pleased today  
19          to say that that has changed. That we have at least  
20          begun the very difficult work of including kids with  
21          disabilities in accountability systems.

22                   I also felt when I came to OSEP that we  
23

1 needed to work at more aggressive ways of bringing  
2 research to practice. I've always been and continue  
3 to be kind of a research junkie. However, what I  
4 realized was that many of the practices in the field  
5 were not consistent with research. That there was  
6 knowledge out there that could better improve what  
7 was happening to children with disabilities, and I  
8 felt that needed to happen.

9           And lastly, I felt and continue to feel  
10 that the federal enforcement role in special  
11 education had to be stronger. That we just couldn't  
12 allow the implementation of this law to be based on  
13 good will. That there are instances where, and there  
14 continue to be instances where there are large  
15 numbers of children who are not getting their very  
16 basics. I'm not talking about reams of paperwork.  
17 I'm talking about the very basics of access to  
18 education.

19           So when I came to OSEP with these  
20 wonderful ambitions, I found that my ambitions were  
21 easier to articulate than to necessarily implement.  
22 And I think all administrators feel that in these

23

1 types of situations.

2           When I looked at what my goals were and I  
3 looked at what was achievable, I basically felt that  
4 there were three obstacles to achieving some of the  
5 things I talked about today. One was statutory. The  
6 second was organizational, and the third was  
7 political. And I'd like to speak about all three of  
8 those today. Because when you look at OSEP and you  
9 look at how it functions, all three of these  
10 dimensions are important. That what OSEP does or can  
11 do is heavily influenced by all three of these, and I  
12 hope I make this clear today how these things  
13 interact.

14           In the area of research to practice, one  
15 of the things that struck me when I first came to  
16 OSEP which frankly I didn't quite appreciate when I  
17 was in the field, was the fact that the research  
18 program in OSEP came from eight separate authorities  
19 with an additional six set-asides within those  
20 authorities.

21           So what happened was, there were some  
22 disability areas that were covered, some age groups

23

1 that were covered. There were some disability areas  
2 that weren't covered. There were some age groups  
3 that weren't covered, and the net result of that was  
4 that there were small pots of money all over the  
5 place, and the ability to have a strong research  
6 program and technical assistance program I felt was  
7 inhibited by that.

8           Also, on the area of outcomes, I felt when  
9 I started looking at OSEP's role in monitoring the  
10 states and enforcing IDEA and assisting the states in  
11 doing a better job, because those things have to go  
12 together, I found that many of the things I would  
13 have liked to have done in the monitoring system  
14 couldn't be done because there was no statutory  
15 authority in the old IDEA to take a look at outcome  
16 measures. It didn't exist. And if it doesn't exist,  
17 OSEP can't do it. If it doesn't exist in law, if you  
18 do not have the authority to do something with the  
19 states, you can't do it. That's basic federalism.

20           So those are some of the statutory things.  
21 Organizationally, what I found when I came to OSEP  
22 was that there are 107 people assigned by the  
23



1 department but there were relatively few people doing  
2 the direct work of the organization. There were  
3 almost as many supervisors as there were workers,  
4 which is not desirable in any organization.

5 And that organization may have been put in  
6 place for all the best reasons. I really wasn't  
7 interested in history. What I was interested in is  
8 looking at putting together an organization that  
9 would make more sense.

10 We did do a reorganization of OSEP to  
11 focus our staff much more closely on the mission of  
12 the organization, which is monitoring and improvement  
13 at the state level through knowledge development and  
14 technical assistance that's developed by the  
15 discretionary program. Essentially, those are the  
16 two big things that OSEP does. It oversees the  
17 implementation of this law, and it develops knowledge  
18 and provides technical assistance through its  
19 discretionary programs.

20 And so we moved OSEP from five divisions  
21 to two divisions. We eliminated bureaus and we  
22 eliminated two layers of management in the process.

1 And staff at OSEP of course had to adjust to all of  
2 that, but I think actually people were happy to  
3 adjust to that, because the existing structure was  
4 not lending itself to efficient operation.

5 On the statutory level, in the 97  
6 amendments to IDEA, Congress in I believe its wisdom  
7 consolidated the discretionary programs and created  
8 five more powerful authorities on a more tightly  
9 focused federal role. And these authorities were  
10 research, technical assistance. It's one thing to do  
11 research, it's another thing to get technical  
12 assistance out to the field, and I was very pleased  
13 to hear Alice and Barbara talk about the regional  
14 resource centers, the outcome center and so forth and  
15 how important technical assistance is in the field.

16 Technology. One of the things that has  
17 happened in the time that I've been in this field  
18 that has really struck me is the tremendous advances  
19 in technology that benefits children with  
20 disabilities. This technology is expensive to  
21 develop. It's unlikely to be developed strictly on  
22 market forces, because oftentimes relatively few

23

1 people use these technologies, although sometimes  
2 they become profitable. So again, we felt that the  
3 federal role to develop these technologies and keep  
4 moving them out was important.

5           Teacher preparation. People have  
6 mentioned before and continue to struggle with the  
7 growing problem of staffing special education-related  
8 services in the field and the importance of having a  
9 federal role there.

10           And finally but by no means last, the  
11 importance of parent education. That one of the  
12 things we know from research, from the National  
13 Longitudinal Transition study, is that active parents  
14 have a positive impact on results of kids with  
15 disabilities, and that's keeping a lot of variables  
16 constant.

17           We felt that, again, and Congress agreed,  
18 and Congress consolidated these authorities to really  
19 focus on a tight federal role. And that was a very  
20 difficult thing for both Congress to do and for the  
21 Administration to approve, because all of the  
22 existing system all had special interests attached to

23

1 these little pots of money. It was a very, very  
2 difficult thing to do. And fortunately, we did it.  
3 So I think that OSEP is in a much better place to  
4 provide the appropriate support to the Part B program  
5 through the Part D program.

6 Politically. One of the nice things about  
7 being a private citizen again is that I have my First  
8 Amendment rights, and I don't have to say the  
9 position of the Clinton Administration is --. But  
10 politically, one of the things that impacts what OSEP  
11 does is the political leadership of the department at  
12 the time, as well as the Congress. That one can't  
13 ignore the political aspect of this job. And indeed,  
14 the political powers that be can greatly enhance the  
15 implementation of this law or can inhibit it.

16 From my perspective, one of the main  
17 criticisms that OSEP has and of course there were  
18 several criticisms today and I'm sure there have been  
19 others, the National Council on Disability, for  
20 instance, did a study that criticized the enforcement  
21 of IDEA. And I think it's important when you look at  
22 the enforcement of IDEA to understand how politics

23

1 plays out in this arena.

2           The two state directors that presented to  
3 you all this morning talked about having conditional  
4 awards on their grants. One of the things that we  
5 realized when we came on board, Judy Heumann, who was  
6 the assistant secretary, and myself, was that we  
7 could find very little evidence in previous  
8 administrations of any forceful enforcement of IDEA.  
9 It wasn't there in any way that you could really see.

10           We felt very strongly that this had to  
11 change. When we did our first conditional award,  
12 which was to the state of Pennsylvania, immediately  
13 we received letters from the Congress from the two  
14 senators from Pennsylvania as well as several of the  
15 congressional delegation basically telling us to back  
16 off. And the reason I'm saying this is to emphasize  
17 that these things all work together: The statute,  
18 the organization and the political climate. And I  
19 think if this panel is interested in making, which I  
20 know you are, in improving the education of children  
21 with disabilities, you have to consider all three of  
22 those.

23

1           One of the other things in relationship to  
2     the area of enforcement that I think is important  
3     that Congress also did in the '97 amendment is it  
4     provided an array of tools that the administration  
5     and the state can use to enforce IDEA that didn't  
6     exist under the previous law. One of the reasons I  
7     believe the previous administrations and why at times  
8     we, meaning the Clinton Administration, were  
9     reluctant to engage in enforcement activities was  
10    that our enforcement tool was largely withholding all  
11    the funds to the state.

12           We attempted that in one state, in the  
13    state of Virginia, over the issue of exclusion of  
14    disabled children, and we got letters from parents in  
15    Virginia saying what are you doing? This is taking  
16    services away from my kid? Which is much of what  
17    Alice said before. When you take all the money away,  
18    the hurt goes everywhere. Under the '97 amendments  
19    to IDEA the Congress provided the administration with  
20    additional tools of partial withholding, for  
21    instance, which I again would assume will be valuable  
22    for OSEP in the future.

23

1                   I am now back as a consumer of OSEP's  
2 products. I am not a customer. I think it's  
3 important to distinguish between consumers and  
4 customers. Customers from my perspective are  
5 children with disabilities and their families. I am  
6 a consumer. I'm someone who provides services to  
7 kids with disabilities, indirectly, by teaching  
8 general educators how better to serve these kids, and  
9 I do not have a child with a disability nor do I have  
10 one myself.

11                   In the area that I work in now, which is,  
12 as I mentioned, higher education, I teach two courses  
13 at Harvard. One is called Students with Disabilities  
14 in School and the other is called Implementing  
15 Inclusive Education. And as I mentioned before,  
16 probably 80 percent of the students in my classes are  
17 going to be superintendents, principals, general  
18 educators. And I am very fortunate in this role to  
19 have available to me many excellent products that  
20 have been developed, funded through Part D of IDEA.

21                   My students, for instance, read the work  
22 of Doug Fuchs on treatment-resistant kids. It's one  
23

1 of the major issues that people are facing now,  
2 particularly in relationship to what I consider to be  
3 a very positive direction of this Administration on  
4 focusing on early reading. But what we know from the  
5 research is that there is a percentage of kids who  
6 are treatment resistant. Well, those kids I believe  
7 are kids who have learning disabilities. And the  
8 importance of focusing on the needs of these kids as  
9 well as doing what the Administration is doing is  
10 critically important.

11 The work that Doug Fuchs and other people  
12 have done in this area is extremely informative to my  
13 staff. Also in this area, my students are very much  
14 impressed by the work that was done by the National  
15 Research Council on preventing reading difficulties  
16 in young children, which again was largely funded,  
17 not exclusively, but was largely funded on OSEP  
18 resources.

19 Another book that I use in my class is  
20 called Restructuring High Schools for All Students.  
21 This is written by Cheryl Jorgensen and a number of  
22 her colleagues, Cheryl Tegis at the University of New  
23



1 Hampshire. And what Cheryl pulled together were a  
2 number of OSEP projects that have looked at the very  
3 difficult issue of the inclusion of kids with  
4 disabilities in high schools and has done an  
5 excellent job of looking at the fundamental issue  
6 around inclusion, which is diversification of  
7 instruction.

8 My general education teachers in the class  
9 feel that this was one of the best things they've  
10 read on that issue, not just on the issue of  
11 integrating kids.

12 In addition to that, my students benefit  
13 very much from the work of the Outcome Center given  
14 the importance of standards-based reform. There are  
15 a number of things that they read that Martha Thurlow  
16 and her associates have put together from the Outcome  
17 Center.

18 So again, I feel very strongly about the  
19 role that OSEP has served and continues to serve in  
20 producing meaningful technical assistance and  
21 meaningful research for my students, and I appreciate  
22 it.

23

1           I would hope this Commission would be  
2 looking, and I know you are, at the future of what  
3 the role of the federal government should be in the  
4 implementation of IDEA. I believe that one of the  
5 things that you'll bump up against is the relatively  
6 small commitment to Part D in relationship to  
7 financial resources in relationship to the overall  
8 enterprise.

9           I just got another wonderful product that  
10 came across my desk from one of OSEP-funded projects  
11 by Chambers and Parrish on how money is spent in  
12 special education, which is extremely valuable for us  
13 to understand these sorts of things.

14           And one of the things that this study has  
15 shown is or they estimate that the amount of money  
16 that's being spent on special education, amount of  
17 public money -- federal, state and local -- is  
18 approximately \$50 billion. Now I think that's a good  
19 thing. I think it's good that we have resources  
20 directed towards the education of children with  
21 disabilities. But I also feel very strongly that  
22 there are lots of ways in which those resources could  
23

1 be used much more efficiently if guided more  
2 appropriately by research.

3           The current Part D allocation is a very,  
4 very small percentage of the overall enterprise of  
5 special education. If you look at Part D as the  
6 research and development arm of a \$50 billion  
7 corporation, you would have to conclude that it is  
8 puny.

9           One of the things that struck me about  
10 this when I was at OSEP, probably mid-term at OSEP,  
11 we had a research conference at Gallaudet University  
12 in which we brought together the top researchers in  
13 the area of deafness. And it was a wonderful  
14 conference. As you probably know, the educational  
15 attainment level of deaf children is way too low,  
16 approximately on average for a high school graduate  
17 about 4th to 5th grade level. That the issues around  
18 language and education that are so complex with deaf  
19 children clearly require more research.

20           When that conference was concluded and the  
21 top researchers in deafness got together and came up  
22 with the final report, it would have consumed every  
23

1 dime of Part D. Deaf children represent a very small  
2 percentage of children served under IDEA. There are  
3 13 categories served under IDEA, and they have very  
4 diverse needs. The needs of emotionally disturbed  
5 children are very different than the needs for deaf  
6 children or the needs of blind children. It's a  
7 highly diverse group of kids, which means that the  
8 support programs in my view should be addressing  
9 those small populations of kids because if the  
10 federal government doesn't do it, nobody else is  
11 doing it, as well as the larger groups of kids like  
12 kids with learning disabilities and kids with mental  
13 retardation.

14           So in the future what I would suggest the  
15 Commission support would be greater funding for  
16 discretionary programs under IDEA.

17           One of the other things that I would  
18 suggest, particularly given the presentation that  
19 Alice and Barbara just did -- and we didn't talk  
20 before, right, Alice? Is the importance of the state  
21 improvement grant effort. That we need to be looking  
22 at ways in which to leverage change at the state

23

1 level.

2           And the Congress, again in its wisdom, put  
3 a new program under IDEA which has been very popular  
4 in the field, of looking at ways to systemically  
5 improve special education to improve outcomes for all  
6 kids. So I would particularly support that.

7           I also feel that there is a need for OSEP  
8 and the Congress and the Administration to address  
9 the issue of teacher shortage in special education  
10 far more aggressively. One of the things that we are  
11 well aware of is not only do we have a shortage of  
12 folks who want to do the wonderful work of being a  
13 special ed teacher. I always loved it. We have not  
14 only a shortage of people going into the field, we  
15 have an exodus out of the field. And we should be  
16 looking very much at why those things are happening.

17           One of the issues that a number of people  
18 have brought up and I would agree with is that many  
19 teachers just don't want to do paperwork. If  
20 teachers wanted to do paperwork, they probably  
21 wouldn't have entered into teaching. They probably  
22 would have become accountants or lawyers. What

23

1 teachers like to do is teach. And the amount of time  
2 that people are spending in paperwork is  
3 considerable.

4 But I think it's important to recognize  
5 that paperwork just doesn't come from the federal  
6 government. When I was working at OSEP, indirectly I  
7 worked for three governors. Deputy Secretary Kunin  
8 was the former governor of Vermont. Secretary Riley  
9 was the governor of South Carolina, and then the  
10 President was the governor of Arkansas. And the  
11 advantage and disadvantage was that they were all  
12 governors of small states. They knew special ed.  
13 They knew quite a bit. But one of the things the  
14 knew about special ed was this paperwork issue, which  
15 many of you have talked about.

16 Specifically, when I was at OSEP we looked  
17 at two states in relationship to this issue of  
18 paperwork. One, Vermont, because that's where  
19 Governor Kunin had most recently been. And the other  
20 was Pennsylvania, because Mr. Goodling who was  
21 chairman of the Education Committee at that time,  
22 asked us to do that.

1           And one of the things we realized when we  
2 looked at paperwork was that a significant amount in  
3 both of these states, close to half of the paperwork  
4 that was required by providers in the field were  
5 required by states and local school districts that  
6 were beyond what was required under IDEA.

7           So I think this issue needs to be  
8 addressed, but it needs to be addressed in the spirit  
9 of partnership as Alice and Barbara said before.

10           I also feel that something that could  
11 greatly help the issue of teacher shortage would be  
12 loan forgiveness for people going into special  
13 education. This would probably require statutory  
14 effort on the part of the Administration, but it's  
15 been done before. It's been effective in having  
16 people enter the field, and I think it would be  
17 effective as well.

18           I think it's also important in the area of  
19 teacher preparation to be looking at a very focused  
20 role for teacher preparation for the federal  
21 government. In the last reauthorization, I think  
22 there was very strong language on the nature of this  
23

1 role. The federal government through its current  
2 small, small teacher preparation program, which is  
3 only about \$90 million, cannot subsidize the  
4 preparation of all special education teachers in the  
5 United States. We estimated when I was there that  
6 the teacher preparation program provided about \$19  
7 per special ed teacher in the United States. You  
8 don't prepare anybody, you don't even do in-service  
9 on \$19 per person.

10 So this role needs to be focused. It  
11 needs to be focused in my view on leveraging better  
12 teacher preparation of special education and related  
13 services personnel, not just subsidizing the existing  
14 system. And I feel very strongly about that.

15 Also, the last reauthorization recognized  
16 that in the area of low incidence disabilities, in  
17 the area of doctoral preparation, that there is  
18 essentially a market failure. For instance, in most  
19 states, there is not a great enough demand for  
20 teachers of the blind for states to have programs for  
21 teachers of the blind. And I think that that's where  
22 the federal government has a much greater role than  
23



1 maybe it's currently assuming.

2 I also would support and continue to  
3 support what has been happening in the last few years  
4 and I believe needs to continue to happen is  
5 expanding parent training under IDEA. The parent  
6 training centers are a tremendous resource. Informed  
7 parents move this system forward. There is no  
8 question about it. And parents who understand both  
9 the nature of this very complex law as well as the  
10 nature of their children's disabilities are far  
11 better able to advocate for what their children need.

12  
13 I would also recommend very strongly that  
14 you support the role of enforcement. That along with  
15 developing partnerships with states that there must  
16 be a balance between these two things. And one of  
17 the things that continually concerns I think many  
18 people in this field is the uneven implementation of  
19 the law from local educational agency to local  
20 education agency. Parents in one town should be able  
21 to get basically what their children need. They  
22 should not have to move.

23

1                   Last, I would like to suggest that from my  
2                   perspective, this Commission and I hope the new  
3                   Administration would be supportive of the wonderful  
4                   people who work at OSEP, particularly the career  
5                   leadership.    JoLeta Reynolds, Patty Guard, Lou  
6                   Danielson and Ruth Ryder are some of the finest  
7                   public servants you will ever meet.  They work very  
8                   hard.  They're very competent, and they're ethical.  
9                   And I would strongly suggest that whatever this  
10                  Commission does, it recognizes the importance of the  
11                  career staff at OSEP.

12                  I want to end with an anecdote, because I  
13                  think most people who have heard me are probably  
14                  shocked that I haven't presented an anecdote yet.  I  
15                  used to do that in OSEP all the time.  I had a young  
16                  girl present to my class last night who is a high  
17                  school student in Massachusetts who has severe  
18                  cerebral palsy.  She has benefitted by technology  
19                  that has been developed by OSEP.

20                  She has benefitted by the existence of a  
21                  federal law.  A girl with her level of disability,  
22                  when I started up in this field, may have very easily

23

1     been institutionalized. She has to communicate  
2     through a computer. She can't speak. She has passed  
3     the MCAP exam in Massachusetts, which is a very high  
4     level exam, and she has one of the highest math  
5     scores in her high school. And she spoke eloquently  
6     to my class through her computer on the importance of  
7     inclusion, the importance of high standards for kids  
8     with disabilities.

9                     But like so many stories of successful  
10    kids with disabilities, the glass is really half  
11    full. Because in order for this child to get this  
12    education at this wonderful high school outside of  
13    Boston, her parents had to move. Her parents got  
14    sick of trying to convince their local district that  
15    their daughter was intelligent, that she should have  
16    access to the curriculum. That the fact that she  
17    could not speak did not mean that she was  
18    intellectually disabled.

19                    So that points out the importance of the  
20    enforcement role in making sure that every school  
21    district in the country does what's right. One of  
22    the things that the school district that she lives in

1 now is faced with is the fact that parents of kids  
2 with disabilities are moving in droves to that school  
3 district, because the surrounding districts are not  
4 doing what they should be doing, which is a failure  
5 of an enforcement system from my perspective, and  
6 it's unfair for that community, simply unfair for  
7 that community, to bear the financial cost of this.  
8 This is a big financial cost.

9           Also in relationship to this particular  
10 child, although she has benefitted by some of the  
11 technologies provided by OSEP, there are many more  
12 technologies that could make things much more  
13 efficient for her in the future that we need to  
14 envision. And also her mother benefitted  
15 tremendously by her training she received at the  
16 Parent Training Center in Massachusetts, but I see  
17 far too many parents who are unable to access that,  
18 not because the parent training centers aren't  
19 willing, because they're underresourced.

20           So I'd be glad to answer your questions.  
21 I thank you for inviting me here today, and I thank  
22 you for your support for improving education for  
23

1 children with disabilities.

2 DR. COULTER: Thank you, Dr. Hehir. I  
3 like a lot of people, very much appreciate you coming  
4 today and speaking. I also was I think witness to  
5 one of the first times you spoke after you left OSEP,  
6 and I will never forget your comment about the glee  
7 with which you were able to talk, as you said, with  
8 your First Amendment rights restored. So we're going  
9 to take advantage of that this morning.

10 (Laughter.)

11 DR. COULTER: And I'm going to turn you  
12 over to Commissioner Berdine.

13 MR. BERDINE: Thank you, Alan. Appreciate  
14 it. Tom, it's nice to see you again. It's been a  
15 while. And as you can imagine, my interest is in  
16 personnel preparation. We've had a number of  
17 conversations in the past with regard to that issue.

18 One of the documents you did not mention  
19 which you probably signed off on was an OSEP document  
20 that's recently come out about the shortages of  
21 higher education personnel. And it's fairly clear,  
22 it's something I wish you would share with your class

23

1 at Harvard, because I think it has significant  
2 implications, implications both for higher education  
3 charges as well as direct services providers.

4 I have three questions which should be  
5 very specific, relatively short answers I believe.  
6 With regard to funding in the area of personnel  
7 preparation and your concern about Part D which you  
8 know that I share and a number of my colleagues  
9 share, how do you feel about indexing Part D to all  
10 the federal funding for Parts B and C? Could you  
11 make a recommendation with regard to that?

12 DR. HEHIR: I would support that. I did a  
13 piece for the Center for Education Policy that you  
14 might want to look at where I argued for that  
15 position.

16 Again, if you look at special education as  
17 \$50 billion enterprise and you also look at the fact  
18 that most, not all, but most of the research and  
19 technical assistance and parent training and so forth  
20 comes from the federal government to enhance the  
21 implementation of this major enterprise, one of the  
22 things that I think is very important is to have

23

1 predictable resources that having an annual  
2 appropriation. One year we got zero out of the  
3 House. Fortunately, the Senate came to our rescue.  
4 But one year we got zero in research. And one of the  
5 things I used to say to people who would ask me about  
6 this when I had many sleepless nights was, you know,  
7 since the time that we got that zero before the  
8 Senate restored the money, thank the Lord, I did not  
9 get any major corporations writing to me saying I'm  
10 going to make up the difference.

11           This is an appropriate federal function.  
12 Having, number one, a larger base, but that is very  
13 clearly focused on a federal role, not just throwing  
14 money at things, but is focused on a federal role  
15 that's appropriate, as I believe the current statute  
16 is.

17           Having a larger base is critical and  
18 having a predictable funding sources predictable for  
19 people who are conducting large-scale research,  
20 people who are operating technical assistance  
21 agencies, people who are running parent training  
22 centers.

23

1           MR. BERDINE: With regard to the payback  
2 provision, you mentioned that you would support that  
3 for teachers. Is that support found for a higher  
4 education persons going into special education,  
5 doctoral students?

6           DR. HEHIR: I would support that, but I  
7 would like to see a stronger federal role in that.  
8 Because one of the problems with doctoral training is  
9 that even if you have loan forgiveness in the future,  
10 four or five years of paying tuition is very, very  
11 difficult for people to contemplate, particularly in  
12 a strong job market.

13           We're fortunate at Harvard. Right now at  
14 Harvard I have 15 doctoral students at Harvard who  
15 are primarily interested in disability work, which  
16 I'm very, very pleased that they're there. And we're  
17 fortunate in that we do have some resources that are  
18 from the university, but we're the wealthiest  
19 university in the world where we can subsidize a lot  
20 of these but not all of these doctoral students.

21           So I would like to see -- I think they  
22 should be applicable to the loan forgiveness, but I

23



1 also would like to see more grants directly to  
2 universities to support the preparation of doctoral  
3 candidates.

4 I also however feel that we need to look  
5 at the doctoral programs that we have, as we need to  
6 look at the teacher training programs that we have.  
7 One of the reasons that many people come to Harvard,  
8 which does not have a special education program, but  
9 we do integrate the issue of disability into the  
10 curriculum, is that they feel in order to exercise  
11 leadership in this field, they have to have a broader  
12 array of skills. If they're going into  
13 administration, for instance, they really have to  
14 know issues of policy broadly. That's particularly  
15 true with the EFCA. You can't look at special  
16 education as a free standing program. You have to  
17 look at it in the context of the overall system.

18 So I think in addition to funding more  
19 doctoral folks, I know this sounds awful in some  
20 people's mind, not in my mind, there should be  
21 strings attached, that these programs should be high  
22 quality programs that train folks to look at a much

23

1 broader field, but keeping the integrity of making  
2 sure that they know the stuff they need to know about  
3 disability.

4 MR. BERDINE: Thanks, Tom.

5 DR. COULTER: Commissioner Takemoto?

6 MS. TAKEMOTO: As an executive director of  
7 a Parent Training Information Center, I just want to  
8 publicly disclose that I did not talk to Dr. Hehir  
9 before this. But I absolutely do believe in the  
10 power of Parent Training Information Centers and the  
11 power of families and systems change.

12 A couple of administrations ago in the  
13 former Bush Administration, Secretary Owens really  
14 pushed the expansion of services, particularly for  
15 PTIs and not necessarily in universities, for serving  
16 more traditionally underserved families. That's  
17 something that you and Judy carried forward in yours.  
18 And I saw sort of an activist role for you and Judy  
19 in terms of putting strings on funding that had to do  
20 with you had people with disabilities, minorities,  
21 family members on review teams, much to the dismay of  
22 many university recipients of your services.

23

1                   We are now at a time where we have again  
2                   an activist administration who really is pushing high  
3                   accountability, no children left behind, no kids  
4                   excluded because of behavioral or disability,  
5                   whatever. So we have an administration with the will  
6                   to do what it takes. What is your advice to the  
7                   OCERS/OSEP leadership in taking the activist role?  
8                   They have limited control over funding, but they do  
9                   have control over what strings they attach to states,  
10                  localities, funding. What would be the role for OSEP  
11                  in carrying out this Administration's activist agenda  
12                  in good results for children with disabilities and No  
13                  Child Left Behind?

14                  DR. HEHIR: Are you talking about D&B?  
15                  Broadly speaking.

16                  MS. TAKEMOTO: Tell me -- specifically  
17                  speaking, what are some steps? And I do believe it  
18                  does involve everything. But tell me what advice you  
19                  would have for the leadership at OSEP in terms of  
20                  using their roles in an activist agenda to carry out  
21                  this Administration's emphasis on results for  
22                  children?

23

1 DR. HEHIR: I think there are a number  
2 of things that can be done. One, I would hope that  
3 there would continue to be an inclusion of customers  
4 and consumers in the monitoring system and in the  
5 award of discretionary money.

6 I think that one of the things that we  
7 know about this particular law is that the law didn't  
8 happen because a group of school administrators got  
9 together and said let's do a strong federal role in  
10 special education. The law happened because a group  
11 of parents got together, not just a group, many  
12 parents experiencing the same thing from state to  
13 state developed what was a visionary law then. It's  
14 a visionary law today. And so one of the things that  
15 I teach my students is, if you're going to implement  
16 inclusive education, you don't do it without the  
17 parents. You have to do it with the parents.

18 So I think the same thing is true with the  
19 monitoring system. I think the monitoring system  
20 should, number one, include both parents and people  
21 who have disabilities, adults who have disabilities,  
22 who may have gone through the special education

23

1 system, may have had a positive experience, may have  
2 had a negative experience, but they bring reality to  
3 the situation.

4 I also think in the monitoring system they  
5 should include local teachers. I think increasingly  
6 we're leaving the teachers out of the equation here,  
7 and I think that they need to be part of that.

8 I think in Part D it's important to  
9 continue the effort of consumer and customer  
10 involvement in the awarding of grants, but that is a  
11 very difficult thing to achieve because you need to  
12 make sure that if you're looking at a research grant,  
13 for instance, that is technically sound, that the  
14 best research design, for instance, gets the award.  
15 And that requires sometimes, that may require  
16 consumers who might also be wearing another hat, that  
17 have expertise in particular areas. And that's  
18 something that I think is particularly difficult to  
19 balance at times, but it needs to be balanced.

20 Other types of awards may not need such  
21 level of expertise, and being able to make those  
22 distinctions between types of awards I think is a

23

1 critical aspect of what the staff at OSEP needs to be  
2 able to do.

3 MS. TAKEMOTO: Thank you. And I also want  
4 to call your attention to the fact that in addition  
5 to the strides in technology and educational  
6 practices, OSEP has taken a leadership position in  
7 bringing more parents, minorities, people with  
8 disabilities into the field where we are much better  
9 equipped and have much more qualified folks involved.  
10 So thank you and your predecessors for that too.

11 DR. COULTER: Commissioner Sontag?

12 DR. SONTAG: Good morning, Tom.

13 DR. HEHIR: Good morning, Ed.

14 DR. SONTAG: It's good to have you here.  
15 Tom, let me just ask a pretty broad general question.  
16 There seems to be, which is a phrase for I don't have  
17 a lot of good data, an increase, a modest increase in  
18 litigation but an enormous increase in legal fees.

19 DR. COULTER: Ed, use the microphone.

20 DR. SONTAG: Could you hear the question,  
21 Tom?

22 DR. HEHIR: Yes, I could hear the  
23

1 question.

2 DR. SONTAG: Okay. That was the first  
3 part of it. Are there ways that we could reduce the  
4 legal costs and make sure that more money is actually  
5 floated to the classroom? I see more and more firms  
6 specializing in special education law and rarely do  
7 they represent parents.

8 DR. HEHIR: I think there are some things  
9 that can be done. If you look at most states, there  
10 are not a lot of due process hearings. Big exception  
11 is the District of Columbia that I don't want to get  
12 into this morning because I'm doing some work with  
13 them in trying to fix that.

14 But in most states it's a relatively small  
15 percentage. There is, I believe one of the things  
16 that could help the most is if there was more  
17 consistent implementation from LEA to LEA. The LEA  
18 that I talk about where this young woman went has not  
19 had a due process hearing for I think she said three  
20 years, and she really doesn't spend much on attorneys  
21 at all, the special ed director in that particular  
22 district, and this is in a district that has a

23

1 significant percentage of its population as upper  
2 middle class folks who tend to be the people who have  
3 access to attorneys.

4           Neighboring districts might not have the  
5 same story, but they may not have the same programs.  
6 And the parents have this vehicle in the law which I  
7 support very strongly, which is to challenge the  
8 placement that a school district is offering. And so  
9 I think that better federal and state enforcement  
10 would be a way to break this down. Also encouraging  
11 more mediation. Most parents do not want to go to  
12 due process hearings. And so encouraging mediation  
13 is I also think an important thing.

14           I also think some training of local  
15 administrators on how to avoid litigation. There are  
16 some people who feel the first thing you do as a  
17 local administrator is call the lawyer, not call the  
18 parent. And immediately set up an adversarial role  
19 between the parent and the school district.

20           There are other administrators like the  
21 woman I'm talking about in this community who the  
22 first call is to the parent, and she hardly ever

23



1 calls a lawyer. And so I think that there could be  
2 some training done of local administrators on  
3 nonadversarial ways of coming to grips with parents  
4 essentially.

5 DR. SONTAG: I want to revisit the issue  
6 of teacher training briefly. Enormous needs for  
7 trained classroom teachers of students with  
8 disabilities, enormous needs for the training of  
9 regular educators who deal with students with  
10 disabilities.

11 Let's assume that we're not going to have  
12 four-fold, five-fold increases in funding. Are there  
13 ways that you would suggest that OSEP could change  
14 its funding strategies and its priorities in the area  
15 of personnel preparation that could better meet the  
16 growing need for more teachers?

17 DR. HEHIR: Boy, that's a good question.  
18 I think the best thing that could be done on this  
19 issue, short of what I said, was looking at ways to  
20 retain the teachers that we have. It's very  
21 expensive to produce new certified teachers. And  
22 when we lose maybe 50 percent within four years,

23

1 focusing on the 50 percent I think is important.

2 And ways at looking at encouraging the  
3 efforts to retain special education teachers, looking  
4 at ways to work with showing models within school  
5 districts, school districts where special education  
6 teachers are happy with their jobs and are staying  
7 with their jobs, and promulgating those types of  
8 models I think would be very important.

9 A big part of this problem is that the job  
10 becomes intolerable for people. It's the paperwork  
11 issue, it's the isolation issue that principals in  
12 schools will for instance not order materials for the  
13 special education teacher. It's the lack of  
14 collegial relationships with other teachers. Some  
15 school districts have done an excellent job at  
16 keeping their special ed teachers.

17 There's a school in Boston, for instance,  
18 called the O'Hearn School, which is an inclusive  
19 school. I know the school well because I used to be  
20 director of special education in Boston and when the  
21 principal came with a proposal to develop the school  
22 back in 1987, it was extremely visionary. And

23

1 basically what he said was, Tom, if I had all the  
2 money you're spending on special ed kids in my  
3 neighborhood and if I had greater flexible use of my  
4 Title I resources, I could provide two teachers in  
5 every classroom. And I'm appropriately named Thomas.  
6 He had to show me. And he had worked it out on  
7 paper.

8           And so we gave Bill Henderson, who is  
9 still the principal at that school, a green light to  
10 go forward, which has become a very effective  
11 inclusive school in Boston. This was a school that  
12 was a low performing urban elementary school.  
13 Parents didn't want to send their kids there,  
14 teachers didn't want to teach there. Now in that  
15 particular school, he has a stack of resumes for both  
16 special education teachers and general education  
17 teachers in that school. He has no difficulty  
18 filling his vacancies in the school. He also has the  
19 highest test scores in the city of an elementary  
20 school.

21           So, again, I think OSEP could be doing  
22 some things in this area of saying this is how you

1 keep people happy with this job. And there's a lot  
2 that school administrators can do, like Bill  
3 Henderson has done, to make this a wonderful job  
4 where it isn't now in many places.

5 DR. SONTAG: Thank you. My last question  
6 deals with what has been referred to as one-size-fits-  
7 all special education classrooms. One of the  
8 strengths of the law that's been there since 1975 is  
9 the IEP. But on another hand, it's also a weakness.  
10 Because at the beginning of the school year, a  
11 teacher is presented with 12 to 15 somewhat different  
12 IEPs. A classroom teacher may or may not be equipped  
13 to deal with the varied instruction that's called for  
14 in those items.

15 Is there a better way that we could link  
16 up individual names with a classroom profile? In  
17 other words, should we not look through that process  
18 somehow that who is the best teacher for Johnny as  
19 opposed to the teacher being preordained? And that  
20 this teacher has these kind of teaching styles, these  
21 kids have these kinds of learning styles. I was  
22 wondering what your thoughts might be on that.

23

1                   DR. HEHIR: I think there are ways we can  
2 do the IEP better, but I don't think that we should  
3 ever be looking at kind of taking some teachers off  
4 the hook for educating kids with disabilities and not  
5 kind of forcing the issue.

6                   Ways in which I think the IEP could be a  
7 more effective document, and I think this really  
8 needs to happen, is to have the IEP much more an  
9 access document. What does this child need to be  
10 able to access the general education curriculum?  
11 Does this child need accommodations? Most children  
12 with disabilities you should be talking about  
13 accommodations first. What are the accommodations  
14 this child will need to access the science curriculum  
15 at the sixth grade when he's still reading at the  
16 third grade level? And that needs to be  
17 straightforward in the English language that a  
18 teacher can understand.

19                   Some children with disabilities because of  
20 the nature of their disabilities need modifications  
21 in the curriculum. Generally children with mental  
22 retardation need modifications in the curriculum

23

1 because they have mental retardation. So the IEP  
2 should also address how the general education  
3 curriculum can be modified for a child with a  
4 disability.

5 The third thing that the IEP should be  
6 looking at is addressing the unique needs that arise  
7 out of the child's disability. There are unique  
8 needs that arise out of a disability that are not  
9 part of the curriculum but that the child needs  
10 addressed in order to have educational equity. The  
11 curriculum doesn't usually, although in some places  
12 it does, teach American Sign Language, but a deaf  
13 child may need to have his ASL vocabulary vastly  
14 expanded if he's going to access the curriculum.

15 So these are the three things in my view  
16 that an IEP should meet.

17 I think the IEP also needs to be in a  
18 sense a contract with the parent, as it currently is,  
19 that says this is what we will do for your child in  
20 order to achieve these three things. And if we focus  
21 the IEP on that, I think it would be a much stronger  
22 document than it is today. And I think it's moving

23

1 in that direction, but I think there's a lot of  
2 confusion. I think some people still look at it as a  
3 cook book, lots of short-term objectives, which  
4 oftentimes reduces the curriculum to its lowest  
5 level, not moves the curriculum forward to the notion  
6 of high expectations for kids with disabilities.

7 So that would be my suggestion, Ed.

8 DR. COULTER: Commissioner Pasternack?

9 DR. PASTERNAK: Thank you, Mr. Chairman.

10 First, Tom, good morning. I have to state for the  
11 record that I'm sorry that you felt that you gave up  
12 your First Amendment rights during your tenure. I'd  
13 also like to state for the record that during this  
14 Administration clearly I haven't given up my First  
15 Amendment rights nor have I been asked to do so, and  
16 I think that this President and this Secretary  
17 encourage us exercising our First Amendment rights.

18 DR. SONTAG: A bipartisan comment here.  
19 I've been where Tom's at. He speaks the truth on  
20 this.

21 (Laughter.)

22 DR. COULTER: Commissioner Pasternack?

23

1 DR. PASTERNAK: Next question. The first  
2 question I'd like to ask, Tom, is why hasn't more  
3 research gone into practice?

4 DR. HEHIR: Why hasn't more research gone  
5 into practice? I think that's a very complex issue.  
6 I think some of it has to do with the culture of  
7 education, that educators are not trained to value  
8 research. That oftentimes education programs kind of  
9 deal with, you know, kind of low level stuff around  
10 20 ways to teach long and short vowels as opposed to  
11 why is it important for children to have,  
12 particularly kids struggling with reading,  
13 appropriate phonemic awareness? Why are you doing  
14 this in the first place?

15 So I think some of it has to do with the  
16 broad culture of education. Educators don't sit  
17 around reading research journals.

18 I also think the researchers often do not  
19 produce products that make sense to people that are  
20 in the classroom. They're often looking at a  
21 relatively small number of issues, and they often do  
22 it in such a way that they equivocate all over the

23



1 place and people say, well, where's the beef?

2 I think there are some things that have  
3 been done that have been different from that, that  
4 have shown tremendous results. I think today one of  
5 the things that I find very positive about what both  
6 the Administration has done and the awareness in  
7 school is on the early reading research.

8 I remember when I first was in this job  
9 and I was exercising my First Amendment rights at  
10 this point, but it wasn't contrary to what the  
11 Administration was saying, so I was very pleased to  
12 say it. I don't know if Alice was there. I spoke  
13 out in California to the state CEC convention. This  
14 was before you were director, Alice. And I talked  
15 about the research that was emerging from people like  
16 Reed Lyon, Jack Fletcher, Sherry Barnes and people  
17 like Joe Torgerson on early reading, and the  
18 importance of phonemic awareness for kids with LD. I  
19 got a standing ovation.

20 And I said, you know, I wasn't that  
21 witty. I mean, I'm talking about research here.  
22 What I didn't realize, and I got some very negative

23

1 views from the then-administration of the California  
2 Department of Education. They were looking at me as  
3 if I had committed a big sin. But at that time in  
4 California, there was a mandatory, dogmatic approach  
5 to reading that didn't allow for this type of  
6 instruction. The special education teachers knew  
7 because they worked with LD kids what the reality was  
8 of LD kids learning how to read, that they don't  
9 intuit how to read.

10           And what happened since then that has  
11 changed those policies throughout the whole country  
12 was a rather significant research to practice effort  
13 that the previous administration led in uniting the  
14 research from NIH with the research on education on  
15 early reading. And that's continuing. I think,  
16 Jack, you're one of the authors on this piece,  
17 Rethinking Learning Disabilities, that Reed Lyon --  
18 Jack, you are one of the authors on this piece. I  
19 use it in my class. It is a brilliant piece, from my  
20 perspective, of bringing research to teachers.

21           When my students read that piece of  
22 research they go, wow, this makes sense. So we need

23

1 to be looking at ways in which the National Research  
2 Council study, Preventing Reading Difficulties in  
3 Young Children, is the biggest seller that the  
4 National Research Council has ever had. I was on a  
5 panel recently dealing with Social Security  
6 eligibility for people with mental retardation, and  
7 one of the people at NRC said to me, the reading book  
8 just surpassed the pig book. And I said, what? And  
9 she said, well, Tom, Preventing Reading Difficulties  
10 in Young Children is now our biggest seller. Our  
11 previous biggest seller was on pig nutrition that the  
12 National Research Council had done which every pig  
13 farmer in the world had read because it impacted  
14 their income.

15 And so the reading book has now surpassed  
16 the pig book. So those efforts are the sorts of  
17 things that you need to be looking more at. You need  
18 to be looking at more high profile things that get  
19 into the media, that get into teachers' hands and  
20 parents' hands.

21 DR. PASTERNAK: I guess I'm troubled by  
22 the fact that the initiatives that you just mentioned  
23

1 are not out of OSEP, out of Research to Practice  
2 Division, and that was kind of what I was getting at  
3 with that question.

4 DR. HEHIR: No, that's not true. That's  
5 not true. The reading initiative, the public  
6 relations efforts that pulled all this research  
7 together, was done in collaboration between the  
8 Research to Practice Division and NIH. Learning to  
9 Read, Reading to Learn, which was the beginning of  
10 the kind of public awareness effort that occurred.

11 And much of the research that is in the  
12 NRC study was more than 50 percent funded by Part D  
13 resources. And the design of that study was very  
14 heavily influenced by OSEP staff.

15 DR. PASTERNAK: All right. That's good  
16 to hear. I guess I want to turn to compliance for  
17 just a minute. As you know, the National Council on  
18 Disability, in their report, said that no state is in  
19 compliance with the IDEA. How do you think OSEP can  
20 achieve increased compliance and perhaps assuring  
21 that every state does ensure that there is compliance  
22 with the IDEA?

23

1                   DR. HEHIR: I think that that is a  
2   daunting task, to tell you the truth. Everybody I  
3   think in this room would like to see higher levels of  
4   compliance for IDEA. I think it's a combination of  
5   enforcement and partnership. I think it's working  
6   with states, you know, as Alice and Barbara said  
7   previously, of bringing the best practice to the  
8   states, who has the best solution to this issue of  
9   teacher retention. Who has really done a great job  
10  at dealing with treatment-resistant kids. And  
11  bringing that to the states and the states having the  
12  vehicle to bring it to the LEAs.

13                   Once of the things that Alice mentioned in  
14  her speech, and I don't know the condition of your  
15  First Amendment rights, Alice, but the fact that  
16  California only retains three percent of its state  
17  grant money is a huge problem for implementing IDEA  
18  in California, because there isn't the  
19  infrastructure, in my view, although I think Alice  
20  does a terrific job, believe me. I've seen what  
21  change has occurred in California since she's taken  
22  her job. There isn't the infrastructure.

23

1           Some states have good infrastructure.  
2       Texas has a wonderful infrastructure with its  
3       regional centers and so forth and so on. I do a good  
4       deal of training in Texas. They have a wonderful  
5       infrastructure.

6           So I think maybe looking at requiring --  
7       and this would have to be statutory -- requiring the  
8       states to have a particular type of infrastructure  
9       that enables the states to assist the local education  
10      agencies. You should always assist first, in my  
11      view, before you enforce. And allows the SEA to give  
12      strong assistance to the LEAs, particularly the LEAs  
13      that are struggling.

14           But also it is important that there is  
15      enforcement there. When this isn't going well,  
16      something happens that's more significant, and that  
17      has to start with the federal level with looking at  
18      states and looking at what they do well, what they  
19      don't do well, and maybe exercising greater, after  
20      you've assisted them, greater enforcement power.

21           So again, I think that's a piece of it.  
22      This is a state grant program. IDEA is a state grant

23

1 program. That assumes the states have the structure  
2 to be able to do this. Some states have much better  
3 structures to do this than others, and you see the  
4 difference. And so again, I would -- I very much  
5 like what Alice said in her last remarks about the  
6 three percent being a real problem. Congress allows  
7 them to use 25 percent of their '97 allocation --  
8 allows them to use -- plus inflation.

9           But many state directors don't have any  
10 access to that money because there's such an effort  
11 to get things down to the local education agencies.  
12 I think that can be penny wise and pound foolish  
13 ultimately in terms of the appropriate implementation  
14 of this Act.

15           I also like what Todd was saying before.  
16 The states should pony up some money for this. The  
17 federal government isn't the only one having an  
18 interest in appropriate implementation of this Act at  
19 the state level. So I think that there is an element  
20 there that I think could help.

21           DR. PASTERNAK: I know time is getting  
22 away, Mr. Chairman. Just one quick question.

23

1 DR. COULTER: Yes it is.

2 DR. PASTERNAK: You've written eloquently  
3 and spoken eloquently about the wait to fail model  
4 that currently exists in LD. I believe one of the  
5 things you've often said is that we wait while they  
6 fail. Why didn't we change that during your tenure?  
7 Why do we continue to have a set of guidelines which  
8 emphasize a wait to fail model?

9 DR. HEHIR: In terms of the LD definition?

10 DR. PASTERNAK: Yes.

11 DR. HEHIR: Well, I don't know. Jack, you  
12 may recall this meeting that we had in OSEP prior to  
13 developing the Administration's proposal for  
14 reauthorization. I would have, you know, having been  
15 someone who had worked in the field for a long time,  
16 having worked with LD kids, I think this is a central  
17 issue, and I am thrilled that this Administration is  
18 dealing with it as straight up as you are.

19 But the actual definition of LD, when I  
20 called Dr. Lyon and Dr. Fletcher and a number of  
21 people, Bonia Blackman, there are a whole bunch of  
22 NIH researchers that came into my office, and I said,

23



1 could you come up with something else at this point?

2 And people did not feel comfortable doing that at  
3 that time. The science wasn't as developed as it is  
4 now in 1994.

5 I don't know what the replacement is as  
6 far as LD. I tend to believe that ultimately, at  
7 least for reading and language-based learning  
8 disabilities, that the ultimate determination of who  
9 is LD should happen after there has been a pretty  
10 intensive early intervention. You don't need  
11 advanced diagnostics to determine who's not reading  
12 at the first grade level. You ask the teachers and  
13 they'll tell you, or you just simply use the reading  
14 measures you would normally use in the first grade  
15 and you can tell who those kids are.

16 The current direction of the  
17 Administration in this area in my view is the right  
18 direction. But ultimately, as we know from the  
19 research, even with the best early reading  
20 interventions, the most scientifically based early  
21 reading interventions, there's a group of kids that  
22 are going to come out of the third and fourth grade

23

1 who are treatment resistant. Those kids are the LD  
2 kids, and I think that may be the better way  
3 ultimately to define certainly language-based LD.

4           Number one, the assumption that kids have  
5 available to them interventions and that, you know,  
6 bells and whistles go off when a kid is not learning  
7 how to read in the first grade, not the fourth grade,  
8 and that you use these types of interventions that  
9 have been so well developed in the research now, and  
10 now is very much a part of public policy and I  
11 applaud that.

12           But ultimately recognizing that -- one of  
13 the things that I find a little problematic when  
14 people talk about LD, they talk about it as if all  
15 you got to do is go and remediate it. There's enough  
16 evidence today to show that there are significant  
17 numbers of kids who are going to have reading and  
18 language problems all the way through school even  
19 with the best interventions, and those are the kids  
20 who should be getting services under IDEA.

21           DR. COULTER: Commissioner Fletcher?

22           DR. FLETCHER: Just to follow up on that

23

1 question, I was pleased to hear that you were using  
2 research that was funded through OSEP on treatment  
3 resisters and so on in your class, but I wanted you  
4 to know that we heard testimony in Nashville that in  
5 essence we don't know a thing about dealing with  
6 treatment resisters, and because of that we shouldn't  
7 change federal regulations around children with  
8 learning disabilities. And I just want to document  
9 for the record that essentially that's not your  
10 testimony.

11 DR. HEHIR: Well, again, I'm not sure I  
12 would advocate today changing the regulations unless  
13 you have something better to take its place. It's  
14 one thing to have in -- one of the other things, Bob,  
15 that we did that we were not successful in doing was  
16 we proposed and we did not get through the Congress  
17 in '99, no it would have been the 2000 appropriation,  
18 a discretionary program that would seek to provide  
19 the sorts of early interventions that the research  
20 would say is necessary, and we didn't get it.

21 But what is being advocated now by the  
22 Congress is not necessarily what's happening in

23

1 schools or being advocated by the Administration,  
2 being advocated by President Bush, is not necessarily  
3 what's happening in schools. And until you have  
4 those systems in place, to some extent, the existing  
5 regulations provide for a fallback when school  
6 districts don't do what they should do in terms of  
7 providing these early interventions.

8           So I'm not sure, unless I could see, and I  
9 haven't seen it from anybody, a better definition of  
10 learning disabilities to be put into the regulations.  
11 I would agree with what that testimony is in  
12 Nashville. Just because you don't change the  
13 regulations doesn't mean you can't do a whole lot to  
14 address this issue, and you are doing a lot to  
15 address this issue.

16           DR. FLETCHER: But that wasn't really my  
17 question. My question was really this idea that we  
18 don't know anything about dealing with treatment  
19 resisters. I gather that it was sufficient that you  
20 would actually use these materials in your class and  
21 saw it as a fairly substantive contribution that OSEP  
22 had already made in terms of identifying treatment

23

1 resisters and developing interventions for them and  
2 things of that sort. Isn't that correct? Isn't that  
3 what you said?

4 DR. HEHIR: Yes. And what I would say we  
5 know about, about treatment resisters, is on one  
6 level doesn't require any more research, which is if  
7 you don't read by the time you're in the fourth  
8 grade, you're disabled.

9 DR. FLETCHER: Right.

10 DR. HEHIR: There's no question about  
11 that. By any kind of definition of disability, if  
12 you look at a major life function. A major life  
13 function of children is to read. So if you're not  
14 reading by fourth grade, you're disabled.

15 Now if you have all of these wonderful  
16 interventions in kindergarten, first, second and  
17 third grade, and I would say that you have to start  
18 interventions with some kids long before kindergarten  
19 if you particularly talk about not just the issue of  
20 whether a kid learns how to decode, but also the  
21 issue if kids can ultimately comprehend, which is a  
22 language issue. And if you look at the fact that

23

1 there are many kids, there's huge disparities between  
2 the language development of some kids and other kids,  
3 which ultimately impacts comprehension, that you've  
4 got to start at the third grade.

5           However, if you provide these  
6 interventions and the kid is treatment resistant, one  
7 of the things that kid needs in my view is an IEP.

8           DR. FLETCHER: Yes.

9           DR. HEHIR: And that IEP should be very  
10 clear about how this kid is going to access the  
11 curriculum, given the fact that reading is not his  
12 strong suit. He needs to learn math. He needs to  
13 learn science. He needs to learn social studies,  
14 and there are lots of ways to accommodate a kid in  
15 the curriculum who doesn't read well.

16           DR. FLETCHER: Right.

17           DR. HEHIR: So I would disagree with that  
18 piece of it. I think we know a lot of what we need  
19 to do with treatment-resistant kids, which is to  
20 provide them with -- there's a lot more we need to  
21 know, but we need to provide them minimally with  
22 access to the curriculum, assuming the nature of

23

1 their disability.

2 I also think, Jack, that with these kids  
3 who have not read by fourth grade, that we need to  
4 continue to provide them with direct services in the  
5 area of reading.

6 DR. FLETCHER: Yes. Absolutely. And in  
7 fact we know how to do that.

8 DR. HEHIR: And that should be part of  
9 their IEP too. And we know more about how to do  
10 that.

11 DR. FLETCHER: Right. And so I think  
12 that's probably a good example of what you described  
13 as the tendency of researchers to equivocate about  
14 how much we know and when things should be  
15 implemented.

16 But I want to shift back to the, you know,  
17 you were talking a little bit earlier about the  
18 meeting that we had about changing the definition and  
19 early intervention services and things of that sort.  
20 And I wanted to remind you that one of the upshots of  
21 that meeting was essentially this group that you  
22 convened, and I was always pleased that you had

23

1 convened that group. I thought it reflected the  
2 wisdom that you continue to exhibit about children  
3 with disabilities.

4 But we were essentially told that the  
5 provision of early intervention services through  
6 OSERS was not something that OSERS would consider  
7 because it's an agency that serves children with  
8 disabilities. And I was wondering if you agree with  
9 that position, given your First Amendment rights now.

10 DR. HEHIR: Well, to some extent at that  
11 meeting what I was reflecting was the then-statute.  
12 To some extent the current statute. I believe that  
13 special education money should be much greater than  
14 it is. This is where my First Amendment rights, and  
15 I don't know if this will affect Bob, but I certainly  
16 believe in the 40 percent commitment.

17 DR. FLETCHER: Sure.

18 DR. HEHIR: And that's not something,  
19 believe me, when the President sends up 10 percent  
20 and you believe in 40 percent, I didn't say 40  
21 percent because I'd probably be out of the job. And  
22 that's where the First Amendment inhibition comes in,

23



1 and I think that's completely appropriate. You're  
2 part of an administration, you work for that  
3 administration. Nobody's forcing you to work there.

4 But assuming this much larger pie of  
5 federal commitment to special education, which I  
6 think the Congress very much wants to do, some of  
7 that money should be able to be used for the types of  
8 things you're talking about without having to give  
9 kids disability labels. And I agree with that.

10 DR. FLETCHER: My point was simply that to  
11 a certain extent, any effort to redo the definition  
12 and so on was derailed at that point because of that  
13 particular concern, which I understand.

14 DR. HEHIR: I think you're right. That  
15 was a piece of the concern. Most of the LD advocates  
16 were very, very uncomfortable opening that  
17 definition. I think one of the things that in the  
18 field of LD we have struggled with as long as I've  
19 been in the field is people recognizing that these  
20 kids exist.

21 And so tampering with that definition  
22 could have been a very, very negative thing for the

23

1 kids who have LD.

2 DR. FLETCHER: Right.

3 DR. HEHIR: Because I believe that  
4 definition, as imperfect as it is, is a safety net.

5 DR. FLETCHER: Right. I have to ask one  
6 other question.

7 DR. COULTER: Quickly.

8 DR. FLETCHER: I know you're trying to  
9 move on, Mr. Chair. But I just wanted to ask, you  
10 know, given the description that you had earlier of  
11 the relationship between OSEP and NICHD, the  
12 Commission asked OSEP to provide examples of their  
13 collaboration with other federal agencies, and there  
14 was no mention of any relationship with the NICHD  
15 Center for Mothers and Children, which includes Reed  
16 Lyons' branch as well as the mental retardation and  
17 developmental disabilities branch. And I had the  
18 impression personally that there's very little  
19 interaction between the Research to Practice Division  
20 and those particular divisions of NICHD.

21 Are you essentially saying that's not the  
22 case and that there is substantially more

23

1 interaction?

2 DR. HEHIR: Well, I can speak to when I  
3 was at OSEP. And there was collaboration not just  
4 with Reed, which I considered one of the most  
5 satisfying collaborations that I had at OSEP, because  
6 I felt that the research that Reed and folks like you  
7 have done for him --

8 DR. FLETCHER: As well as people at OSEP.

9 DR. HEHIR: As well as people with OSEP,  
10 really has moved the ball forward. We wouldn't be  
11 talking about some of these issues of treatment-  
12 resistant kids and early intervention for kids and  
13 phonemic awareness without that research. I feel  
14 very, very satisfied in that.

15 We also did a significant amount of  
16 collaboration on children with attention deficit  
17 hyperactivity disorders and various efforts to get  
18 the research out on those disorders.

19 We did significant collaborations with the  
20 Center of Mental Health Services on Community of  
21 Caring Grants. Gary DeCorlis over there. Can more  
22 be done? Sure, more can always be done.

1 Collaboration is a difficult thing. But I feel that  
2 we should always be looking at these intersections to  
3 make sure that we're benefitting the most by the  
4 federal contribution.

5 DR. FLETCHER: Thank you.

6 DR. COULTER: Thank you, Dr. Fletcher.  
7 Dr. Hehir, I think you heard earlier Commissioner  
8 Sontag speaking to the lag time between when OSEP  
9 visits a state and the production of the report on  
10 that visit. And I think we all understand one of the  
11 most fundamental things to change behavior is to get  
12 timely feedback.

13 Can you help us understand ways in which  
14 we could improve or make recommendations regarding  
15 OSEP's improvement so that reports get issued in a  
16 more timely manner? I mean, 18 months to two years,  
17 which is the current data that we have on reports  
18 getting out. That certainly isn't anything that's  
19 going to stimulate change. What will get reports out  
20 quicker?

21 DR. HEHIR: I agree with you. The reports  
22 have to get out quicker than they have in the past.

1 I think the thing that would get them out quicker is  
2 if they touched fewer hands. OSEP exists within a  
3 pretty large bureaucracy at the Department of  
4 Education and I felt very strongly that there were  
5 often reports that I would see within two months that  
6 I would sign off on that the staff at OSEP had  
7 produced that touched so many hands after it left my  
8 office, and many times when it was state of  
9 negotiation around this finding or that finding and  
10 is this really what the law provides for, et cetera,  
11 et cetera.

12 I think empowering OSEP to be able to  
13 produce its own reports without a lot of other hands  
14 touching it would be central to that effort. And  
15 again, I think if you look at the people who are at  
16 OSEP, if look at Ruth Ryder, if you look at JoLeta  
17 Reynolds, they know the law better than anybody I  
18 know.

19 So it would be one thing if there wasn't  
20 the expertise within the organization, but there is  
21 the expertise within the organization. The question  
22 is the number of hands it touches when it leaves

23

1 there. And some of the hands it touches are people  
2 who are very much higher up in the organization and  
3 don't have a lot of time to attend to this sort of  
4 thing. But they have a lot of power. They have the  
5 power to be able to sit on something for three  
6 months, four months. And then Alice is back in  
7 California saying, gee, I want to move with this  
8 stuff and she can't move with it because she doesn't  
9 even have the report.

10 DR. COULTER: Once again, I think we've  
11 heard a lot of testimony speaking to the positive  
12 nature of a partnership and working towards  
13 compliance. The question I'm going to ask you is in  
14 no way to diminish the fact that there are lots of  
15 possibilities when people have a constructive  
16 relationship.

17 Let me now turn, however, to those very  
18 rare instances where sanctions are required, and I  
19 think you mentioned three examples where sanctions  
20 had been attempted, only one of which, at least  
21 during your tenure, was actually successful in going  
22 through in terms of looking at the limited sanctions

23

1 that you had.

2 I'd like for you to respond to two  
3 questions actually as it relates to sanctions. One,  
4 within the current structure of either the Department  
5 of Education or the federal government itself, and we  
6 have the National Council on Disability which has for  
7 instance suggested about maybe moving monitoring and  
8 enforcement out, completely out of the department, or  
9 maybe somewhere else within the department.

10 Speak to structurally what would lead to  
11 more effective enforcement. And secondly, what other  
12 tools, what other, besides withholding part are all  
13 of the money, what other things do you think would  
14 make this law more easily enforceable, not just  
15 implementable, but enforceable?

16 DR. HEHIR: I would like to correct the  
17 record. There were several states in which we did  
18 conditional approvals when I was at OSEP, and there  
19 was one state, actually two states in which we -- one  
20 state where we went to withholding, another state  
21 where we sought withholding in the state. Actually  
22 two states, three states. And the state at the

23

1 eleventh hour came around.

2 DR. COULTER: Well, Dr. Hehir, I think I'm  
3 referring to you mentioned Pennsylvania, an example  
4 that a number of us are aware of.

5 DR. HEHIR: Right.

6 DR. COULTER: And I think you used as an  
7 example the political factors, I don't want to say  
8 intrusion, political factors that inhibit  
9 enforcement. So --

10 DR. HEHIR: I think that on the  
11 enforcement issue, I think that the degree to which  
12 an administration and Congress -- and Congress --  
13 support enforcement is largely a political issue. I  
14 think that's too bad on one level, but that's the  
15 nature of our system. And so I think, number one, if  
16 the Administration is really clear about when it  
17 enforces, and I don't think we were ever that clear  
18 about when we enforce, but if up front the  
19 Administration said, if the following things occur,  
20 this is when we move to enforcement, and then we move  
21 to enforcement using less restrictive means than full  
22 withholding as you move along.

23



1           In other words, there's a continuum of  
2 enforcement. I think that could be articulated and  
3 that would help. But I think ultimately, the  
4 Administration and Congress has to support the notion  
5 of enforcement, which our administration did. We did  
6 support the notion of enforcement, although at times  
7 it was difficult to sustain that, given the political  
8 climate.

9           I think in terms of the law, I think that  
10 there is sufficient legal -- I don't think the law  
11 needs to be touched in this area. I think that there  
12 is sufficient tools available to the Administration  
13 now and to Congress to enforce. I also think,  
14 however, if you look at what ultimately is going to  
15 help, what I said before about making sure the states  
16 have the infrastructure to be able to implement this  
17 law would probably be the most important thing you  
18 could do.

19           DR. COULTER: Structure. Is the current  
20 structure the best structure for ensuring  
21 enforcement, or should enforcement be moved somewhere  
22 else?

23

1 DR. HEHIR: I think enforcement should  
2 stay in OSEP. I don't know where else it would move.  
3 I think one of the things that needs to be recognized  
4 with IDEA, it's a civil rights law, yes, but it's  
5 also a state grant law, that there is additional  
6 requirements that go far beyond civil rights that  
7 IDEA seeks.

8 It is also, as I mentioned before, a state  
9 grant law, so that the existing monitoring system has  
10 been one that's been developed with that in mind. In  
11 other words, it monitors state agencies. There  
12 aren't any other comparable education laws that quite  
13 work that way. And so again, I wouldn't recommend  
14 that at this time.

15 Do I think there needs to be more  
16 collaboration with OCI? Yes. I think that that has  
17 always been a difficult thing. When you are getting  
18 to things that are really clearly civil rights  
19 issues, in other words where both 504 and ADA are  
20 relevant, then I think there should be some joint  
21 activities. We did some when we were there. We did  
22 some with New York City, for instance, with the

23

1 regional office in New York City with the New York  
2 City public schools. We did quite a bit on the issue  
3 of overplacement of minority kids in special ed, but  
4 I think there can always be more of that.

5 But I think monitoring of IDEA should stay  
6 in OSEP. It also should be connected to the  
7 discretionary programs.

8 DR. COULTER: Dr. Hehir, I want to thank  
9 you very much for your indulgence both in terms of  
10 the amount of time we took with you and getting  
11 started late, and I also want to thank the indulgence  
12 of the speakers that are about to follow you because  
13 we are running on.

14 So if you would, our three speakers that  
15 are scheduled next, would you please come up?

16 DR. HEHIR: Alan, I will be presenting my  
17 written testimony to you next week.

18 DR. COULTER: Thank you very much. We  
19 appreciate that.

20 Members of the audience, I'd like to  
21 introduce to you three speakers who are going to  
22 address a topic called Consumers: Improving Special  
23

1 Education Through the Office of Special Education  
2 Programs -- What Works and What Can Be Improved.

3 To address that topic we have three  
4 speakers. We have Paula Goldberg. Ms. Goldberg is  
5 the Executive Director of the Parent Advocacy  
6 Coalition for Educational Rights, affectionately  
7 known as PACER. PACER is based in Minneapolis,  
8 Minnesota, and its mission is to expand opportunities  
9 and enhance the quality of life of children and young  
10 adults with disabilities and their families, based on  
11 the concept of parents helping parents.

12 We also have with us today Leslie Seid  
13 Margolis. She is the Managing Attorney of the School  
14 House Discipline Project at the Maryland Disability  
15 Law Center. The Maryland Disability Law Center is a  
16 nonprofit corporation established by federal and  
17 state law to advocate for the rights of persons with  
18 disabilities in the state of Maryland.

19 And third, we have Richard "Dick" D.  
20 Komer, who is the Senior Litigation Attorney at the  
21 Institute for Justice based in Washington, D.C. He  
22 litigates school choice cases and employment

23

1 discrimination cases in both the federal and state  
2 courts. And folks, I want to thank you for your  
3 attendance and your patience with us. This is a very  
4 important topic. Ms. Goldberg, you're on.

5 MS. GOLDBERG: Thank you very much,  
6 Chairman Coulter. I'm very pleased to be here today.  
7 I am Paula Goldberg, Executive Director and a founder  
8 of PACER Center in Minnesota. PACER was among one of  
9 the first parent training and information centers,  
10 and we were funded by OSEP in 1978 along with PTSI  
11 also.

12 DR. COULTER: Paula, speak directly into  
13 the mike so that the audience can hear you.

14 MS. GOLDBERG: Okay.

15 DR. COULTER: Thank you.

16 MS. GOLDBERG: Actually, OSEP clearly took  
17 a risk and a new direction in funding parent centers  
18 in the seventies, and they have been a remarkable  
19 success in promoting parent involvement and parent-  
20 professional partnership.

21 I am also Co-Director of the Alliance  
22 Project, which is funded by OSEP to provide technical

23

1 assistance to the 105 parent training and information  
2 centers and community parent resource centers, which  
3 I will refer to as parent centers, throughout the  
4 country.

5 Today I'm going to talk briefly about  
6 three things. One, the important role of the PTIs  
7 and the community parent resource centers and share  
8 the evidence of their success and the data. Make  
9 recommendations to about OSEP regarding our  
10 experience. And three, make recommendations from  
11 parent centers regarding compliance and other issues.

12 For more than 20 years, PACER has been  
13 involved in helping other parent centers across the  
14 country and also helping families. Since 1997, PACER  
15 has been the national coordinating office for the  
16 technical assistance alliance for parent centers, or  
17 the Alliance. I want to personally thank Donna  
18 Pflug, who is our project officer at OSEP for her  
19 important help and support as well as acknowledge the  
20 dedication and commitment of the parent centers where  
21 a majority of the staff are parents of children with  
22 disabilities.

23

1                   During the past 23 years with PACER, I  
2     have seen both the best of times and the worst of  
3     times. It is the best of times because we have seen  
4     the number of parent centers grow from a small  
5     handful to 105 and one in every state at least. This  
6     means help for thousands of parents who care deeply  
7     about education for their child with a disability.  
8     Parent involvement is recognized as a major  
9     cornerstone of education and one of the four pillars  
10    of Secretary of Education Paige and an important part  
11    of No Child Left Behind.

12                   Study after study describes the importance  
13    of parent involvement in the success of children in  
14    schools. I don't know how many of you saw 60 Minutes  
15    last Sunday night, but they demonstrated the  
16    importance of parent involvement in achieving  
17    educational outcomes for children. It was quite a  
18    demonstration of success with military families  
19    actually.

20                   More children with disabilities are  
21    graduating from high school and taking jobs. There  
22    are amazing success stories for children with  
23

1 disabilities because of IDEA.

2           It is the worst of times because there are  
3 still children with disabilities who are not  
4 receiving a free appropriate public education. The  
5 education system is not working for them. I will  
6 relate one recent call we received at PACER. Tom is  
7 17 and lives in rural Minnesota. He had received  
8 special education for many years. His mother called  
9 PACER stating that her son was not learning and was  
10 spending a lot of time with the janitor, which she  
11 didn't understand. When we asked for copies of Tom's  
12 IEP, the mother said she had not been invited to an  
13 IEP meeting in three years,.

14           When she requested copies of the IEP at  
15 PACER's request, she discovered, one, that the  
16 teacher had forged the mother's name on the last  
17 three years of IEPs. Two, the school had changed  
18 Tom's diagnosis from learning disabilities to mental  
19 retardation without the mother's knowledge or  
20 consent. And three, Tom's main goal on the IEP was  
21 to work with the janitor most of the day. The second  
22 goal was to learn to value the library 76 percent of

23



1 the time.

2 This is a horrific story from 2002. The  
3 teacher has been suspended and the PACER staff person  
4 continues to work with the parent and with the school  
5 to help that student.

6 What do parent centers do? They help  
7 families make informed decisions that result in  
8 appropriate education and services for children with  
9 disabilities, work to improve outcomes in education  
10 for all children, to educate and inform parents and  
11 professionals, resolve problems between families and  
12 schools, and connect children with disabilities to  
13 community resources.

14 We want to share with you the importance  
15 of the parent center system or parent training  
16 system. As a part of the Alliance technical  
17 assistance grant, we developed a plan to help the  
18 parent centers collect data. We just finished a  
19 report that documents four years of work of the  
20 parent centers. For the first time we have collected  
21 data from almost 100 parent centers. Professor Susan  
22 Hazazzi from the University of Vermont has worked

23

1 with us and helped us with the process and report the  
2 data.

3 Last year the parent centers served almost  
4 one million people, which is an average of nearly  
5 10,000 people per center. Also, 68 percent were  
6 parents and 32 percent were professionals. It is  
7 significant to note how many professionals attend our  
8 trainings that call for information. We do support  
9 parent-professional collaboration. We believe this  
10 to be a tremendous value for the dollar.

11 Two. The parent centers serve a  
12 representative and large number of racially and  
13 culturally diverse families. The numbers have  
14 increased. Thirty-nine percent of persons attending  
15 trainings were from racially and culturally diverse  
16 families, and 31 percent of persons calling for  
17 assistance were from racially diverse families. This  
18 data is impressive, and it is representative of the  
19 number of diverse families in the general population  
20 and also in special education.

21 As an example, 50 percent of the staff of  
22 the PTI in Iowa are racially diverse. At PACER we

23

1 have staff who are American Indian, African American,  
2 Hispanic, Southeast Asian and Somalian to help  
3 individual families.

4 Three. Parent centers serve children and  
5 youth with ages and disabilities across a spectrum.  
6 They respond to the father whose newborn child is in  
7 the neonatal intensive care unit and calls every day  
8 for two weeks for support, and to the parent of the  
9 21-year-old who calls about employment issues, and to  
10 the parent whose child has just tried to commit  
11 suicide and has no place else to call.

12 The outcome data, which I really want to  
13 share with you, is important. Almost 5,000 parents  
14 were randomly selected and called last year by  
15 independent individuals to assess the effectiveness  
16 of the parent centers six months after they attended  
17 a training or called for help. Five thousand parents  
18 represents a large number.

19 One. For parents attending the training,  
20 67 percent of the parents stated that their child  
21 received more appropriate services as a result of  
22 using the information from the training. Eighty-six

23

1 percent felt more confident working with the schools,  
2 and 93 percent were more involved in their child's  
3 educational programs.

4 Two. For parents receiving individual  
5 help over the phone, which we spend a great deal of  
6 time doing, 84 percent of the parents received some  
7 of the services their child needed, and 88 percent of  
8 the parents felt more confident in working with the  
9 schools.

10 Three. Parent staff attended more than  
11 11,000 IEP meetings with families where they help  
12 resolve issues. Additionally, parent centers  
13 disseminated 1.5 million newsletters and had 3.5  
14 million contacts through Web sites, for a total of 5  
15 million people.

16 We have been told that this data is  
17 impressive. These statistics are only possible  
18 because of the type of people who work at parent  
19 centers. They are passionate, driven, caring people  
20 who work very long hours and have a mission because  
21 they understand what it is like to be a parent and  
22 have a vision of the future.

23

1                   Parent center recommendations. Parent  
2 centers are vital to so many families. Parents tell  
3 us that procedural safeguards need to be maintained  
4 in the law. Teacher training and writing IEPs and  
5 knowing the law is critical. LEA monitoring and  
6 compliance are necessary for both outcomes and  
7 procedures and a strong state compliant system is  
8 vital.

9                   One. Parent centers are very cost  
10 effective and are an important investment. Parent  
11 center staff often resolve conflicts and  
12 miscommunication between parents and schools. This  
13 saves school districts and states thousands of  
14 dollars that may have been spent on hearings and  
15 litigation.

16                   Parent centers are underfunded, and many  
17 cannot even afford basic health benefits for their  
18 staff. Yet they perform a vital role and have proven  
19 outcomes.

20                   Parents centers help with systemic issues  
21 and build capacity at the local level. We hear that  
22 there is an increasing demand for services. We

23

1 recommend increasing resources for parent centers to  
2 \$50 million this year and \$10 million each of the  
3 next five years. With 6.4 million children receiving  
4 special ed services, the current \$26 million for the  
5 PTI line item amounts to only \$4 per child. The  
6 parent centers need more funds to serve more  
7 families, help resolve more conflicts and help  
8 improve outcomes for children.

9           We recommended, number two, some  
10 additional new services in addition to the current  
11 ones for parent centers. They would include:

- 12           1. Transition and rehabilitation.
- 13           2. Early childhood, including transition  
14 information for families.
- 15           3. Mediation attendance with parents and  
16 juvenile justice issues.

17           And the last one, early intervention and  
18 early reading.

19           We recommend OSEP require pre-service, in-  
20 service development that includes collaboration with  
21 the parent centers and as a criteria for funding. We  
22 recommend that OSEP have parent centers as a part of  
23

1 all task forces, review panels, research projects,  
2 SIG projects and other OSEP programs.

3 And a few quick recommendations based on a  
4 national survey from the National Coalition of Parent  
5 Centers on compliance.

6 Mediation. We recommend changing the law  
7 in IDEA to make state-supported paid mediation  
8 available at any time if a parent requests it, not  
9 only after a complaint requesting a due process  
10 hearing is filed, which is the current law now.

11 Two. Due process hearings. We recommend  
12 that OSEP be required to keep data on the number of  
13 hearings, mediations and facilitated IEP meetings  
14 held in each state and fund a study to look at  
15 states that have high and low numbers of due process  
16 hearings.

17 We recommend research in how alternative  
18 dispute resolutions are working. Last year there  
19 were only 3,020 due process hearings at Level One in  
20 this country. Seventy-two percent were from five  
21 states. Twenty-one states have fewer than 10  
22 hearings a year. Thirty-three states had less than

23

1 20 hearings a year. With 6.4 million children, that  
2 is .0004 hearings per child which is clearly a small  
3 number.

4 Three. State complaint procedure. We  
5 recommend strengthening the state complaint procedure  
6 by, one, requiring states to strictly comply with  
7 timelines, monitoring and enforcing findings and  
8 corrective action plans. And we view state complaint  
9 systems as a viable alternative for due process  
10 hearings for families. And we also would like to see  
11 the complaints publicly stated as well as the  
12 resolution.

13 In a recent survey, 78 percent of the  
14 parent centers reported that their state complaint  
15 system is not working. In Minnesota, our state  
16 complaint system does work, and it benefits all.

17 And lastly, IEP. We strongly support  
18 keeping the short-term objective to help parents and  
19 teachers know where the student is progressing. We  
20 strongly support keeping the annual IEP as a tool for  
21 learning with outcome. It is the heart of IDEA.

22 We recommend that OSEP develop a model  
23



1 that includes outcomes. When we look at No Child  
2 Left Behind, how will we know if we have left a child  
3 behind if we don't know where we are going? Annual  
4 IEPs, short-term objectives and annual goals provide  
5 a map to the future with accountability.

6 I hope in the next five years we will be  
7 able to say these are the best of times for all  
8 children. Thank you very much.

9 DR. COULTER: Ms. Margolis?

10 MS. MARGOLIS: Thank you. Good morning.  
11 My name is Leslie Seid Margolis. I'm a Managing  
12 Attorney at the Maryland Disability Law Center, which  
13 is Maryland's protection and advocacy agency.

14 I've been with MDLC since 1985 and have  
15 represented numerous children with disabilities in  
16 individual special education cases and class  
17 litigation as well as in juvenile court foster care  
18 proceedings.

19 I've also spent a great deal of time  
20 working on policy issues at the local, state and  
21 federal levels. I chair a statewide special  
22 education advocacy coalition looking at policy issues

23

1 throughout Maryland. We've got roughly 25 members.  
2 And I also chair a national advocacy work group  
3 devoted to the issue of IDEA monitoring and  
4 enforcement, and I believe that's probably the reason  
5 I'm here today.

6 I really appreciate the opportunity to  
7 testify this morning regarding the Office of Special  
8 Education Programs, and I need to say that my  
9 perspective is based not only on the many years that  
10 I've worked on special education legal and policy  
11 issues but also on my status as the parent of a  
12 nearly eight-year-old child with severe physical and  
13 cognitive disabilities who is fully included in a  
14 regular education program in Baltimore City.

15 My interest in special education at the  
16 federal level was sparked by a 1989 monitoring report  
17 issued by OSEP to Maryland that was one-and-a-half  
18 pages long and declined to identify any violations.  
19 Over the course of inquiries and later litigation  
20 under the Freedom of Information Act, we learned that  
21 OSEP in fact had prepared a report making numerous  
22 findings of violations but that Maryland had objected

23

1 to that report and the two agencies had essentially  
2 negotiated the report away.

3 I think our experience in Maryland became  
4 a rallying cry for change to the monitoring process  
5 and ultimately a monitoring oversight committee was  
6 set up by OSEP in the early 1990s. I was a member of  
7 that committee and roughly maybe ten years ago, I was  
8 asked to speak at one of the meetings. I stated that  
9 monitoring is meaningless without enforcement. Since  
10 that time, numerous changes have been made to the  
11 monitoring system by OSEP, but I think the statement  
12 is just as relevant today as it was ten years ago,  
13 and I'm going to repeat it: Monitoring is  
14 meaningless without enforcement.

15 Twenty-five years after the IDEA was  
16 enacted, we are still struggling to ensure that the  
17 law is implemented at all, let alone effectively, for  
18 students in every school district in the country.  
19 Part of the problem is inadequate monitoring and  
20 enforcement at the state level, and part of the  
21 problem is a federal monitoring system that sweeps  
22 too broadly, focuses too much on procedures and too  
23

1 little on substance, fails to produce timely  
2 monitoring reports and engages in enforcement action  
3 only rarely and inconsistently.

4           The problems with federal monitoring have  
5 been persistent enough and pervasive enough that a  
6 few years ago a number of advocates from protection  
7 and advocacy agencies and national disability and  
8 education groups joined together to determine a  
9 course of action that would result in meaningful  
10 change. It's this process and the resulting work  
11 with OSEP to develop a focused monitoring system that  
12 I would like to talk about today.

13           To be perfectly candid, when our work  
14 group first began to meet, we were focusing our  
15 efforts on whether we should sue OSEP for failure to  
16 effectively monitor and enforce the IDEA. But to  
17 dispel the notion that lawyers always want to  
18 litigate, I will say that we asked ourselves what we  
19 wanted to get out of litigation. And what we wanted  
20 was a monitoring process that actually worked.

21           So we set ourselves the task of trying to  
22 come up with one, and we developed a framework for  
23

1 what we have called focus monitoring. The essence of  
2 that proposal that as a broad, as we've  
3 conceptualized it, is that a broad group of people  
4 would identify a few significant priorities. Those  
5 aspects of the IDEA that if they were really  
6 implemented would make a difference for children.  
7 And it's those priorities that are monitored using a  
8 databased, verifiable system, providing supports in  
9 capacity building, and that's a very key part of what  
10 we're advocating, and then when necessary,  
11 utilization of sanctions.

12 In our view, though, the quid pro quo for  
13 a narrower, sharper focus on a small number of  
14 priorities is meaningful enforcement that results in  
15 implementation of those priorities. And I use the  
16 word "implementation" rather than compliance, because  
17 I think that for whatever reason, the word  
18 "compliance" has become synonymous with procedural  
19 requirements. I think that is an overly narrow,  
20 erroneous way of defining the term. In fact,  
21 compliance with the IDEA means implementation of the  
22 IDEA and all its substantive as well as procedural  
23

1 requirements. And I really think that as the  
2 Commission does its work, it's important to dispel  
3 this very narrow definition of compliance that's come  
4 about.

5           We approached OSERS with our framework and  
6 we had several meetings, the outcome of which was  
7 OSEP's agreement to participate in a series of  
8 meetings with a very broad group of stakeholders, as  
9 OSEP has termed us. Beginning in November of 2000  
10 and continuing with small work group meetings that  
11 will culminate in a full stakeholder group in June of  
12 this year, we filled in many details of a focused  
13 monitoring system that relies on data for  
14 decisionmaking purposes.

15           We have identified possible OSEP  
16 interventions ranging from technical assistance to  
17 sanctions, along with a system for how the  
18 determination of what level of OSEP intervention  
19 would take place. I've brought copies of the current  
20 draft of our proposal. They should be attached to  
21 the copies of my testimony. But note that this  
22 proposal will be revised very shortly to include a

23

1 sanctions protocol as well as additional information  
2 involving Part C.

3 I think that I speak for other advocates  
4 and parent members of our stakeholder group when I  
5 say that we've been very pleasantly surprised by how  
6 far we've come. I don't think any of us expected  
7 when we began the meetings with OSEP that we would  
8 actually have a proposal that we could circulate that  
9 all of us could agree to, but we think we're pretty  
10 much there.

11 OSEP staff have participated meaningfully  
12 in our meetings. They have provided us with  
13 information that has helped us craft a proposed  
14 system, and we think that it would truly make a  
15 difference for students if it were implemented. But  
16 -- and there always is a but -- I have to say that  
17 now that we've gotten to the point where our system  
18 could be implemented, at least on a small scale, I am  
19 concerned that OSEP may lack either the ability or  
20 the will to make the system real.

21 At heart, I think I and others are  
22 concerned that focus on a small number of priorities

23

1 would be readily embraced by OSEP but that the other  
2 essential piece of our proposal, which is the  
3 enforcement piece, will not be so easily adopted and  
4 exercised.

5 I am somewhat encouraged by the very firm  
6 position that OSEP took in my own state at our last  
7 steering committee meeting when OSEP was very clear  
8 about the need to do business differently and to  
9 consider enforcement actions against local school  
10 systems. But the gap between talking about  
11 enforcement and actually engaging in it sometimes  
12 seems like an unbridgeable chasm.

13 I understand that OSEP has to function in  
14 a world that's very full of political pressure and  
15 fraught with the tension that comes from having to  
16 have a cooperative relationship with the people that  
17 OSEP is charged with oversight responsibility of.  
18 But to preserve any level of credibility with  
19 advocates and parents, and much more importantly, to  
20 enable the promise of the IDEA to be fulfilled by  
21 true implementation of its requirements, OSEP has to  
22 put that last piece of the monitoring system in place  
23



1 and use its enforcement authority in accord with the  
2 provisions of the system we have laid out or in  
3 accord with another system that's subjective and that  
4 people understand clearly.

5 I've said this before and I will say this  
6 again, it is unconscionable to acknowledge as the  
7 previous Assistant Secretary of OSERS did, that  
8 parents are the primary enforcers of the IDEA and  
9 then fail to act to change that situation.

10 Enforcement responsibility rightfully belongs to the  
11 Department, to states and to local school systems. I  
12 am cautiously optimistic that OSERS and OSEP  
13 recognize the responsibility and that the work of our  
14 group will result in meaningful changes in the  
15 quality of special education through an effective  
16 monitoring and enforcement system, but we've been  
17 poised at this brink before. And as a special  
18 education attorney and as the parent of a child who  
19 is dependent upon IDEA for her education, I truly  
20 hope that this time OSEP will be able to bridge the  
21 gap between talk and action.

22 I urge the task force to recommend the  
23

1 adoption by OSEP of the focus monitoring system that  
2 includes a database examination of priorities and  
3 enforcement to ensure implementation of those  
4 priorities.

5 I want to thank you again for the  
6 opportunity to testify. And at the conclusion of our  
7 panel, I'd be happy to address any questions you may  
8 have. Thank you.

9 DR. COULTER: Thank you, Ms. Margolis.  
10 Mr. Komer?

11 MR. KOMER: First I'd like to thank you  
12 for inviting me to be on this panel. I have perhaps  
13 as completely a different perspective on these issues  
14 as is possible since I don't work with OSEP. I  
15 haven't worked with OSEP for almost ten years. I  
16 haven't missed not working with OSEP for the last ten  
17 years.

18 But first let me just summarize my  
19 background. For 14 years after graduating from law  
20 school in 1978, I worked in a variety of the federal  
21 civil rights agencies. I started at HEW before there  
22 was a Department of Education, then I worked at the  
23

1 Department of Education, then I worked at the Civil  
2 Rights Division at the Department of Justice and then  
3 at the Equal Employment Opportunities Commission for  
4 one of my longer stints, five years.

5 I then returned to OCR in 1990 to the  
6 position that C. Todd Jones currently holds.

7 Throughout that time, my primary energy went into  
8 disability issues, because when I started, Section  
9 504 was just in the process of being implemented and  
10 the IDEA had been recently revamped, including  
11 incorporating and elaborating on the draft provisions  
12 from the Section 504 regs on elementary and secondary  
13 education.

14 In 1993, the Clinton Administration's  
15 arrival gave me the opportunity to pursue other  
16 endeavors and since then I've been a part time  
17 attorney working at the Institute for Justice where  
18 virtually all of my time is spent promoting school  
19 choice initiatives, ranging from vouchers through  
20 charter schools on the other hand.

21 As a result, my contact with the IDEA has  
22 been essentially from a kind of legal policy point of  
23

1 view, which is how to incorporate into school choice  
2 initiatives equal opportunities for disabled students  
3 and their families to participate in those sorts of  
4 initiatives. As a result of the six current voucher  
5 programs in the United States, one, in Florida, is  
6 exclusively limited to children eligible for special  
7 education, and all of the other five have unusual or  
8 special provisions for addressing the needs of  
9 individuals needing special education.

10 That occurs in a context, though, of a  
11 larger attempt to provide parents with greater  
12 choices and opportunities in pursuing education,  
13 typically nonpublic alternatives, although as all of  
14 you I assume are aware, charter schools are in fact  
15 public schools and raise special IDEA questions which  
16 we occasionally address.

17 But mostly what we deal with is  
18 individuals who want to opt out of the public school  
19 system because they I believe reflect what I think is  
20 an unusual dichotomy or conundrum, which is at the  
21 same time that we've made incredible strides in the  
22 time that I've been working during my working life,

23

1     which spans from 1978 till today, we've made  
2     incredible strides in special education and in  
3     serving children in need of special education, the  
4     overall performance of the American education system  
5     has in fact declined and declined steadily.

6                     And it is in the context of trying to  
7     reverse that overall trend that the Institute for  
8     Justice advocates increased competition and increased  
9     opportunities for all parents to make use of other  
10    opportunities besides monopolistic public schools.

11                    As a result, the people that we deal with,  
12    the people who are our clients in school choice  
13    litigation, are people who want out of public  
14    schools, people who believe that their children have  
15    been misidentified as in need of special education,  
16    people who believe that they need a different  
17    environment for their children because the public  
18    schools have become increasingly characterized by  
19    disruption and inadequate education.

20                    As a result, from our perspective, the  
21    issues that OSEP should probably focus attention on  
22    are the extent to which special education  
23

1 requirements may be contributing in any way to the  
2 issues of the failure of public schools to be able to  
3 maintain adequate discipline, the ever apparent  
4 increasing expansion of the number of children in  
5 special education, in particular the category of  
6 people labeled as learning disabled and who because  
7 of that label may in fact be diverting resources away  
8 from more severely disabled and clearly disabled  
9 children who need greater services, and the issue of  
10 accountability of why children are not learning in  
11 general, not just learning disabled kids.

12           One of the things I was interested to note  
13 the previous speaker discussing was the fact that  
14 California with its emphasis on whole language had  
15 managed to fail because of that emphasis on  
16 addressing early reading needs. That issue was not  
17 limited to kids with learning disabilities. It of  
18 course had substantial impacts throughout the state  
19 of California on their performance on tests and on  
20 the ability of kids to learn to read. I think that  
21 that's a very good example of the issue of the  
22 overall concern that we have for public education and  
23

1 its impact on the subset, which is the kids in need  
2 of special education.

3           Finally, in order to let you ask  
4 questions, I'd just like to address the one issue  
5 which is the suggestion that enforcement  
6 responsibilities be removed from OSEP and placed  
7 somewhere else, particularly the Department of  
8 Justice. As Dr. Hehir mentioned, the IDEA is  
9 relatively unique among federal statutes. It is in  
10 fact a grant statute as well as having civil rights  
11 aspects. From my perspective as somebody who spent a  
12 lot of time enforcing civil rights statutes,  
13 particularly Section 504, a statute like IDEA should  
14 not be enforced outside of the area of the agencies  
15 that have the expertise on those particular topics.  
16 That will lead to significant problems I believe, and  
17 I would recommend that OSEP retain any enforcement-  
18 type responsibilities that it has.

19           Thank you very much. I'm delighted to  
20 have been able to provide my somewhat jaundiced views  
21 on these topics, and I'd be happy to join the rest of  
22 the panel in answering any questions.

23

1 DR. COULTER: Thank you, Mr. Komer.  
2 Commissioners, we have relatively limited time, so I  
3 would appreciate your adherence to the five minutes,  
4 and I will begin with Commissioner Takemoto.

5 MS. TAKEMOTO: I would like to wait until  
6 this round finishes.

7 DR. COULTER: Okay. All right.  
8 Commissioner Sontag?

9 DR. SONTAG: Paula, it's good to see you  
10 again.

11 MS. GOLDBERG: Thank you.

12 DR. SONTAG: I'd like to ask you a couple  
13 of questions about the data that you present on page  
14 13 of your report. I think we all have some concerns  
15 about funding for special education coupled with I  
16 think we need to take a reasonable look at that  
17 growth. And as I looked at the area that you had the  
18 most action on, so to speak, it's attention deficit  
19 disorders. Would you be willing to foreshadow what  
20 that might mean in terms of potential growth in  
21 special education?

22 MS. GOLDBERG: I can only respond to  
23



1 actually saying to you that the number of calls we  
2 receive from families, we receive many calls. And we  
3 had a workshop last week in Minnesota where we had  
4 almost 200 parents come. And we asked the question,  
5 how many are receiving special education? And many  
6 of them were not receiving special education. But  
7 their children have issues and they feel their  
8 children aren't learning. So it is an area where we  
9 are getting calls from families, and that's what I  
10 can say. I can't foreshadow that this is going to --

11 I can't answer your question directly. I can only  
12 say that this is what we are hearing from families of  
13 their concerns. And that when I went around the room  
14 and asked the parents individually beforehand, they  
15 said the schools, it was not working for their child.

16 DR. SONTAG: Thank you.

17 DR. COULTER: Commission Berdine?

18 MR. BERDINE: I want to thank the panel.

19 This is very interesting. Enjoyed both the written  
20 testimony and your presentations. I have two simple  
21 questions, two straightforward questions. One  
22 directly to Paul and then to the other two panelists.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

We've heard a lot of testimony in the Commission about the disconnect between parents and communities and teachers, and we've heard a lot of testimony about from teachers that they leave the field because of the litigious nature of special education. What recommendations would you make to OSEP, Paula, that would help reconnect teachers in training with parents? And the same question would be to the other panelists, what recommendations would you make to OSEP that would reconnect teachers in training to the legal system that they need to learn how to operate in?

MS. GOLDBERG: Two points then I will address your question. One, Suzanne Martin from the University of Florida has a new national significance grant and it is to try and train, develop a curriculum to train teachers pre-service about working with families, and I think that is a critical piece both in regular ed teachers and special ed teachers.

On the 60 Minutes show there was a

1 professor who said that at her university, teachers  
2 are not taught how to work with families and that it  
3 is a very critical role. So that would be one major  
4 suggestion that I think is important.

5 MS. MARGOLIS: I think that that's a  
6 really key point. Having just served on a Maryland  
7 State Department of Education task force on teacher  
8 preparation, recruitment and retention, my  
9 subcommittee, which was looking at teacher  
10 preparation issues as they affect recruitment and  
11 retention heard from new teachers, experienced  
12 teachers, school administrators, families and put our  
13 own experiences on the table as well.

14 And I think we've concluded, and I  
15 certainly have in my years of practice, that a good  
16 deal of the disputes that occur between families and  
17 school systems are based on lack of good  
18 communication. And I think it's really essential  
19 that teachers learn as they're being trained how to  
20 deal with families. I just sat through a meeting on  
21 Monday that was one of the most unpleasant meetings I  
22 have ever attended and thought, you know, I wish I

23

1 could write an article on how to turn an ally, a  
2 parent ally into an adversary in three hours or less.  
3 And I'm not going to write that article, and I'm  
4 going to continue to try to work with my school  
5 system, but it was an extraordinary experience for  
6 me, and I have a lot more experience in this field  
7 professionally than most parents do.

8 I think also that in terms of  
9 understanding the legal system, it is important for  
10 teachers to do that. But we heard from teachers who  
11 complained that the bulk of the professional  
12 development that they receive is on what the law  
13 requires. And I think again that if teachers receive  
14 the kind of preparation they really need to work with  
15 kids with a variety of disabilities in their  
16 classrooms, if they learned how to modify curriculum,  
17 adapt curriculum, do effective behavior interventions  
18 with kids, that a lot of the legal stuff would just  
19 sort itself out and that focusing on the legal issues  
20 rather than focusing on the substantive education  
21 issues for teachers in training is really one of the  
22 reasons why there are so many disputes as well as the  
23

1 communication issue.

2 MR. KOMER: I'm not sure that I have  
3 anything specific that I can add to that. I think  
4 that what that reflects is part of a larger problem,  
5 which is that many times teachers are not  
6 particularly responsive to any parents, not just the  
7 parents of disabled children, and that's an issue  
8 that has to be addressed systemically.

9 The IDEA is beneficial in that it requires  
10 a certain level of parental interaction, and I fully  
11 support any teacher training changes that make  
12 teachers more responsive. But as long as the larger  
13 systemic issue, which is, particularly in inner  
14 cities, that the student population is essentially  
15 captive and has no other alternatives, I think that  
16 it's inevitable that administrations and teachers as  
17 parts of the educational establishment will be  
18 unresponsive as long as the population there doesn't  
19 have other alternatives.

20 If the parents know that they can leave  
21 and the school districts know that they will lose  
22 their client base, I think you'll see school

23

1 districts react different to all parents, not just  
2 the parents of disabled kids.

3 DR. COULTER: Commissioner Pasternack?

4 DR. PASTERNAK: Thank you, Mr. Chairman.

5 I'd like to state for the record that Leslie and  
6 Paula exemplify the kind of parents as professional  
7 model that we have in many parents across the  
8 country.

9 The first thing I'd like to ask  
10 particularly Paula and Leslie is what about the  
11 complaint system doesn't work, and how can OSEP help  
12 make it better?

13 MS. GOLDBERG: When we did a survey, and I  
14 would be happy to share with you all the responses  
15 from the parent centers around the country, but they  
16 say they do not, if the state takes an action,  
17 sometimes it takes four months for the state to get  
18 back to them rather than the 60 days required. So,  
19 one, they're not always following the law.

20 DR. PASTERNAK: Okay.

21 MS. GOLDBERG: Two, one of the things that  
22 we found in Minnesota was that if they issued a

23

1 corrective action plan, there was no follow-up for  
2 the local district to actually do it, so the parent  
3 would say, well, I went through this process, the  
4 complaint. The state issued a report and nothing  
5 happened in my local district. So Minnesota hired  
6 two staff people to follow up on the corrective  
7 action plan and within 30 days they kept following up  
8 and that's made a tremendous difference in the  
9 implementation.

10 So whether you look at the process, you  
11 talk to Norina Hale, who is the state director in  
12 Minnesota, and you put some timelines and some I  
13 think it's more funds in terms of more staff to  
14 actually make it work, and in the long run it's going  
15 to save money because it will have fewer due process  
16 hearings and fewer adversarial issues.

17 DR. PASTERNAK: Okay.

18 MS. MARGOLIS: I can only speak to  
19 Maryland, and I think we're an example of how federal  
20 monitoring can at times really make a difference,  
21 particularly if there are teeth behind it. Our  
22 complaint management system has improved

23

1 significantly over the last few years. For the first  
2 time, we have a system that actually lists  
3 enforcement actions that can be taken. We never had  
4 enforcement.

5 Now the state hasn't actually exercised  
6 those or has just begun to exercise some of those,  
7 but we actually have a written procedure now that  
8 lists enforcement as a piece of the process.

9 We use the complaint management system a  
10 great deal in our office. We don't have the  
11 resources, we don't have the staff to be able to go  
12 to a lot of due process hearings. And frankly, a lot  
13 of issues don't lend themselves well to due process  
14 hearings, so that is a very important remedy for  
15 people to have.

16 We have found the complaint system most  
17 effective when it deals with concrete violations of  
18 the IDEA that the state can look to the regulations,  
19 find something and pin its findings to them. We have  
20 been less successful where we have filed complaints  
21 to try to change the quality of the services,  
22 particularly what we've found in our discipline

23



1 project is that so many of the cases that come to us  
2 as discipline cases are really appropriateness cases.  
3 They are kids who have not been identified for  
4 special education or the kids who are in special  
5 education but have really worthless behavior  
6 intervention plans if they have any intervention  
7 plans at all.

8           When we have tried to complain about the  
9 quality of the behavior intervention plan, we've not  
10 been as successful, I think because our state feels  
11 like they don't have anything from OSEP or anything  
12 in the law that they can pin a finding to and  
13 actually make a qualitative judgment about.

14           So I think that to the extent that there  
15 can be more guidance coming from OSEP, to the extent  
16 that there can be more specificity about what the  
17 components would be of a good behavior intervention  
18 plan, that's an example of the kind of thing I think  
19 would help the process a lot.

20           But we have been able to make both  
21 individual change at the student level and systemic  
22 change through the complaint process, and that's a

23

1 very recent thing for us. It's really only in the  
2 last maybe two or three years that we've been able to  
3 do that, and I think OSEP had a lot to do, because we  
4 were monitored in 1999, and I think that Maryland  
5 felt a great deal of pressure because of the  
6 impending monitoring visits.

7 MS. GOLDBERG: One thing I just want to  
8 mention is that up until '97, there was a secretarial  
9 review of complaints that parents could file. Now  
10 let's say a state complaint system isn't working, the  
11 parents have no option. There's no place that they  
12 can appeal. Most systems have some place where you  
13 can appeal, and at this point, there isn't that.

14 DR. PASTERNAK: But apropos of what you  
15 said earlier, it was taking years for secretarial  
16 reviews to happen, and so wasn't one of the  
17 complaints that by the time the secretarial reviews  
18 are done, the kid had graduated from school and so it  
19 was no longer relevant to the needs of that kid?

20 MS. GOLDBERG: I'm not sure. I wasn't  
21 involved in that in terms of that they were taking a  
22 long time.

23

1 MS. MARGOLIS: If I could respond to that  
2 quickly. I think when the IDEA was reauthorized in  
3 1997, some of us at least commented that while the  
4 secretarial review process had not worked  
5 effectively, that wasn't a reason to eliminate the  
6 secretarial review process. It was an indication of  
7 the need to improve that process. And when the state  
8 is responsible for violations of the IDEA or when the  
9 complaint process is not working, there is a real  
10 lack of a place to appeal to if there's not a  
11 secretarial review process available.

12 DR. PASTERNAK: At the risk of incurring  
13 the wrath of the Chair, one more quick question or  
14 quick question for a quick answer. What would  
15 compliance with enforcement look like so that OSEP  
16 would know what it is that you're specifically  
17 recommending so that we have a system where we can  
18 get states to be in compliance since the NCD report  
19 suggests again, not to be redundant, that no state is  
20 in compliance with the IDEA?

21 MS. MARGOLIS: We're in the process of  
22 developing what we're calling a sanctions protocol

23

1 that will be added to our proposal. But essentially,  
2 we are looking at a system that has the indicators  
3 that would tell you if that priority is being met,  
4 and then using data to sort states into categories,  
5 the ones that are meeting or exceeding the  
6 indicators, the ones that are close but need some  
7 work, the ones that need a lot more work, and the  
8 ones that we put in the category of unacceptable, and  
9 would want OSEP to focus its attention primarily on  
10 the states falling into the unacceptable category,  
11 because those are the states that are harming  
12 children by their failure to implement the IDEA.

13           The range of interventions would depend on  
14 the nature of the violation and on the reason for the  
15 violation. If it's an issue of capacity building,  
16 we'd want the technical assistance, the resources,  
17 the ability to build capacity in place with timelines  
18 and with actions that would occur if those timelines  
19 are not met.

20           If the reason for failure to implement is  
21 maliciousness, for lack of a better word, if it's a  
22 deliberate decision to flaunt the requirements of the  
23

1 IDEA, then the intervention would obviously look  
2 different you might leap to the enforcement piece.  
3 But we're in the process of developing a proposal for  
4 that sanctions protocol that would then be shared  
5 with the larger work group in June.

6 DR. PASTERNAK: Thank you, Mr. Chair.

7 DR. COULTER: Commissioner Fletcher?

8 DR. FLETCHER: I have quick questions that  
9 don't require elaborate answers, starting with Mr.  
10 Komer. I'm wondering, in terms of your advocacy of  
11 parental choice programs, whether that's with or  
12 without accountability at the level of either the  
13 school or the child?

14 MR. KOMER: School choice fundamentally  
15 functions on accountability at the level of the  
16 parent, the family. If the family is dissatisfied  
17 with the services they receive, the family chooses a  
18 different provider. It's the same sort of  
19 accountability that I as a parent with kids who are  
20 now in private school exercise on a daily basis.

21 DR. FLETCHER: If parental satisfaction  
22 was an index for the success of our schools, would we

23

1 need accountability systems such as the ones that are  
2 being put in place?

3 MR. KOMER: If it was in a broader  
4 competitive environment, perhaps not. But in fact we  
5 don't have that. We have a system in which 90  
6 percent of the kids are in public schools, almost all  
7 of those in the schools they've been assigned to.  
8 And the accountability system is needed to determine  
9 whether or not they're providing the services that we  
10 believe they should be providing.

11 DR. FLETCHER: How do parents know whether  
12 the child is getting effective services without some  
13 form of accountability?

14 MR. KOMER: In most of the states, the  
15 kids in private schools take tests just as kids in  
16 public schools take tests. My kids take the ERBs  
17 every year. And we have a pretty good idea how  
18 they're doing.

19 DR. FLETCHER: But for states that  
20 provide, for example, parental choice for kids with  
21 disabilities, those types of tests are often not  
22 appropriate for the child.

23

1           MR. KOMER: That would be an interesting  
2 question to ask in the states of Vermont and Maine  
3 where the voucher programs there called tuitioning,  
4 the school boards basically have two  
5 responsibilities. One is to determine where the kids  
6 are going to school, and second to provide special  
7 education services to those kids who are identified  
8 as in need of special ed. I'm not sure what  
9 accountability systems Maine and Vermont require with  
10 respect to those special ed kids, but that would be a  
11 model that you could look at.

12           DR. FLETCHER: In Florida children with  
13 disabilities can be placed in private schools with no  
14 form of accountability. I gather you support that?

15           MR. KOMER: We have supported the McKay  
16 Scholarship Program, although I haven't seen yet  
17 because it's so new, whether the expansion has  
18 continued to result in high levels of parental  
19 satisfaction or not. I don't think anybody's studied  
20 that.

21           DR. FLETCHER: Ms. Goldberg, speaking of  
22 parental satisfaction, all the data that you

23

1 presented here is based on parental responses. Do  
2 you have any data on the response, for example, of  
3 the professionals that attend PTI trainings or on the  
4 responses of SEAs or LEAs or schools on PTIs?

5 MS. GOLDBERG: We do have data in terms of  
6 professionals who fill out workshop evaluations at  
7 the end. We haven't collected that. There was a  
8 major research study done a number of years ago on a  
9 PTI that actually had control groups of parents and  
10 asked a system of teachers throughout the state and  
11 also special ed directors. But to my knowledge,  
12 that's the only piece of a major research project  
13 that was done.

14 DR. FLETCHER: So pretty much the data  
15 that you're presenting is restricted to parental  
16 responses, and you don't survey, for example, schools  
17 to find out if they're aware of PTIs or how they feel  
18 about the services provided by PTIs and so on?

19 MS. GOLDBERG: At this point, we developed  
20 a system to begin. There was no systemized approach  
21 to collecting data from the parent centers across the  
22 country, so our first step was really to begin to

23



1 collect data from families. But we certainly could  
2 begin to look at the other avenues.

3 DR. FLETCHER: And then quickly, I notice  
4 also like Commissioner Sontag that many of the phone  
5 calls that you get are from parents of children with  
6 ADHD and learning disabilities. And I'm wondering if  
7 you know to what extent the primary concern for these  
8 families is over eligibility issues. In other words,  
9 the dispute occurs at the level of entry into special  
10 education versus the types of services that are  
11 provided.

12 MS. GOLDBERG: I cannot answer that. We  
13 do not ask that question at this particular moment  
14 across the whole country.

15 DR. FLETCHER: Thank you.

16 DR. COULTER: Commissioner Takemoto?

17 MS. TAKEMOTO: Thank you, Mr. Chair or Dr.  
18 Chair, for giving me some extended time for  
19 developing the question. But for me this has been a  
20 developmental process of listening to lots of folks  
21 around the country. I guess I see special education  
22 as being a great bang for the buck when I see the

23

1 lights turning on for students with disabilities,  
2 parents, teachers, educators and administrators, that  
3 there are lots of good things happening and there are  
4 lots of good things happening with very little  
5 resources.

6 I'm shocked that OSEP has 107 or had 107  
7 employees to do all that work. And it also strikes  
8 me that much of the work or much of the bang for the  
9 buck with those few people has had to do with using  
10 the field to come up with solutions, using the field  
11 to work together more closely to come up with  
12 solutions and also disseminating those solutions to  
13 parents, students, practitioners, educators.

14 So from each of you my question is, at the  
15 same time we've seen and been distressed by those  
16 lights that have gone out in those students, in those  
17 teachers, in those families, in those educators, what  
18 would be the most important thing that OSEP could do  
19 to keep the lights in those eyes shining bright? And  
20 you don't have extended time for response here.

21 MS. GOLDBERG: I think it's a whole range  
22 of things. You're asking for one thing. I think

23

1 it's teacher training. I think it's parent training.  
2 I think it's a number of different things. It's hard  
3 to prioritize one. But certainly I also think OSEP  
4 in taking a leadership role and saying that the IDEA  
5 is important and that special education children have  
6 high expectations and can learn and that we look at  
7 access to the general curriculum.

8 All the things that we've been talking  
9 about are significant and important, and OSEP playing  
10 that role of encouraging that, encouraging technical  
11 assistance, encouraging research. I think the Part D  
12 programs I think Tom mentioned that they are  
13 underfunded, and I think we need to look at that and  
14 we need to encourage more funding to have that  
15 infrastructure of research, training, technical  
16 assistance.

17 MS. MARGOLIS: I agree that it's a range  
18 of things and would say obviously increased resources  
19 are key. More prompt and clear technical assistance  
20 from OSEP. We've heard from states that they've  
21 asked for guidance and it's sometimes been years  
22 before they've received a response.

23

1           So a quicker turnaround time for guidance,  
2           making the comprehensive system of personnel  
3           development meaningful, supporting better training  
4           for teachers, and look at what teachers really need  
5           to know to work with kids with disabilities I think  
6           are some of the things.

7           MR. KOMER: I think OSEP is in a unique  
8           position to know what states are doing it right and  
9           to publicize the states that are doing it right and  
10          to hold them up as examples for the other states in  
11          an exemplary way.

12          DR. COULTER: Thank you, witnesses. I  
13          know two of you are running relatively tight in terms  
14          of needing to return to your base. We want to thank  
15          you very much for your willingness to provide  
16          testimony and for your responsiveness to our  
17          questions on what we consider to be a vital topic.  
18          So we thank you.

19          Members of the audience, we will be  
20          reconvening at 1:15 to take testimony and we'll see  
21          you then. Thank you.

22          (Whereupon at, 12:10 p.m. on Friday, April  
23

1 26, 2002, the hearing recessed, to be reconvened at  
2 1:15 p.m. the same day.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

## 1 AFTERNOON SESSION

2 (1:15 p.m.)

3 DR. COULTER: I'd like to welcome you to  
4 the afternoon session of the OSEP Task Force, Role  
5 and Function. We have witnesses this afternoon, and  
6 the witness that is before us now is -- I'm sorry, I  
7 have just been advised by my colleagues to remind  
8 everyone that we do have a sign language interpreter  
9 available in the room. Those people that need  
10 interpretation, if they would indicate to us, so we  
11 can make certain that we can get the interpreter in  
12 front of you.

13 We have two witnesses this afternoon.  
14 Speaking to the topic of OSEP - Achieving Excellence  
15 in Implementing Special Education Through Federal  
16 Leadership, with us today are Dr. Philip J. Burke.  
17 Dr. Burke is Professor and Chair of the Special  
18 Education Department at the University of Maryland.

19 Dr. Burke also serves as Director of the  
20 Institute for the Study of Exceptional Children and  
21 Youth, housed in the University's Department of  
22 Special Education.

23

1                   With us also today is Martin Gould, the  
2                   Senior Research Specialist for the National Council  
3                   on Disability, an independent federal agency that  
4                   makes recommendations to the President and to  
5                   Congress on disability policy issues.

6                   Gentlemen, thank you very much for coming  
7                   today. Dr. Burke, you're on.

8                   DR. BURKE: My greetings to members of the  
9                   President's Commission on Excellence in Special  
10                  Education, ex officio members, staff of the  
11                  Commission, all staff present, and guests. I'm  
12                  honored to come before you today to address the  
13                  topics of achieving excellence in implementing  
14                  special education programs through federal leadership  
15                  as it is provided by the Office of Special Education.

16                  Indeed, we have entered a new century, and  
17                  have been awakened as a nation to the critical  
18                  importance of education in all aspects of our lives.  
19                  We find ourselves at a crossroads in public  
20                  education. To quote Robert Frost, we took the road  
21                  less traveled by with respect to the federal role in  
22                  education.

23

1           That has now evolved dramatically from a  
2 collector and disseminator of statistics, the early  
3 role served by the U.S. Office of Education, the E in  
4 the HEW of an earlier era, to a new and vital role,  
5 an active role in not only encouraging excellence in  
6 education, but in requiring that expectations and  
7 outcomes be defined and assessed.

8           Progress in this raelm since the  
9 publication of "A Nation at Risk" 19 years ago, is  
10 nothing short of spectacular, as exemplified in the  
11 No Child Left Behind Act of 2001. In the less  
12 traveled road, generally the active federal  
13 environment has been traveled before.

14           The history of special education and the  
15 active role prescribed by Congress to address the  
16 educational needs of children with disabilities  
17 predates general education initiatives by over 25  
18 years, and it is important to remember that history  
19 as we look to the future.

20           The current OSEP traces its organizational  
21 roots to 1963 when President Kennedy created the  
22 Division of Handicapped Children and Youth. This  
23



1 Division was organized to administer newly-organized  
2 grant programs under Public Law 88164, Programs in  
3 Teacher Training, Research and Demonstration.

4 It is important to note that these  
5 programs were not completely new with the Kennedy  
6 Administration. They built upon programs authorized  
7 earlier with a piece of legislation signed by  
8 President Eisenhower in 1958.

9 Our country was always in a difficult  
10 period in 1958, with the recent launch of Sputnik and  
11 the national crisis of confidence that that resulted  
12 in. This led the enactment of the National Defense  
13 Education Act, however, along with federal  
14 legislation designed to stimulate the preparation of  
15 scientists that year, Congress and the Eisenhower  
16 Administration recognized the need to prepare  
17 teachers of children with disabilities.

18 So, Public Law 85926 was enacted, creating  
19 a significant role for the Federal Government in the  
20 field of mental retardation. It's important to note  
21 that President Eisenhower signed that bill just four  
22 days after signing the National Defense Education  
23

1 Act.

2 In 1967, Congress amended the Elementary  
3 and Secondary Education Act and added Title VI to  
4 address the needs of children with disabilities.  
5 With the enactment of Public Law 89750, Congress also  
6 created the Bureau of Education of the Handicapped to  
7 administer this expanded federal role in the  
8 education of children with disabilities.

9 The creation of DEH was designed to  
10 rectify the earlier dissolution of the Division of  
11 the Handicapped Children and Youth, which had become  
12 a casualty of an organizational streamlining effort  
13 in Government.

14 Testimony before Congress indicated that  
15 dispersal of programs of research, personnel  
16 preparation, aid to states, and demonstration that  
17 occurred as a result of the dismantling of the  
18 Division of Handicapped Children and Youth have led  
19 to reduced services and other undesirable results.

20 It is important to review this history  
21 because the need for a strong and viable OSEP cannot  
22 be overstated, in my view. Not just the presence,

23

1 but a dynamic organization that provides national  
2 leadership, not just federal leadership.

3 That leadership must involve every element  
4 necessary to make the Individuals with Disabilities  
5 Education Act a formidable presence in the lives of  
6 children and youth and their families as they  
7 experience education in our nation's schools.

8 Key to dynamic leadership are the elements  
9 of research, personnel preparation, compliance, and  
10 monitoring or programs, and a demonstration of state-  
11 of-the-art practices in all aspects of special  
12 education.

13 I'll paraphrase some of the testimony: A  
14 continuing and strengthened national leadership role  
15 is urged for OSEP. This is well beyond the concept  
16 of federal leadership in special education. The  
17 latter implies a limited role of getting grants out  
18 for discretionary programs and conducting the  
19 necessary monitoring of compliance.

20 National leadership would require the  
21 steadfast commitment to staffing the OSEP by the most  
22 highly-qualified professionals, individuals with

23

1 experience and status in the field and in related  
2 disciplines, individuals with expertise and standing  
3 in the professional field that is recognized widely,  
4 and who are respected for their independent  
5 understand of issues and programs and the challenges  
6 faced by the delivery of the promise of IDEA in all  
7 respects.

8           As the federal role in education evolves,  
9 and assumes a more prominent national posture in the  
10 lives of children and their families, it is essential  
11 that OSEP provide critical ongoing leadership.  
12 Current staff and the leadership of OSEP should be  
13 commended for a steadfast commitment to the ideals  
14 and purposes of IDEA in all respects.

15           They have functioned effectively in very  
16 challenging times, however, as we look to the future  
17 and the role of OSEP, we must find ways to strengthen  
18 that leadership. It should be possible to enable  
19 experienced professionals from universities, state  
20 departments of education, and local schools to serve  
21 for a productive period in OSEP, possibly on  
22 supported leave.

23

1           In the past, it has been possible to have  
2 various internship programs. It might also be  
3 possible to create similar experiences for more  
4 senior professionals who might be able to join OSEP  
5 to support this concept of strong leadership.

6           Effective national leadership would be  
7 achieved with a blend of experienced civil servants,  
8 senior executive personnel, appointees, and a potent  
9 mixture of additional experts and professionals in  
10 the field, the latter a mix of both junior and senior  
11 professionals augmented with interns. Of course,  
12 this mix of personnel would also include parents and  
13 individuals with disabilities.

14           I'd just like to talk briefly about some  
15 of the problems we have in special education today,  
16 and they are very significant. One of the critical  
17 problems involves the availability of skilled, well-  
18 prepared teachers.

19           Will a child's teacher be competent,  
20 qualified, well-prepared, and well-supported in the  
21 classroom? Will the teacher had access to state-of-  
22 the-art intervention strategies and the latest

23

1 curriculum developments, the latest technology,  
2 access to staff development of the highest quality?

3           Unfortunately, when students gain access,  
4 which we seem to have formulated very efficiently, we  
5 seem to have resolved the issue of access, but,  
6 unfortunately, the answers to the questions about the  
7 type of teacher they're going to receive is perhaps  
8 followed by the polite inquiry to ascertain the  
9 school system or school building, or teacher the  
10 child will encounter.

11           With widespread shortages of qualified  
12 special education teachers, access all too often  
13 means access to a program with a provisionally-  
14 certified or emergency-credentialed teacher. There  
15 are some suggestions that I have made with a strong  
16 leadership role to strengthen the operation of OSEP,  
17 and I outlined those in my testimony. I won't read  
18 it; I'll highlight them. For example, one would be  
19 conceptual. The concept of what was being considered  
20 for award or funding were programs, not projects.

21           That's particularly true in the personnel  
22 preparation area. If you view the grants before you

23

1 as projects, the natural question to ask is what's  
2 new in this or is this new? When, indeed, you're  
3 looking at programs to prepare teachers or doctoral  
4 students for leadership, a more appropriate question  
5 is, is this program state-of-the-art and of the  
6 highest quality? And the shift to functioning, to  
7 looking at grants as programs as opposed to projects,  
8 would be extremely helpful. It's more than a  
9 conceptual shift. It might also be possible through  
10 this to identify highly-effective programs, models  
11 that could be identified by others to be emulated and  
12 replicated.

13           Operationally, as the grants are reviewed  
14 in OSEP, it's been in the recent past -- 30 points,  
15 for example, have been awarded to need on the grants.  
16 A suggestion might be -- I know that that's been  
17 reduced recently, but one would assume that if there  
18 was no need for the program, that the Secretary would  
19 not be issuing a priority, and it might well be that  
20 those points could be reassigned to, say, the quality  
21 of the program that's under review, and that the  
22 field leaders would be judging the actual state of  
23

1 the art or the quality of the program that's being  
2 reviewed, and that would have a large influence on  
3 whether or not the program is to be supported.

4           There are several things within personnel  
5 preparation right now that were to inhibit the  
6 efficacy of the program. For example, the payback  
7 provision wherein individuals are required to pay  
8 back two years for every year of support, no matter  
9 how that support is defined, works as a disincentive  
10 for a large number of students, particularly mid-  
11 career-changing students.

12           It creates a dynamic that is  
13 counterproductive, and there are no data to support  
14 the need for a payback, at least that I'm aware of.  
15 In fact, a recent study found that 98 percent of the  
16 doctoral graduates of those personnel preparation  
17 programs were actually employed in the field of  
18 special education. So what little data we do have  
19 shows that there's no need for the payback.

20           Comments on planning CSPD and state  
21 improvement grants: We've had CSPD since Public Law  
22 94-142 was enacted. This is a comprehensive system

23



1 of personnel development. It's a system that is  
2 supposed to help states and regions to plan for the  
3 needs for personnel.

4 Basically it hasn't been happening, in  
5 some places, not at all, in other places, rather  
6 ineffectively. We now have the State Improvement  
7 Grant Program, and while it's been in existence for  
8 only two years, there are a number of questions about  
9 its efficacy and how it's functioning.

10 For example, the SIG and CSPD requirements  
11 should be examined carefully, and implemented in a  
12 fashion that responds directly to the personnel needs  
13 in the field.

14 A few comments on review panels: Every  
15 effort should be made to look at the review panel and  
16 its efficacy as it functions in OSEP. There have  
17 been suggestions by organizations such as HECSI, and  
18 we have also had a work group on peer review that  
19 made recommendations.

20 These recommendations should be examined  
21 to see where appropriate changes ought to be made. To  
22 give you an example of how it plays out, the

23

1 experience in the recent past has been that there  
2 would be three field graders. One would be an  
3 expert, one would be the representative of an under-  
4 represented minority group, and another person would  
5 be a person with a disability.

6           When you have that lock-step formulation  
7 of panels, the part that seems to lose out is the  
8 expertise with respect to judging the personnel  
9 preparation program, when, indeed, the responsibility  
10 of the panel should be to bring to the review, the  
11 ability and expertise to make sound judgments on  
12 whether the grant application represents state-of-  
13 the-art practice of the highest quality in the  
14 appropriate field of preparation.

15           On grant size and funding shortages, its'  
16 absolutely clear -- and you'll see in my  
17 recommendations that OSEP has been grossly under-  
18 funded, especially in light of the fact that we have  
19 seen such rampant teacher shortages over the past  
20 decade. Few realize that the actual funding that was  
21 targeted in this field was not increased for ten  
22 years,           for           an           entire           decade.

1           This past year it was increased by \$8  
2 million. That was the first increase in ten years.  
3 But an accompanying difficulty, and one that you may  
4 want to look at, is the move by OSEP to go to  
5 significantly larger grants, apparently to reduce the  
6 amount of paperwork involved and the number of  
7 actions that people had to deal with -- the burden on  
8 staff, so to speak.

9           It also has resulted in diminution in the  
10 number of programs that could be funded. In the most  
11 recent cycle, for instance, in high incidence, there  
12 were 145 applications. Sixty of them were  
13 recommended to be awarded by the panels and approved,  
14 but only 27 were actually funded.

15           So we were left in the midst of a blatant  
16 teacher shortage in every state in the Union. We  
17 had, for example, 33 grants that were fundable, but  
18 that were left unfunded. So it's a combination.

19           Mostly the problem is a lack of funding,  
20 but, operationally, some examination should be given  
21 to the size of those grants. To fund small grants  
22 and target them in a program as opposed to a project,

23

1 I think the payoff would be much greater for OSEP.

2 Also, if the problem is paperwork, some  
3 consideration should be given to multi-year awards.  
4 If you've given an award for three years, you ought  
5 to be able to make the award and not have to deal  
6 with the continual review each year. There has to be  
7 a way to change that.

8 The funding: We'll be recommending, at  
9 the very least, that there be a doubling of the  
10 current appropriation for Part D, which would be \$185  
11 million, at least. At the leadership level, we're  
12 learning that there has been a serious decline in the  
13 number of doctoral students. These are the people  
14 who staff our colleges and universities.

15 In fact, a study founded by OSEP found  
16 that there has been a 30-percent decline in the  
17 production of leadership personnel. That's becoming  
18 a serious problem for us as the faculty in colleges  
19 and universities who prepare the teachers are  
20 beginning age out.

21 Award cycles: This is the mantra of  
22 training programs and others for years, but it is

23

1 important to recognize that there is a cycle with  
2 respect to induction for students. This past cycle,  
3 grants were submitted in October or November of 2000,  
4 and then the awards were made in the following summer  
5 in July.

6           Those of you who are familiar with how  
7 teacher education or personnel preparation or  
8 doctoral study works, July and August is already way  
9 too late to be recruiting a class of students who  
10 will then be involved in preparation. It makes the  
11 program that much more inefficient and lessens the  
12 impact that you can actually achieve with personnel  
13 preparation.

14           It would be a really good idea to work  
15 towards submissions in October and November, with  
16 announcements in February or March, and then the  
17 staff of OSEP would then be able to finish that work  
18 and go out and actually work with the teacher  
19 education programs and training through April, May,  
20 and June.

21           Recommendations -- and these I will read:  
22 Firstly, OSEP is woefully under-funded, given the

23

1 breadth of the mission to address the full  
2 implementational IDEA.

3           In the realm of teacher and leadership  
4 shortages, as well as in research, every effort must  
5 be made to increase the discretionary funding  
6 available for these critical programs. As funding  
7 for IDEA is increased, it is strongly recommended  
8 that concomitant and proportional indexed funding  
9 increases be made available in the discretionary  
10 budget.

11           Secondly, strengthen OSEP. The role of  
12 OSEP is unique in government. It must be  
13 strengthened as it achieves the development and  
14 implementation of IDEA in all of its elements and  
15 purposes.

16           Thirdly, through augmented staffing and  
17 support, elevate OSEP to a more nationally-visible  
18 leadership role, professionally, well beyond the  
19 currently-construed federal role related to grant  
20 management and monitoring.

21           Fourth, the interconnection and  
22 interrelationship between research, personnel

23

1 preparation, demonstration, and monitoring and  
2 evaluation of state programs must be maintained  
3 within OSEP and strengthened. OSEP cannot  
4 successfully carry out the scope of its mission  
5 without these programs functioning in one location,  
6 organizationally, operating as an effective and  
7 comprehensive unit.

8 Fifth, OSEP should be reorganized with the  
9 creation of major divisions for research, personnel  
10 preparation, and leadership, state assistance, and  
11 monitoring.

12 Sixth, OSEP should consider making  
13 significant changes in the peer review process and  
14 procedures for making awards, including realistic  
15 timelines, size of awards, and elimination of the  
16 payback provision.

17 Conceptually and operationally, OSEP  
18 should move to consideration of the program, and not  
19 project funding, where appropriate, including the  
20 elimination of ratios for student financial support.

21 And, finally, CSPD and SIG should be  
22 examined carefully to determine how they are

1 contributing to teacher production and staff  
2 development, particularly with respect to support for  
3 pre-service preparation of teachers in institutions  
4 of higher education, as well as staff development for  
5 personnel in the schools.

6 Thank you.

7 DR. COULTER: Thank you, Dr. Burke. Mr.  
8 Gould?

9 DR. GOULD: Good afternoon, members of the  
10 President's Commission on Excellence in Special  
11 Education; thanks for inviting NCD to participate  
12 today. I'm Dr. Martin Gould, Senior Research  
13 Specialist at the National Council on Disability.

14 NCD is an independent federal agency  
15 making recommendations to the President and Congress  
16 on all issues affecting Americans with disabilities.  
17 NCD is charged by Congress with monitoring federal  
18 statutes and programs pertaining to people with  
19 disabilities, assessing their effectiveness, and  
20 meeting their needs.

21 Its mission is to provide a voice in the  
22 Federal Government and in Congress for all people

23



1 with disabilities, in the development of policies and  
2 delivery of programs that affect their lives. One of  
3 those areas involves public education, including  
4 special education.

5           Of the various issues that are likely to  
6 be taken up during the IDEA reauthorization process  
7 this year, as you point out, leadership will be one  
8 of the key issues. NCD believes an integral part of  
9 exercising federal leadership is the role that OSEP  
10 must play in implementing and enforcing the civil  
11 rights law know as IDEA.

12           We believe it's not enough to support  
13 enforcement; you must do it. How well is IDEA  
14 working? How well has federal leadership worked?

15           In more than 25 years since its enactment,  
16 IDEA's implementation has produced improvements in  
17 the quality and effectiveness of the public education  
18 received by millions of children with disabilities.

19           National data show that, depending on  
20 which annual report you use, 27 to 60 percent of  
21 students who receive special ed graduate with  
22 diplomas, compared to 75 percent of their peers who

23

1 don't get special ed and don't need it.

2 About 27 percent of students who have IEPs  
3 complete high school, compared to 68 percent of the  
4 general student population. Three to five years  
5 after leaving high school, more than half are found  
6 to be employed, compared to 69 percent of their  
7 peers.

8 National data also show that 50 percent of  
9 students who receive special ed are instructed in  
10 regular classrooms, where they have access to general  
11 curricula and more rigorous educational instruction.  
12 We really believe these outcomes are a result of  
13 OSEP's involvement with state and local school  
14 districts over the years.

15 We also believe that the educational  
16 outcomes could be much better through strengthened  
17 federal leadership and consistent implementation and  
18 enforcement of the law. We repeat: You must not  
19 just support enforcement; you must do enforcement.

20 In January of 2000, as you well know, NTD  
21 released Back to School on Civil Rights, a report  
22 that analyzed data contained in the Department of  
23

1 Education state monitoring reports. The study  
2 measured compliance and enforcement in the areas of  
3 free and appropriate public education, least  
4 restrictive environment, individualized education  
5 programs, transition services, general supervision,  
6 residual safeguards and protections, and evaluation  
7 of students with disabilities.

8           The study also looked at the enforcement  
9 and decisionmaking efforts by leadership of the  
10 Department of Education. As you know, NCD's report  
11 revealed that a majority of states, to different  
12 degrees and over many years, have failed to ensure  
13 compliance and enforcement in these areas.

14           What are the implications and consequences  
15 of chronic non-compliance and lack of enforcement:  
16 The most basic and fundamental principles of a civil  
17 rights law such as IDEA.

18           First, when critical, individualized  
19 education services and programs such as individual  
20 mental health and psychological counselling are not  
21 provided, students may well develop behavioral  
22 problems that require school districts to apply

23

1 serious disciplinary consequences to those children.

2           Secondly, when students do not receive the  
3 speech or physical therapy services the IEPs require  
4 and that they're deemed eligible for. They cannot  
5 achieve economic outcomes. Clearly, those children  
6 will be left behind.

7           Third, when school systems continue to  
8 categorically and unnecessarily place students,  
9 particularly those from diverse backgrounds, in more  
10 restrictive educational settings, unnecessarily,  
11 students will be stigmatized, will have difficulty  
12 learning, and school systems cannot maximize the use  
13 of the scarce federal education dollars they receive  
14 yearly.

15           Fourth, when students do not have  
16 transition plans to prepare them and their families  
17 for the role of work or college or the demands of  
18 community life after high school, they are not likely  
19 to become independent and responsible adults.

20           The ongoing struggle of many students with  
21 disabilities, their parents, and their advocates to  
22 obtain services under IDEA leaves them with the

23

1 impression that the Federal Government is not  
2 enforcing the law effectively. In far too many  
3 cases, parents are still the main enforcement vehicle  
4 for ensuring compliance with IDEA at all levels of  
5 government.

6 To address this issue, as well as other  
7 matters that affect students and their families, as  
8 well as schools, NCD recommends:

9 First, OSEP should strengthen compliance  
10 monitoring and enforcement by recognizing states that  
11 are performing well. I repeat: Recognize states  
12 that are performing well; offer ongoing technical  
13 assistance to states to correct non-compliance; and  
14 apply consequences consistently when proven  
15 objectives are not met.

16 Second, OSEP should make as its own  
17 compliance monitoring and enforcement priority for  
18 the next five years, the assessment of state progress  
19 towards completing and creating reliable and  
20 comprehensive data to support effective state  
21 compliance monitoring and enforcement capabilities.

22 Third, OSEP should closely monitor state  
23

1 progress in developing those reliable data collection  
2 and reporting mechanisms that adequately and  
3 accurately assess both state compliance and  
4 performance results for students with disabilities.  
5 I repeat: Compliance and performance results for  
6 students with disabilities.

7 This recommendation coincides with the  
8 1997 IDEA reauthorization to focus IDEA  
9 implementation more closely on objective performance  
10 standards and results measures.

11 Fourth, OSEP should expand its program  
12 support for initiatives that promote educational  
13 opportunities and rights for under-served populations  
14 of children and youth with disabilities and their  
15 families.

16 More programs are needed to explain IDEA's  
17 requirements and the rights and unique needs of  
18 students with disabilities who are involved in the  
19 juvenile justice, Immigration and Naturalization, and  
20 child welfare systems, as well as in schools operated  
21 or funded by the Bureau of Indian Affairs.

22 Fifth, OSEP's monitoring process in each  
23

1 state should routinely include an ethnically diverse  
2 sample of students with a match to their records,  
3 where interviewed, along with their parents and  
4 service providers for a determination of whether the  
5 law's requirements are being met on their behalf or  
6 not.

7           Sixth, OSEP should issue the monitoring  
8 reports as soon as possible after the site visit,  
9 preferably within 60 days or two months, whichever  
10 comes first.

11           Seventh and finally, OSEP should develop  
12 and test the use of state compliance agreements that  
13 incorporate appropriate sanctions selected from a  
14 broad range of enforcement options and link them to  
15 the state's failure or inability to correct specific  
16 non-compliant conditions within an agreed timeframe.  
17 OSEP should also encourage the state's use of  
18 sanctions in this matter, when the state's compliance  
19 monitoring indicates that LEAs are failing to correct  
20 the findings of non-compliance.

21           During the course of five studies over 11  
22 years from 1999 to 2000, the National Council

1 consistently learned that parents of children with  
2 disabilities are enthusiastic supporters of the law.  
3 They think it is a good, sound, solid law. They also  
4 told us there is room for improvement on the basics.

5

6 OSEP has the responsibility to exercise a  
7 key leadership role in current IDEA reauthorization  
8 efforts. We stand ready at the National Council to  
9 assist OSEP in any way we can in these endeavors.

10 Thank you very much for allowing us to testify today.

11 DR. COULTER: Thank you both for your  
12 formal testimony. I would now like to turn it over  
13 to Commissioners to ask their questions.

14 Commissioner Sontag?

15 DR. SONTAG: Dr. Burke, good to see you  
16 again. You're looking older all the time.

17 DR. BURKE: Thanks for the compliment.

18 DR. SONTAG: A couple of questions on the  
19 area of personnel preparation: One deals with the  
20 issue of quality, which you testified to in the  
21 review process.

22 As I've look through the years at that

23



1 issue, I think that for the most part, OSEP does fund  
2 quality grants. But if we look at the issue of  
3 teacher training right now and the significant need  
4 for large expansion of the number of teachers, do you  
5 think there might be another way, another funding  
6 strategy that might increase the number of, first,  
7 secondary institutions that could get involved in  
8 training?

9 DR. BURKE: Actually, there are quite a  
10 number. I called the Council for Exceptional  
11 Children a few months ago, just simply to learn how  
12 many people are involved in the preparation of  
13 special education teachers. Their estimate is that  
14 in the country there are 700.

15 That's quite a few; that's well beyond the  
16 number of people that actually receive grants from  
17 OSEP. I believe the number of grantees that are  
18 involved in the production of teachers that are  
19 funded by OSEP represents a fairly small fraction.

20 The issue here really would be to expand  
21 the discretionary funding, going for ten years in the  
22 midst of a severe crisis, and lack of personnel,

23

1 really has inhibited the production of personnel and  
2 teachers. And I think that we are beginning, as of a  
3 couple of years ago, to really pay for that lack of  
4 support.

5 That's why many of us are advocating for a  
6 fairly significant increase in the future, so that we  
7 can get more of those individuals involved in some  
8 fairly good quality programs for preparation.

9 DR. SONTAG: A question to deal with  
10 accountability: I'm wondering if you could indicate  
11 to us what assurances you make to the schools in  
12 Maryland that your graduates have the ability to  
13 teach? Particularly, do every one of your graduates  
14 know how to produce and write an IEP?

15 DR. BURKE: Absolutely. It really begins  
16 with the relationship that you have with the school  
17 systems. For example, in the State of Maryland, ten  
18 of the special education directors are graduates of  
19 our department.

20 The two largest school systems --  
21 actually, the three -- Baltimore City, Prince  
22 George's County and Montgomery County -- are headed

1 by graduates of the University of Maryland, so we  
2 have excellent relationships.

3 We also convene a spring meeting where we  
4 bring in anywhere from 70 to 100 cooperating teachers  
5 and officials from the schools to interact with us  
6 about what we're doing. We present changes that are  
7 in the program, and they give us feedback on the  
8 changes they're producing.

9 That's an intensive aspect of what we do,  
10 but it's very critical. Also, the movement in  
11 teacher education today is to develop professional  
12 development schools. We're in the midst of doing  
13 that now. We've developed three.

14 These are programs that are in the public  
15 schools where there are faculty working with their  
16 teachers. Our students are all going through year-  
17 long internships in the same schools, so that the  
18 opportunity to see what the teachers are doing and  
19 how they can perform and where they are in the  
20 process is there.

21 And I believe it's possible to do that in  
22 every single teacher preparation program around the

23

1 country.

2 DR. SONTAG: Thank you.

3 DR. COULTER: Commissioner Takemoto?

4 MS. TAKEMOTO: This is for Dr. Gould: I  
5 notice in your testimony that it just takes too long  
6 to do something as simple as inclusion for too many  
7 kids, and that, in fact, kids are aging out, families  
8 are moving to other communities, yet families have  
9 said that the law is terrific. And you're saying  
10 PNAs and other attorneys need to get funded to make  
11 the law work, but even when they're doing that work,  
12 it's just taking too long.

13 Are there no changes needed in the law to  
14 make that a little bit faster? And what specific  
15 leadership could OSEP take to cut out that nonsense?

16 DR. GOULD: I don't know if we expressed a  
17 timeline or a period of time for school districts to  
18 do inclusion, but we think that in some respects  
19 there are school districts that may not be doing  
20 that. We think that part of the issue is that there  
21 are still school districts who are categorically  
22 placing some students because of their label, in

23

1 programs that are unnecessarily or overly  
2 restrictive.

3           So it's a mixed bag. We think that in  
4 those instances when attention is paid up front to  
5 the individual needs of students, and their label  
6 doesn't drive a placement, we think that inclusion  
7 may be progressing at a timely pace. But in other  
8 instances, it does take some time for students who  
9 represent fairly challenging program issues, who have  
10 a panoply of related services that they need, it will  
11 take time.

12           In those instances, we believe that school  
13 districts do and should make sure that preparation  
14 time is taken.

15           MS. TAKEMOTO: I'm sorry that I have to  
16 interrupt you, but you're talking about good  
17 practice. And I'm saying law and OSEP leadership;  
18 those are the two questions.

19           If the law is so great that this is  
20 happening, that children are being, in fact, in the  
21 least restrictive environment, then it means that  
22 OSEP is not doing their job in enforcing that civil

23

1 right to inclusion. Is the law so terrific that it  
2 really does promote this?

3 And you're saying that time is involved,  
4 but also the report is saying that there are a lot of  
5 legalistic hurdles that take too long.

6 DR. GOULD: Clearly the law itself doesn't  
7 mandate a timeline for that. Individual states'  
8 regulations are set up. They may or may not provide  
9 any timelines for that.

10 But, clearly, if the law was not good or  
11 solid, particularly on the matter of least  
12 restrictive environment, you would not have seen the  
13 progress over the past seven or eight years, and more  
14 students moving to less restrictive or unnecessarily  
15 restrictive settings, and more children being  
16 educated in regular classrooms.

17 MS. TAKEMOTO: So timelines and  
18 implementation would be an important aspect?

19 DR. GOULD: There is no timeline.

20 MS. TAKEMOTO: But a timeline would help?

21 DR. GOULD: A timeline would help.

22 MS. TAKEMOTO: And the other: Has the  
23

1 Council looked at minor disabilities turning into  
2 other, more severe disabilities -- ADHD, learning  
3 difficulty, emotional disability, non-responsive to  
4 special education, leading to juvenile justice and  
5 dropouts? Have you looked at the secondary effects  
6 of not properly educating students with disabilities?

7 DR. GOULD: In '93 we issued a report to  
8 Congress and the Administration called "Progress and  
9 Prospects," where we actually did natural  
10 progressions analysis, following children from grade  
11 to grade, both in regular, non-special education, as  
12 well as special education.

13 We saw that there were large numbers of  
14 students in regular education between Grades 2 and 3  
15 and 3 and 4 who became eligible in statistically  
16 significant numbers for special education. We also  
17 saw considerably larger numbers of students in  
18 regular education who moved into special education  
19 between Grades 6 and 7, and many of them were  
20 identified as having some of the labels that you  
21 mentioned.

22 We have not looked at the progression of  
23

1 students from one label such as learning disability  
2 to other labels such as serious emotional  
3 disturbance. However, I will mention to you now, as  
4 Dr. Pasternack may be aware, we are undertaking a  
5 study with the Urban Institute, looking at juvenile  
6 justice and delinquency prevention, and we are going  
7 to be studying the intersection of those two social  
8 policy initiatives and their effects on children.

9 DR. COULTER: Thank you. Commissioner  
10 Berdine?

11 MR. BERDINE: Thank you, Chairman Coulter.  
12 I have one question for each of you: The question  
13 for Phil is, Phil, you mentioned in your written  
14 report, the SIGs and Commissioner Sontag asked you  
15 some questions about alternative routes to producing  
16 more teachers. Could you address the role, the  
17 impact of SIGs, as you see it over the last two  
18 years, in terms of producing more fully-qualified  
19 teachers?

20 DR. BURKE: I think that a fairer  
21 assessment would be that the impact to date of the  
22 ECS has been fairly minimal. The expectation has

23



1     been from the beginning -- our assessment would be  
2     that the impact has been fairly minimal in terms of  
3     production and the availability of teachers, to date.  
4     It's been functioning for two years, and one of the  
5     issues that we've raised here is that we see more of  
6     an impact with respect to the production of teachers,  
7     and also in the area of staff development, as well.

8             In other words, once a teacher leaves a  
9     preparation program, the first several years are very  
10    critical in terms of being able to follow them and  
11    their skills.  So, we'd like to see more of an impact  
12    for our program.

13            MR. BERDINE:  Dr. Gould, in the last page  
14    of your written testimony, you brought up something  
15    that I find very interesting.  We've had a number of  
16    parents address the Commission, and almost to a  
17    person they have spoken in support of IDEA, the  
18    concept, the law, but then they had a great deal of  
19    concern about the implementation aspects of it.

20            In your last page, the middle paragraph,  
21    you talk about the role of P&A being enhanced.  I  
22    would assume that that would be a way of addressing  
23

1 these parental concerns. How would OSEP do that?  
2 How would OSEP have a role in changing the direction  
3 or the emphasis of P&A?

4 DR. GOULD: Even though the P&As are  
5 funded through the Administration on Developmental  
6 Disabilities, I believe that many federal agencies  
7 share, at the very minimum, a partnership at the  
8 values level and at the program level, in trying to  
9 ensure that resources are directed to those areas  
10 where resources are scarce, but where the need is  
11 great.

12 We think that the Administration on  
13 Developmental Disabilities has, and we continue to  
14 cooperate with the Office of Special Ed Programs on  
15 such an endeavor. If the Administration and if the  
16 Office of Special Ed Programs were able to identify  
17 geographic areas where there was the greatest need,  
18 or a chronic need, we think that would be one  
19 opportunity to effect such a recommendation.

20 Although the Administration on  
21 Developmental Disabilities funding pales in  
22 significance to that of the Office of Special Ed

23

1 Programs, we believe that ADD's own network of  
2 university-affiliated programs, which now go by  
3 another name, as well as their state DD councils have  
4 both the network, the connection, and the commitment  
5 to provide additional support and leadership and  
6 ideas to such an endeavor.

7 And, of course, there is always the  
8 opportunity to look to find where cost savings can be  
9 made in other areas directed towards that type of  
10 endeavor.

11 MR. BERDINE: Thank you. I yield to  
12 Commissioner Sontag.

13 DR. SONTAG: Actually, there are three  
14 sources of funding for the P&A systems out of the  
15 Department of Health and Human Services. We would  
16 enjoy working with both OSEP and others to see the  
17 extent that their efforts could be coordinated. In  
18 addition to three sources of funding to the P&A,  
19 they're recipients of a lot of other grants from our  
20 agency.

21 DR. COULTER: Commissioner Fletcher?

22 DR. FLETCHER: Just to follow up on that  
23

1 question, Dr. Burke, are you saying -- and I don't  
2 know that you're saying this, but are you saying that  
3 OSEP doesn't always interact effectively with other  
4 agencies like those that Dr. Sontag described, or  
5 other federal agencies in providing coordination of  
6 services or contributing to services and so on?

7 DR. GOULD: Are you asking me or him?

8 DR. FLETCHER: I'm asking you, Dr. Gould.

9 DR. GOULD: No, I'm not.

10 DR. FLETCHER: Can you give me some  
11 examples of how OSEP has interacted effectively with  
12 other agencies to promote effective services for  
13 children with disabilities?

14 DR. GOULD: We believe that OSEP has  
15 worked with the Centers for Disease Control, in  
16 certain instances, listened to some of the early  
17 testimony today. It was clear that OSEP interacts  
18 with a number of different agencies within the larger  
19 Department of Education.

20 OSEP interacts effectively with the  
21 National Council on Disability in some of its efforts  
22 over the past year, particularly regarding the area  
23

1 of focused monitoring systems and a look at current,  
2 continuous monitoring and improvement systems, so,  
3 yes.

4 DR. FLETCHER: Thank you. I appreciate  
5 those examples. They're very helpful. A lot of the  
6 recommendations that you made in your testimony are  
7 essentially recommendations about process,  
8 enforcement, and things of that sort.

9 I'm wondering -- this is a very broad  
10 question, but I'm wondering how effective is it to  
11 really mandate process? I mean, it seems to me that  
12 when you look at what's been accomplished with IDEA,  
13 and I'm looking back at a publication that you  
14 provided for us as Commissioners, my impression was  
15 that mandates around goals were pretty effective,  
16 whereas mandates about process tended not to be  
17 terribly effective. I'm sort of struck by your  
18 testimony by the emphasis on process as opposed to  
19 outcomes.

20 DR. GOULD: I'd have to disagree with you;  
21 that the civil rights law such as IDEA can be reduced  
22 to process. I think that some of the basic

23

1 principles, particularly least restricted environment  
2 is one that I have heard and seen Commissioners talk  
3 about as a key outcome and a result that's needed.  
4 So I would have to beg to differ with you in that  
5 respect.

6 I think there are many other instances  
7 where in the absence of following some fundamental  
8 provisions of the law, like looking at the  
9 individualized needs of a student, regardless of what  
10 some folks might think of the paperwork of an IEP, is  
11 an absolute necessity in developing accommodations.

12 And I think you also heard that in the  
13 testimony earlier today from Dr. Hehir.

14 DR. FLETCHER: Would you look at your  
15 recommendations on page 13 and 14 and tell me which  
16 of these do not involve process, please? They say  
17 enforce the law, publicly articulate and implement an  
18 enforcement philosophy, consult with students with  
19 disabilities, enforcement -- parents have identified  
20 a number of obstacles to participation. I agree that  
21 participation should be outcome, but then it gets  
22 into process again.

1                   My impression is that the bulk of these  
2    recommendations are about process and not about goals  
3    or outcomes, and I'm asking how effective is it to  
4    take this particular approach, which involves, for  
5    example, modifications of statutes and regulations  
6    around the process, as opposed to clearly  
7    articulating goals like LRE, which I agree is a goal.

8

9

10

11

12

13

14

15

16

17

18

19

1 DR. GOULD: As you may or may not know,  
2 these recommendations were drawn from a much larger  
3 set of recommendations from the Back to School  
4 Reports. So they represent a small portion.

5 I would still say that in the absence of a  
6 clear line of thinking and implementation of the law  
7 between input and process. You don't get the  
8 outcomes.

9 DR. FLETCHER: I'd like you to tell me  
10 what evidence there is that focusing on the process  
11 leads to improved outcomes. My impression is that  
12 while things have certainly improved, we still have  
13 problems with graduation rates. Kids who go to  
14 special education do not learn to read or do math.  
15 Kids with behavior problems are at higher risk for  
16 incarceration, if they are identified for special  
17 education.

18 Where is the evidence that links process  
19 and outcomes?

20 DR. GOULD: As you may or may not know,  
21 there is no research base that does such a thing in  
22 this field. I would offer to you the fact that these

23



1 things don't happen randomly in the absence of  
2 following the current provisions of the law. We  
3 would not get to these randomly or accidentally.

4 DR. FLETCHER: So essentially there is no  
5 basis for saying that process, a focus on process,  
6 leads to improved outcomes, nor on that basis could  
7 you say that mandates around process are likely to  
8 lead to outcomes, because we don't have a research  
9 base that supports that?

10 DR. GOULD: No, I won't say that. What  
11 I'll say is that there is no research base to do  
12 that. I might also add that in the absence of a  
13 fuller implementation and enforcement of the law,  
14 undertaking such research might not be fruitful or  
15 productive.

16 DR. FLETCHER: Thank you. If I could beg  
17 the indulgence of the Chair, I just have one question  
18 for Dr. Burke.

19 Dr. Sontag was talking about alternative  
20 approaches. One of the problems that's commonly  
21 presented to me by deans of colleges of education is  
22 that their university treats their college as a cash

23

1 cow, and that they don't get full returns on the  
2 amount of revenue that they generate.

3 I'm wondering how widespread a problem  
4 that is.

5 DR. BURKE: Let me see if I understand  
6 your question. A dean told you that their college is  
7 being treated as a cash cow.

8 DR. FLETCHER: The money that's generated  
9 by the College of Education is used to fund other  
10 programs at the university, so that the college  
11 itself may get 75 percent, for example, of the actual  
12 revenue that they generate, because of the number of  
13 students that they actually attract.

14 DR. BURKE: I don't really have any  
15 evidence of that. I think that in my own experience,  
16 that is not the case at the institution where I am.  
17 I've never seen a study that would reinforce that,  
18 either. That may anecdotally be the experience of  
19 the person you talked with.

20 DR. FLETCHER: Not person, but persons.  
21 So that's not your experience.

22 DR. BURKE: Not at my own institution.

23

1 DR. FLETCHER: Thank you.

2 DR. COULTER: Dr. Burke, your number two  
3 recommendation states that to strengthen OSEP as a  
4 federal unit within OSERS, obviously everybody talks  
5 about additional funds. And certainly in your  
6 testimony, you certainly talked about additional  
7 funds.

8 Can you give us some other examples than  
9 funding that would help explicate the statement,  
10 strengthen OSEP as a federal unit within OSERS?

11 DR. BURKE: I think that I focused on in  
12 my testimony, staffing issues, expertise of people  
13 that are on the staff. I think that goes a long way  
14 towards improving the visibility and the presence.

15 That's what I meant by strengthening OSEP,  
16 and I suggested in my testimony, a number of ways to  
17 be able to do that. I think that, in part, I'm  
18 talking about national leadership versus federal  
19 leadership. We'd like to see the office elevated  
20 above monitoring grants or processing grants, and  
21 take a much more strident role in terms of  
22 leadership, have more of a professional presentation.

23

1           And I think that through augmentation of  
2   staff, a more vibrant approach in terms of bringing  
3   in some people from the field. And I made some  
4   suggestions in my testimony, all the way from very  
5   junior people such as interns -- of course, we  
6   haven't always been as selective with interns as we  
7   maybe should have been, but in terms of bringing  
8   people in from the field and giving them that  
9   experience, most of them go back to their home state.

10

11           But I think it really would enliven the  
12   intellectual life in the place, and I think that's  
13   important to us. I'm not saying that to cast  
14   aspersions of current staff; I'm just saying take  
15   that as a goal to strengthen it.

16           It's very, very important to the field,  
17   and there's an historical reason for this, which I  
18   tried to point out. When the Division of Handicapped  
19   Children and Youth was founded by President Kennedy,  
20   the most prominent special educator in the field was  
21   brought in to direct the Division.

22           And I think -- so the emphasis would be

23

1 for us to continue with this Division to support  
2 individuals who are able to come in and work. I  
3 think that's part of what we're looking to.

4 Some of those are intangible, but, indeed,  
5 I think it would help a great deal.

6 DR. COULTER: Thank you. Dr. Gould, I want  
7 to go back to your comments about the protection and  
8 advocacy system. The recommendation, as I read it,  
9 which I think obviously several of us found of some  
10 interest, seems to imply that it's not just OSEP that  
11 has a lower level of desirable performance.

12 But the way I read this statement, you're  
13 not too happy with the way in which P&As have dealt  
14 with enforcement of special education laws. Do you  
15 want to expand on that a little bit?

16 DR. GOULD: I don't think that's what we  
17 meant to imply. I think we meant to imply that there  
18 is a way to use the collective energy and resources  
19 of the entities that are funded by different federal  
20 agencies better. We just recommend or suggest one  
21 way.

22 DR. COULTER: Thank you. I want to -- my  
23

1 colleague to my far left was a little concerned that  
2 he lost his turn, so Dr. Burke would probably like  
3 for me to point out that one of the more  
4 distinguished former interns, who is now the  
5 Assistant Secretary, has a few questions for you.

6 DR. PASTERNAK: Thank you, Mr. Chair. I  
7 should point out for the record that he meant to his  
8 far left, topographically, for the purposes of the  
9 record.

10 Mr. Gould, I'm very troubled by the  
11 statement on page 4, towards the bottom of the page,  
12 wherein you write -- and this is a direct quote from  
13 the paper here: "These problems essentially condone  
14 non-compliance with the Act." That, to me, is an  
15 incredibly serious accusation.

16 And as somebody now charged with the  
17 responsibility of assuring compliance with the Act,  
18 given that myself and my predecessor both took an  
19 oath to uphold the law, I'm very curious about  
20 whether, in fact, you really mean that, and if so, is  
21 that not the type of serious charge that should  
22 actually lead to formal charges being filed against  
23

1 those people who preceded me, who, according to this,  
2 essentially were violating the very law for which  
3 they took an oath to uphold.

4 DR. GOULD: That's not our determination  
5 to make. The law has been on the books, and I think  
6 people come to government to implement the laws and  
7 the programs that they're responsible for. We think  
8 that people intend to do the work of good government,  
9 and when instances arise that they don't, over a  
10 number of years, there are issues that need to be  
11 dealt with. How that's done, it's not ours to say.

12 DR. PASTERNAK: I guess that in the  
13 spirit of trying to help the Commission understand  
14 today's hearing, this task force is taking a specific  
15 look at OSEP's role and function in a variety of  
16 issues, in order to carry out the President's charge,  
17 that we achieve excellence in special education.

18 So, I guess it would be perhaps a topic  
19 that we can continue talking about, since we've  
20 begun, I think, a good collaborative effort. And I  
21 appreciate some of the things that you said earlier.

22 But I guess maybe you can help this task  
23

1 force understand what, specifically, do you think  
2 OSEP could do to do a better job of helping the  
3 states ensure compliance with the IDEA?

4 DR. GOULD: For example, if, as I listened  
5 to some of the testimony earlier today and I have  
6 read from previous hearings, if there are issues  
7 around getting reports out on time. And if part of  
8 what is underlying or causing our reports to be late,  
9 it's because some of the earliest versions, the  
10 initial versions of the report, have analysis and  
11 facts in them that may be disputable and may have to  
12 be withdrawn because the work done did not stand up  
13 to scrutiny, analysis, and debate.

14 Perhaps if that continues to be an issue  
15 with staff, then perhaps there might be some need to  
16 help those folks in the area of data analysis and  
17 writing for those reports, so that you don't go  
18 through unnecessary redrafts and back-and-forth.  
19 That's just one possible suggestion, but I'd like to  
20 talk to you about it further.

21 DR. PASTERNAK: I very much appreciate  
22 that kind of dialogue and look forward to having you

23



1 and Jeff and others -- along those same lines, in  
2 that same paragraph -- let me see if it was that same  
3 paragraph.

4 I know that I read in the written  
5 testimony that you provided to us, something about  
6 the overuse of due process. I didn't have my  
7 highlighter -- oh, it's the same sentence: "Problems  
8 essentially condone non-compliance with the Act and  
9 increase parental use of due process provisions."

10 We heard testimony earlier today that the  
11 number of due process requests made, I believe,  
12 represented .004 percent of the numbers of kids  
13 receiving special education-related services around  
14 the country. I'm curious about, apropos of what my  
15 colleague, Dr. Fletcher, was asking you earlier, for  
16 some specific outcome-oriented data-driven help here.

17 Is that a high level of usage of due  
18 process, or what when you all were drafting this  
19 report -- were you hoping that we would not see any  
20 due process requests? I'm just kind of curious for  
21 some targets that we should -- that you all would  
22 recommend that we look for at OSEP as a trigger that

23

1 there's an excessive number of due process or a high  
2 number of due process cases being filed.

3 DR. GOULD: I don't think we were  
4 referencing a high number of frequency; we just said  
5 an increased level. We didn't specify a number.

6 We think that in many instances, parents  
7 prefer not to go to due process. We don't think that  
8 many of them have the cash, the \$10,000, \$12,000 or  
9 \$15,000 to hire an attorney. We don't think they want  
10 to do that; we don't think they're inclined to do  
11 that.

12 We think that they'd much prefer to work  
13 things out with school systems, but in the absence of  
14 an ability to try to get what the IEP says their son  
15 or daughter should get, they're left with little  
16 option.

17 They can either take what they're given or  
18 not given, or try something else. And sometimes --  
19 more times than is probably necessary, they will try  
20 to opt for due process.

21 DR. PASTERNAK: Do you think that in the  
22 reauthorization, there's an opportunity for us to

23

1 perhaps change some things about the law itself, that  
2 would make it easier for families to get the services  
3 that they're desperately seeking for their kids, and  
4 perhaps by doing that, reduce the need for people to  
5 resort to due process?

6 DR. GOULD: Probably.

7 DR. PASTERNAK: Would simplifying the law  
8 be something that you would recommend we try to do?

9 DR. GOULD: I don't know what you mean by  
10 simplifying. This is probably a conversation that we  
11 need to have at another time.

12 DR. PASTERNAK: I look forward to that.

13 Dr. Burke, we have heard a great deal of  
14 testimony concerned about the quality of special  
15 education teachers across the country. What  
16 recommendation would you make to OSEP in terms of  
17 redesigning its personnel preparation funding in  
18 order to help increase the quality of qualified  
19 personnel to meet the needs of students with  
20 disabilities across the country?

21 DR. BURKE: I've made several  
22 recommendations here today. I think part of the

23

1 problem is that many of the teachers people  
2 experience out in the schools are actually not  
3 trained at all.

4 For example, in my own state of Maryland,  
5 two years ago we issued 3,000 provisional  
6 credentials; 1400 of them were in special education.

7 And those people went right into the classroom.  
8 They had emergency and provisional credentials, with  
9 little or no preparation whatsoever.

10 That's part of what you're beginning to  
11 hear through the school systems. Because of this  
12 shortage crisis, we have a lot of extraordinarily  
13 unqualified people that have gone onto the rolls.

14 I would guess that the programs that  
15 you're funding through the personnel preparation  
16 program, if you had 146 applications and you only  
17 find 27, you have some of the most competitive, high-  
18 quality programs. I don't think the issue is the  
19 ones that you're funding; I think the issue is much  
20 broader in terms of where personnel are being  
21 prepared.

22 Also, I think that the availability of  
23

1 funding under Part D, because of this two-year period  
2 where there were no increases whatsoever, at the same  
3 time as we saw increases in the Part B program and  
4 more access to special education programs.

5 I think it helped to drive this crisis to  
6 a more extreme point. So I think that what are the  
7 useful suggestions for Part D and for OSEP?

8 One of them is funding. I think we are  
9 recommending very strongly that funding be doubled,  
10 at the very least; secondly, that you fund program  
11 instead of project. I think that that way, you will  
12 be able to impact more of what's going on in a  
13 university and take credit for more of the teachers  
14 who are actually prepared, which I think you should  
15 be able to do.

16 I will impact many, many more people if  
17 you take a program approach, as opposed to a project  
18 approach. And I think then take those programs that  
19 are of high quality, and hold them up so that others  
20 can emulate them.

21 In other words, work in the area of  
22 dissemination; work in the area of showing and  
23

1 exposing those programs that are really, truly of  
2 high quality, and then reinforce that concept. So I  
3 think there are some very, very concrete steps that  
4 can be taken.

5 The other idea with respect to augmenting  
6 OSEP with additional personnel, others who might be  
7 able to come in to assist, to help with some of that  
8 review. That would do even more to help with that.

9 DR. PASTERNAK: As you probably are  
10 aware, the Administration has put forward a proposal  
11 to dramatically increase the amount of money for loan  
12 forgiveness for both math, science, and special  
13 education teachers. We certainly believe that's one  
14 strategy which could help, and I know you've made  
15 some recommendations. I was kind of looking to go  
16 above and beyond a couple. Let me get more specific,  
17 perhaps.

18 Should we abandon the 75-percent  
19 requirement, that that 75 percent of that money that  
20 would flow in personnel prep go to support the actual  
21 students who are enrolled in those programs?

22 DR. BURKE: The 75 percent, I would

23

1 recommend and have recommended that you abandon it is  
2 a fixed amount. If you go to program funding, you  
3 may actually be able to support students indirectly  
4 who don't receive direct financial assistance.

5           You might get more bang out of the  
6 program, or out of your dollar invested, if you go in  
7 that direction. There are other problems with that  
8 75 percent.

9           For example, a graduate assistant doesn't  
10 count in the 75 percent. Most universities at the  
11 graduate level, support students with graduate  
12 assistantships.

13           The graduate assistant doesn't count as  
14 receiving student financial support under the way the  
15 rules are construed right now. They are considered  
16 staff of the university because they usually have a  
17 20-hour work requirement.

18           Also, if they are not graduate assistants,  
19 they can't get health insurance for their families  
20 and themselves. This is a fairly significant  
21 disincentive, and I think it should go away.

22           I think it's important to review that  
23

1     portion.  The other part of it is to look at what is  
2     the commitment the university is making to the  
3     program.  Are the really laying it on the line with  
4     respect to support for faculty and staff?

5                   I think those are some ideas that will  
6     really help.

7                   DR. PASTERNAK:  We've heard other  
8     recommendations, in Nashville, specifically, to  
9     change, dramatically, the peer review process now in  
10    place.  Would you support those recommendations?

11                   DR. BURKE:  I've not seen the  
12    recommendations from Nashville.  I've made some  
13    comments myself.  I've read the workpaper that was  
14    produced and submitted to OSEP on the peer review  
15    panel.

16                   I think the prime requisite for panelists  
17    are that they have expertise on the subject being  
18    reviewed; that they have experience with it; they  
19    have independent knowledge, and that they are able to  
20    make a judgment for you as the federal officer, as to  
21    whether or not what you're seeing is of good quality,  
22    state-of-the-art, should be funded.

23



1           If you have other interests that you want  
2   to put into that panel next with respect to  
3   representation of other interests, then I think there  
4   may be ways to do that. But if you're going to have  
5   a program that's being reviewed, and you're going to  
6   have three, four, or five people reviewing it, it's  
7   absolutely imperative that they have real expertise  
8   in reviewing those grants, because it begins there.

9           DR. PASTERNAK: There has been some  
10   discussion about reducing the amount of directed  
11   research and thereby increasing the amount of field-  
12   initiated research. As a yes/no, would you support  
13   that recommendation?

14           DR. BURKE: I think there should be a  
15   balance. I think you have to be in a position in  
16   OSEP to be able to explore things that are really  
17   pressing, issues that need to be looked at. You have  
18   to be able to have that kind of discretion, and that  
19   would be part of the leadership we'd expect from  
20   OSEP.

21           On the other hand, the field -- some of  
22   the greatest ideas that we have are things that a

23

1 group of experts have not conceived of. I think it's  
2 very important for people to be able to present their  
3 ideas and receive support.

4 You may find that some of the most  
5 creative things come from unsolicited proposals, so I  
6 think a balance --

7 DR. PASTERNAK: Last question, Mr. Chair,  
8 if you'll indulge me. To both of you, as you both  
9 know, the National Academy of Sciences-NRC report  
10 talked about an issue we've been aware of for many  
11 years, the disproportionate representation of some  
12 minority kids in some categories, especially  
13 education in some part of the country.

14 From a personnel prep and just general  
15 training perspective, what do you all think OSEP  
16 should be doing to address the fact that particularly  
17 African American students are over-represented in the  
18 category of mental retardation?

19 DR. BURKE: This is a very, very complex  
20 question. As you correctly pointed out, the National  
21 Academy of Sciences made a number of recommendations,  
22 and, in fact, one of our faculty members served on

23

1 that group. We've been able to have a discussion at  
2 our own university with respect to that.

3 Part of the problem, I think, is clearly  
4 the quality of the general educational program that  
5 you find in many of the settings where these  
6 youngsters are going to school. And we find that the  
7 quality of special education, in many respects is  
8 dependent upon the quality of general education  
9 that's available.

10 Youngsters don't have good alternatives  
11 all the time in the general program, and end up over-  
12 referred to special education, and I think the  
13 problem starts there.

14 On the other hand, I think that because  
15 we've set up a system in special education to receive  
16 children that are having difficulties in school,  
17 we're open to over-referrals with respect to special  
18 education.

19 Specifically with regard to personnel  
20 preparation, I think it's possible to prepare  
21 teachers to be very, very sensitive to these issues,  
22 to understand them, to understand what really

23

1 constitutes an appropriate referral, and how to win  
2 the game.

3           So I guess, in sum, it's a very complex  
4 issue. I think you can deal with part of it through  
5 personnel preparation, part of it through improving  
6 the general education that's available to children in  
7 the schools.

8           DR. GOULD: I defer to Dr. Burke, because  
9 he's qualified to speak to that issue. From my own  
10 background teaching at Towson State University in  
11 Maryland, it was apparent that there are man students  
12 that went through the college of general education,  
13 who had not been exposed to a number of different  
14 ways to adapt different curricular instruction for  
15 linguistically or culturally diverse students.

16           That is something that Towson and other  
17 state colleges around the state of Maryland have made  
18 improvements in, but we continue to be challenged.  
19 Because of the continuing diversity around the  
20 country, and for those geographic areas that have  
21 school districts where there are students who may  
22 speak 30 or 40 different languages, the teacher

23

1 colleges and the universities, in the personnel  
2 preparation programs, have to be particularly on the  
3 money in being able to address the complexity and  
4 sophistication of the needs that those students,  
5 linguistically and culturally, present to them, and  
6 that is no easy task.

7           To the extent that you can target  
8 personnel preparation programs, or even set  
9 expectations up within grants that go to certain  
10 geographic areas, if that's allowed to do that, I  
11 would suggest that you consider those kinds of  
12 approaches.

13           DR. COULTER: Executive Director Jones?

14           MR. JONES: There are a couple of  
15 questions that I want to address: The first one is  
16 for both of you. Actually, I think we can do both  
17 for both of you.

18           As drawn from Dr. Gould's testimony  
19 mentioning that parents, many parents will find  
20 themselves confronted, when they arrive at an IEP  
21 meeting with a completed IEP and a fait accompli  
22 presented to them -- and you won't be surprised that  
23

1 that is not the first time that this Commission has  
2 heard that presented as something that goes on -- but  
3 we've also heard from administrators, chiefs, even  
4 plaintiffs' attorneys discussing that part of the  
5 reason that seems to go on has to do with the fear of  
6 litigation, and that the IEP is viewed as a  
7 procedural blocking device, that at least we can  
8 prove our plan is complete. The school is saying  
9 that, and that by not having errors in that, we can  
10 avoid being sued.

11 Interestingly, in San Diego a few days  
12 ago, we heard from two plaintiffs, parents'  
13 attorneys, who said that, of course, they find that  
14 of little relevance. They look for gross problems  
15 such as lack of an IEP for cases when they pursue it.

16 My question for you, for both of you, is,  
17 to what extent do you think that the IEP, as  
18 educational tool and process, is undermined by fear  
19 of litigation and the view among school personnel  
20 that they want to use that as a way to prevent them  
21 from being sued, as opposed to the educational tool?

22 DR. GOULD: We have not heard those

23

1 stories, and it saddens us to hear or learn that  
2 school district personnel feel if they're put in that  
3 position, on the one hand. On the other hand, I  
4 guess in this day and age, I would venture to say I'm  
5 not surprised that that may be happening.

6 I think when those instances do occur, and  
7 if they are frequent and if they can be identified or  
8 possibly tracked back to a particular area, I think  
9 that perhaps some attention needs to be paid to the  
10 culture that's going on, the litigatory culture  
11 that's going on in that area in that community.

12 I'm not saying, obviously, that the  
13 Commission is able to do that, undertake that, or  
14 draw any conclusions about that, but obviously that  
15 type of attention might be warranted, because that  
16 serves no one well. And it particularly ill-serves  
17 children and their school personnel.

18 DR. BURKE: I think anytime a parent  
19 assembles in a room with five, seven, or eight  
20 individuals in a school, it can be very intimidating.  
21 I think -- what can OSEP do with regard to that or  
22 what could you do with respect to the

23

1 recommendations?

2 I think that the more school systems are  
3 able to have a level of communication with the parent  
4 before the actual IEP meetings, some understanding of  
5 what's coming, what are the elements of that, I think  
6 that would be very, very helpful, to the extent that  
7 that can be accomplished.

8 The issue that we see is, after the IEP is  
9 written, actually there are a number of elements with  
10 respect to modifications, specialized instruction,  
11 that are very difficult to see being implemented. In  
12 other words, you have two elements of that, you have  
13 the IEP as it's proposed and negotiated, and then you  
14 have it as it's carried out.

15 So, I think there are two sides to that  
16 issue.

17 MR. JONES: The other question that I  
18 wanted to get to builds from one of the NCD's  
19 recommendations around LRE and the drive to increase  
20 LRE and maximize it. My question goes to when IDEA  
21 was created, LRE was an unambiguous good. Children  
22 were being excluded from schools, excluded from

23



1 classrooms.

2           Now we're reaching an era where there is  
3 substantially more participation in the general  
4 education environment by children with disabilities.  
5 And there can become at times, at tension between the  
6 outcome of a service and the related environment.

7           Let's say you have a program to assist  
8 children with learning disabilities, and we'll say  
9 that by objective research, that it demonstrates that  
10 children who are in a particular type of pull-out  
11 environment where it is an intensive service delivery  
12 with just a couple of other kids with disabilities  
13 away from the general classroom, is markedly superior  
14 to services received in a general ed classroom with  
15 aids. That creates a bit of a tension with then  
16 concept of LRE, because that child may not be in the  
17 least restrictive environment when they're in that  
18 pull-out classroom, for, we'll say, even a couple of  
19 hours or more a day.

20           How do you think that issue should resolve  
21 itself from a policy perspective, if there's a  
22 tension between the objective outcome that a child

23

1 has in terms of education outcome and the social  
2 benefit and other benefits of LRE? Which one trumps  
3 when there is tension?

4 DR. GOULD: Not meaning to be evasive, but  
5 it's not clear from the factual situation you  
6 described, what the crux of the tension is and why we  
7 have the choice that we have. I just didn't  
8 understand the question.

9 MR. JONES: Let me construct it this way:  
10 If it turns out that the best way for a child to  
11 maximize their outcomes in an educational sense, is  
12 to have them in a segregated classroom away from  
13 children without disabilities for large portions of  
14 the day. That would clearly not be the least  
15 restrictive environment for that child.

16 By putting them in the general classroom,  
17 say, and having an aid assist them, just  
18 hypothetically, let's work from that construct. What  
19 should policymakers be looking at in terms of  
20 creating policy that deals with that, if there's a  
21 tension between having a less restrictive environment  
22 and trading off for that, having a child have the

23

1 inferior educational outcomes?

2 DR. GOULD: I think the genius of the  
3 IDEA, if you will, at least as it relates to LRE, is  
4 that there is a presumption that placement in the  
5 regular class should be the first consideration,  
6 unless with supplementary aid, service and support,  
7 that child can't learn.

8 Whether a child can maximize his or her  
9 learning in a separate class or a separate placement,  
10 may not necessarily be the correct test, at least in  
11 terms of how we make policy in the situation you  
12 described. If the child is not learning in the  
13 regular class, then the IP team obviously should be  
14 looking at that and trying to convene some meeting  
15 with the parents and other support personnel to  
16 determine whether, in fact, there needs to be a  
17 change, and try to identify where else instruction  
18 and support need to be provided.

19 Whether that, in fact, turns out to be a  
20 separate class or segregated placement, again, is  
21 going to be left up the IEP team and it should. And  
22 there is a whole continuum of placements and services

23

1 between those, as you are aware, that they may need  
2 to consider.

3 I think that's what the policy decisions  
4 should be, and I think that's the genius of LRE, and  
5 I think it remains to be seen, whether or not the  
6 genius proves out.

7 MR. JONES: Dr. Burke?

8 DR. BURKE: I think that you're always  
9 going to have that tension. You have tremendous  
10 pressure on general education to produce achievement.  
11 Now, with the "No Child Left Behind," you're going to  
12 have annual assessments performance outcomes in the  
13 classroom that are going to be there.

14 So, general education is really under the  
15 pressure to manifest achievement. That's certainly  
16 true in my own state with the MSPAP tests that we've  
17 had.

18 On the other hand, inclusion, in many  
19 respects, has a large socialization agenda. In other  
20 words, we want children educated with their  
21 chronologically-appropriate peers; we don't want them  
22 unnecessarily isolated or segregated. We have ample

23

1 evidence that if you do that, children really don't  
2 learn the socialization skills; they really don't  
3 work very well with their peers.

4           The tend, when they finish schooling, to  
5 be very isolated and regressed, so inclusion is very  
6 important. I would agree with Dr. Gould that there  
7 is a genius in terms of the IEP coupled with the  
8 concept of LRE, except that that genius only works if  
9 you have competent people who are actually doing the  
10 assessments, working with the parents, designing the  
11 modification of the curriculum program, understanding  
12 the school that the youngster is going to attend, and  
13 understanding their needs and then working on a  
14 program that's appropriate, that has the right  
15 balance.

16           I think that where we run into our  
17 greatest difficulties is where we retreat to some  
18 sort of pro forma review for the IEP, where people  
19 aren't necessarily skilled or don't know the child,  
20 or don't understand the needs.

21           And so I think that in the ideal sense, it  
22 will work, but there will always be a tension. And

23

1 from our perspective, our contribution to that is to  
2 prepare the most competent teacher and specialist  
3 that we can, who can understand what really needs to  
4 be done to represent the child.

5 We like to feel that the teacher is both  
6 an advocate, as well as a representative of the  
7 school system in terms of the IEP. They really have  
8 to wear two hats. It's very important that they be  
9 able to do that and be competent.

10 MR. JONES: Thank you very much.

11 DR. FLETCHER: Just to clarify, Mr. Chair,  
12 both of you are essentially testifying that schools  
13 need to have access to a continuum of services and  
14 address the issue of the least restrictive  
15 environment through the interdisciplinary team.  
16 Isn't that what I understood?

17 DR. GOULD: That's what the law says.

18 DR. FLETCHER: But your recommendation,  
19 specifically, is that school needs to have a  
20 continuum?

21 DR. GOULD: The recommendation is that the  
22 law needs to be followed, as it's written.

23

1 DR. FLETCHER: That wasn't what I heard  
2 you say. I heard you use the word, "continuum,"  
3 which is why I'm picking up on it. And what I'm  
4 hearing you say is that the schools need to have  
5 options, so that the interdisciplinary team will be  
6 able to avail themselves of what the child's needs  
7 are.

8 DR. GOULD: Yes.

9 DR. BURKE: I did not make a  
10 recommendation with respect to that. My testimony  
11 was more with respect to other issues.

12 DR. FLETCHER: I didn't hear what you  
13 said; I'm sorry.

14 DR. BURKE: Another problem with the  
15 microphone. I did not make a recommendation with  
16 respect to LRE, just to clarify that point. But I  
17 did testify here today about it, yes.

18 DR. FLETCHER: Just now I thought I heard  
19 you say that schools need to have a continuum of  
20 services.

21 DR. BURKE: I think schools need to be  
22 responsive to the needs of the child, as identified  
23

1 through the assessment process related to the IEP,  
2 and, most commonly, that's found to be a range of  
3 ability in terms of personnel and services that will  
4 attend to the child's needs.

5 DR. FLETCHER: Thank you.

6 DR. COULTER: Gentlemen, we thank you for  
7 your testimony. We appreciate your attention to our  
8 questions. We are now going to shift to the public  
9 testimony section.

10 With regard to that, I need to review with  
11 you, the Commission rules as they relate to public  
12 testimony: Each speaker will have three minutes.  
13 Ms. Munoz, who is taking a position at the front of  
14 the room, is our timekeeper. She will give you  
15 indications of when you have two minutes left, one  
16 minute left, and 30 seconds left. We would ask your  
17 courtesy and cooperation to adhere to the three-  
18 minute time limit for purposes of maintaining the  
19 integrity of the Commission's rules, we will ask you  
20 to stop speaking at the end of three minutes.

21 Our first speaker today is Peter Toby  
22 Brown, to be followed by Sharon England.



1                   MR. BROWN: Good afternoon, honorable  
2 members of the President's Commission. My name is  
3 Toby Brown, and I'm the parent of an eight-year old  
4 boy with autism. I work at the United States Patent  
5 Office.

6                   The PTO is a Federal Government  
7 performance-based organization. The PTO strives to  
8 excel in all facets of customer service. One of our  
9 goals is to return all phone calls within 24 hours.  
10 Patent examiners, support staff, and PTO executives,  
11 each strive to meet that 24-hour goal. Patent  
12 examiners face penalties if they do not return  
13 customers' calls.

14                   OSEP, on the other hand, is like a black  
15 hole to the customers it is supposed to serve,  
16 special education children and their parents and  
17 guardians that advocate for them. Here are few  
18 examples of OSEP's customer service:

19                   OSEP conducted reviews of special  
20 education in Virginia in 1989 and 1995. The reports  
21 portrayed a bleak landscape for special education  
22 compliance in Virginia. OSEP was supposed to monitor

23

1 Virginia again in 2000.

2 I worked on a team with other parents, and  
3 we prepared a report on the Virginia Department of  
4 Education. The cover letter is attached to the  
5 report I handed in with my comments.

6 The report was submitted to OSEP in  
7 January of 2001, and included 31 pages covering the  
8 five main areas of concern addressed in OSEP's 1995  
9 report: FAPE, ESY, secondary transition, parental  
10 involvement, and general supervision.

11 The 31 pages referenced reams of evidence  
12 that were provided in accompanying binders. We  
13 offered ourselves for further comment, and/or  
14 insight, but never heard anything from OSEP.

15 Subsequently, Virginia's P&A, DRVD, conducted a  
16 similar analysis of specific problems noted in 1995,  
17 and VDOE had done to rectify the noted problems.

18 VDOE found that the problems had largely  
19 not been addressed, and that the VDOE could only a  
20 trace of evidence that any problem had, in fact, been  
21 addressed at all. VDOE submitted its evidence in a  
22 report to OSEP in 2001.

1           I'm the Chairman of the Advisory Council  
2           to DRVD. At a meeting yesterday, the VDOE indicated  
3           that OSEP had never contacted DRVD regarding its  
4           report.

5           Last year VDOE submitted documentation to  
6           OSEP, and ultimately OSEP decided that no site visit  
7           was necessary. All was well in Virginia.

8           Rather than helping parents and children,  
9           OSEP acts as a deterrent to speedy dispute  
10          resolution. The Virginia Department of Education, in  
11          partnership with OSEP, now employs a strategy wherein  
12          it asks OSEP whether it has to do something it really  
13          does not want to do.

14          I reference two due process requests, one  
15          filed by me, and a separate request filed by DRVD.  
16          Each request for due process resulted in VDOE sending  
17          a letter off to OSEP, requesting guidance.

18          It has been 16 months since VDOE mailed  
19          the letter regarding my request. There has been no  
20          response. It was 171 days before VDOE appointed a  
21          hearing officer in DRVD's case.

22          The bottom line is that OSEP is not

23

1 serving its customers, is nonresponsive to all kinds  
2 of requests. Many parents wonder what the utility of  
3 OSEP actually is.

4 Either dismantle it or give it the tools,  
5 the power, and, most importantly, a directive to hold  
6 the states, and ultimately the LEAs accountable.

7 DR. COULTER: Thank you, Mr. Brown.

8 Sharon England, to be followed by Bill East.

9 MS. ENGLAND: Good afternoon, I'm Sharon  
10 England. I'm an attorney who practices in the  
11 metropolitan Washington area of Virginia. I never  
12 intended to practice in the area of special  
13 education. I was actually a social worker for 20  
14 years in the field of child protection before I got  
15 my law degree. I intended to represent abused and  
16 neglected children; I never intended to be a special  
17 ed attorney.

18 And that's pretty much what I have been  
19 dragged into, and I usually tell people, god and the  
20 juvenile court judges and various other advocates  
21 dragged me, kicking and screaming, into practicing  
22 special education law.

1           I can tell by many of your questions here  
2           that you do have an interest in some of these issues  
3           that concern me, practicing and representing children  
4           in foster care. There are just numerous numbers of  
5           those children involved in special education issues.

6           In fact, there are studies done in  
7           Baltimore and Chicago that estimated that 30 percent  
8           of children in foster care are also represented in  
9           the special education population. And it was through  
10          my representation of children in that category that I  
11          learned the area of special education law.

12          One of the things that I discovered is  
13          that there are many violations of procedural  
14          protections for children who are in foster care, for  
15          instance, getting consent of the natural parent. In  
16          the six years I have been practicing, I very rarely  
17          have seen parents at IEP meetings. In the six years  
18          I've been practicing, I've seen three appointments of  
19          surrogate parents, which is required by federal  
20          regulations. Two of them were in this past year.

21          Cross jurisdictional issues: When  
22          children who live in the City of Richmond are

23

1 transferred to foster homes in other counties, you  
2 have horrific types of problems in terms of getting  
3 those children prompt special education services.

4 Many foster parents will say that foster  
5 home placements will disrupt because the children's  
6 special education needs are so great, they can't keep  
7 up with them. As you know, guardian ad litem  
8 appointment is required in all matters involving  
9 children in foster care. That's predominantly what I  
10 do, is represent children as a guardian ad litem.

11 Yet guardians ad litem are not mentioned  
12 in any special education regulation as a possible  
13 resource for children as advocates in special  
14 education proceedings. I spend most of my time at  
15 IEP meetings, many times fighting challenges about my  
16 presence there. Certainly the issue comes up when I  
17 try to file any kind of administrative action.

18 Finally, the other area is the area of  
19 delinquency. This is an area where I have really  
20 apparently developed an expertise, as a result of a  
21 juvenile court judge's finding that many of the  
22 children who come before them because of charges of

23

1 delinquency, invariably what they find is that their  
2 delinquent acts are pretty much exclusively to  
3 school settings, and as a result, children are pretty  
4 much well-behaved in a community, but when they get  
5 to school, that's when they're being charged with  
6 crimes.

7           When you pull those kids' files and you  
8 look at them, you'll find that your children who are  
9 unidentified or identified as having learning  
10 disabilities at a very young age, they actually have  
11 good attendance, good parental participation. By the  
12 time they get to middle school, they are woefully  
13 behind, and they are now being found eligible as  
14 emotionally disturbed or mentally retarded, and,  
15 unfortunately, I think it's usually due because they  
16 weren't identified.

17           I'd like to call your attention to what I  
18 think is a really good article called "Caught Between  
19 Two Systems," in the Yale Law Review, that really, I  
20 think, has a very thorough discussion of these  
21 issues. Thank you.

22           DR. COULTER:           Thank you, Ms. England.

1 Bill East, to be followed by Paul Marchand.

2 MR. EAST: I'm Bill East, National  
3 Director of the National Association of Directors of  
4 Special Education. I have had 26 years this year in  
5 working with OSEP in a variety of capacities. I want  
6 to thank you for listening this morning to Alice  
7 Parker and Barbara Gantwerk, and other state  
8 directors around the country at earlier hearings. I  
9 support their testimony.

10 Very quickly, I want to address five areas  
11 relating to OSEP: Number one, this is related to  
12 OSEP staff. I have found them over the years to be  
13 very competent and caring, and I encourage you to  
14 encourage the Secretary to properly staff and provide  
15 resources to OSEP to do their job. Most people I  
16 work with there are doing two or three full-time jobs  
17 at the present time.

18 Two, send a clearer message about the  
19 purpose and the focus of OSEP. That should be  
20 improving student results, as well as the protection  
21 of rights. We also can make sure that OSEP supports  
22 the maximum flexibility to states to support regional

23



1 resource centers, parent training information  
2 centers, and IDEA partnerships.

3 Three, we need to have OSEP focus their  
4 work by placing in the amendments to IDEA, clearer  
5 directions on what you want states to do. This will  
6 help reduce the need for lengthy and burdensome  
7 regulations, and also reduce the need for OGC  
8 involvement at the federal level and lawyers'  
9 involvement at the state and local levels.

10 Four, speed up the transition of the  
11 focused monitoring system that was described to you  
12 this morning by Leslie Margolis.

13 And, five, focus more energy on personnel  
14 development. If we don't put a quality teacher in  
15 every classroom and a quality administrator in every  
16 school, all this other won't matter.

17 A couple of suggestions there is to look  
18 at the funding mechanism that would require higher  
19 ed, the SEAs, local districts, to work together and  
20 provide more non-competitive funds to states, for  
21 example, the state improvement grants. Thank you  
22 very

much.

1 DR. COULTER: Thank you, Mr. East. Paul  
2 Marchand.

3 MR. MARCHAND: Good afternoon and hello  
4 again. After Miami I want to say to you immediately  
5 that having not been at, but heard a lot about New  
6 York and Nashville, and today you are back on track  
7 in regard to bringing the real experts to talk about  
8 the real issues, and I'm delighted to see that that's  
9 the case.

10 I'd like to make two points: One deals  
11 with the resources in OSEP, and the other is the  
12 resources around Part D. When you look at the  
13 situation, 6.5 million children, hundreds of  
14 thousands of schools, tens of thousands of school  
15 systems and 107 FTEs at OSEP, four monitoring teams,  
16 an incredible technical assistance initiative that  
17 needs to be expanded, there is no doubt that OSEP  
18 needs much, much more staff if we are going to have  
19 any expectation that they're going to do the job and  
20 do it right.

21 I would hope that this Commission strongly  
22 encourages this Administration to put in the

23

1 Department's salary and expense budget in the future,  
2 enough resources to have OSEP be able to do what we  
3 would all expect them to be able to do.

4           Lastly, in regards to Part D, almost every  
5 speaker today that I heard, talked to some extent  
6 about how the various parts of Part D, be it  
7 personnel preparation, be it research, be it any of  
8 the other factors, are so critical to making Part B,  
9 and to some extent, Part C, with regard to preschool,  
10 work.

11           Yet we have an infinitesimally small  
12 percentage of the monies that go into Part D, which  
13 is the foundation for Part B, being made available.  
14 Unless we do something very different, including the  
15 possibility of creating a percentage of Part B sliced  
16 into Part D, the growth is unlikely to come through  
17 the annual appropriations where it becomes a game.

18           So I would strongly encourage you to think  
19 about a way to create, through Part B, some mechanism  
20 to make Part D much more real. Thank you very much.

21           DR. COULTER: Thank you, sir. Ladies and  
22 gentlemen, this concludes our agenda for this task

23

1 force meeting. Pardon me just a second.

2 Libby, do you want to try? You're not on  
3 the list.

4 Ladies and gentlemen, one more three  
5 minutes. Are you ready?

6 MS. NEALIS: I'll be very brief. I'm  
7 Libby Nealis with the National Association of School  
8 Psychologists. I'm pleased to remind you all that  
9 you have already heard from school psychologists in  
10 many of the other meetings, so I won't elaborate on  
11 the psychological services, academic, and behavioral  
12 interventions that school psychologists can provide  
13 for students in special education and students in the  
14 general ed curriculum.

15 But I did want to make just a couple of  
16 comments on OSEP, particularly with regard to  
17 technical assistance. I think this is a critical  
18 area that needs to be strengthened, and that OSEP is  
19 already doing a great job, but that dissemination of  
20 these technical assistance materials and greater  
21 production of technical assistance materials and  
22 guidance to states need to be focused on.

23

1                   Right now, the IDEA partnerships that have  
2                   been funded for OSEP, of which my organization is a  
3                   part, is producing these types of materials, but  
4                   they're not necessarily getting down to the schools  
5                   and to the districts that can benefit from their use.

6                   Also, there is a lot of information on the  
7                   OSEP website regarding things such as positive  
8                   behavioral supports and other types of disciplines  
9                   and interventions that can be utilized, and I don't  
10                  think there's a wide dissemination or knowledge that  
11                  these are out there, as well.

12                  With regard to other technical assistance  
13                  and guidance that OSEP can provide, I think stronger  
14                  guidance on interagency agreements for states -- this  
15                  is in the law; it's under methods of insuring  
16                  services, and yet it's one of the things that we've  
17                  heard states have but are not implemented.

18                  I know that we understand that agencies  
19                  working together is a challenge, but it can be done  
20                  and is being successfully done in many communities  
21                  and other many models. And I encourage the  
22                  Commission to look at those and for OSEP to improve

23

1 the ability to get those models out to schools.

2           Also with regard to interagency  
3 agreements, not only working with the juvenile  
4 justice, mental health, and education agencies, but  
5 also with the state Medicaid agencies, I think, is a  
6 critical point. I know that your fellow Commissioner  
7 Chambers has already brought to your attention, the  
8 Medicaid issues. I would strongly encourage looking  
9 into that. It's not only one of the areas where  
10 there needs to be greater collaboration and  
11 coordination and guidance and technical assistance,  
12 but could alleviate some of the funding issues and  
13 meeting the needs of students.

14           With regard to personnel preparation, I  
15 have heard a lot about interdisciplinary teams.  
16 That's great. I want to emphasize that related  
17 services personnel are critical members of these  
18 interdisciplinary teams. And there has been a lot of  
19 talk about loan forgiveness and personnel preparation  
20 assistance with regard to math and science and  
21 special education teachers. We'd like to add that  
22 related services are also suffering from shortages

23

1 and are critical in providing the services under  
2 IDEA, and helping schools implement those services  
3 and implement other school-wide programs that can  
4 benefit the entire student population. Thank you  
5 very much.

6 DR. COULTER: Thank you, Ms. Nealis. This  
7 does conclude our agenda, and we are adjourned.  
8 Thank you very much for your participation.

9 (Whereupon, at 2:55 p.m., the Commission  
10 hearing was adjourned.)