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UNITED STATES DEPARTMENT OF EDUCATION
PRESIDENT'S COMMISSION ON
EXCELLENCE IN SPECIAL EDUCATION
TASK FORCE ON SYSTEM ADMINISTRATION

APRIL 23, 2002

U.S. Grant - a Wyndham Historic Hotel
326 Broadway
San Diego, California

COMMISSIONERS:

- JAY CHAMBERS
- DOUGLAS GILL
- ALAN COULTER
- CHERYL TAKEMOTO
- DOUGLAS HUNTT
- ADELA ACOSTA

STAFF:

- C. TODD JONES

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P R O C E E D I N G S

8:41 a.m.

MS. ACOSTA: Good morning.

I am Adela Acosta, Chair of the System Administration Task Force of the President's Commission on Excellence in Special Education. I welcome you to today's hearing.

The focus of our hearing is administrative barriers to effective special education services. The Task Force and its witnesses will explore ways in which we can overcome many of the barriers that hinder special education. These barriers include the perception of excessive paperwork, a focus on regulatory compliance rather than an academic outcome, and the perception of excessive litigation.

Before we begin our hearing, I would like to briefly provide you with background about the Commission. President Bush established the Commission last October to collect information and to study issues related to federal, state, and local special education programs. The Commission's goal is to recommend policies to improve the educational performance of students with disabilities so

1 that no child will be left behind.

2 Our work is not designed to replace the
3 Congressional Reauthorization of the Individuals with
4 Disabilities Education Act. Rather, the report we produce
5 and issue this summer will not only provide vital input
6 into the reauthorization process but also into the
7 national debate on how best to educate all children.

8 Over the past two months, the Commission and
9 its task forces have held hearings in Houston, Denver, Des
10 Moines, Los Angeles, Coral Gables, New York City, and
11 Nashville. The Commission has looked at issues such as
12 teacher quality, accountability, funding, cost
13 effectiveness, parental involvement, identification of
14 children with learning disabilities, and research.

15 Today, we turn our attention to the
16 administration of special education. Anyone remotely
17 connected with education knows that special education
18 services are burdened with paperwork, regulations, and
19 litigation. While administrative procedures and
20 compliance are needed to guarantee all children with
21 disabilities receive a free and appropriate education,
22 procedures and regulations must not overwhelm teachers,

23

1 children, and families. Instead, they should ensure that
2 children receive quality services with real academic
3 outcomes.

4 Hours spent on excessive paperwork, or its
5 perception, is a significant barrier to effective delivery
6 of education services to children with learning
7 disabilities. Fifty-three percent of all special
8 education teachers report that routine duties and
9 paperwork interfere "to a great extent" with teaching.
10 Policy makers and regulatory authorities must look for new
11 ways to reduce paperwork so that teachers can focus on the
12 most important task at hand, teaching children.

13 Paperwork is not the only factor that
14 detracts from effectively serving children with
15 disabilities; excessive litigation does, as well. The
16 current dispute system sanctioned by IDEA increases the
17 chances of due process proceedings and actually promotes
18 the use of attorneys and advocates. Dispute resolution is
19 an alternative to litigation that we should explore.

20 We will hear presentations from experts and
21 educators on these topics. We will also have a public
22 comment period this afternoon. What we learn from all

23

1 these sources will provide us with the valuable input we
2 need to develop our recommendations for the President.

3 Thank you for your interest in the
4 Commission. We will now begin today's hearing.

5 Before we begin, we'd like to welcome our
6 sign language interpreters, Tracy Williams and Tom Moran
7 and we would ask you to please turn off your cell phones
8 during this hearing.

9 Our first panel will discuss special
10 education paperwork; where does it come from, what is its
11 value, what can be done about it? The panel will review
12 how paperwork acts as a barrier to the effective education
13 of students with disabilities and what can be done about
14 the problem.

15 The panelists will include: Dr. Maggie
16 McLaughlin, who is an Associate Director of the Institute
17 for the Study of Exceptional Children and Youth. She is
18 involved in several projects, one of which is Special
19 Education Policy Leadership Development. This program
20 trains personnel to assume key leadership roles in the
21 public and private sectors and become policy makers at the
22 state and national level.

23

1 Dr. McLaughlin is also involved in conducting
2 several policy research efforts, as well as assisting
3 districts in developing and evaluating new programs.

4 Dr. Edward Lee Vargas, currently serves as
5 Superintendent of the Hacienda La Puente Unified School
6 District in California, serving over 54,000 students pre-K
7 through adult. As Superintendent of Santa Fe Public
8 Schools, Dr. Vargas was instrumental in raising district-
9 wide achievements, implementing major reforms, and
10 increasing accountability.

11 Thank you and welcome.

12 DR. McLAUGHLIN: Thank you, Madam Chair,
13 members of the Commission. I appreciate this opportunity
14 to be here this morning and to discuss issues related to
15 paperwork in special education and its barrier to
16 providing truly effective special education.

17 I'm going to organize my remarks this morning
18 in kind of two ways. First, I'm going to provide some
19 background or context and issues for the current paperwork
20 dilemma and then I'm going to provide some of my
21 preliminary recommendations. And I think, when we get
22 into them, you'll see why they're certainly thoughts that

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1 need to be developed for how to begin to move special
2 education from a paper-driven enterprise to a focus on
3 measurable benefits to children with disabilities.

4 I have, arbitrarily, organized the issues
5 around paperwork into two categories. The first, I'm
6 calling kind of the top down administrative requirements,
7 driven primarily by reporting requirements but other
8 statutory, regulatory, and administrative procedures from
9 OCR and OSEP that fall primarily on the state education
10 agencies and local education agencies.

11 And the second, and probably the more complex
12 and difficult arena of paperwork is that it merges from
13 the bottom up. And those are the papers, the forms, and
14 procedures associated with the individual education
15 programs and the implementation of FAPE.

16 Now, before I begin, I think it's important
17 to note that both categories, and these are arbitrary
18 categories of paperwork, result from a long-standing
19 attempt to establish accountability in special education
20 for students with disabilities and for a deep and long-
21 standing mistrust on the part of parents, families,
22 advocates, professionals, about the commitment of general

23

1 education, both commitment and political will, to educate
2 children with disabilities.

3 And one only needs to look at the testimony
4 that was provided by professionals and advocates back in
5 1963, prior to the passage of the first Elementary,
6 Secondary Education Act and the subsequent reauthorization
7 of that Act and, of course, the legislation leading up to
8 94-142, to look at the comments that were provided in
9 testimony that said that we don't feel that local
10 education agencies, that states, will make a financial
11 commitment, will make a true educational commitment to the
12 education of these children unless we hold them
13 accountable.

14 Therefore, unless, and until, we collectively
15 establish a unified accountability system that reliably
16 accounts for each and every child and, simultaneously,
17 critically examine some of the foundations of our policy
18 and practices, we are only going to be able to tinker
19 around the edges of paperwork improvement.

20 So, having said that, let me first address
21 what I see are some of the federal-level -- and these are
22 the easy ones, I believe, for us to begin to address.

23

1 There are federal-level requirements that primarily impact
2 systems at the state and local levels but do create
3 unnecessary and enormous paperwork burdens.

4 The first of these surround the multiple data
5 reporting requirements that we have at the -- in statute.
6 First of all, we have Section 618 of IDEA which specifies
7 data that must be reported by states. The data must
8 include -- and there are several key areas that have been
9 provided since 1978, actually when the first report was
10 generated.

11 But we have increased the data reporting
12 requirements in subsequent reauthorization. And these are
13 the data that you may be familiar with that come in the
14 annual report to Congress each year that include child
15 count; educational environment; personnel; data on exiting
16 -- or how students with disabilities exit school;
17 discipline; and other data as required by the Secretary --
18 and this is from the statute itself.

19 These data have resulted again in, and were
20 originally put into statute, as an attempt to provide some
21 national-level accountability on the part of systems for
22 making sure that they were actively seeking and finding

23

1 children with disabilities and educating them in the least
2 restrictive environment.

3 Subsequent data elements that have been added
4 to this have looked at other very important and very
5 critical indicators such as how students are exiting and,
6 as I mentioned, discipline.

7 However, in the 1997 reauthorization for
8 IDEA, another section, a new section, was added that
9 pertained to the performance of students with
10 disabilities, Section 612. Among the requirements in
11 Section 612 are those that address participation in state
12 and district assessments and the reporting of those
13 assessment results. But Section 612, subsection (a) is
14 the requirement that states create performance goals and
15 indicators for students with disabilities. These must be
16 aligned with established learning standards and desired
17 educational outcomes; they must be consistent to the
18 maximum extent appropriate with other goals established by
19 the state and address the performance of children with
20 disabilities on these assessments, drop-out rates, and
21 graduation rates.

22 The first biennial reports --and states must
23

1 not only establish these, they must report on these data
2 biennially. And the first reports which were submitted
3 around the last of December -- December 31st of 2000 --
4 were kind of all over the map, to be honest. Since that
5 time, I know that OSEP has undertaken an effort to begin
6 to really refine those reports.

7 But these biennial performance reports are,
8 in some respects, redundant now with both the state-
9 reported data and also with the new data, expanded data
10 requirement, under No Child Left Behind.

11 And I'm going to address these in my
12 recommendations because I believe that this particular
13 piece of federal statute could offer a very important --
14 with the appropriate expansion -- a very, very important
15 way to begin to develop system accountability for every
16 child.

17 And then we have all of the accountability
18 reporting requirements that come under the monitoring
19 process. And I know that this is something that has been
20 of deep concern to people at state and local agencies
21 because of the number of data elements that they've been
22 reported -- required to report on and/or to provide data

23

1 and/or corrective action.

2 This effort, the monitoring effort which is
3 now called "Continuous Improvement Monitoring Process," in
4 many respects is beginning to overlap significantly with
5 the performance goal and indicator requirement and the
6 other state data-reporting requirements.

7 So we have three distinct reporting
8 requirements that are emanating from federal statutes that
9 are beginning to have a lot of redundancy and need to be
10 streamlined.

11 The fourth area has to do with the Office of
12 Civil Rights data pertaining to the counts of children
13 receiving special education disaggregated by major racial
14 and ethnic groups, and the similar data that are collected
15 -- although not at the local district level, only at the
16 state level -- by -- or just aggregated at the state level
17 -- by the state reporting requirements under Section 618.

18 So, I'm addressing those four as major data-
19 reporting issues that have a major impact on systems and,
20 to move quickly through those recommendations: One, I
21 would like to recommend, as did the National Academy of
22 Science's recent Committee on the Minority Students in

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1 Special and Gifted Education, that the OCR and OSEP data-
2 reporting requirements be -- a new data-reporting system
3 be designed and implemented under OSEP that would document
4 all of the critical indicators at local and state levels,
5 of character -- of numbers and characteristics of students
6 receiving special education. So that would be to reduce
7 or remove the redundancy in the OCR and OSEP data.

8 I also believe, as I alluded earlier, that we
9 need to consolidate the state reporting, monitoring
10 compliance activities, and other state reporting under
11 Section 612, creating performance goals and objectives.

12 Frankly, I believe that we need to then
13 expand on that to make sure that we align the Section 618
14 requirements with those of No Child Left Behind, which I
15 think provides an opportunity to have truly consolidated
16 state reporting, local reporting, and down to the school-
17 level reporting. I strongly believe that, until we have
18 school-level data at the same level of detail as we do for
19 No Child Left Behind, for students with disabilities, and
20 aggregated to LEA and state, we will not begin to develop
21 an aligned accountability system.

22 Let me also add that, at this point in time,

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1 as Dr. Vargas will address, we have a number of data
2 systems that are in place to report in general education
3 and we have, in essence, a separate data administrative
4 silo for special education that comes up from the local
5 all the way up to the state and to the federal level,
6 leaving us -- giving us a great deal of redundancy in
7 effort, resources, and, more importantly I think, leaving
8 children with disabilities out of this larger
9 accountability system.

10 Now I'd like to talk about, quickly, the more
11 difficult one, having to do with IEP, the issues around
12 the amount of paperwork. I will just briefly say that
13 data released by the recent special ed personnel needs and
14 special education research indicates that, while both the
15 typical general educator and special educator report
16 working approximately the same number of hours, 55 versus
17 53 a week, both groups indicate they average five hours a
18 week in designing or preparing lessons. And special
19 education teachers report spending an additional five
20 hours completing forms and paperwork.

21 These forms and paperwork, as my written
22 testimony indicates, really come about because of our
23

1 longstanding difficulty, both in terms of statute, in
2 terms of our concepts, and in terms of legal
3 interpretations of FAPE and the meaning of "appropriate."

4 The fact that free and appropriate, and
5 particularly the "appropriate" part of public education
6 has, through various legislative, as well as judicial,
7 interpretations, come to be interpreted as something that
8 is designed -- and this is basically coming from the
9 Supreme Court decision -- in order to be appropriate, it
10 must be provided and designed in conformity with
11 procedures and time lines and be reasonably calculated to
12 confer educational benefit.

13 Obviously, I'm really quickly going through
14 this, but the issue for local schools and local
15 administration is that, as long as they can document the
16 procedures and the timeline, they have, in fact, met the
17 statutory requirement around "appropriate." This has
18 nothing to do, necessarily, with the children's actual
19 progress.

20 Changing the paperwork demands at the local
21 level, for teachers and for schools, will mean that we
22 must fundamentally examine, I believe, what constitutes an

23

1 appropriate education. And I also believe that this is
2 going to be rather a bold recommendation but I'm going to
3 offer it first. And that is, that we need to begin to
4 define what constitutes FAPE, and I'm talking about the
5 appropriate part of FAPE, in terms of a student's progress
6 toward measurable standards

7 I'm not going to, in this forum, talk about
8 whether they're the same standards as students with
9 disabilities -- I mean, of the students without
10 disabilities, but I do believe that we need to critically
11 examine the standards and we need an unambiguous, reliable
12 measure of individual progress which should replace the
13 paperwork compliance as our accountability tool.

14 The legal concerns should not be about
15 satisfying a checklist of services or procedures, but what
16 has the child learned and has the child made adequate
17 yearly progress toward those measurable outcomes.

18 Now, again, I want to reiterate, I don't
19 necessarily say that all of the outcomes, all of the
20 performance indicators that are established for the
21 "typical" child may, in fact, be sufficient for every
22 child with a disability, particularly as we move toward

23

1 those children with more complex educational needs.

2 But that does not mean that they cannot be
3 standards-, and should not be, standards-driven, because
4 they should.

5 I think the other piece that we need to
6 recognize is that, at each reauthorization, Congress has
7 added elements to the IEP in order to guarantee more
8 effective education but the results of those have been to
9 substantially increase the paperwork and the time involved
10 in developing the IEP for every child. And the current
11 focus on the procedures by which we implement the IEP
12 forces the school systems to go through the same
13 bureaucratation (phonetic) -- bureaucratized manner for
14 every single child.

15 I believe we need to begin to allow and look
16 at individual variation for IEPs based on the complexity
17 of the child's needs. For example, we have a lot of
18 children who are identified as needing special education
19 but whose special education is the accommodations that are
20 necessary to truly access the complete general education
21 curriculum. The goals that we hold for those children,
22 the assessments that we use to measure their performance

23

1 are the same.

2 IEPs for those children need not be as
3 complex or detailed or should be allowed to vary from
4 those for children who really do have a highly modified
5 and adapted educational program.

6 I think, again, that this kind of variation
7 can only exist once we have evidence of adequate yearly
8 progress toward system performance goals. I think that
9 age and intensity of educational needs should determine
10 the IEP process and not cookie-cutter bureaucratic
11 requirements.

12 And finally, I think that -- and this is, of
13 course, connected to this -- we must provide opportunities
14 for local school districts, or local schools within school
15 districts, to begin to highlight different approaches to
16 designing and documenting FAPE. This is certainly an
17 opportunity for us, a unique opportunity, in this era of
18 increased individual student accountability, to begin to
19 think outside the box and explore new ways to design IEPs,
20 and/or maybe something that isn't even an IEP, that looks
21 much more like the kinds of reports that we get for the
22 typical child. And if, indeed, those report cards did

23

1 have valid and reliable measures of children's progress on
2 those indicators, then do we need the same level of
3 scrutiny, the same type of procedures that we have through
4 the IEP.

5 And I would hope that we could begin to
6 support some very small-scale, carefully-controlled and
7 monitored pilot projects that could take us further in
8 developing these recommendations.

9 So, in closing, I want to say again that I
10 think we now have a knowledge base and enough experience
11 in the implementation of special education that we need to
12 begin to move beyond the model that we designed over 25
13 years ago for ensuring accountability as well as
14 commitment on the part of school systems.

15 I think we now can think about practices and
16 strategies that were not even achievable a decade ago and
17 I think that most of our time -- most of our efforts to
18 this time have been changes simply to tinker with the
19 federal special education legislation and have been made
20 in isolation of how special education functions as part of
21 an overall educational enterprise.

22 I know the changes that will be crafted must

1 be acceptable to multiple constituencies and interests but
2 I believe that it is now time for us to move beyond simply
3 tinkering with reform, as I've said before, and of
4 addressing for the fundamental issues of accountability;
5 otherwise, this reauthorization, like all the previous
6 ones, will just be so many acts of random improvement.

7 Thank you.

8 MS. ACOSTA: Thank you.

9 And now Dr. Edward Lee Vargas.

10 DR. VARGAS: Thank you Madam Chairman and
11 members of the Commission. I'd like to say good morning
12 and thank you for the opportunity to address you today.

13 I want to underscore all of the comments of
14 my colleague, Dr. McLaughlin, and share with you that, as
15 I walk through my comments, I'm filtering them through a
16 number of experiences, having been raised in a family with
17 a child with a disability and a couple of very strong
18 parent/advocates, and also having worked as a special
19 education teacher, as a school psychologist and
20 diagnostician, special ed director, as well as assistant
21 superintendent, for looking at district-wide types of
22 systemic improvements under Title I and other programs --

23

1 in addition to being a building administrator. Since as I
2 look at these issues, and I'm currently a superintendent,
3 filter these comments through there, especially most
4 recently as Superintendent for the Ysleta Independent
5 Schools District in El Paso, Texas, which was the highest-
6 achieving large urban district in the state, using some of
7 the ideas that I'll be talking about with you today.

8 You should have in your packets, copies of
9 the slides that we'll be walking through.

10 [Overhead projector presentation]

11 The central recommendation basically is
12 business over bullets here. The current paperwork burdens
13 in special education, which act as a barrier to effective
14 education of students, are a function of the culture.
15 And, when I say "culture," it's the way we do business in
16 education, special ed and general ed.

17 And, in order to remove these barriers, both
18 special education and general education must be recultured
19 or changed, and in some cases significantly, with regard
20 to how we think about, design, and implement the referral,
21 the identification, and the placement processes in special
22 education.

1 Look for the thing that causes it, this
2 overwhelming paperwork. First of all, the referral stage,
3 there is no reliance on special education by general
4 education for differentiated instruction, which results in
5 more high incidence referrals for mild learning
6 differences, increased paperwork, burgeoning caseloads,
7 and a significant amount of time in meetings, which also
8 increases costs.

9 There's often an assumption in that referral
10 process that the students have had a high-quality of
11 instruction prior to referral and, by doing that, there is
12 this perpetuation of unexamined instructional quality in
13 the referral sources. As we look at the identifications
14 part of the process, the student eligibility reports focus
15 on classification criteria versus instructional quality.
16 These are compliance-driven, lengthy reports that are not
17 matched to relevant instructionally-focused teaching
18 intervention.

19 When you think about it, as a former school
20 psychologist writing 15 pages to defend an LD
21 classification, which -- you know, I've been working four
22 states and it's inconsistent across states; you can be

23

1 eligible in one state and cross the border and you're not
2 disabled any more and virtually, very little or no
3 relevance to how do you improve instruction once the
4 student gets to special education.

5 And it's a deficit-driven classification
6 model where all the blame for failure is placed on the
7 child; there's little or no assessment of the quality of
8 the student's instructional settings and interventions
9 that are conducted prior to the referral.

10 And, as a result, we end up with caseloads of
11 38 to one in a resource room because of the lack of
12 options and attention to the general ed referring source
13 system.

14 Primarily, the identification process looks
15 at the norm-referenced classification criteria versus
16 criterion-referenced based on state curriculum standards,
17 as we see this emerging -- state standards across states
18 and more criterion-reference where assessments are aligned
19 to states. The identification process seems to be
20 disconnected from these merging terms and measurement
21 systems that have no relevance to what's being taught in
22 the classroom.

23

1 If we look at the placement process, it takes
2 a significant amount of time away from student instruction
3 and the teacher's ability to really examine the effect and
4 the effectiveness of the current teaching practices. The
5 paperwork is firmly focused on compliance versus the
6 quality of instruction; did we get all the forms right;
7 did we get all the notices out? And very little time to
8 really talk about relevant instructional interventions
9 relative to that student's needs.

10 The majority of special educators spend a day
11 or more of the instructional week on paperwork, and this
12 has come in from, in part, the (inaudible) Teachers
13 Report from the Council for Exceptional Children. Eighty-
14 three percent spend a half to a day and a half days per
15 week on IEP-related meetings. It's reported that 68
16 percent of teachers spend less than two hours per week on
17 individualized instruction.

18 Before I came here today, I pulled together a
19 large group of special educators and principals in my
20 district to ask them what they thought about all this.
21 And they shared with me that they -- in our district,
22 teachers spend two days on instruction and three days out

23

1 of the week on procedures and paperwork and in IEP
2 meetings. This is less time, again, to examine the
3 treatment effect of specific instructional methods and
4 strategies, within placement, on the actual student
5 achievement relative to these standards.

6 So, while we have teachers in regular ed
7 working in grade-level meetings, looking at student work,
8 looking at the content clusters relative to the state
9 standards, and the skill sets and the research-based
10 strategies to address those, our special education
11 teachers are working on paperwork and missing out on some
12 very powerful experiences that will benefit children. And
13 so significant amounts of required forms, notices, and
14 reports consume these blocks of teacher and administrative
15 time.

16 The end result is, I believe in my experience
17 in administrative culture, that focuses on procedural
18 compliance versus performance and a results-orientation.
19 And, in my opinion, this leads to the illusion of
20 accountability. If we've got all the forms filled out and
21 all the compliance requirements completed, we're doing a
22 good job for our kids; and I don't find that to

23

1 necessarily be true all the time.

2 And so the focus on compliance versus student
3 performance is a part of driving, I believe, the burdening
4 paperwork. This also creates incentives for litigation
5 and the associated paperwork that's involved in that, and
6 an adversarial climate. As I talked to staff a few days
7 ago, some reported they spend four to five hours sometimes
8 in IEPs -- and they believe that many of the IEPs are
9 written more for the legal profession than for the
10 student's benefit. And they pleaded with me to please
11 share these comments with you today.

12 And the focus on forms versus teaching and
13 learning, that I found as a teacher or psychologist, or
14 director, or administrator; and the absence of focus on
15 the quality and the specific affect of the instructional
16 treatment on maximizing student achievement gains in both
17 general and regular education.

18 Recommendation: 1

19 I think you have to get up to 30,000 feet
20 here to understand that overwhelming paperwork in special
21 education is one symptom of the broader systemic issue as
22 to how public education addresses the growing diversity of

23

1 student learners in an era of high-academic standards for
2 all, -- not some or most, but all -- high-stakes testing,
3 and increased accountability across states.

4 Meaningful change will require attending to
5 how we can do things differently in both general and
6 special education. This is what I refer to -- and it is
7 referred to in the literature -- as reculturing. Changes
8 in law must be designed to facilitate new ideas and
9 practices that reduce paperwork but also raises
10 achievement. Special ed and general ed are inextricably
11 linked and any meaningful reduction in paperwork cannot
12 occur without looking at both systems and how one breeds
13 the other.

14 Recommendation 2:

15 Reduce the paperwork in special education by
16 reducing the over-reliance on special education for
17 differentiated instruction;

18 Increasing the presence of high-quality
19 differentiated instruction in general education for high-
20 incidence of mild disability referral; you want to
21 underscore reading and math because most of the students
22 that are referred for special education are referred for

23

1 reading problems. This will help to eliminate the
2 disproportionate referrals of certain groups, as my
3 colleague referenced earlier in the report from the
4 National Academy of Sciences on the over-representation of
5 minorities in special education and their representational
6 gifted education.

7 There is an over-representation in the broad
8 sense and in pockets for African-Americans, for Native
9 Americans, for Hispanics, and others. And providing high
10 quality instruction early on will help to eliminate that
11 disproportionate -- or inappropriate placement.

12 It also reduces the high cost associated with
13 special ed for differentiated instruction. When I think
14 about some of the schools I've worked with that had moved
15 in this direction and looked at addressing the learning
16 environment before labeling the child, they've made
17 tremendous gains with students and have been recognized
18 state-wide and nationally for their efforts.

19 The second bullet, provide for universal
20 early screening of all students; and this is also
21 consistent with the right report for early identification.
22 I know, in the State of Texas, they are doing that, which

23

1 helped us to identify, early-on, where to intervene and
2 helped us reduce the reliance on special ed when students
3 really needed high-quality instruction.

4 And, of course, the last one there on that
5 page, expand the availability of, and access to, quality
6 preschool, full-day Kindergarten, early literacy, health
7 care, and parent support systems. We know that, when
8 young people and parents have access to these services,
9 they come to school ready to learn reading and are not in
10 need of remediation.

11 Capitalize on the emerging standards-based
12 instructional attainment strategies, achievement
13 disaggregation, and research based instruction. There are
14 multiple systems now emerging around the country that
15 allow teachers to look very closely at the learning
16 standards for that state to disaggregate student
17 performance based on criterion-referenced assessments, to
18 look at the content clusters, to look at the skill sets,
19 and to look at matching researched-based strategies with
20 that. And they don't need to unnecessarily label many
21 students in order to do that.

22 Integrating special education and the general
23

1 education systems. As Dr. McLaughlin mentioned, it's no
2 secret that two silos out there actually prevent a lot of
3 these new ideas and growth from actually occurring.

4 Integrated administrative structures and
5 facilitate sharing and access to new and emerging learning
6 technologies. As schools are moving quickly to meet the
7 standards and requirements of federal legislation, as well
8 as state, there's a lot of change happening in schools and
9 special education needs to have access to that. By the
10 same token, a lot of those efforts need to have access to
11 the benefits and the knowledge in special education and
12 there needs to be a sharing of that.

13 Allowing for the redirection of funds
14 associated with the unnecessary manufacturing of mild
15 disability labels towards providing high quality
16 instructional interventions that produce results in
17 general education based on the standard, and this can
18 assist on reducing the unnecessary paperwork and the
19 burgeoning caseload in special education.

20 I remember, when I was a special ed director
21 in Seattle and John Morefield, (phonetic) who was the
22 principal of Hawthorne Elementary School, decided with the

23

1 staff that, in order to address some of the reading
2 problems and math problems that they were having in their
3 classrooms was resulting in students not learning, they
4 decided that, rather, to refer to all of these students to
5 special ed, that they would create powerful reading
6 programs in every classroom. And it took some maneuvering
7 to be able to do that; we actually ended up writing IEPs
8 to say that the most appropriate placement was not in that
9 particular -- every classroom but in a reading program
10 that was developed.

11 And their results proved very favorable and
12 it was very positive. But that could not have occurred
13 had the administration not been flexible in allowing some
14 of the funds to be used for powerful instruction outside
15 of special education.

16 Recommendation 3. Shift the focus of
17 identification from labeling the children to matching each
18 student's teaching and learning to specific high-quality
19 instructional intervention, eliminating the classification
20 labels that presume instructional relevance and the
21 interventions that may accompany the placement. There
22 really is no relationship, one-to-one relationship,

23

1 between the label we provide and instructional
2 intervention upon placement.

3 I know many, many young people that are
4 labeled as LD and placed in a resource room with five or
5 six other classifications; and there's really no
6 discussion about what are we going to do with them when
7 they get there that's going to make a difference and help
8 them achieve. That's all focused on they're LD, they need
9 a resource room, and let's sign off on it.

10 Replace the non-categorical conceptions and
11 criteria based on relevant quality instructional
12 interventions. Looking at -- you may have heard of or
13 know -- as a school psychologist, if I gave enough of you
14 tests, I could probably make a third of you LD, probably
15 one or two of you gifted, and the others would be average
16 -- the Chair would be gifted.

17 And, you know, I remember, working as a
18 school psychologist, just finding you must test, and the
19 right test and the right discrepancy to make that student
20 eligible so that they could get some help. And I'm not
21 convinced that that was the way to maximize their
22 achievement. Not that, when they got into special ed,

23

1 they didn't get good quality, but I'm not sure it was
2 necessary for the cost and based on what was happening
3 there that couldn't happen in a regular classroom with
4 good training and support.

5 Refocus the initial eligibility and re-
6 evaluation reports on specific instructional treatment
7 effect versus these voluminous boilerplate classification
8 reports. Looking at what's really working, what's making
9 a difference, there's a tremendous opportunity here, I
10 believe, with the narrowing, if you would, of curriculum
11 and focusing on curriculum and focusing on standards, and
12 what could -- what should you be able to do at every
13 level. It's much easier now for schools to focus on how
14 to address those and schools are being very successful
15 around the country in doing so. And I believe we need to
16 capitalize on that.

17 Recommendation 4.

18 Streamline the IEP process away from one-
19 size-fits-all without impeding students' and parent
20 rights. For some students, you don't need the 19 pages,
21 if you're looking at some quality reading instruction.
22 These are (incating) from, by the way, from L.A. Unified;

23

1 and ours are very similar.

2 Allowing flexibility in the scope, nature,
3 and timing of requirements in IEP reviews relative to the
4 need and based on results. I noticed, in discussion with
5 -- you know, with the two- to three-year ranges in IEPs
6 reviews -- I'm not sure that -- you know, a one-size-fits-
7 all is really helpful. Some students do need five, six,
8 seven, eight, people that are in IEP and regular reviews.
9 In fact, I would argue I know some kids who need to be
10 reviewed at least every six weeks. But there are others
11 that maybe don't need that and so, allowing for that
12 flexibility would help to address part of this paperwork
13 burden that people are feeling.

14 Allowing for the substitute of norm-
15 referenced assessments with quality criterion-referenced
16 standards-based performance assessments emerging in
17 regular education reforms.

18 There are more and more systems, I think,
19 about the IDMS (phonetic) in California that we're looking
20 -- the Star Report (phonetic) in Texas, and now the TAS
21 (phonetic), the Texas Essential Knowledge Skills, and the
22 sophisticated disaggregation tools that are automated that

23

1 are provided to teachers that break down very discretely
2 the learning and patterns of students and look at how to
3 address those are much more relevant, in some cases, than
4 the current data that we look at in terms of student
5 learning. And I would encourage more and more of that as
6 we've seen teachers take hold of that and embrace it in
7 helping them to address the standards.

8 Leverage existing, new, and emerging
9 technology towards increased web-based automation of
10 routine processes, procedures, and clerical tasks. And we
11 looked in four states and seen how we've reinvented forms
12 and this forced states to meet the requirements and,
13 special ed generally being at the bottom of the technology
14 food chain when it comes to automating a lot of this.

15 Understanding the cost associated with a lot
16 of this routine clerical task and the time and energy that
17 could be redirected towards looking at instruction by
18 using technology for a lot of this and moving it up the
19 food chain.

20 And then standardizing forms and data
21 collection procedures nationally. My colleague alluded to
22 that and referred to that in terms of looking at data

23

1 collection processes. So many times, we spend a lot of
2 time trying to develop and design forms and making sure
3 they are compliant when a lot of that time could be spent
4 working with students.

5 Recommendation 5 would be to align special
6 education placements with standards-based reform
7 initiatives, thinking and referring to the No Child Left
8 Behind legislation;

9 Including special education in general
10 education school-wide improvement initiatives and required
11 plans. Where I've seen that happen, you see kids doing a
12 lot better in a school-wide approach and responsibility
13 for every child that comes through that door;

14 Including special ed staffing in regular
15 education self-improvement and professional growth
16 initiatives. There's some tremendous things going on now
17 in education as we look at meeting these standards and
18 people are working very hard to ensure that no child is
19 left behind, and with everyone being held accountable.
20 Special ed needs to be part of that; they have a lot to
21 offer in that equation and, by the same token, a lot of --
22 should adult learning can occur;

23

1 Allowing for local district and school level
2 flexibility and creativity in special education exchange
3 for improved student results, allowing for pilot program
4 options to expand that and try some of these things that
5 I'm talking about. There are school districts around the
6 country that are doing it and they're doing it and the
7 other paperwork, as well. And I think we could learn a
8 lot by allowing for that local flexibility in exchange for
9 results with our students;

10 And replace and select special ed compliance
11 requirements, where appropriate, with district and school
12 improvement plans when those plans are centered on
13 individual students and accountability for results. And I
14 alluded to some of those emerging systems that are taking
15 hold in school districts and -- would help to facilitate
16 that and reduce some of that burden. And I believe, in
17 many cases, when you're looking at the more mild
18 classifications, it would be more helpful to teachers in
19 addressing the standards, especially when those students
20 are being included in school and district reporting for
21 accountability.

22 Recommendation number 6.

23

1 The goal of reducing paperwork in special
2 education must be coupled with improving student
3 performance and achievement for all students, particularly
4 those with disabilities. If we do a better job on the
5 front end, students won't need so much help afterwards.
6 And so, to get a different result, one must first do
7 things differently. I think it was Einstein who said that
8 the definition of insanity is doing the same thing over
9 and over and expecting a different result. And I would
10 underscore Dr. McLaughlin's comments about this
11 reauthorization; it's critically important that there be
12 more ideas and different practices that come out of this
13 or it will be more of the same. And that's going to
14 require the cooperation of everyone;
15 Federal, state, and local education agencies;
16 Teacher and administrative training programs;
17 State educator certification agencies. As
18 long as a teacher, coming out of college, can only be
19 certified in one area or two, and only those, and only
20 teaching in this type of a classroom which can only take
21 this type of a student with this type of a label, that
22 design, which is very well-designed to deflect change,
23

1 will resist that change;

2 Local school boards, districts, schools, and
3 classrooms;

4 Administrators, teachers and support staff;

5 Parents and advocates. There has to be that
6 trust there to allow for different ideas and
7 experimentation in doing things that, hopefully, will make
8 better -- resulting in improved outcomes;

9 And the community service providers and other
10 stakeholder groups. For example, if young mothers don't
11 have access to adequate pre -- postnatal, health care and
12 get the support systems they need and have access to high-
13 quality pre-school and -- it will be very difficult to
14 provide for the interventions that are necessary.

15 And so, looking at whether it's providing --
16 teaching the parents to speak English, developmental --
17 while the kids are in school, the parent education, all of
18 these pieces are part of this formula because they're all
19 inextricably linked. It's a systemic issue.

20 And most of the people that I've worked with
21 over the years are as terribly committed as anyone else;
22 But the most talented caring and dedicated people that

23

1 I've had the opportunity to work with are the people in
2 special education. But the current system, my fear is, is
3 driving them out and something has to be done about that.

4 Thank you very much.

5 MS. ACOSTA: Thank you Dr. McLaughlin and Dr.
6 Vargas for that very thoughtful testimony.

7 And now we will begin the questions from the
8 Commission panel. We will begin on my right with Cherie
9 Takemoto.

10 MS. TAKEMOTO: Thank you for excellent,
11 excellent testimony and thinking-outside-the-box ideas.
12 And the Commission isn't necessarily specifically dealing
13 with this, but I'm curious, as an administrator and as
14 someone who works with administrators, one of the things
15 that we've heard is that the procedures for manifestation
16 reviews, getting rid of those bad kids, it's just too
17 excessive. And I'm concerned -- I'm personally concerned
18 about protections of not leaving children behind by
19 putting them in the in-school suspension, out-of-school
20 suspension, expulsion, or get rid of them however you can.

21 And I'm wondering, there's -- there were
22 paperwork protections that were added in the last

23

1 reauthorization and that is paperwork. How do you we
2 ensure the safeguards of those children not being left
3 behind and address the calls that the last idea went too
4 far with that?

5 DR. McLAUGHLIN: Well, I'll take this first.

6 In those instances, in the recommendations
7 that I was putting forth, I think that there are instances
8 with individual students whose, either educational needs
9 and behavioral needs, whatever, do require this extensive
10 review, multiple people involved in that, not just in the
11 IEP, but in the whole process around protecting those
12 children's rights, as well as examining -- and this is the
13 important part -- examining the services that are provided
14 to those students.

15 So I think the difficult part is that, what
16 we've put into place is an enormous bureaucratic
17 inefficiency that is applied just to any child regardless
18 of the specific educational needs of that child.

19 And so, what I think we need to do is not to
20 simply throw away -- and in those particular areas where
21 we are really protecting the child's rights to education
22 -- without, you know, carefully thinking about applying it

23

1 to those students. But I think, in the other areas of the
2 IEP that were added -- provisions that were added --
3 around access to the curriculum and some of the other more
4 educationally -- I think they are all educational, but
5 certainly the ones that are most directly related to
6 classroom instruction and education, those are the ones
7 that I think we can be much more bold about changing.

8 MS. TAKEMOTO: So you consider some of the
9 behavioral procedures that were put in place last time
10 around as weighing in favor of the civil right of a child
11 to have access to education?

12 DR. McLAUGHLIN: I think that they need to be
13 reviewed at the very specific level of what exactly is
14 being required under -- you know, in any given district.
15 But I do believe that those pieces of paper are important
16 civil rights -- you know, protections for given children.

17 And so I would be, in this whole idea of
18 flexibility -- again, I think that, you know, we could
19 risk throwing everything out instead of saying, "These are
20 instances where we may want to keep the concept of
21 manifestation determination." not the way, necessarily,
22 that individuals states and school districts have chosen

23

1 to interpret this because there is a great deal of
2 ownership for this paperwork that rests at the local
3 district.

4 So I think that we can -- but the basic civil
5 rights protections that are associated with some of those
6 provisions in law are not something that we should just
7 automatically say that, because it's burdensome, we're
8 going to throw away.

9 DR. VARGAS: Absolutely. I mean, the
10 procedural safeguards are very important, critical, and I
11 don't think anyone is suggesting that they not be there;
12 they need to be there. I think the question is how they
13 are implemented at the local level.

14 As I reflect on how they're implemented in
15 different places, some are more burdensome than others and
16 it's because of the way we've manufactured the
17 implementation at a local level. And so my thoughts on
18 the matter would be that a close examination of how
19 they're implemented in order to ensure that the concept
20 and the protections are there but that they're not over-
21 killed for too many kids when that may not be necessary.

22 MS. TAKEMOTO: Okay.

23

1 DR. McLAUGHLIN: If I could just follow up
2 real quickly.

3 I think part of what Dr. Vargas and I both
4 said separately was, if -- to allow some flexibility in
5 that, there are school districts -- and I look probably at
6 parents in the audience and say, "Believe it or not" --
7 that are now throwing out children with behavioral
8 problems, who are actually designing very effective
9 approaches. And it would seem that, in recognition of
10 places that can demonstrate -- and I mean that in terms
11 of, you know, really reliably and validly demonstrate that
12 they are not doing these egregious things -- do we have to
13 implement every single piece of paper in the same way in
14 those school districts as we might in a school district
15 where we do have evidence that there are some problems in
16 that area.

17 And it's that notion of being able to provide
18 with evidence but some flexibility that I think is also
19 important to think about.

20 MS. TAKEMOTO: Okay. And the other children
21 that sometimes get left behind, we're talking about the
22 majority of the students are in what would be considered

23

1 to be mild disabilities. I think we've heard lots of
2 testimony about that.

3 Tell me about accountability for results for
4 those students for whom teachers find it challenging to
5 show any demonstratable progress.

6 DR. McLAUGHLIN: I'm just going to jump in
7 here because I'm involved in one such effort like that.

8 In Montgomery County, Maryland, which is
9 across the river, I think, from you, Cherie, and Madeline
10 Will and Ricky Sabier (phonetic), who are two parents, are
11 chairing something we call the Continuous Improvement
12 Team, and we have -- and I'm providing kind of just the
13 support to it -- and we have developed a set of indicators
14 that can be measured at the school level, that can be
15 measured and reported at the school level, that do account
16 for every single child.

17 Now we are struggling right now with finding
18 some -- we do have an alternate assessment and we are
19 using some of the alternate assessment data but we're also
20 looking at other critical -- we're in the process of
21 designing, let's put it that way, some other very critical
22 performance indicators for the kinds of children who are

23

1 not participating in our state -- in the state or district
2 assessments.

3 And, even for those children, the parents of
4 those children are saying, "There are some other things
5 that are important that we want to know about those
6 children that may not currently be things that are
7 developed from the..." -- I mean, that we are measuring
8 and reporting at the school level.

9 We have just -- I shouldn't say "we" -- they
10 have -- the parents and the CIT have just obtained from
11 the superintendent two things; one, the school improvement
12 planning process, that Dr. Vargas referred to, must now
13 indicate, in the CI -- the SIP, the status of children
14 with disabilities, every child, regardless of the nature
15 of disability, on these indicators. There's going to be
16 principal training in how to interpret those data. And
17 they will begin to be used and reported.

18 Now, they're not going to be reported in any
19 state-level reports at this time because this is specific
20 to this county. But, just to put this in perspective,
21 there are 134,000 students -- Madam Chair, you know that
22 -- 134,000 students and 16,000, 17,000 students with

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1 disabilities. So this is a huge district; we're not doing
2 this just on a small, couple of buildings. And our
3 definite intent here is not one single child can be left
4 behind at the school level.

5 The problem right now is that those data are
6 used for school improvement planning, they're going to be
7 used for accountability at the school level. There is, at
8 the present time, a whole separate set of data that the
9 state requires that that district report so we still have
10 a parallel effort going on.

11 MS. ACOSTA: Thank you, Dr. McLaughlin.

12 In the interest of time, Commissioners, we
13 are going to limit you to five minutes. And then, if
14 there is any time left over, we certainly will welcome
15 your questions at that time.

16 Commissioner Hunt?

17 DR. HUNTT: Thank you, Madam Chair, and
18 thank you panelists for your excellent presentation.

19 Dr. McLaughlin, I think you're the first
20 person that has mentioned the fact that we're talking
21 about a civil rights issue. I don't think that that issue
22 has come up previously. And it piqued my interest because

23

1 we're talking about paperwork and compliance and
2 performance models.

3 I was wondering, from a monitoring
4 perspective, are we potentially asking those set to be
5 both friend and foe in monitoring this? For instance, we
6 talk about developing trust -- Dr. Vargas, you have
7 mentioned that; -- being flexible; trying new things,
8 thinking outside the box. That type of thing would
9 require technical assistance, I would think, from the
10 federal level.

11 How do we establish that trust at the federal
12 level -- the state and federal level, and thinking outside
13 the box and being flexible, if that monitoring group is
14 also the foe, in that, "If you don't do 'X', this is going
15 to happen to you."?

16 So I'm wondering, is OSEP -- is it still
17 appropriate for OSEP to be both friend and foe in this
18 process? If we move to a performance model, do you think
19 that's going to be an effective way to do it?

20 DR. VARGAS: Well, Chair, and members of the
21 Commission, Mr. Hunt, I wouldn't think about it as
22 necessarily friend or foe and I'm thinking of it as

23

1 principle. You know, thinking about student-centered
2 decision making in a student-centered focus.

3 If the bottom line is we're trying to improve
4 the educational outcomes and the performance of students,
5 that should be at the center of everything that we do.
6 And it's not about, you know, who's a good guy or a bad
7 guy or -- monitoring or technical assistance, as much as
8 it is, is each one of us has a responsibility and a role
9 in this hierarchy of systems and can play a powerful role
10 in helping to improve those outcomes.

11 And that does mean that whoever the players
12 are, I think, have to understand that this is about kids,
13 it's not about the adults. And that's where our attention
14 needs to be and we need to check our egos at the door,
15 because that's where they belong in this business, and put
16 our attention and energy into how do we help improve the
17 performance of students and what can each one of us do,
18 not necessarily what can you do and what can you do, but
19 asking ourselves what part of the solution do I have.

20 And, if it's OCRs asking what can we do to
21 help these schools and these teachers and these parents
22 and all of them working together to raise the performance
23

1 and the outcomes for students so that they have, you know,
2 the same kind of -- or at least the maximum number of
3 choices that they can in their lives? What role does each
4 one of us play, whether it's on the general or the special
5 ed side of the house, and how can we make what we do more
6 powerful for these young people?

7 DR. McLAUGHLIN: Just to follow up on that.
8 I mean, I don't know that it's friend or foe, although
9 it's foe in the sense that, if you're found to be out of
10 compliance and you have a corrective action plan, it
11 usually results in several more pages on your IEP forms
12 and nothing, necessarily, happens for children in that
13 whole process. But the parents and the advocates and, you
14 know, other people who advocate it may feel that that's
15 good because at least there is some attention to it.

16 But I think that, if we could think about
17 this as -- first of all, when I talked about having a
18 performance-based, obviously, this is a very, very
19 critical issue, that we have to make sure that we have not
20 just the same standards as other kids in the system, but
21 that we have all of the right indicators, some of which
22 might be still be process indicators, they might be

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1 program-specific as opposed to student performance, as we
2 move toward this full accountability and rebuilding trust.

3 Secondly, I agree with Dr. Vargas that I'm
4 not so sure now that anything does happen really
5 substantively to change the lives of kids or their
6 performances in some of the monitoring that goes on and
7 that, if we had much clearer targets for that monitoring
8 and then said, "Yes, and now these are the things that we
9 have to do." some of which can be directives to the state.

10 For example, "These are the things that you
11 must use your state improvement grant funds for; you have
12 no choice now because you have these issues that you need
13 to deal with."

14 I mean, I'm sure there are other ways that we
15 have levers that are constructive levers as opposed to a
16 punishment kind of model.

17 DR. HUNTT: I think that's a sad commentary,
18 that there's nothing substantive that happens through the
19 compliance model that we currently have.

20 But I want to, at least, indicate that I
21 appreciate your comment on civil rights; it's a sad
22 reality that we in American society have decided that kids

23

1 with disabilities aren't going to graduate from high
2 school and they're not going to get jobs afterward. And
3 this is a civil rights issue; and I appreciated that.

4 One of the recommendations I'd like to make
5 to the Honorable Alan Coulter, at the end of the table
6 there, who is going to be chairing a Task Force next week
7 on OSEP, is that you consider whether they are the most
8 viable monitoring body, Alan, because, as a civil rights
9 issue, it may be that the Office of Civil Rights may be
10 the more appropriate monitoring entity.

11 Thank you, Madam Chair.

12 MS. ACOSTA: Thank you, Commissioner

13 And now, Commissioner Gill, please?

14 DR. GILL: Thanks. I appreciate your
15 presentation, too. I appreciate the fact that you at
16 least gave us some examples and some recommendations, et
17 cetera. So my question is going to be real simple.

18 If you only had one recommendation that you
19 could pony up to this committee, and I'm going to ask each
20 of you the same question, which one would it be?

21 DR. VARGAS: Madam Chairman, the Commission,
22 Dr. Gill, my first recommendation would be to integrate

23

1 general and special education. And I say that because,
2 when we've done that in school districts, it's created the
3 capacity to leverage more energy, more ideas, and
4 resources towards addressing some very difficult systemic
5 problems and issues. And it puts everybody at the same
6 table to deal with all kids; it doesn't leave people in
7 isolation and it doesn't leave them alone.

8 And so, as I think about it from an
9 organizational perspective in terms of how to leverage
10 capacity, would be to put all those resources together in
11 terms of talented people, ideas, parents and others
12 working together because the problems that we face are so
13 insurmountable that no single agency or provider can meet
14 all of the needs that our young people have, that we're
15 talking about. Only by working together, as a school
16 system with the community, both special and general
17 education, can we harness those resources in more powerful
18 ways. And that would be my first recommendation, if I
19 were making the decision.

20 DR. GILL: Okay.

21 DR. McLAUGHLIN: Dr. Gill, I'm going to take
22 that a little further, a little more specifically, and say
23

1 that, if I had one wish for this reauthorization, it would
2 be that I would take Section 612, performance goals and
3 indicator, I would clearly look at the language under that
4 and align it with the building, LEA and SEA reporting
5 requirements under No Child Left Behind, but -- and I want
6 to make this a very careful "but" -- that we just don't
7 say that whatever is reported under Title 1 ESEA is okay
8 for kids and that kids with disabilities should be
9 included, but that we look at the critical standards and
10 indicators to make sure that we have the sufficient number
11 for all students.

12 But I feel that we have got to move toward
13 the level of that kind of unified accountability at the
14 building level, at the LEA level and at the SEA level to
15 be able to realize the same -- I share Dr. Vargas' goal
16 but I believe that it's going to come through a kind of
17 system that's based on, "we're all working toward..." and
18 we're all very clear on the targets we're working toward
19 for children with disabilities and without.

20 DR. GILL: Okay. I have lots of follow-up
21 questions but I'm going to -- I know, in the interest of
22 time, other people have lots of questions they want to

23

1 ask, too. So thanks.

2 MS. ACOSTA: Thank you, Commissioner Gill.

3 I have one -- two quick questions.

4 And, to agree with Commissioner Hunt,tt,
5 President Bush has called denying any child in this
6 country a right to an equal education, the underbelly of
7 bigotry. And I thought that was very well stated. I hope
8 he doesn't mind me speaking out of context for him.

9 However, we talk a lot about accountability
10 and the paperwork issue being linked to that
11 accountability. How would you monitor school-based
12 performance accountability?

13 DR. VARGAS: Madam Chairman, members of the
14 Commission, obviously, as we look at more individualized
15 systemically approaches to accountability, there, as I
16 alluded to and referred to, there are emerging systems in
17 school districts now that look at the performance of each
18 individual student relative to every learning standard in
19 that grade level, and their performance relative to that
20 learning standard.

21 And so, there are mechanisms that I believe
22 are in place that, if you look at -- I'll use as one

23

1 example, there's a school called Ascarte School,
2 A-s-c-a-r-t-e; it's an elementary school in El Paso,
3 Texas. It's a national blue-ribbon school, the principal,
4 Ramon Morales (phonetic) was the principal -- national
5 principal of the year. It's probably about 650 students,
6 a hundred percent poverty, 95 percent minority. And, if
7 you look at the performance of those students, on the
8 state-wide exams, almost every one of them is achieving
9 above a 90 percent pass rate.

10 And you talk about accountability for every
11 individual student and you walk into that school, you can
12
13 see the teams of teachers, working together, are holding
14 themselves accountable for each and every individual
15 student.

16 And it's -- I want to come back to the point
17 of the civil rights issue because the fact that some kids
18 can do well in this country and some can't is a civil
19 rights issue. And all students need to perform at higher
20 levels, including those in special education.

21 And so I would submit that there are emerging
22 systems that are continually being developed that I think

23

1 we need to really take advantage of and further refine and
2 develop so that, indeed, no child is left behind under
3 these state-wide systems.

4 MS. ACOSTA: Thank you. And just one more
5 thing. Sir, would you just let us look at that IEP that
6 you brought with you?

7 DR. VARGAS: Certainly, I'll leave it with
8 you.

9 MS. ACOSTA: Thank you so much; we appreciate
10 it. It will become part of the record.

11 One of the issues that we have people saying
12 is a lot of paperwork and we need to get a handle as to
13 what paperwork really looks like. Thank you.

14 Commissioner Coulter?

15 DR. COULTER: I want to tell you once again,
16 I think as each Commissioner has, how much we appreciate,
17 you know, the time that you've taken to look at what is, I
18 think, a very, very difficult issue and that is, defining
19 what people are complaining about. Because I think a lot
20 of people have concerns that are more born out of
21 frustration; we're trying to understand the process that
22 -- any tangible experience they might have. So this issue

23

1 of paperwork is, I think, sometimes very difficult for us
2 to define exactly what the problem is.

3 Let me see if I can get some confirmation on
4 a couple of things. First of all, as I heard you speak, I
5 think both of you spoke to the feasibility of an
6 accountability system for providing education to students
7 with disabilities that focuses on results, that that seems
8 to be possible and doable for all kids with disabilities.

9 Is that yes or no?

10 DR. VARGAS: Yes.

11 DR. McLAUGHLIN: Yes.

12 DR. COULTER: Okay; thank you. I appreciate
13 that. And we love yes/no questions, by the way -- or
14 yes/no answers, I mean.

15 Secondly, as I understood it, some -- and I
16 think, Maggie, that you spoke to this most directly --
17 that, in some instances, results for kids with
18 disabilities can be much shorter-term kinds of results.
19 We're not talking about annual achievement, we're not
20 talking about diplomas, avoiding drop-out; we're talking
21 about, in some instances, kids simply being in settings
22 that would facilitate them learning typical social skills

23

1 or social skills on learning how to get along with kids,
2 et cetera, that that actually could be a result in this
3 more flexible conception of what we want for kids.

4 DR. McLAUGHLIN: I think what I said is that
5 I believe that, for students with disabilities, we need
6 some of those indicators because they are very important,
7 but they would not substitute for results. I would still
8 want to have results on, for example, social adjustment.

9 DR. COULTER: Okay.

10 DR. McLAUGHLIN: In addition to those or in
11 addition to other key program indicators.

12 DR. COULTER: Okay. Now here's the longer
13 question; you can spend the rest of my five minutes, the
14 two of you, answering it.

15 What frames the discussion about
16 "appropriate"? In other words, you know, I'd like for you
17 to give us some indicators of what you see as definitions.
18 Maggie, you used the term "appropriate" obviously, from
19 "free and appropriate public education." Superintendent
20 Vargas, you talked about quality-differentiated
21 instruction.

22 What frames that discussion for us about, you

23

1 know, what are the indicators of "appropriate," what are
2 the indicators of "quality" that we can practically
3 address for folks?

4 DR. McLAUGHLIN: May I ask a clarification
5 here? You want to talk about what they could be and not
6 the current legal and statutory interpretation of
7 "appropriate"?

8 DR. COULTER: Well, I think we encouraged you
9 to dream big and you did that. So, keep dreaming.

10 DR. McLAUGHLIN: Okay.

11 DR. COULTER: Just dream specifically for us.

12 DR. VARGAS: Madam Chair, members of the
13 Commission, Mr. Coulter, first of all, I think, if we are
14 in an era of standards-based reform, we have to start with
15 the standards, start with what are the expectations that
16 we have for all students so they won't be left behind.

17 And for students with more intense and severe
18 needs, I think we have to ask the question, what kind of a
19 life do we want them to have when all of us go away at 21
20 and all those supports are gone for parents. What's going
21 to happen to them?

22 And I think we have to, then, start that fact
23

1 with planning in terms of what's it going to take to get
2 there. So, in terms of specific quality indicators,
3 certainly started with standards, certainly looking at, as
4 I refer to, the instructional environment and the quality
5 of the instructions being provided, the methods, the
6 strategies, the pacing, the many research-based practices
7 out there that would meet standards of quality in terms of
8 helping young people to learn to read, like reading
9 recovery, accelerated reading, reading results that are
10 making a difference for kids, have these proven to make a
11 difference for kids and, if they haven't, then what other
12 strategies are available that would meet the students'
13 needs, but not throwing the towel in and saying it's the
14 child's problem and it's their fault they're not learning.

15 So, looking at the qualitative issues in that
16 regard in terms of the features, if you will, of that
17 instructional setting and the support systems available.
18 And then relative to progress being made, using the most
19 powerful practices we know of, determining gradually as we
20 move along what adjustments should be made in light of
21 students' progress or performance based on their own
22 individual situations.

23

1 But certainly they're there, certainly
2 schools around the country in different places are
3 actually doing that. It hasn't been crystallized or
4 formalized or framed in any particular way for many of us
5 but it is happening and it's focused on, what is it that
6 we want as an end result and is what we're doing moving us
7 in that direction or is it just making us feel good right
8 now but it's really not going to result in an improved
9 quality of life for that student when we all go away at
10 21.

11 MS. ACOSTA: Thank you.

12 Commissioner Chambers?

13 DR. CHAMBERS: Thank you very much, Madam
14 Chair.

15 It's very nice to see both of you again after
16 a long hiatus and I want to join the chorus here in
17 expressing my appreciation for the clarity of your
18 presentations.

19 I also serve on the Finance Task Force so my
20 question may sound like it's coming a bit out of left
21 field but, as I listened to you talk, particularly Dr.
22 Vargas, thinking about the inextricable links between

23

1 general education and special education, my mind began to
2 move away from my very specific questions about paperwork
3 and processes and think about some broader -- a broader
4 question. I have one question for you; it's not a yes/no,
5 true/false, it's an essay question.

6 But I guess what -- I would like to ask you
7 what you see the implications of your remarks are for
8 increases in the federal support, financial support, for
9 special education and then, more directly, for the use of
10 federal funds, how they might be used, because I heard you
11 talking about identification and maybe not spending so
12 much time in identification. So I guess I'd like you to
13 elaborate a little bit on those issues for me.

14 Thank you.

15 DR. McLAUGHLIN: Dr. Vargas?

16 DR. VARGAS: Either way.

17 DR. McLAUGHLIN: Well, thank you.

18 Dr. Chambers, I, as you are probably are
19 aware, talked previously, a long time written about, the
20 need to begin to have a great deal of flexibility in the
21 use of resources. Now, when I say resources, I can be
22 talking about the FTEs that are assigned to a school, as

23

1 well as dollars that might come in a school's budget
2 because I believe that the ultimate goal is to provide, to
3 the individual school at the school level, the kinds of
4 resources and the configuration of resources that that
5 school needs to get every single child to where he or she
6 needs to be.

7 And I mean that when I say, "every single
8 child." So that, in fact, if a school decides that what
9 they need are more reading teachers or they need some
10 behavioral specialist or, for the next year, they need
11 these kinds of things, they should be able to use those
12 resources flexibly to do that without being encumbered
13 with this -- you know, regulations around how money flows
14 or, you know -- I hate to say this because I'm sure this
15 may send some, you know, shivers up people's spines -- but
16 even staffing guidelines and things that otherwise
17 restrain the use of those resources.

18 I also believe that, in this current -- and I
19 -- it's not -- you know, it's not settled yet, it's still
20 the cases on fiscal adequacy or still somewhat, you know,
21 in balance of whether that's going to be the predominant
22 or dominant, you know, model among state funding formulae;

23

1 but special education really cannot participate in or be
2 part of that because of the way in which we consider
3 "appropriate" -- to go back to Dr. Coulter's question --
4 as well as the way in which we have funded and supported
5 special education.

6 So I think it's even more critical now that
7 we begin to say, "This is what constitutes an adequate
8 education, e.g., these are the standards, these are the
9 outcomes that we expect." They should be expanded and
10 extended for children with disabilities, and other
11 children who may be specially-situated children, and this
12 is the amount of money that it's going to take at the
13 state level, or at the district level.

14 Now you may be aware that we've just come out
15 of the Thornton (phonetic) Commission in Maryland and I'm
16 quite proud of what our legislature has done; but it's
17 quite interesting that they've basically chunked out a
18 piece of it and said, "Okay, all the rest of this is going
19 to support, you know, the growth of children in the
20 schools and this you can use for special education." and
21 implicit in that is, whatever you all do in special
22 education, here's some extra money to do it.

23

1 And the rest of it is, of course, clearly
2 based on student performance and getting children to
3 higher levels of that performance. And I know Madam Chair
4 is very familiar, probably, with that more than I am.

5 So I think it has implications for how we --
6 maybe not at the federal level, but certainly at the state
7 levels, how we allocate and look at our special ed
8 resource needs and how they get allocated to local
9 districts and schools.

10 MS. ACOSTA: Thank you.

11 DR. CHAMBERS: Is there any way -- I want to
12 hear what Dr. Vargas has to say.

13 MS. ACOSTA: We've gone over our five-minute
14 limit, Dr. Chambers, but we can -- and we have to take a
15 break because of technical difficulty.

16 I am going to ask -- Todd Jones is our
17 Executive Director for the Commission and he has something
18 to ask, as well, And, again, Mr. Jones, we have a
19 technical difficulty and we've been asked to break at this
20 -- right after Mr. Jones' question.

21 MR. JONES: Mine is very short; it's for
22 Maggie.

23

1 The question goes to reporting of data at the
2 school level. Under No Child Left Behind, one of the
3 things you can do is break down the data at the
4 schoolhouse level, you can break down below that to third
5 grade, that's convenient to do when you have one, two,
6 three, third-grade classes. But, if you have one child
7 with autism or two children with autism in the third
8 grade, or even three in the school, you're getting down to
9 levels of statistics that allow information to be extract-
10 based on the knowledge of one.

11 From my work doing the OCR Survey, I'm now
12 becoming intimately familiar with these concepts. And
13 then, if you add race cross-matched against disability
14 status, you make it almost impossible to do, even at some
15 schoolhouse levels for a lot of the low-incidence
16 disabilities.

17 How would you -- how do you see this being
18 addressed by integrating in the concepts of No Child Left
19 Behind accountability systems to special education system
20 data collection?

21 DR. McLAUGHLIN: Basically, there are two --
22 I'm very familiar with -- and increasingly familiar with

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1 -- the issues around reporting at the school level for
2 students with disabilities, whether we have a large 'N' or
3 whether we just have a small number. And we have the
4 confidentiality issue, which is a legal issue. And I
5 think that does need to be addressed.

6 And, if I can step aside from that for just a
7 minute and say that there is, however, two things that
8 we're kind of talking about. One is the computation
9 and/or the determination of AYP and the setting of
10 performance goals which, in small 'N' is not going to be
11 possible and it may be that those concepts, those pieces
12 of No Child Left Behind, must be done at the LEA level or
13 in an aggregate form because of the small 'N'.

14 However, it would be of extreme use to the
15 public to know that, if you had 10 children in fifth-grade
16 level at -- in your school who had an IEP, how many of
17 those children even participated in an assessment.
18 Whether you could -- how many participated with
19 accommodations, without accommodations.

20 And, the other thing that I think is
21 incredibly important under the -- and hopefully will be
22 addressed during the regulations or in the regulations --

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1 is, when you compute your school performance index for the
2 computation of AYP, exactly which students with
3 disabilities are included in that and which are not. For
4 example, students with accommodated scores are non-
5 standard accommodations; where are they?

6 So a lot of the issues on accountability, at
7 least in our beginning stages, are simply in a very
8 descriptive, clear format so that parents, when they pick
9 up that school report, see who is in and who is out and
10 who was computed and who wasn't. And then the issues
11 around computation of AYP and, you know, whether you've
12 met your performance goals are certainly something that is
13 more a measurement construct.

14 The only issue that I can't address, at this
15 point in time, is the confidentiality issue. However, I
16 would say that those numbers of non-report do differ, as
17 you probably are aware, from five in our state to 10, I
18 believe, throughout California, to six in Kentucky and
19 Delaware --no, maybe Delaware is 10.

20 So, if we could perhaps seek some
21 standardization there, that might be helpful. But --

22 MS. ACOSTA: Thank you so much.

23

1 Once again, Dr. McLaughlin and Dr. Vargas, we
2 thank you for coming this morning and sharing your
3 insights and your expertise with us.

4 At this time, we will take a break, a 15-
5 minute break. We have some technical difficulties and we
6 will back.

7 Thank you.

8 (Whereupon, a brief recess was taken.)

9 MS. ACOSTA: We are now back in session

10 The next panel will discuss the process
11 compliance model, what are the alternatives. The panel
12 will explore the real world of the process compliance
13 model on local schools and what alternatives might exist
14 to the current system.

15 The prior focus on compliance does not
16 necessarily translate to an effective educational outcome
17 for children who need special education services, shifting
18 the focus from an exclusive emphasis on compliance to a
19 data-driven model focused on academic outcomes such as
20 school graduation rates of children with disabilities will
21 be discussed.

22 The panelists will include: Dr. Batya

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1 Elbaum, an Associate Professor in the Department of
2 Teaching and Learning and the Department of Psychology at
3 the University of Miami; and she is the Director of the
4 University of Miami School of Education Center for
5 Research.

6 We also have with us Ms. Donnalee Ammons,
7 formerly a local special education director, who is
8 currently the CEO of Success Institute, a community-based
9 mental health agency that operates under the psychiatric
10 rehabilitation option within the Louisiana Medicaid
11 program.

12 Thank you, ladies.

13 DR. ELBAUM: First of all, Madam Chair and
14 members of the Commission, thank you very much for giving
15 me the opportunity to testify before you today. As you
16 know, I'm an Associate Professor of Education and
17 Psychology. I have a doctoral degree in developmental
18 psychology and I do research on the academic --

19 MS. ACOSTA: Excuse me, doctor, you need to
20 speak more directly into the microphone. Thank you.

21 DR. ELBAUM: Thank you.

22 I do research on the academic achievement and
23

1 social development of students with disabilities,
2 primarily students with learning disabilities. Since
3 receiving my doctoral degree in 1994, I've been recipient
4 of an OSEP Initial Career Award and I have been principal
5 or co-principal investigator on a number of directed
6 research projects.

7 Since we were asked to present our
8 recommendations first, I'm going to do that, with
9 Donnalee's assistance. And I'm going to read through them
10 briefly; they are relatively short. And then I will
11 provide you with some of the background and argument that
12 led me to make these recommendations.

13 [Overhead projector presentation]

14 The first presentation and, to answer the
15 question which Dr. Huntt has not yet asked -- this is the
16 most important one -- is that monitoring should focus on
17 the extent to which students with disabilities are
18 achieving important outcomes. All the rest flows from
19 that statement.

20 The second recommendation is that monitoring
21 activities should be designed to investigate those areas
22 of performance and compliance that bear the strongest

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1 relation to important outcomes so as to inform the design
2 of interventions aimed at improving these outcomes. State
3 educational agencies should work collaboratively with
4 stakeholders to develop a common understanding of how data
5 can and should be used to inform the monitoring process.

6 My next recommendation is that SEAs should
7 use multiple sources of data and multiple data-collection
8 methods so as to make the findings of monitoring visits as
9 robust as possible. SEAs should make all data and data-
10 gathering procedures public and explicit; they should also
11 streamline data collection and compilation procedures so
12 that high-quality reports can be produced within several
13 weeks of a monitoring visit.

14 SEAs should ensure that key stakeholders,
15 especially parents, are involved in each aspect of the
16 monitoring process, including planning, implementation,
17 and evaluation of monitoring activities.

18 And last, SEAs should have their monitoring
19 activities reviewed and evaluated by an external evaluator
20 to assess the extent of stakeholder involvement, the
21 consistency of implementation of established monitoring
22 procedures, the reliability of the data collected, the

23

1 extent to which the findings are supported by the data,
2 and finally, the usefulness of the monitoring report in
3 terms of providing guidance for future action.

4 Now let me tell you what leads me to make
5 these recommendations.

6 Based on my training and research experience,
7 I'm convinced that the application of research principles
8 to the monitoring enterprise will result in improved
9 outcomes for students with disabilities and their
10 families. Though many people think of research as
11 abstruse and theoretical, I would like to suggest to the
12 Commission and to the families of students with special
13 needs, that there is nothing more practical or more likely
14 to result in improved outcomes than a monitoring system
15 that uses many of the same principles that we use in our
16 University-based research studies.

17 Before I speak about the application of
18 research principles to state monitoring systems, let me
19 explain how I, primarily a researcher, became involved in
20 Florida's monitoring efforts. When the State of Florida
21 came up for OSEP monitoring in the 1999-2000 academic
22 year, I was asked to help develop and implement a more

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1 systematic and focused method of gathering public input
2 than had hitherto been used in our state's self-assessment
3 efforts.

4 Working in conjunction with what we call the
5 Bureau of Instructional Support and Community Services,
6 which is our Division of Special Education at the state
7 level, my research team developed a set of focus group
8 interview protocols, we trained a cadre of focus group
9 facilitators, organized the electronic data-compilation
10 system, and assisted in implementation of the process
11 across multiple sites in Florida in a three-day time
12 window during OSEP's validation planning visit. On the
13 fourth day, we produced a preliminary report.

14 The Florida monitoring report that OSEP
15 provided acknowledged the contribution of this system to
16 providing broad and timely input to the monitoring process
17 and noted that it was responsible for obtaining input from
18 a large number of parents, including under-represented
19 groups.

20 This process enabled the OSEP team to have a
21 clear picture of what stakeholders in Florida thought
22 about special education services before they even returned
23

1 to Washington, D.C.

2 Following OSEP's monitoring visit, the State
3 of Florida began a major revision of its own monitoring
4 system. I've had the privilege of participating in this
5 revision process over the last three years; it has been a
6 collaborative effort involving not only the Department of
7 Education and University researchers but also parents,
8 teachers, district administrators, consultants, and even
9 students. The process has resulted in a new way of
10 thinking about what monitoring can and should achieve and
11 how go get it done.

12 If the process of revising the system has
13 been as successful has it has been, that is in no small
14 part due to the serious commitment of resources that the
15 State has allocated to bring about this system change.

16 Now, what I'm about to present offers my own
17 distillation of the principles underlying the new
18 monitoring system in Florida. I speak not as an official
19 representative of the Florida Department of Education but
20 as a researcher who has participated in stakeholder
21 meetings, monitoring workgroup meetings, trainings of peer
22 monitors, state-wide meetings of district staff, pre-

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1 monitoring briefings, site visits to districts, post-
2 monitoring debriefings, data analysis, and review of
3 reports.

4 So I'm going to briefly describe what I have
5 distilled as the principles of what I feel is an improved
6 monitoring system in the State of Florida.

7 The first principle is that the process
8 should be public and explicit. District-level data on key
9 indicators must be made available to the public. The
10 formulas used to select districts for monitoring must also
11 be made public. All data collection procedures must be
12 communicated in advance to the districts; all monitoring
13 reports must be made public and disseminated not only to
14 school personnel but also to parents and other
15 stakeholders.

16 Second, the process should utilize rigorous
17 research methods. Multiple data sources and data-
18 gathering methods should be used. It should be possible
19 to trace all data back to their sources so that the
20 accuracy of the data can be verified. The data-gathering
21 process must be described in great enough detail so that
22 it can be replicated. This means that it would be

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1 possible, in principle, to have a different team of
2 monitors apply the same procedures to a comparable sample
3 of individuals, schools, and classrooms in the district.

4 This replication makes it possible to assess
5 the reliability of the process as indexed by the extent to
6 which the findings of the two teams agree with one
7 another. Replication is one way in which the quality of
8 the monitoring system can be evaluated by an external
9 evaluator.

10 Next, the process should be feasible. Ah,
11 there's the rub, you say; that research studies take a
12 long time. And that can certainly be the case. However,
13 I would like to disabuse you, if need be, of the notion
14 that researchers do not have an eye to issues of
15 practicality. Let me illustrate this with an example from
16 my own work.

17 If, for example, a graduate student about to
18 embark on her dissertation -- I should look at Michelle --
19 were to come to me and say, "Dr. B, what I want to do for
20 my dissertation is to find out everything there is to know
21 about why students with disabilities experience
22 difficulties in school and what we can do to help them."

23

1 I would say, "My gosh, that's admirable, that's ambitious,
2 but what decade was it your were targeting for your
3 graduation because I'm going to be gone by the time that
4 either you or anyone else knows everything there is to
5 know. And, what's more, given the pace of change, by the
6 time you know everything, everything you know is probably
7 wrong."

8 So, in order to ensure the feasibility of a
9 research project, you have to have a focus. The same is
10 true of monitoring. No state can investigate every valued
11 outcome of a free appropriate public education and, even
12 if the focus is on a single outcome, no monitoring system
13 can apply every conceivable data-gathering method to the
14 investigation of that outcome.

15 So, limiting the scope of an investigation
16 may mean -- and, by investigation, I mean research
17 investigation -- may mean that the findings cannot be
18 generalized to domains that were not studied. However,
19 what is gained is a high level of confidence in the
20 findings within a particular domain with the likelihood of
21 developing effective strategies for addressing at least
22 one major area of need. One hopes, of course, that the

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1 strategies implemented to address one critical area of
2 need will lead to improvements in other domains, as well.

3 This is why a monitoring system needs to
4 focus its investigations on those districts where outcomes
5 are poorest and, within districts, the state's
6 investigations need to focus on areas of performance and
7 compliance that are high-prophezed to have the strongest
8 relation to the outcome under study.

9 The next principle is that the process should
10 involve parents and other stakeholders in all phases of
11 monitoring, planning, implementation, and evaluation. It
12 is especially important for parents to be members of these
13 teams. In Florida, parent representatives on the
14 monitoring steering committee played a key role in
15 developing the new monitoring system. Parents are also a
16 key data source.

17 When a district is selected for a focus
18 monitoring visit, the parents of all students with
19 disabilities receiving special education services in the
20 district are mailed a questionnaire concerning their
21 perceptions of the quality of special education services
22 and their satisfaction with their involvement in the

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1 educational process. Parents are also invited to indicate
2 their interest in participating in a focus group interview
3 whose purpose is to examine the focus outcome in greater
4 depth. Additionally, parents can also call a toll-free
5 number at the University of Miami to provide additional
6 input.

7 A similar multi-method design, that is survey
8 plus focus-group interviews, is used to obtain input from
9 teachers and service providers and from high school
10 students receiving special education services.

11 Florida has yet to include parents as members
12 of the monitoring team, as is done in several other
13 states, and to include parents in the evaluation process,
14 but these are steps that I think will soon come under
15 consideration.

16 Next, the process should be designed so as to
17 inform interventions -- or call them corrective action
18 plans or improvement plans -- that lead to improved
19 outcomes for students with disabilities. In my view, the
20 research-based approach to monitoring offers the greatest
21 likelihood of learning what aspects of special education
22 services -- for example, instructional strategies,

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1 curriculum, assessment, relations between schools and
2 families, and so forth -- have the strongest relation to
3 the outcome variable of interest in a particular district.

4 Knowing what these factors are is of crucial
5 importance because this knowledge can guide development of
6 an improvement plan designed to improve the outcome. I've
7 included a couple of examples in my written statement to
8 the Commission; I'd be glad to discuss these if there is
9 time.

10 Now, though, I would like to turn from the
11 "what" and the "why" of monitoring to the "how."

12 How, in fact, can a rigorous data-based
13 monitoring system be implemented in real time? And let me
14 give you the example of Florida. In Florida, the
15 monitoring steering committee identified four important
16 outcome variables which, in Florida, are called triggers,
17 which will be the focus of the first wave of the new
18 monitoring process. The one I'll be using for
19 illustrative purposes is the drop-out rate for students
20 with disabilities.

21 Once the triggers have been selected and the
22 various data-gathering activities decided on, the Florida

23

1 monitoring team, in collaboration with my research group,
2 developed a data-coding matrix for each selected outcome
3 variable. This is the data-coding matrix for the drop-out
4 trigger (indicating) -- ah, it's already up there.

5 Going down the left column are the state's
6 data-gathering activities. These are the same for all the
7 monitoring visits regardless of the trigger. Across the
8 top are the areas of investigation relevant to the
9 trigger. These differ somewhat, depending on the trigger.

10 In the case of drop-out rates for students
11 with special education, the areas deemed most relevant,
12 that is, most likely to be informative for the purposes of
13 designing a plan to improve results, were staff training
14 and knowledge, student attendance, quality of drop-out
15 prevention programs, compliance with the least restrictive
16 environment, school actions and systems around student
17 behavior, curriculum, assessment, and transition.

18 Each matrix also includes an opinion column
19 to capture stakeholders' personal views of the factors
20 that related most strongly to the focus outcome.
21 Collective, the areas of investigation represent our best
22 thinking about the factors that are likely to be

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1 associated with drop-out rates for students with
2 disabilities.

3 What goes into the cells of the matrix are
4 numbers corresponding to the components or items of each
5 data source that relate to a particular area of
6 investigation. This matrix serves the critical function
7 of guiding design of an automated data-compilation program
8 that I'll describe in a minute. Each area of
9 investigation will have a section devoted to it in the
10 final report. Use of this matrix ensures that every
11 relevant topic is addressed by data and that data gathered
12 address a relevant topic -- or, as I say, "A place for
13 each datum and each datum in its place."

14 Members of the Commission will also see a few
15 sample pages of output from the data-compilation program
16 in your appendix.

17 The use of computer technology has had an
18 enormous impact both on how data are gathered and how they
19 are processed prior to data interpretation. In the past,
20 that is, up until this century, the Department of
21 Education monitors would record all of their information
22 from their document reviews, interviews, classroom

23

1 observations, and so forth, by hand, on hard-copy forms,
2 cart all the boxes back to Tallahassee, unload them, do
3 all those things that you're familiar with, and it would
4 take a very long time to even get to the stage of data
5 interpretation.

6 Now we have the monitors record their data in
7 Word forms and send the data to us electronically. We
8 submit the electronic files to a fully-automated data-
9 compilation system that produces a report corresponding to
10 each cell of the matrix. Following this year's visits,
11 we'll probably revise that system somewhat. All the data
12 from the monitoring visit, with the exception of the raw
13 survey data, can now be stored on a single CD.

14 The greatest challenge, though, comes in
15 thinking about the patterns in the data. What do the data
16 tell us? In this regard, the challenge facing state
17 monitoring teams is strikingly similar to the challenge
18 that you, the members of the President's Commission, are
19 facing right now. How do you organize large amounts of
20 data from diverse sources, interpret areas of difference
21 and consensus, synthesize the findings, and come up with
22 recommendations that will lead to system improvements?

23

1 How, indeed, do you accomplish this in a very short period
2 of time and yet have confidence in the outcome?

3 A tool that we are using to accomplish this
4 goal is the data-compilation system that began with the
5 data-coding matrix. An example of the power of well-
6 organized data to facilitate interpretation and to guide
7 intervention is in the table that I'm about to show you.

8 This table presents a very, very small sample
9 of the data collected in the area of curriculum during a
10 recent monitoring visit. For illustrative purposes, I've
11 focused especially on adaptations and modifications.

12 As you see -- and if you could track this,
13 Donnalee, leave that there and track it with your finger
14 visually -- from the parent focus group interview, one of
15 the things we learned is that parents felt teachers were
16 not providing modifications to the curriculum set out in
17 the IEPs.

18 One parent said, "Regular education teachers
19 do not make modifications. If it's listed on the IEP,
20 someone should make sure that regular education teachers
21 understand that modifications need to be made." There are
22 several other comments there; in the interest of time,

23

1 I'll skip down.

2 From the teacher focus group, participants
3 stated that some, but not all, teachers cooperated in
4 terms of providing modifications for students with
5 disabilities -- there are examples that follow.

6 From the student focus group interview, some
7 students felt that teachers were not amenable to providing
8 ESE --that's our term in Florida -- students adaptations
9 in the classroom. "Actually, we're supposed to get extra
10 time any time we want but some teachers won't let you.
11 They make it hard for you to get extra time."

12 We have an item from our parent survey that
13 reads, "My child's teachers give students with special
14 education extra time or different assignments as needed."
15 In this particular district, 68 percent of the parents who
16 responded to the questionnaire agreed with that statement.
17 And you see there's a pattern in the data such that
18 parents of younger children agree more with that statement
19 than parents of kids as they go through the system. So we
20 have only 60 percent of parents of high school students
21 reporting that their child's teacher give students with
22 disabilities extra time.

23

1 From the teacher survey, when we asked
2 teachers to respond to the statement, "My school modifies
3 and adapts curriculum for students with disabilities as
4 needed," 52 percent of teachers reported that, at their
5 schools, that occurred consistently; 32 percent report
6 that it occurred to some extent; and 16 percent, in this
7 particular district, reported that it occurred minimally
8 or not at all.

9 From the student survey, the item "ESE
10 teachers give students extra time or different assignments
11 if needed" only 57 percent of students -- these are high
12 school students -- affirmed that statement; 43 percent
13 disagreed.

14 In the interest of time, I'll skip the next
15 page; it has very interesting information but I think you
16 see the pattern in the data.

17 This way of organizing the data from diverse
18 sources allows us to see the convergence of data and
19 paints a picture of an area practice that, in this
20 district, is certainly greatly in need of improvement and
21 would represent an excellent target for concerted system
22 change.

23

1 MS. ACOSTA: Thank you so very much for the
2 excellent presentation.

3 And now we will hear from Ms. Donnalee
4 Ammons.

5 MS. AMMONS: I appreciated the opportunity to
6 show my technical skills (referring to her operation of
7 the overhead projector during Dr. Elbaum's presentation.)

8 And thank you very much for inviting me to be
9 here but I wanted to add to the information you know about
10 me, it is that I have been a Team Leader of focus
11 monitoring in the State of Louisiana for the last three
12 years. And I've been working, for the last year, with the
13 State of New Mexico on the focus monitoring process.

14 I didn't start out with a recommendation in
15 my testimony because I got the information a little bit
16 late about that. But, if I have one recommendation, that
17 is that focused monitoring will work and it will make
18 change.

19 When I was a Special Education Administrator,
20 I kind of thought of traditional monitoring, that it
21 probably should be a four-letter word so that it could fit
22 that four-letter-word "expletive deleted" category. I

23

1 normally considered that a bunch of desk jockeys from the
2 state department or maybe the federal government would
3 show up to find fault. They were usually top-notch paper-
4 pushers because those seem to be the kind of people who
5 worked at that level. If they've ever faced the day-to-
6 day struggle of working with kids with disabilities, I
7 believe that it had been so long ago, they'd forgotten the
8 challenging opportunities of the real world.

9 Monitoring was supposed to make sure that
10 children with disabilities were getting a program that was
11 compliant and afforded them an opportunity to make
12 progress. It was not a fact-finding mission, it was a
13 fault-finding mission.

14 Whenever I think about the benefits of
15 traditional monitoring, I think about Ms. Roberta. She
16 was a special education teacher in a small, rural school
17 in my system during the '70s. Her paperwork was pitiful
18 and IEPs became her Mt. Everest. She really tried but she
19 couldn't seem to get all the i's dotted or the t's crossed
20 or the spaces filled in right.

21 In about 1981 or '82, that school year, it
22 was our system's turn to be monitored. And we all kind of
23

1 wondered, "Well, what witch-hunt will the monitors be on
2 this year?" When the team arrived with their piles of
3 papers and their sharpened pencils, we were ready, as
4 ready as we could be. As luck would have it, they chose
5 some of Ms. Roberta's students to review. They ate Ms.
6 Roberta for lunch. By the time they got done dissecting
7 her poor paperwork, there was nothing left but cat box
8 filler.

9 She came to me after the monitoring team
10 left.

11 "This is my last year. I love my children
12 and they love me. The ones that are through
13 school, bring their children back to visit
14 me. They all work; they all take care of
15 their families; they go to church; they save
16 money; and they buy homes. They contribute
17 to society, they don't take from it. They

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19

20

21

1 all read and write, some a little better than
2 others, they want their children to get an
3 education. They're proud of who and what
4 they are; and I'm proud for them."

5 She was kind of quiet for a minute and then she looked at
6 me and she said,

7 "You know, those monitors, they didn't even
8 visit my classroom. They didn't see all the
9 things those children were doing. They
10 didn't look at how far some of those children
11 have come. They didn't ask what becomes of
12 your children when they finish in your
13 classroom. They just care about paper; paper
14 is what is important to them, not what
15 becomes of the children. If teaching is only

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1 paper and filling out forms, then I can't be
2 a teacher. I can teach children to read and
3 do math and be good citizens, I can even
4 teach them how to fill out those forms. But,
5 if the kind of job I do as a teacher is based
6 on how well I write an IEP, then I just
7 better go to the house."

8 And she did.

9 Now, I spend a lot of time talking to horses
10 and cows and chickens and I tend to rely on simple
11 sentences and a very functional vocabulary. And I wasn't
12 sure how many of the illustrious Commission members spoke
13 "farm." So I decided to reaffirm a higher level of
14 communication by looking at some of the internet
15 information on monitoring. I went to Dr. Coulter's
16 website.

17 You know, Dr. Coulter and Ms. Roberta,
18 they've been talking over a 20-year time warp. The very
19
20
21
22

1 things that her students did in 1981 were listed as
2 measures of good outcomes for students in 2001. What a
3 shame that the wrong emphasis sent a really good teacher
4 out of the classroom.

5 You see, we did focus monitoring even back in
6 1981 but the focus was on paperwork.

7 I think about Ms. Roberta a lot as I work
8 through the monitor -- focus monitoring process in the
9 last three years and I want to tell her, "Hey, Ms.
10 Roberta, things are changing. We're looking at outcomes
11 now, we care about what happens to children, we measure
12 success by the success of the students. If they're
13 scoring well in high-stakes testing, if they're in regular
14 classes and meeting with success, then the fact that a
15 regular teacher didn't sign the IEP or that the LRE
16 justification isn't written very well or maybe a box
17 wasn't checked quite right, well, that isn't so important
18 when what you see is that the outcomes for students are
19 happening and those outcomes are right."

20 For years, the emphasis in monitoring at the
21 state and federal level has been on the three P's of poor
22 performing pupils, Policy, Procedure, and Paper. These

23

1 need to be replaced with some new P-words, Progress,
2 Performance, and Product. And the product that we're
3 looking for is successful outcomes for students.

4 In the last three years, I've served as Team
5 Leader on 30 initial or follow-up focus visits. I've
6 shadowed several teams or filled in as a team member when
7 a team was short. I know focus monitoring at the grass-
8 root level, the level where it makes a difference. And I
9 can assure you, it does make a difference.

10 In the Northeast corner of Louisiana, there
11 is a small, impoverished parish that continues to have one
12 of the highest unemployment rates in the nation. A few
13 years ago, they were featured by the national media and
14 described as being similar to a third-world country. The
15 federal monitors visited this system and, in addition,
16 they were a focused-monitoring system in Louisiana's first
17 focus monitoring year.

18 Now they're still a focus system because, so
19 far, no student has exited with a standard diploma. They
20 have a long way to go but all aspects of programming for
21 students with disabilities have improved except that one,
22 the number of students exiting with a standard high school
23

1 diploma. The special education supervisor knows that some
2 time, he will have a graduate and that graduate will, in
3 all probability, be the first one in the family to finish
4 high school, possibly the first family member to complete
5 the eighth grade. But, in the meantime, this special
6 education administrator continues to make improvements in
7 service delivery to get better results for all children at
8 all levels.

9 His comment after the first focus visit was,
10 "This is the first monitoring I ever had where I felt the
11 team really was looking for ways to help me help my
12 program instead of just pointing a finger and me and
13 saying, 'I gotcha; naughty, naughty.'" He truly views
14 focus monitoring as a tool that will help him determine
15 why things are not happening for students; offer follow-up
16 support and assistance in areas in which he has few, if
17 any, resources; and maybe give a little extra clout to
18 what he's been trying to get the system to do.

19 In the traditional cyclical monitoring,
20 everyone gets looked at in the same way; just as much time
21 is spent in a good system as in a poor system. The paper
22 product becomes the easiest thing to measure and so IEPs

23

1 get scrutinized with a microscope. Data is looked at but
2 not used in a definitive manner for systemic change.
3 Monitoring teams look at lots of records, lots of paper;
4 the law of averages says that, if you handle enough pieces
5 of paper, there will be mistakes.

6 The emphasis becomes the IEP as a written
7 document, not the IEP as a map to a destination. The
8 emphasis is paper, not children.

9 In traditional monitoring, the premise is
10 that the monitoring team is looking for things that are
11 wrong. The system will be written up and will be required
12 to fix the problems. As I stated earlier, the traditional
13 monitoring process has been viewed as a fault-finding
14 mission by most local school systems. We know you have to
15 find something.

16 In focus monitoring, it's different, everyone
17 knows what the problem is; that's why the system is in
18 focus. The role of the focus monitoring team is to try to
19 find the systemic issues that are causing the focus
20 results. It's then up to the state Department of
21 Education to assist the -- help the system develop a
22 corrective action plan that is measurable, doable, and

23

1 designed to bring about change.

2 With focus monitoring, the team knows that,
3 instead of a surface look at all areas, one area has been
4 targeted for in-depth, on-site, analysis. This analysis
5 will include interviews, observations, current document
6 review, and review of historical information. The purpose
7 is to pinpoint causative issues that will lend themselves
8 to developing solutions.

9 This doesn't mean that the focus monitoring
10 team is on-site to give technical assistance. It does
11 mean that team members have time to follow the clues that
12 result in findings of non-compliance that precipitated
13 focus status.

14 In Louisiana, the focus indicators are:

15 Percent of students exiting with a standard
16 or regular high school diploma;

17 Percent of students served in regular
18 setting;

19 Percent of students passing the Language Arts
20 portion of the fourth grade state-wise assessment.

21 In New Mexico, there are some different
22 areas, but some similarities:

23

1 Percent of students served in a regular
2 setting;

3 Percent of students passing the state
4 assessment;

5 And percent of students identified as
6 Learning Disabled.

7 In the focus monitoring visit, the visit is
8 based on hypotheses as to why the focus issue is
9 occurring. The hypotheses are developed by reviewing a
10 variety of data, including statistical comparisons of data
11 on disabled and non-disabled students in the system,
12 within the region of the state, and against state averages
13 and national averages.

14 If the system was the lowest-ranked system in
15 the number of students exiting with a standard high school
16 diploma, the hypotheses might include:

17 Students are not provided opportunities to
18 access the general curriculum resulting in their failure
19 to acquire, and sufficiently develop, skills so as to exit
20 with a high school diploma;

21 A second one might be accommodations and
22 modifications in the regular program are not developed and

23

1 implemented so as to afford students a reasonable
2 opportunity for success.

3 The team then sets out to prove or disprove
4 the hypotheses. Sometimes other issues become evident as
5 problematic. There is a staffing held at the end of each
6 day where all of the things that the team viewed are
7 discussed and the decision is made, do we continue with
8 our original hypotheses; do we add some new ones; do we
9 discard any?

10 Louisiana has chosen to give sufficient
11 laterality to the teams options that they may ultimately
12 have findings of non-compliance in a variety of unrelated
13 areas. The New Mexico stakeholders elected to keep very
14 close to the focus indicators.

15 Louisiana has also asked its teams to serve
16 as a check system for issues that were concerns because of
17 the recent federal monitoring, including extended school-
18 year programming and Part C.

19 My feelings are that Louisiana needs to get a
20 little more focused and New Mexico needs to get a little
21 less focused; that's just based on my experience. I tell
22 my teams, when we go into a system, "You're detectives.

23

1 What are the things that result in the focus issue? Look
2 at what is happening with students; forget about whether
3 anyone or everyone can regurgitate the rules and
4 regulations in an interview." Most of the time, they've
5 been really well-schooled in what to say.

6 What we want to look at is, are those
7 regulations being implemented on a day-to-day basis. One
8 of my favorite sayings is, I hear what you say but I see
9 what I see. Most of all, the teams determine if the
10 programming for students is carried out so as to
11 reasonably confer educational benefit.

12 When I interview, although we do have set
13 interview questions, my first question is always, "Why do
14 you think no students in special education are exiting
15 with a high school diploma?" The responses are usually
16 very on target. I like to interview the superintendent
17 and it usually surprises the superintendent. But let's
18 face it, he sets the tone for the system. If he sets off
19 a lot of warning bells during the interview, then you can
20 be pretty sure nothing will change in the system unless he
21 is afraid his money will be touched or his name in the
22 paper.

23

1 A lot of times, school systems tell me,
2 "Well, our official records are at the central office." I
3 tell my team, "Don't worry about the official records;
4 what we want to see are the records that teachers are
5 using to teach the children." Those are the important
6 ones.

7 If the IEP is seen as a map to a destination,
8 then it should be well-used. If I'm driving to a new
9 place -- and the IEP, okay, should be covering new ground,
10 then I look at my map frequently. I want to know what the
11 spots are, I want to know what the places are that I'm
12 going to stop along way, and I want to know that I will
13 get to my destination on time.

14 I think that too often teachers are seeing
15 the IEP as only a paper compliance issue. Let me quote a
16 supervisor that I talked to just before I left. Her
17 comment, when I said I was going to compare the two is,
18 "Donnalee, there is no comparison between the two.

19 "I remember when I was a coordinator and the
20 monitors came. When they left, I felt as though
21 everything I was doing was wrong. I was trying to do what
22 I thought was right for kids, my whole mindset was

23

1 defensive.

2 "This year, when I was monitored, I felt like
3 focus monitoring gave me a jump start towards better
4 programming. I am so excited about what we are doing; I
5 haven't been this excited in a long time. My focus
6 monitoring has energized me to push ahead and get better
7 outcomes for students."

8 We do use parents as an active part of our
9 focus monitoring process in Louisiana and in New Mexico.
10 In Louisiana, the parents are also a part of the -- or,
11 some of the team members that go into the school and make
12 school-site visits, but it's taken us three years to get
13 there.

14 Over the last three years, 95 percent of the
15 school systems visited in Louisiana with the focus
16 monitoring model have expressed positive feelings about
17 the visit. Post-monitoring surveys have been positive
18 about the non-threatening, non-intrusive nature of the
19 visits. In every instance, the system has used the
20 results of the visit to improve services towards better
21 outcomes as opposed to improving completion of documents.

22 In the rest of the written testimony that you
23

1 have, I've included the side-by-side comparison of focus
2 and traditional monitoring, as well as a few suggestions
3 about things that should be considered if, at the federal
4 level, a focus monitoring process is adopted.

5 MS. ACOSTA: Thank you so much.

6 We will begin the Task Force question and
7 answer session with Commissioner Chambers.

8 DR. CHAMBERS: Thank you very much for your
9 presentation. I have a couple of questions for either of
10 you who chose to answer.

11 I guess I'd like to understand more about the
12 monitoring process or, at least, as you would see it under
13 the new IDEA that we're talking about making
14 recommendations for.

15 First, who should get monitored and how
16 often? And then I guess I'd like -- the second part of
17 the question is, to get some sense, more specifically,
18 about what kinds of outcomes should -- you talked a little
19 bit about this but I guess I would like to hear some more
20 specifics about what kinds of outcomes should we care
21 about, both on an annual basis and an ongoing basis during
22 the school year. If you could elaborate on those for me.

23

1 Thank you.

2 MS. AMMONS: You go ahead and start.

3 DR. ELBAUM: Okay, I'll start.

4 I think there are two main questions there;
5 perhaps there are more imbedded in that but -- the
6 question of which districts and how often is a question
7 that, at the state level, which districts --I'm sorry --
8 which states and how often, which districts and how often,
9 we debated quite a bit.

10 And the focus has been on the lowest-
11 performing districts but within certain categories. In
12 Florida, the size groupings are very important; so that
13 was an important variable for that state.

14 But there's also another component to the
15 overall monitoring system, which is what we call the
16 "random component" so that, in addition to the focus
17 monitoring efforts, which focused on the lower-performing
18 districts, there are a certain number of districts that
19 are selected every year for a monitoring visit, which is a
20 lighter monitoring visit than the others, it doesn't
21 include all the components. And that is truly random in
22 order to spread around the monitoring resources.

23

1 Because I really do think it's a resource to
2 the district, to help them understand what's going on in
3
4 the district and what kinds of improvements are most
5 likely to lead to improved outcomes overall. So I'll stop
6 there on that question.

7 With regard to what should be measured -- I
8 don't remember how you phrased it -- but what counts, what
9 should be measured, what should we be concerned about. Up
10 to this point, the stakeholders in Florida, and in many of
11 the other states I'm familiar with, have selected the
12 really big outcome variables, high school graduation,
13 completion, exit with a standard diploma, participation
14 with regular education students, and those are relevant
15 and exceedingly important to post-school outcomes for a
16 large percentage of students in the system.

17 However, I would like to acknowledge that
18 there are students who -- for whom the most important
19 outcomes are not captured in the ones that I've just
20 mentioned. So, for our more severely involved students,
21 there may be other outcomes that need to be looked at that
22 are not captured in those very large outcome indicators.

23

1 And those need to be looked at, as well.

2 Some of my researches on social outcomes for
3 students with disabilities, I look at the issues of self-
4 concept and friendship and social adjustment. And, thus
5 far, we have not developed state-level or national-level
6 indicators of progress in those areas; and I think that's
7 something we should be looking at, as well.

8 MS. AMMONS: I agree with what Dr. Elbaum
9 said and I think that the stakeholders in both states that
10 I'm working with have selected what they had thought the
11 most significant factors.

12 I don't have the broad view that many of you
13 have, and many other people have, but what I have seen in
14 the two states is that, the students who are learning
15 disabled, who are emotionally disturbed, those are the
16 types of students that are not accomplishing what one
17 would reasonably expect they would accomplish. And, so
18 that I would think that many states would continue to look
19 at exiting with a standard diploma in performance on the
20 high-stakes testing is a factor in assessing systems.

21 So far as how frequently a system should be
22 monitored, if you used a rating system with an indicator

23

1 and you go top to bottom, your bottom systems will
2 regularly get monitored until they have improvement. Your
3 higher systems -- or higher-performing systems will be in
4 that random pool that, hopefully, will come up for
5 selection on a three- to maybe five-year basis, as I'm
6 seeing it work in the state of Louisiana.

7 MS. ACOSTA: Commissioner Takemoto.

8 MS. TAKEMOTO: I just have a comment.

9 As you were giving your testimony, I was
10 thinking about functional behavioral assessments and
11 behavioral intervention plans. If one applies those
12 correctly, one is talking about the system, and that
13 system of support, as opposed to the problem students. So
14 that kind of occurred to me as you were speaking about how
15 one makes a hypothesis as to why it is that the school is
16 not performing.

17 I still have great concern for -- when you're
18 looking at percentages that the kids with severe
19 disabilities don't even affect those -- I mean, you could
20 ignore those students and still do well with percentages.
21 In fact, in a resource-based system, you would put the
22 money where you get the most bang and, regretfully, not
23

1 necessarily have to show any meaningful progress for those
2 students.

3 Is there a way that you could marry some of
4 the ideas about the previous panel, of accountability for
5 individual students with this more targeted monitoring
6 system?

7 MS. AMMONS: I think that it's very easy to
8 do that because, once again, if there is some type of
9 standard assessment measure in comparing the progress that
10 students make -- not everything has to be tied to an
11 indicator that says exiting with a high school diploma or
12 something like that.

13 When we go in on a focus monitoring visit, we
14 are still looking at compliance issues, but compliance
15 from the standpoint of how that focus indicator keyed us
16 into it. If we see that services are not being provided in
17 a setting -- or in a system for certain students, then we
18 begin to look at, are they not providing services that are
19 meaningful for all students.

20 And so that's where -- for example, in the
21 State of Louisiana, our reason for going in might have
22 been one thing; as we did our investigation, we might have

23

1 seen other things that were triggered. So, in a sense,
2 you look at all of the areas of compliance but on a
3 performance basis, not on just how was the form filled
4 out.

5 One of the others, and I'm sorry -- I see
6 teachers who are uncertified teachers, whose only training
7 is how to fill out the form because that has become the
8 most important thing. And they're not getting trained in
9 what to do with the students they're working with.

10 DR. ELBAUM: I actually want to add two
11 points to that, very briefly.

12 Based on my experience in Florida, the State
13 is adopting -- or debating whether to adopt at least one
14 of two, perhaps more, strategies for addressing that.

15 One is to have a component of the random
16 monitoring be specifically targeted to certain groups.
17 For example, gifted is also administered by our
18 Exceptional Student Education Division so there is a
19 component there that doesn't have to do with federal
20 requirements for students with special education, but
21 they're monitoring activities around that. And they're --
22 are in the plans to have monitoring activities, I believe,

23

1 for low-incidence disability groups.

2 Another thing that's happening is development
3 of a standardized alternate assessment reporting system.
4 In the State of Florida, there are many, many different
5 alternate assessments that are used for students who
6 cannot participate in the standardized assessments. We are
7 now trying to develop a report -- a form is being used
8 right now for the first time -- that will conform reports
9 of progress towards standards for students who participate
10 in alternate assessments; and that will be an excellent
11 tracking method that will allow us to look at results for
12 those students.

13 MS. ACOSTA: Thank you. I just have one
14 quick question.

15 I'm interested in -- we've met some parents
16 who have told us about how arduous it is for them to get
17 into any kind of monitoring process. And you said you had
18 parents -- you trained parents to be part of your focus
19 monitoring group? And how many of them were ethnically or
20 linguistically different?

21 MS. AMMONS: In Louisiana, we don't have so
22 many that are linguistically different but we do have

23

1 parents who are ethnically different. I don't know in the
2 top of my head what the percentage is; it seems like an
3 okay mix to me because no one stands out.

4 In New Mexico, there are parents who are
5 ethnically and linguistically mixed. And, in the systems
6 that the data supports has a very heavy Spanish-speaking
7 population in that system; we ensure that the parents on
8 that focus monitoring team are bilingual.

9 MS. ACOSTA: Thank you.

10 Todd Jones?

11 MR. JONES: I want to ask one quick question.

12 I guess this is a "when push comes to shove" question. We
13 talk about -- the concept you talked about focus
14 monitoring are dealing with districts -- or the states
15 that are willing to go along with the principles involved.

16 Let's say, hypothetically, we are on to the
17 next administration, the Assistant Secretary is not as
18 enlightened as Bob Pasternak (phonetic) is and so the new
19 Assistant Secretary puts into place a new set of measures
20 against which a state's going to be judged. And, under
21 indicator 'X' a certain state starts failing, and we'll
22 say it's in the area of transition. If the state likes

23

1 the indicator it's used for a number of years, indicator
2 'Y', and they are still continuing to demonstrate success.

3 Ultimately, you're at an impasse unless you
4 can resolve which one you're going to use.

5 The state will say, "Look, we're doing great
6 on transition. We have this trend out for five years;
7 we've been doing great." On the other hand, you have the
8 new indicator and it says they're not doing well; what
9 happens then on the focus monitor?

10 MS. AMMONS: It's been my experience, at this
11 point, because the focus monitoring team acknowledges
12 when, in the process of being on site, they see things
13 that are very non-compliant, that are very much not having
14 outcomes, that they would be making findings in that area,
15 as well.

16 MR. JONES: Okay, but -- fine, they're making
17 findings in the area 'X' which says, "Your kids aren't
18 performing and the district says, "No, you're using the
19 wrong standard; we've been using indicator 'Y' for six
20 years, this demonstrates our kids are doing well; you're
21 data is flawed. I reject your analysis."

22 MS. AMMONS: It still ties back to the

23

1 regulations that are in place, even though it's not
2 specifically investigating each of those.

3 MR. JONES: Okay, let me use a better
4 example, low incidence disabilities, we're dealing with
5 transition.

6 Today, the indicator -- let's say the
7 indicator exists on job outcome based on preference. A
8 new Assistant Secretary comes in and says it's job based
9 on preference and whether that person is working primarily
10 with other persons with disabilities. Under the old
11 standard, kids are going into contracts where they're
12 working with other disabled students, they have jobs,
13 they're earning pay, they're happy, the indicator
14 indicates they're doing well.

15 Under the new indicator, let's say the
16 employment rate goes down but more students are employed
17 -- fewer and fewer students are in a mixed environment,
18 which indicator is right? It's a value judgment.

19 And my question is, how does the enforcement
20 mechanism come into play at that point? Because the state
21 is satisfied with what it has, draw conclusions from those
22 indicators, let's say, for purposes of argument, these are

23

1 equally valid philosophical outcomes. Who wins and how
2 under a focus monitoring situation? I can tell you right
3 now, under OSEP, the answer is, nothing happens because we
4 have disagreement, money isn't taken away. Under OCR,
5 there's an agreement to disagree and maybe there is a
6 movement to take away money; maybe not. But, ultimately,
7 it's kind of the same in those situations.

8 What happens under focus monitoring? Is it
9 still an agree to disagree? Or what happens at the end of
10 the day?

11 DR. ELBAUM: Well, I would hope that there is
12 more dialog that your scenario suggested around what are
13 the important indicators of outcomes. And I think it can
14 work both ways. As policy folks decide what are the
15 important outcomes, then folks like me and others and the
16 research end develop measures to measure those things.

17 And, as stakeholders, like parents, decide
18 that, for example, some aspect of social adjustment is
19 really important and pushes that issue up to the top, then
20 we need to put in place measures that will provide data
21 indicators for that.

22 MR. JONES: Maybe I'm not being pointed

23

1 enough and I don't want to go over my five minutes. Let
2 me use another more pointed example.

3 School safety model, number of kids expelled
4 who have been dangerous in school is our indicator. If
5 that number is 100 percent under the current regime, let's
6 say hypothetically I'm in the State of Virginia and we're
7 using the old Virginia standard that they used to expel
8 without services. And the standard for our achievement is
9 number of students who were formerly receiving services
10 who now do not because they are a danger to other
11 students.

12 Now we have another standard and we use what
13 -- we can come up with any other standard. If it involves
14 students getting services, they're doing worse under the
15 old standard. When push comes to shove, what happens?

16 DR. ELBAUM: There can still be a finding and
17 what would be the result of that -- would be that there
18 would be a corrective action plan that would need to be
19 designed to rectify that and a follow-up of that
20 corrective plan would say whether, in fact, they were
21 making progress towards making that indicator better
22 because it wasn't the targeted -- and I understand -- I

23

1 think I've got --

2 MR. JONES: I've only got 30 seconds; that's
3 why -- I don't want to cut you off but, "If I reject your
4 action plan; I don't comply." what do you do? I say, "I
5 refuse to comply." How do you make me?

6 MS. AMMONS: In the State of Louisiana, they
7 have begun to initiate financial sanctions and publication
8 of those things has been discussed on the internet on the
9 Louisiana Department of Education web, and those kinds of
10 issues, as sanctions when a system doesn't.

11 MR. JONES: Okay, I'm out of time so I
12 concede.

13 MS. ACOSTA: Thank you.

14 Commissioner Gill?

15 DR. GILL: Thank you, Chairman.

16 With all due respect to Ms. Roberta, I've got
17 about four questions that I want to ask you. So, please
18 understand that we only have about five minutes so if you
19 could kind of -- your responses, I would appreciate.

20 The first one is, and this is kind of for
21 both of you, I want to know what the cycle is, what the
22 Florida monitoring cycle is, three years, four years, five

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1 years, whatever it is, as well as I want to know what it
2 is for Louisiana and New Mexico. So, what are the cycles?

3 DR. ELBAUM: I can just say briefly, when I
4 started collaborating with the Florida DOE, their cycle
5 for the 67 districts in Florida was approximately one
6 visit every six years.

7 DR. GILL: Okay.

8 DR. ELBAUM: But that's not -- they're no
9 longer on a cycle.

10 DR. GILL: Well, that's okay.

11 DR. ELBAUM: Okay.

12 DR. GILL: And then Louisiana?

13 MS. AMMONS: Louisiana is not a cyclical
14 monitoring process and has not been for the last three
15 years. I -- New Mexico is in the process of changing from
16 a cyclical process; they were on a three-year model.
17 Louisiana was on a three-year model, as well, before they
18 went to the focus monitoring.

19 DR. GILL: Okay. So, without some sort of
20 cyclical model, or in the case of a cyclical model, as the
21 case may be, when you have changes in reauthorization that
22 occur within those cycles and you have regulation changes,

23

1 et cetera, how do you generalize the results from one
2 monitoring of one of the districts to a monitoring of
3 another district who happened to be monitored after the
4 reauthorization or regulation changes occurred?

5 DR. ELBAUM: I can respond with regard to the
6 outcome indicators that I'm most familiar with. One of
7 the reasons that we are defining the variables very
8 carefully and gathering data in a similar fashion in all
9 of the districts that are participating in monitoring now,
10 is that so that we can compare outcomes across districts
11 and longitudinally on the outcome variables of interest
12 over time irrespective of the reauthorization cycles. So
13 that speaks to the issue of outcomes such as graduation
14 with a standard diploma and those sorts of things.

15 DR. GILL: Okay. Let me ask you another
16 question, then. What would define you as monitoring?
17 Does monitoring just mean the on-site visitation --

18 MS. AMMONS: No.

19 DR. GILL: -- of local districts on some sort
20 of cyclical basis or what all is involved in monitoring?
21 I know our folks in the State of Washington would say
22 that's at least a review of some other compliance

23

1 indicators, as well. We have systemic issues that we
2 think come up via mediation, via citizens' complaints, via
3 on-site verification, via auditing, via due process, all
4 of those things. What I think I'm hearing -- and you
5 correct me if I'm wrong -- is what I'm hearing you refer
6 to monitoring as an on-site visitation of a local
7 district; is that not correct?

8 MS. AMMONS: No, that's not correct.

9 DR. GILL: Okay, how would you define
10 monitoring?

11 MS. AMMONS: Primarily -- the first thing
12 that happens is data is reviewed. Like Dr. Elbaum has
13 talked about, you review the data on the system, the
14 statistics on the system, and all of that is used. Your
15 on-site visit is to validate or not validate -- it's to
16 prove or disprove what the data is giving you.

17 But there is lots of data that's looked at
18 beforehand, you look at the self-review that the school
19 system does, in Louisiana, and those are the issues.

20 We also review if there have been complaints
21 filed; if there have been complaints filed, then those are
22 looked at as a part of the process.

23

1 DR. ELBAUM: Okay. I would conceive of
2 monitoring as a system designed to gather, track, explain,
3 and utilize data on student performance. And that whole
4 system has episodes in it that go across time.

5 There's ongoing data-gathering at the
6 district level, there's analysis of those data prior to a
7 monitoring visit. A monitoring visit is one episode in
8 the process and provides a snapshot; but the important
9 thing is not the monitoring visit, the important thing, in
10 my point of view, is what happens after the monitoring
11 visit. How did the findings of the visit get incorporated
12 into the improvement plans?

13 In Florida, they're moving to a yearly
14 district improvement plan which is going to utilize the
15 data that are gathered as part of the monitoring process.

16 DR. GILL: I understand; and I appreciate
17 that. I think that's correct.

18 But now here's my last question for you. And
19 that is, are we not simply replacing one cumbersome system
20 with another?

21 DR. ELBAUM: No.

22 MS. AMMONS: No.

23

1 DR. GILL: By moving to a more focused
2 monitoring system?

3 Okay, then tell me what the differences would
4 be, please.

5 DR. ELBAUM: Okay. Do you want me to go
6 ahead?

7 MS. AMMONS: Go ahead.

8 DR. ELBAUM: Okay. From my perspective --
9 and again, my perspective has some limitations because I
10 haven't been involved under the old system for a long
11 time --

12 DR. GILL: I understand.

13 DR. ELBAUM: Not only has the "what" of
14 monitoring changed, but, in Florida, the "how" has changed
15 drastically. I think the use of technology and the way we
16 are able to track data has completely eliminated the
17 accumulation of paper and it allowing us to do analyses at
18 a data-base level that just were not possible earlier.

19 So that addresses a little bit of the
20 cumbersome from the practical standpoint.

21 Now, what I think the question you're raising
22 may be, or one aspect of it is, well, you know, when you

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1 have this much data, you need to do something with it or
2 it's not valuable to you --

3 DR. GILL: One would hope so.

4 DR. ELBAUM: Yes. And so the real bang out
5 of all of this effort is going to come from a careful
6 analysis and application of the data. And, unless there
7 are resources available at the state level to help analyze
8 and interpret the data, and technical assistance available
9 back to the districts so that they can make sense of their
10 own data, I think we won't get the maximum benefit from
11 the new system. So that also has to be in place.

12 DR. GILL: Thanks.

13 So is Ms. Roberta more or less likely to stay
14 in the field as a result of your focus monitoring system
15 as opposed to the compliance monitoring system of the
16 past?

17 MS. AMMONS: I think that the Ms. Robertas,
18 that are the people that are doing a good job, are more
19 apt to stay in the field because they're not going to find
20 that the paperwork -- and the earlier panel talked about
21 the paperwork -- that the paperwork has become an
22 overriding, cumbersome thing that appears to be all that

23

1 anybody looks at.

2 The other thing that I find that the focus
3 monitoring process does is it lets -- and why I'm very,
4 very pro the on-site visits is because you see what is
5 happening, not what somebody is reporting. And, very
6 often, what is reported is different than what actually
7 occurs.

8 DR. GILL: I know. I know we've got to move
9 on and I'm going to do that.

10 But the paperwork issue and the
11 accountability -- I mean, I think the issue here is
12 accountability, isn't it, and paperwork is simply the
13 manifestation of the accountability; is that right?

14 MS. AMMONS: Does it have to be the
15 manifestation, --

16 DR. GILL: That's what I'm asking.

17 MS. AMMONS: -- the accountability?

18 I don't believe it does.

19 DR. GILL: Okay.

20 MS. AMMONS: I don't believe it does. I
21 believe, if the product, if the performance, if the
22 accomplishments of what are set out for the students --

23

1 for the disabled students -- is accomplished, then there
2 should be less emphasis on the paperwork part.

3 DR. GILL: But no less emphasis on
4 accountability.

5 MS. AMMONS: No less emphasis on
6 accountability.

7 DR. GILL: Okay; thank you.

8 MS. ACOSTA: Thank you.

9 Commissioner Hunt?

10 DR. HUNTT: Thank you, Madam Chair.

11 Just three questions.

12 One, Dr. Elbaum, with regards to your
13 research proposition, you're not saying that rigorous
14 research is synonymous with thick description so that
15 we're not adding more paperwork --

16 DR. ELBAUM: Is what? I'm sorry.

17 DR. HUNTT: -- so we're not making rigorous
18 research synonymous with thick descriptions so that we're
19 not going to put more burden on teachers to respond to
20 research questions and have it actually more paperwork at
21 the end?

22 DR. ELBAUM: No. As a matter of fact, none

23

1 of the monitoring activities that I described and that
2 I've observed in the State of Florida involve any specific
3 extra effort on the part of teachers besides participating
4 in teacher focus group interviews or being interviewed or
5 having someone visit their classroom.

6 DR. HUNTT: Thank you.

7 And then, with regard to the focus groups, do
8 you reach out to kids that have already been through the
9 system to participate on the focus groups, as well as
10 parents who have been through?

11 DR. ELBAUM: No. That's very interesting;
12 but what we've tried, this year, is to use the data base
13 from which we have an indicator of kids who have already
14 dropped out and we have invited those parents to
15 participate because we really think that the best
16 information on kids who have dropped out comes from the
17 kids, themselves, or from their parents.

18 But, for legal and institutional review board
19 reasons, and so forth, it's very difficult to get to
20 minors who have dropped out. But we can solicit the
21 participation of their parents.

22 DR. HUNTT: Good.

23

1 And then, with regard to the monitoring,
2 we're not looking only at academic achievement but, as you
3 indicated, we're looking at life skills with kids that
4 have significant disabilities, then? Is that --

5 DR. ELBAUM: Yes.

6 MS. AMMONS: Yes.

7 DR. HUNTT: -- what I heard you say?

8 MS. AMMONS: Yes, you look at all of that.

9 DR. HUNTT: And then, finally, just to pick
10 up where Todd Jones left off, I'm still not clear.

11 When the focus group is at a standstill with
12 the Department on what their expectations are, what
13 happens then? I'm still not clear. You're saying that
14 there's financial sanctions against the system; is that
15 correct? Is that the only recourse?

16 MS. AMMONS: I've not seen it get that far so
17 I don't have a good answer for that.

18 What we've seen is that, because of the data
19 that's used in making the report, most systems have not
20 disagreed with the findings. There has not been a great
21 deal of animosity or adversity and the State Department
22 works with the system to develop a corrective action plan

23

1 which the State and the district agree upon and they work
2 through that.

3 In only one case has there been disagreement;
4 it was not with the finding, it was with the follow-up
5 activity that was taken.

6 DR. HUNTT: It seems to me what I'm hearing
7 from parents is that the Department of Education holds all
8 the cards that, essentially, they are responsible for the
9 monitoring, they're responsible for the enforcement, and
10 that parents, as we all know and what we've heard from
11 parents over the past few months, is that there is very
12 little recourse other than litigation, then, that it's the
13 system that holds all of the cards.

14 So what would be the problem with -- as we
15 talked earlier, civil rights is the core issue here --
16 involving the Office of Civil Rights to help with the
17 enforcement issue and then asking the Department of
18 Education to do the monitoring in more of a helpful way,
19 in being technical assistance rather than the enforcement?

20 DR. ELBAUM: I'll just say I have not been
21 involved in the enforcement end; I'm a researcher. I
22 think it's very important that monitoring teams enjoy the

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1 luxury of certain objectivity, that their mission is
2 primarily to gather data. And I would hope, dearly, that
3 other incentives besides financial sanctions could be
4 devised to assist districts.

5 DR. HUNTT: Thank you.

6 And then, lastly, since Alan Coulter has
7 left, I'm glad to know there was Ms. Roberta that came up
8 with all the ideas that he has on his website.

9 MS. AMMONS: Right.

10 DR. HUNTT: Thanks.

11 MS. ACOSTA: Thank you. We will go on now
12 for the next panel.

13 Thank you so much for your expert testimony,
14 Dr. Elbaum and Ms. Ammons -- I've now pronounced it in two
15 different ways and you're so gracious you haven't
16 corrected either one. I appreciate that.

17 Our next panelists will be discussion of
18 dispute resolution beyond litigation. The panel will
19 consider how elements of a current dispute system's
20 complexity increases the chances of due process
21 proceedings and promotes the utilization of attorneys and
22 advocates.

23

1 The panel will also review the role of
2 mediation, the relationship between due process and
3 increased paperwork. The panelists will include -- Jim
4 Rosenfeld is an attorney who specializes in special
5 education law and a Visiting Professor of Clinical Law at
6 the Seattle University of Law.

7 Mr. Rosenfeld co-authored Transporting
8 Students with Disabilities with Dr. Linda Block
9 (phonetic). He's also Executive Director of the EDLAW
10 Center and the Council of Parent Attorneys and Advocates,
11 and publishes a monthly newsletter EDLAW Briefing Papers.

12 William Dussault is an attorney practicing in
13 Seattle, Washington. Mr. Dussault is Vice President of
14 the Council of Parent Advocates and Attorneys, and
15 specializes in the areas of social security and SSI,
16 discrimination issues, education, and special education,
17 ADA litigation, assessibility issues, trusts and estates,
18 and guardianships.

19 Good morning and welcome.

20 MR. ROSENFELD: Good morning and thank you.

21 I'm Jim Rosenfeld and, as you noted, I am
22 presently a Visiting Clinical Professor of Law at Seattle

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1 University Law Clinic where I have the privilege of
2 supervising third-year law students in their
3 representation of parents of students with disabilities.

4 I believe, preliminarily, I need to correct
5 one thing you said, Madam Chair. I am no longer the
6 Executive Director of COPAA, I resigned in November
7 because of the duties that I assumed at the Seattle
8 University Law Clinic.

9 I do want to thank you, however, for inviting
10 me to contribute to your deliberations here today. And I
11 would also like to thank the President, and I suspect the
12 First Lady, for putting education at the top of the
13 nation's agenda, particularly for his call that no child
14 be left behind.

15 Differences will exist about how our
16 education system is to be improved but I am confident in
17 my belief that all parents of children with disabilities
18 agree with the President, as stated in the Executive Order
19 establishing this Commission that, "Unfortunately, among
20 those at greatest risk of being left behind are children
21 with disabilities."

22 I also believe that most parents concur with
23

1 his recognition that special education must "...operate as
2 an integral part of a system that expects high achievement
3 of all children, rather than as a means of avoiding
4 accountability for children who are more challenging to
5 educate or who have fallen behind."

6 I believe it will help you to place my
7 observations in context to know something about my
8 experience, which I suggest is unusual, if not unique. I
9 refer specifically to the fact that, until quite recently,
10 my interest in special education law did not arise from
11 any direct personal stake. And, by that, I mean that I
12 have no immediate family member with a disability, which
13 in this field is somewhat unusual.

14 Especially during the last five years,
15 however, I have worked diligently to improve the legal
16 resources available to parents of children with
17 disabilities. My intention has been to moderate the
18 egregious imbalance of legal resources available to
19 parents as compared with school systems, an imbalance that
20 permeates the entire system of special education.

21 With your permission, let me now turn to the
22 subject I was asked to address and, as requested in
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1 recognition of your limited time, I have filed a prepared
2 statement; so I will limit my oral presentation to
3 identifying those subjects -- and here I am -- briefly
4 stating my recommendations, and then, as time permits,
5 discussing the experiences that led to them.

6 According to the agenda, this portion of your
7 hearing is addressing how elements of the current dispute
8 system's complexity increases the chances of due process
9 proceedings and promotes the utilization of attorneys and
10 advocates. This topic is worthy of serious consideration
11 but it seems to be stated -- as it is stated, I think it
12 has two assumptions that I would like to address briefly.

13 First, to simplify, is the assumption that,
14 if existing formal legal remedies were somehow curtailed,
15 relations between parents and schools would be less
16 adversarial. I think it should be obvious this is untrue.
17 Institution of legal proceedings is not the cause of
18 adversarial or hostile relationships between parents and
19 schools, it is the result or the consequence of those
20 relationships.

21 In this regard, it is important to remember
22 what the purpose of a law suit is and is not. It is not

1 to reconcile the parties, rather it is to secure a
2 determination of whether the law has been violated, for
3 example, to define the obligations of the respective
4 parties.

5 I suggest that law suits accomplish this
6 objective too often slowly and expensively and through far
7 too adversarial procedures but usually definitively. The
8 fact that law suits do not reconcile the parties suggests
9 that there is a need for alternative, additional dispute
10 resolution mechanisms, which I will discuss briefly in a
11 moment.

12 The second assumption is that current methods
13 of dispute resolution are failures because too often they
14 do not end up in securing the programs or services sought
15 by one of the parties, usually the parents. I concur in
16 this characterization of the outcome but I suggest that
17 this shortcoming is substantially a reflection of serious
18 shortcomings of how IDEA has been implemented rather than
19 the failure of the legal system.

20 What I mean by this is that, even the best
21 legal verdict is useless unless the parties are capable of
22 complying with it. To state this in a somewhat different
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1 context, as I have heard many parents say, "Getting a good
2 IEP is only the first step; it doesn't do you any good if
3 the school can't implement it."

4 It has been my experience that this inability
5 to implement occurs far too often and too frequently to be
6 just a failure of will. I think it happens for four main
7 reasons. One of these is the lack of money; and I think
8 you've been dealing with that in many other contexts so
9 I'm not going -- I'm just going to mention it.

10 Three others are:

11 First, the failure to fully and accurately
12 identify a student's disabilities which precludes the
13 development of an appropriate educational program for the
14 student. As I say, "You can't deal with the problem if
15 you don't know what the problem is."

16 The second one is, lack of adequate training
17 and support for general and special education teachers and
18 related service personnel, which makes it extremely
19 difficult, if not impossible, to implement even the best
20 education program, or, "You can't do it if you don't know
21 how to do it."

22 And then the fourth is, a lack of knowledge

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1 on the part of the program and service providers who,
2 because the research and practices appear to be lacking,
3 often seem to be pursuing a trial-and-error approach. Or,
4 "You can't do it if you don't know what it is you're
5 doing."

6 All of these are implicated in, and
7 contribute to, dissatisfaction with existing dispute
8 resolution procedures. These failures, as much as
9 elements of the current dispute system's complexity,
10 increase the likelihood of due process proceedings and
11 promote the utilization of attorneys and advocates. The
12 resources required for due process and civil litigation,
13 and their inherently adversarial nature, certainly
14 contribute to the impression that the legal process is a
15 cause, not a result, of the problem.

16 And the picture becomes even more confusing
17 because these underlying problems of implementation, when
18 combined with the narrow focus of due process and civil
19 litigation, have a cascading cumulative effect; when one
20 occurs, it makes the next level problem more likely, more
21 serious, and more adversarial.

22 And finally, while existing methods of
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1 dispute resolution may be complex, one cannot overlook the
2 fact that the problems are inherently complex on both an
3 individual and a systemic basis. All of these contribute
4 to the difficulty of establishing quick, fair,
5 inexpensive, and effective dispute resolution procedures.

6 Now, turning to problems with the available
7 dispute resolution procedures currently available under
8 IDEA, there are problems with the mediation procedures,
9 the due process hearing system, and the judicial process.
10 In my opinion, briefly, they are:

11 First, mediation varies considerably in
12 quality from state to state and in the way that mediation
13 is approached and conducted by both the mediators and the
14 parties on both sides.

15 Second, due process suffers from similar
16 problems, though the failure here is more tragic, in my
17 opinion, because problems have been known by all of the
18 interested parties for some time but have been largely
19 ignored and neglected.

20 Third, litigation, though it probably works
21 best, from a strictly mechanistic or theoretical
22 viewpoint, is simply unavailable to most parents because

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1 of the lack of attorneys and its cost. In this regard,
2 I'd like to refer you, when you have time, to the
3 information I've included in my prepared statement about
4 this because I think there is absolutely no doubt that the
5 lack of attorneys in this area seriously affects overall
6 compliance with IDEA.

7 What is missing in all of these, however, is
8 an approach designed to identify, address, and ameliorate
9 the chief factor, I believe, that contributes to
10 increasing regulation and causes our existing dispute
11 resolution procedures to become so adversarial. That
12 factor is the lack of trust between the parties, which a
13 number of you have mentioned in your deliberations this
14 morning.

15 I have little doubt that this lack of trust
16 increasingly drives both sides to resort to, and rely
17 upon, IDEA's procedural requirements, the so-called
18 paperwork, and ultimately, the existing dispute resolution
19 procedures. To put a spin on former President Reagan's
20 admonition, "If you can't trust, you must certainly
21 verify."

22 The emotional and financial demands placed
23

1 upon parents of children with disabilities are reasonably
2 well-known and often acknowledged. School personnel, for
3 their part, must learn to deal with other degrees and
4 types of stress. These pressures on both sides contribute
5 to, and undermine, the foundation of trust that is
6 essential to negotiate a resolution of differences that is
7 satisfactory to both parties.

8 While I do not have the training or expertise
9 to make specific suggestions on how this might be
10 accomplished, I believe there should and must be a wide
11 variety of dispute resolution procedures available for
12 both parents and school districts to use. Some of these
13 should be structured to be non-adversarial, such as
14 mediation was intended to be. But there must be more.

15 One additional dispute resolution procedure
16 might be voluntary but binding arbitration available only
17 upon the election of both of the parties. I suspect many
18 parents and schools would be willing to waive their rights
19 of appeal from such decisions if they were fair,
20 impartial, and fast.

21 And at least one additional dispute
22 resolution mechanism should be designed to identify and
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1 address the emotional forces that are inherent in these
2 complex disputes, including the actual and perceived
3 differences of power between the schools, on the one hand,
4 and parents on the other.

5 Unless and until there is a non-adversarial
6 dispute resolution alternative available designed to
7 rebuild parent/school trust, that is inherent in the
8 complex task of educating a child with disabilities, the
9 adversarial nature of parent/school relations will never
10 be reduced for very long.

11 None of these should be exclusive or
12 mandatory and none of them will be very effective unless
13 the quality of the decision-makers is improved; and that's
14 extremely important. One of the many failures in all of
15 the dispute resolution procedures is the quality of the
16 decision-makers.

17 The same is true of the existing alternative
18 methods of dispute resolution, including mediation and due
19 process proceedings, both of which can and should be
20 significantly improved if for no other reason than such
21 improvement, itself, will contribute to greater trust in
22 the system. Effective mediation will reduce hearings;

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1 sound impartial hearings will reduce litigation.

2 My experience with mediation, as I said, is
3 not as extensive as it has been with due process so I will
4 offer only these brief observations.

5 First, I believe it was a mistake to mandate
6 the offer of mediation, or indeed of any dispute
7 resolution procedure. Mediation should be one of many
8 alternative dispute resolution procedures, included in
9 notice of procedural safeguards but requiring that it be
10 formally rejected seems to me, at least, to something of
11 an oxymoron.

12 Second, the quality of mediators and
13 mediation practices needs significant improvement. I am
14 sure you are familiar with studies conducted by, among
15 others, CADRE, which is Consortium for Appropriate Dispute
16 Resolution in Special Education. There now appears to be
17 sufficient information available to continue refinement of
18 the mediation process. Indeed, my guess is that, if
19 improvements are not made, ultimately mediation will come
20 to be characterized as due process and judicial
21 proceedings now are.

22 Turning finally to the where I believe

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1 reasonable reforms will produce significant improvements
2 in dispute resolution, the due process hearing system.
3 Due process hearings held under IDEA are a key component
4 of the statute's procedural safeguards. However, there
5 has been little consistency, competency, or fairness in
6 the hearing systems established and administered by State
7 education agencies. This has resulted in deep and wide-
8 spread dissatisfaction among parent and advocacy groups,
9 unnecessary litigation and frustration of Congress' intent
10 in enacting IDEA.

11 In most states, due process hearings have
12 become very sophisticated and complex legal administrative
13 proceedings requiring extensive and expensive preparation.
14 School systems and parents, alike, including their legal
15 representatives, have expressed increasing frustration and
16 dissatisfaction with the existing due process hearing
17 system.

18 But despite the criticism that has been made,
19 surprisingly, little data has been collected. Most studies
20 have focused on basic information, for example, the
21 hearing system structure, the number of hearings
22 requested, and who won. Much less is known about persons
23

1 eligible to serve as hearing officers or administrative
2 law judges, their backgrounds, selection, training,
3 compensation, or experience. The differences among
4 hearing systems and hearing officers, from state to state
5 and, perhaps, most important how those differences affect
6 implementation of IDEA.

7 It seems to me that competent and impartial
8 administrative hearing systems are crucial to efficient,
9 effective, and fair implementation of IDEA. The
10 importance of adequate and sufficient initial training and
11 periodic updates cannot be overstated. Most states have
12 misread the complexity of special education law and
13 underestimated the level of training needed.

14 A task of this depth and breadth would
15 challenge the most qualified and experienced judiciary. I
16 think no lower standard be accepted for persons making
17 decisions that may determine the future of our children.

18 In addition, hearing objectives should be
19 refocused. Hearings should be conducted under procedures
20 designed to place primary emphasis on the appropriate
21 educational outcome for the child, reduce the adversarial
22 nature of the hearing, minimize the cost to the parties,

23

1 and enhance a timely decision that should include rules of
2 procedure developed to emphasize the reason for the
3 hearing, that is, to determine what constitutes a free and
4 appropriate public education for the child and reduce the
5 barriers to achieving that objective.

6 Moreover, all hearing decisions should be
7 matters of public record, readily accessible by parents
8 and school districts at no or minimal cost. One of the
9 purposes of having written hearing decisions is to
10 establish a body of law, that is, to create precedence.

11 Despite the individual nature of special
12 education hearing decisions, they can and would be used,
13 and are, by other decision-makers and their advisors, such
14 as attorneys, advocates, and parents to ascertain whether
15 other similar proposed courses of action are lawful.

16 For these reasons, I strongly urge the
17 Department of Education for an establishment of a national
18 academy on IDEA administrative hearings to perform some of
19 the services that I've mentioned.

20 I have a number of other pages designed to
21 identify those activities; I will -- since you are being
22 pressed for time, I won't go through that. And I hope

23

1 that you will read the statement.

2 Before I conclude, I want to make an
3 observation about a common complaint, that is, the so-
4 called legalization of special education and the berating
5 of attorneys for the complicity in this result.

6 It's illustrated, I think, by an experience I
7 had in a recent manifestation hearing. A short time after
8 the hearing began, one of the participants asked, almost
9 rhetorically, why we were going through the process. And
10 another participant, who happened to be the school
11 district's compliance director said, "Well, it's just
12 something the law requires us to do."

13 That was a flip answer to a complex question
14 but I fear it reflects how easy it is for some to forget
15 or overlook the fundamental reason we enact laws and
16 establish legal procedures. So I want to emphasize that I
17 have never met parents of a child with a disability who
18 would not trade all of the procedural safeguards,
19 including all the existing dispute resolution procedures,
20 for an appropriate education for their child, nor have I
21 ever encountered a situation in which those safeguards
22 prevented such an outcome.

23

1 I sincerely hope you will keep these things
2 in mind during your deliberations and I thank you for your
3 time.

4 MS. ACOSTA: Thank you, sir. And now we will
5 hear from Mr. Dussault.

6 MR. DUSSAULT: Thank you, Madam Chairperson,
7 members of the Commission.

8 I've been in private practice of law now for
9 slightly over 30 years in Seattle. Even before I started
10 my practice, while I was still in law school, I was
11 enlisted by four amazing ladies, parents of children with
12 disabilities, to write the first law in the United States
13 and the state level, mandating a zero reject program for
14 children with disabilities that was based upon appropriate
15 programming for the children.

16 Interestingly enough, I well-remember the
17 night in late 1970 in the University of Washington Law
18 School's Student Bar Association office when the other
19 drafter and I came up with the use of the word
20 "appropriate" to describe the kind of education that
21 should be offered. And it was incorporated in our
22 Washington State law in 1971, well before both PARC and

23

1 Mills, and certainly before EHA -- for those of you who
2 remember what this law was before it was IDEA.

3 Interestingly enough, EHA, the name of the
4 federal act was borrowed from our State law, which was
5 borrowed from our State Constitution, Article 9, Section 1
6 of the Constitution.

7 And I bring that up, not just as a history
8 lesson but to also reflect that the right to education is,
9 in fact, constitutionally-based in many states, if not all
10 of them, and, in fact, may be constitutionally-based under
11 the equal protection and due process clauses of the Fourth
12 -- the Fourteenth Amendment, rather, as found in both PARC
13 and Mills.

14 So, as we debate litigation and procedures
15 beyond litigation in the law, itself, we must remember
16 that, even if magically we could make the due process
17 procedures go away in the statute, they are not going to
18 go away in practice. These issues will be here. We might
19 be able to fine tune them, tinker, deal with them, but
20 there is an independent right, that is, independent of
21 IDEA, to bring these actions.

22 What we should be looking at is how can we
23

1 make it better, more efficiently, more effectively, to
2 resolve the disputes without forcing people back into
3 those main type of class action litigations that we saw in
4 PARC and Mills because the result of the -- the difference
5 here isn't between an IDEA due process and nothing; the
6 dispute is between an IDEA due process and
7 constitutionally-based litigation in class actions.

8 I do not believe we want to go back; I do not
9 believe either the parent advocates or the district
10 advocates want to face a return to those types of
11 litigation.

12 I litigate special education cases; I would
13 say I intake 50 to 75 cases a year and have for that 30-
14 year period. Of those cases, I find that, oh, maybe 50
15 percent of them generally arise because of misinformation
16 on the part of one or the other side to the dispute, the
17 parents or the district, and oftentimes, through providing
18 them with good advice and good information, we can resolve
19 the problem long before it ever gets to even filing a
20 complaint with the district.

21 I probably file 10 to 15 due process hearing
22 requests a year. I never have tried more than one a year,

23

1 just to give you a sense of proportion of what the
2 litigation side is like from the parents' perspective.
3 And of the compatriots I work with in COPAA, the attorneys
4 who principally work plaintiffs' special education law,
5 you will find that's pretty consistent.

6 We settle well over 90 percent of our cases.
7 And, always, that settlement occurs at a table with the
8 district, working together, not necessarily in which the
9 parent wins everything and not necessarily in which the
10 district wins everything, but in which there is a
11 negotiated compromise to agreed-upon ends.

12 We generally try to take parents away from
13 the litigation process because, quite frankly, the
14 district does hold all the cards. The district holds all
15 the records; you are the custodian of the records if you
16 represent a district. You have all the professional
17 personnel in your back pocket, all the service providers
18 are employed by the district.

19 The second portion of the Rowley decision
20 clearly provides that district personnel are to be given
21 the benefit of the doubt in presentation of the case. And
22 you have a budget that the parent does not have unless the

23

1 parent chooses to go into the equity in their home, their
2 savings accounts, or other services.

3 This is not a level playing field, folks. I
4 testified on this issue in 1977, in the Handicapped
5 Children's Protection Act before the Senate and made
6 exactly the same positions known. It is not easy for
7 parents to undertake a litigation course.

8 I come, freshly, from a due process hearing,
9 four days last week in a small, Southwestern Washington
10 school district named Washougal in which the parents have
11 now taken a major mortgage against the equity in their
12 home to fund their special education litigation. There
13 were some 25 to 30 violations of the regulations alleged
14 by the district (sic), not one or two checking a box.
15 Ladies and gentlemen, there was no IEP for 10 months.

16 When we are talking about special education
17 litigation, we are not necessarily talking about a missed
18 form, one missed form or one missed check mark on an IEP,
19 we are still talking about no IEP. Understand that those
20 are the issues we still continue to litigate; we're still
21 looking at first generation access issues in the
22 litigation around the United States.

23

1 Now, some of those issues, we're not going to
2 resolve by negotiation. In this particular case, two
3 weeks into the litigation, I offered to settle the case
4 for \$8,000, including all attorneys' fees and all
5 resolution of the claim. We're now nine months later,
6 through a full four-day hearing; win or lose, the district
7 will have paid between 30 and \$40,000 in their attorneys'
8 fees, which we will never know about because there is no
9 requirement asking the district's attorney to disclose
10 their fees. It might be an interesting and illuminating
11 discussion.

12 On the other hand, the parents must petition
13 for their fees, often through federal district court,
14 further increasing the fee costs to the case. If the
15 district loses this case, the out-of-pocket cost will be
16 between 100 and \$150,000 for a case they could have
17 resolved for \$8,000.

18 The lawyers did not create that situation;
19 the lawyers responded to it and I can tell you that the
20 plaintiff's lawyer, the parents' lawyer, tried at every
21 step of the way to settle it. It didn't work.

22 Those are the cases we see on a regular

23

1 basis, even today, even while we are well into 25 years of
2 implementation under this law. One would think we would
3 be beyond the case of arguing about whether there should
4 or shouldn't be an IEP.

5 This, by the way, was a child with Apert's
6 Syndrome, on a tracheostomy, a gastrostomy tube, blind in
7 the left eye and ear (sic), visually impaired in the right
8 eye, almost deaf in the right ear, with a severe learning
9 disability, gross motor and fine motor disorders, non-
10 verbal. This is not a borderline case of not having an
11 IEP, this is this graphic case of the most severely
12 disabled student. The doctor testified he was a one in
13 250,000 incidence, low incidence disability, and he was in
14 the topmost difficult cortile (phonetic) of that group of
15 students. And I didn't have an IEP. So we are clear in
16 context of what we're looking at.

17 I've been fascinated by the discussion this
18 morning and you have written remarks; so I'm obviously
19 departing from those because I think it's more relevant.
20 You can read for yourself.

21 The purpose -- what we're really trying to do
22 here, and we're discussing it from different aspects, is,

23

1 how do we implement this law? How is it that 25 years, 27
2 years after the law, we still don't have IEPs? We've had
3 monitoring for all that period of time and it hasn't
4 stopped the Washougal School District from not having an
5 IEP for Abe. It didn't stop the Seattle School District
6 for not having an IEP for a whole year for another student
7 -- that was my last litigated case against Seattle and
8 that one went three weeks.

9 Monitoring is a top-down accountability
10 system, it goes from either the federal or the state
11 agency and monitors from the top, down. Procedural
12 compliance is what we have been monitoring for the past 25
13 years. Litigation is a bottom-up accountability system.
14 It is an accountability system that is oriented
15 specifically to an individual case; it tests the system
16 from the bottom of the system up, rather than from the top
17 of the system down. We need both.

18 Monitoring has not been effective to create a
19 cultural change in education completely. I agree with Dr.
20 Vargas' remarks this morning about the culture of
21 education. But monitoring cannot complete the change in
22 the system in and of itself. There is no way that either

1 the federal or the state government has sufficient funds
2 to go to the Washougal School District and determine
3 whether they are doing the right thing for Abe's program
4 in that school district. No monitoring system is ever
5 going to be able to do that.

6 So you need a supplement. In this country,
7 we have always used the legal system, the litigation
8 system, as the supplement to a monitoring system. Look at
9 environmental protection acts, look at road safety acts,
10 look at any area of public policy established by the
11 government and we use both a monitoring and regulatory
12 system and an individual accountability system to make it
13 work. And we don't attempt to do it in two years or three
14 years; we allow the systems 20, 30, and sometimes 40 or 50
15 years to work rather than becoming impatient that it isn't
16 working today.

17 Specifically, on things that I would look at
18 in the alternative dispute resolution system to make
19 changes -- I think it's first well to acknowledge that I
20 wrote the regulations in the State of Washington in 1972
21 that describe the due process and hearing system that is
22 virtually identical to the system enclosed in IDEA. I did

23

1 the first due process hearing in Washington in 1974 at the
2 same time as the Pennsylvania litigations were going on
3 under PARC in '74 and '75. I've watched this system
4 intimately.

5 In terms of mediation, mediation is an
6 excellent idea, The current system has three or four
7 specific problems.

8 Number one, you chose mediators who are
9 knowledgeable about special education and not mediation.
10 If there is anything you should learn, is not to stay
11 within the educational system for your alternative dispute
12 resolution procedure. In litigation, trial lawyers,
13 plaintiffs' and defense lawyers, in all kinds of cases,
14 personal injury, contracts, property disputes, we go to
15 private mediators. They're not skilled in property law,
16 they are not skilled in personal injury, they are skilled
17 in mediation. Start to look at models outside of
18 education.

19 Who are the people that know most about
20 mediation, arbitration, and litigation? I'm sorry,
21 they're not educators, they're lawyers. We do this for a
22 living. Look at that system to structure your mediation.

23

1 Item number one, get fully independent
2 mediators, not people that are associated with the
3 colleges and universities who have to place their students
4 in the school districts that they are mediating the case
5 over. Pick people that know the skilled mediation, not
6 special education.

7 Keep mediation voluntary but make it
8 immediate. Indicate that it should occur within five days
9 of any due process request. Indicate that the process
10 should be half-day or less. And I suggest you even do
11 something radical, in these days, set up a separate fund
12 that will pay the attorneys' fees for both the district
13 and the parents out of a separate budget that does not
14 come out of the district's operating budget, but allow
15 payment of that fund only for services related to
16 settlement.

17 In other words, give a positive incentive to
18 both sides to mediate and resolve the case. Set that
19 apart from a prevailing-party litigation system. Under
20 Buckhannon, you can't get fees right now for settlements.
21 Create a fund that specifically endows and encourages the
22 settlement of a case and a rapid resolution.

23

1 Allow for alternative dispute resolutions
2 throughout all of its options, again, commonly seen in
3 litigation and certainly provide a summary arbitration
4 resolution dispute (sic), whether its binding or not. I
5 suggest there be both a binding and a non-binding
6 arbitration but, in the event of a -- if a party elects
7 non-binding arbitration and chooses to appeal it, that
8 party bears all of the costs if the appeal is not
9 successful.

10 Now, that's a typical litigation model that's
11 in place all around the United States in trial law. Use
12 the models that are out there instead of trying to
13 recreate a model that's specific to education because, in
14 juxtaposing the educational and the legal concepts, you've
15 lost the value of the legal concepts that have worked in
16 ADR. The majority of our cases in litigation, other than
17 special education, now resolve through ADR, Alternative
18 dispute Resolution. So a summary arbitration procedure
19 that occurs prior to discovery and prior to trial
20 preparation.

21 When we actually go to trial in due process,
22 it's not an administrative hearing; it is a trial. We do
23

1 discovery, we do depositions, we prepare the case as if it
2 were a trial because it is. Everything is riding on it
3 for that child. And we don't take cases to litigation
4 until we know there's no other resolution. But, once we
5 have to go to trial, I don't care whether it's called due
6 process or a federal district court litigation, it is the
7 trial of first impression.

8 Now another thing I would do is standardize
9 the due process structure across the United States so you
10 have a one-tier hearing in every state, rather than two-
11 tier hearings. That means that you have only one hearing
12 at either the LEA or the SEA level, one hearing only, with
13 direct review to court from that placement and that it
14 continues to be de novo, that it continues to be a hearing
15 in which new evidence can be considered but we define de
16 novo as being new evidence that is beyond the original
17 record, so you don't retry the same case. Some of the
18 circuit courts have gone to that result now, but not all
19 of them.

20 We know that due process has, in fact, worked
21 to resolve disputes for individual children, Amber Tatro,
22 Amy Rowley, all of those children would tell us that,

23

1 whether they agree or not with what the court said, they
2 had a full and independent hearing.

3 We know that that has resolved their disputes
4 from the bottom, up. Monitoring -- I don't care, in fact,
5 whether it is process or focus or functional or outcome,
6 monitoring is never going to result in a full and complete
7 implementation of the system unless the federal and state
8 governments are willing to put the money behind it so that
9 a federal monitor or a state monitor is in the Washougal
10 School District to look at Abe's program, his IEP,
11 addressing his Apert's Syndrome. Monitoring will not do
12 that; it's a false promise.

13 We have to change a culture. Looking at
14 changing the culture through one method only is naive; we
15 need as many methods as possible to change that underlying
16 culture.

17 Thank you very much.

18 MS. ACOSTA: Thank you.

19 And now we will proceed with the questioning
20 from the Commissioners and we will start with Commissioner
21 Coulter.

22 DR. COULTER: You're right, this is very,

23

1 very complicated. And I appreciate your creativity.

2 Actually, I am delighted with virtually everything you had
3 to say. It certainly gives us some additional things to
4 think about.

5 Let me just ask you two quick questions.

6 First of all, as I understand it, most of the major
7 decisions in special education litigation are still open
8 today so, for instance, the Mattie T. vs Riles (phonetic)
9 case which as filed in the mid-'70s, et cetera, is,
10 frankly, currently being litigated now. The PARC
11 decision, as I understand it, is still open.

12 I accept the fact that litigation is, as you
13 said, a bottom, up form of accountability but I think, in
14 the main, for us, given that these things are still open,
15 it's a relatively poor way to try and get the system, as a
16 whole, to move.

17 If you accept that premise, I mean, if you
18 accept the complimentary premise, it needs to be there but
19 it's not going to move the system very quickly, what are
20 some ways that we can make special education less
21 complicated but more effective?

22 MR. DUSSAULT: I'll take a first shot, if I

23

1 might. First, I would suggest that none of the major
2 litigations remain open in the sense that none of the
3 supreme court decisions in this area resulted in the
4 appointment of a master or resulted in continuing
5 jurisdiction on any of the cases.

6 So, if we look at the definitive
7 determinations, whether we're looking at Burlington or the
8 Florence County Carter case or Honing vs. Doe or Rowley,
9 all of them established, to one degree or another, black-
10 letter law. In fact, Rowley is, perhaps, the most
11 ambiguous out of all of them and the definition of
12 "appropriate" really focused on procedural issues in
13 Rowley.

14 I do accept that, in many instances, the
15 circuit courts have decided that they need to maintain
16 jurisdiction because the violations of the local school
17 districts have been so broad, so systemic in nature, that
18 management of the district had to be pulled from the
19 district itself and placed outside. You take Mills, you
20 can take the PARC case, you can take Mattie T vs. Halliday
21 and countless others. It's really more of a reflection of
22 the intransigence within the system.

23

1 You could respond to that by simply saying,
2 "We will monitor compliance with court decrees." But, if
3 there was, in fact, a more effective monitoring process,
4 then perhaps we wouldn't see the court taking jurisdiction
5 and maintaining control because, quite frankly, the
6 federal district and circuit courts only want to do that
7 as a last resort, they don't want to intercede in those
8 areas.

9 Now some judges are a little more activist
10 than others, perhaps, but nonetheless, the courts know
11 they're not set up to do that. The discussion here has
12 been in creating a separate monitoring body, that is, a
13 body for enforcement, suggesting, perhaps, that we flip
14 that responsibility to OCR and leave the support
15 responsibility with OSERs.

16 That will only be effective if the trust
17 between the Plaintiff's Bar and OCR is repaired because,
18 quite frankly, from the Plaintiff's Bar perspective, there
19 is a perception -- I'm not saying reality -- but there is
20 a perception that OCR won't do a lot more at enforcement
21 than anybody else.

22 So you're simply changing partners and
23

1 dancing unless you maintain some mandatory guidelines for
2 what that enforcement procedure is to entail; simply
3 giving it to the agency without more won't create the
4 appropriate perception you want from the Plaintiff's Bar.

5 DR. COULTER: Would you accept the fact that
6 -- I think I heard both of you speak to the issue that, if
7 we focused more on outcomes for kids and less on, as you
8 said, the check-boxes piece, that -- I mean, maybe this is
9 a way -- because I'm not certain that I'm hearing an
10 answer to my question -- as to how to make this less
11 complicated for people to implement?

12 MR. DUSSAULT: I think it must be a
13 combination of both a process and an outcome monitoring.
14 I had the pleasure of serving on the Accreditation
15 Council, which is a national body that accredits services
16 for persons with developmental disabilities in all of the
17 facilities other than public education. The Accreditation
18 Council shifted from a process monitor to a combination
19 process/outcome monitoring structure, approximately 15
20 years ago, and used technology extraordinarily well with
21 hand-held computers, on-site data collection, et cetera,
22 many of the things you talked about. I know it is

23

1 possible to do an effective combined process/outcome
2 monitor. I think it's simplistic to go from one to the
3 other. I think that will help.

4 However, what concerns me is our tendency to
5 want to immediate gratification. This new system is going
6 to have to work next year and, if it doesn't work next
7 year, we will try a new system the year after that.

8 It won't work that way; it's going to take
9 years to create an overall structure and it needs to be
10 done at all levels.

11 DR. COULTER: Thank you.

12 MS. ACOSTA: Commissioner Hunttt?

13 DR. HUNTT: Thank you, Madam Chair.

14 A quick statement and one quick question.

15 First of all, if I had one recommendation I
16 would make, if IDEA said, "No parent would ever have to
17 expend their own resources to litigate a case based on
18 their child's need for an education."

19 Given that, realistically, I understand that
20 there needs to be a mediating process outside -- a third
21 party outside of the Department of Education. But why
22 couldn't we construct a mediating process that leaves
23

1 attorneys completely out of it? In other words, we have
2 an objective, third-party mediator that listens to the
3 parents, listens to the education department, and makes a
4 decision based on that without having to pay for attorneys
5 at all.

6 MR. DUSSAULT: Because the plaintiff's
7 attorneys, who represent parents, won't agree with it and
8 let me tell you why.

9 We had exactly that experience in the State
10 of Washington where the initial mediation structure was
11 set up so that parents could not participate -- excuse me
12 -- so that attorneys could not participate in the system.
13 Knowledgeable attorneys simply told their clients not to
14 go to the mediation because the clients were then placed
15 in the disadvantage of dealing with that school district.

16 Remember my comment about the level playing
17 field? If I had a level playing field with both parties
18 to the mediation equally knowledgeable, your suggestion
19 works perfectly.

20 DR. COULTER: But what I'm saying is taking
21 your recommendation as the third-party source outside of
22 the Department of Ed, isn't that leveling the playing
23

1 field, then?

2 MR. DUSSAULT: That's only the first start;
3 it then makes the mediation process, itself, more neutral,
4 but it doesn't make the knowledge of the parties neutral
5 and the inherent intimidation between the parties.

6 Most of my clients are lower-income or lower-
7 middle-income clients; I'd say one in 10 have resources
8 that would typically go to an attorney. English is a
9 second language, which is common; minority clients are
10 common, parents with two or three children with
11 disabilities are common, families where one of the parents
12 is up 20 hours a day taking care of the child, common.

13 The parents simply don't have the resources,
14 whether it is academic or intellectual or emotional or
15 social resources, to participate in that mediation process
16 on an equal basis; they need someone.

17 MR. ROSENFELD: I'd like to embellish that a
18 little bit because I think it's more than that. I think
19 what Bill is getting at is that there is a huge
20 disimbalance of power here and knowledge.

21 It's not just a matter of income or education
22 and so forth, I've had a number of well-educated attorneys

23

1 in other areas come to me and say, "I have a problem with
2 my kid; I haven't the faintest idea of how to do this."
3 And, even when they go into mediate, they don't know the
4 right questions to ask; it's a completely foreign
5 territory to them.

6 So there really is this inherent imbalance in
7 power that makes it very difficult for mediation to work
8 without attorneys being present, which is not to say that
9 I haven't some sympathy with that idea, I just don't know
10 how it would work.

11 MR. DUSSAULT: The other comment I would make
12 is that, in litigation, in civil litigation, we've been
13 using mediation for 20 years; it has reduced the number of
14 trials dramatically. Again, I'm saying, go to the model
15 where mediation was developed. And, in that model, my
16 client with a personal injury accident is not going to go
17 into the mediation without an attorney.

18 Attorneys being present in litigation
19 mediation haven't stopped the cases from settling; in
20 fact, they have made the cases settle. So it is not the
21 attorney participant in the process that slows the
22 process. In fact, it makes the process work.

23

1 DR. COULTER: Thank you. And, since we are
2 short on time, Mr. Rosenfeld, given the third-party
3 concept for mediation, is there a group that exists now,
4 without having an academy that could get to the same point
5 that you had with developing the academy?

6 MR. ROSENFELD: Actually, I think Mr. Dussault
7 is probably more familiar with the mediation things than I
8 am. I'm not familiar with any specific group; no.

9 DR. COULTER: But you're recommending that
10 you set up a group, then, but you don't --

11 MR. ROSENFELD: My recommendation was to set
12 up an academy to deal with hearings; but there's certainly
13 no reason that it couldn't also deal with mediation and
14 other dispute resolution procedures.

15 DR. COULTER: Thank you.

16 Thank you, Madam Chair.

17 MS. ACOSTA: Commissioner Gill?

18 DR. GILL: Thanks.

19 It would have been nice, I think, if we had
20 had you guys follow the first panel because, to me, there
21 are a lot of crosswalks between some of the issues that
22 were raised, in terms of some of the recommendations to

23

1 improve the system, et cetera, and, I think, what you
2 said. So what I want you to do is kind of react to a
3 couple of them that I thought I heard.

4 One is, I want you to react to the notion of
5 non-categorical labeling as one of the issues; and the
6 second issue I want you to respond to is, monitoring is
7 the top, down and litigation is the bottom, up; where do
8 the two meet? What is the kind of crosswalk or the bridge
9 between those two that you think we should be focusing on?

10 MR. DUSSAULT: Let me address the first one
11 first, if I might, the non-categorical.

12 I feel somewhat responsible for the creation
13 of very functional definitions for eligibility purposes
14 because you'll find it in Section 1 of the 1970
15 legislation that we wrote. And I believe it was one of
16 the most egregious mistakes we made. I do not believe
17 there is any place for functional definitions on a
18 categorical basis any more in special education and, in
19 fact, there probably wasn't when we first came up with the
20 idea of an IEP.

21 If we have a truly individualized educational
22 program, why do we need categorical definitions? I

23

1 suggest that we should be using a model that already
2 exists, again, go to what's successful instead of trying
3 to recreate the wheel. Go to the Social Security Act.
4 Under the Social Security Act, we have an underlying
5 definition of the existence of a disability and we have a
6 secondary component of defining severity.

7 We define the disability into existence, we
8 then determine that the severity requires services,
9 whether it's Title IV, Title XVI, Title XIX, whatever it
10 is, and then we move on to define the services
11 individually.

12 By establishing functional categories,
13 oftentimes for funding purposes, what has happened is that
14 we've driven program by label. We put kids in the MR
15 classroom, we put kids in the LD classroom, not where the
16 child needs to receive services. You coined the phrase,
17 we talked about it earlier. There's a horrible difficulty
18 with people perceiving that special education is a place.
19 Special education is not a place, it's a combination of
20 services. The categorical labels foster that reliance on
21 placement based upon category. Get rid of the categories
22 and stop having the money follow the category.

23

1 We all know that program follows money; it's
2 realistic. Stop having the money control the placement
3 through eliminating those categories and use a model like
4 social security.

5 The second issue is, where does monitoring
6 and individual litigation meet? I don't have a clue.

7 DR. GILL: -- for your honesty.

8 MR. DUSSAULT: I really don't. At some point
9 the two will mesh and both become effective mechanisms but
10 I don't believe there's a magic line.

11 DR. GILL: I guess I think what I thought I
12 heard you guys talking about was kind of a continuum of
13 dispute resolution, one of which may, in fact, be binding
14 arbitration, non-binding arbitration, complaints,
15 mediation, monitoring, all of those sort of as
16 collectively how you monitor and enforce the system as
17 opposed to a relying on any one particular approach.

18 MR. ROSENFELD: I think of them as being not
19 discreet categories, which sounds to me as what you're
20 talking about, whereas they're basically overlapping. And
21 I'm not sure there's any particular nice, neat meeting
22 place for any of them. I think we need all of them.

23

1 I would like to say something about the
2 categorization problem, also.

3 My impression is that, as a result of the '97
4 amendments, we were trying to get away from that to some
5 degree and I think, perhaps for some part of that,
6 Florida, for example, moved away their funding from a
7 categorical to a matrix level in which they're supposed to
8 try to identify the level of the severity of the
9 disability and the level of services that are, then,
10 detached from the initial categorization identification
11 for federal funding purposes.

12 But it's an indication of how deeply imbedded
13 the categorization is that it still carries forward in
14 this matrix model. It's going to take time to get away
15 from it, I guess, and I think just time's going to be the
16 answer to it. But the initiative can't stop, it has to
17 continue going.

18 DR. GILL: Okay, thanks.

19 MS. ACOSTA: Mr. Jones?

20 MR. JONES: Unlike many of the other members
21 of the panel, actually, being a lawyer, I'm always
22 enthused that there are lawyers that we have come and

23

1 testify. So I'm glad you're here.

2 We talked about -- Jim's closing comment was
3 about how many parents would trade the right to FAPE for
4 the right for -- that their child is receiving services.
5 And I know I'm mangling how you described it. But
6 really --

7 MR. ROSENFELD: Real FAPE, not the --

8 MR. JONES: That's right, real FAPE --
9 trading away the procedural pieces for the real education.
10 I think about -- our earlier discussion was around
11 paperwork and so much of paperwork, from asides we've had
12 in a variety of cities, has been that schools view it as a
13 safe comfort for how to avoid litigation. They think, "If
14 I'm filing the papers, if I'm doing the right things, I'm
15 going to avoid being sued; I can put down on paper that
16 I've done 'X'."

17 And, aside from your most egregious cases
18 where they're simply not providing anything, they may be
19 able to scare off litigation by doing so. My question for
20 you all is, let's step out of that paradigm for a second
21 and talk about a system that existed around performance
22 and, if what constituted in an IEP was around the

23

1 achievement that a child is making aside from some very
2 basic statements about, there will be speech therapy,
3 there will be a program to move the child forward.

4 How might that impact on the litigation
5 dynamic? Certainly it's struck some witnesses that it
6 would move some schools away from the paperwork dynamic
7 because, at the end of the day, what really counts is what
8 the performance is; it's not how you've gotten there.

9 How would that affect the parents you've
10 dealt with and the parents you've counseled around what
11 they're seeking to achieve? And let's say there are
12 instances where you have the disconnect between
13 achievement going on and what the parent is desiring.

14 So, in the future you have litigation, you
15 have a parent that comes to you and says, "Look, the
16 school district says this was in the plan, these are the
17 achievement measures they were going to use. That's
18 happened, the child was achieving, but I'm not happy
19 for..." X, Y, or Z reasons.

20 How does that play out in a future context
21 and, since there's really no reality to base it on other
22 than what's in your heads, I'm just going to listen to
23

1 what you have to say and take that in.

2 MR. DUSSAULT: Interesting reality there.

3 The first comment I would make is that the --
4 I don't view the federal paperwork requirement as being
5 particularly onerous. I work with school districts --
6 I've worked against school districts, but with them, too,
7 because they call me and say, "How can we avoid seeing you
8 across the table?" So we do work in that regard, too.

9 And what I see from local school districts is
10 40 and 50 forms and they keep telling me, the teachers
11 keep saying, "Well, the federal government requires all
12 these forms." And I keep going back and saying, "No, it
13 doesn't. Look at what your LEA is doing; look at what
14 your SEA is doing. In fact, that's where your form
15 requirements are coming from."

16 I don't think you really have much ability to
17 affect that paperwork issue at the federal level unless
18 you prohibit SEAs and LEAs from a proliferation of paper
19 at the local level, which is a pretty tough stand to take.
20 But I really see that as not a function of the federal
21 law, but a function of state and district responses to it.

22 In terms of litigation itself, I have to
23

1 admit, being an unabashed fan of the current IEP
2 requirements, I look at an IEP requirement that says I am
3 supposed to have a baseline of data, current levels of
4 performance on how Abe's functioning. I'm supposed to
5 know where he is today.

6 I am supposed to have a school district and a
7 parent work together to write measurable goals with
8 ongoing benchmarks and dates to tell me when I can see is
9 Abe making progress or not. My suggestion is, you already
10 have the tool that allows you to measure outcomes. You've
11 determined the outcome by setting the goal; it's a valued
12 item, "I want Abe to be able to do 'X'. I know where he
13 is on 'X' now because I'm required to have a current level
14 of performance; I know where he's supposed to be in three
15 months, six months, nine months, and 12 months and I can
16 measure it through objective criterion."

17 Those are all in the process now. And yet,
18 my cases always involve -- even those that actually have
19 IEPs, I have yet to see a measurable objective based upon
20 a known baseline. If the parent came in to me and said,
21 "I can see that Abe's been making progress because he now
22 does a hundred of the first 200 ... words and he only did

23

1 12 when we started," I'd have measurable progress towards
2 a goal that was established between the parent and the
3 district and I wouldn't have a case.

4 If you simply use what there is now and
5 implement it without anything further, implement what's
6 there now, I don't have a case. And I'll tell my parent
7 that.

8 MS. ACOSTA: Thank you.

9 In the interest of time, I will defer my
10 questions to my fellow Commissioners. Commissioner
11 Takemoto?

12 MS. TAKEMOTO: I'm going to follow-up on
13 that. I get distressed when I see the amount of time and
14 CSPD effort going to training teachers to have IEPs that
15 are reasonably calculated to not be held accountable for
16 results. Lots and lots of pages and pages of stuff.

17 So you've already spoken to that.

18 What I want to know is, I also listened to
19 parents who are in school districts where the teachers
20 have figured out how to do this and who cannot find them
21 an attorney that can take the case because the school has
22 not screwed up on that paperwork piece.

23

1 Tell me a little bit about how -- as long as
2 there is the paperwork piece, without the, say, adequate
3 yearly progress as a mandate, those families are -- those
4 kids are still going to be left behind.

5 MR. DUSSAULT: I think one issue you
6 addressed is one that Jim highlighted and that is the lack
7 of qualified attorneys to do this kind of litigation. And
8 there is that lack; there aren't a lot of well-trained
9 plaintiff's attorneys. I would say you're looking at, in
10 most states, no more than five to 10 attorneys who I would
11 want handling these kinds of cases. And yet we can't, of
12 course, control who the parents go to. So there is a
13 problem in finding competent representation here and it's
14 staggering.

15 But, again, if a competent attorney looks at
16 the records, the attorney should be able to distinguish
17 between the checkmarks on the papers and the number of
18 consent forms and the number of notice forms -- we
19 notified you of a meeting on such and such a day -- you
20 know, the 30 or 40 forms where you have paperwork
21 compliance but nothing is happening with the child. It's
22 the attorney's job to go directly to those measurable

23

1 goals and objectives on the IEP, because that's the tool,
2 right now, that tells me, is the child making reasonable
3 progress.

4 And we know, from the case law, that de
5 minimis progress isn't enough; we also know that it's not
6 maximization of potential. That's the Rowley standard and
7 we've got lots of case law on it. So we know what the
8 standards are in general.

9 But the difficulty is that we aren't trained
10 enough, both educators and attorneys, to look specifically
11 to the objective criterion for measurement of the goals
12 and objectives; and that's the key in terms of program
13 outcome. And the parents create the valued outcomes when
14 they set the goals and objectives. The question is, do we
15 have progress towards those goals and objectives; and,
16 without data collection, we don't have it.

17 MR. ROSENFELD: I just want to follow-up
18 briefly on both points.

19 I think Bill overstated the number of
20 attorneys available by a lot, of a factor of two. I
21 think, if you go into my prepared statement, you'll see
22 some -- they aren't conclusive data, but it's pretty good

23

1 data.

2 MS. TAKEMOTO: I saw the map that has nothing
3 in the middle states.

4 MR. ROSENFELD: Well, there are a number of
5 states who have -- you have to understand what that data
6 was; those were members of COPAA who were attorneys. And
7 we didn't prepare this to have attorney members in every
8 state. But it was just interesting to find out that there
9 were no -- none of our members were attorneys in those
10 states.

11 But I think even, perhaps, New York and
12 California, which probably have the largest number of
13 attorneys, there are probably no more than five who are in
14 Mr. Dussault's calibre, who are really -- know how to do
15 these cases and have done enough of them to know what
16 they're doing. It's a really serious problem.

17 I forgot what the other point was that you
18 were talking about.

19 MS. TAKEMOTO: My question was about results.

20 MR. ROSENFELD: Oh, yeah.

21 I think that the -- to over-simplify it
22 greatly, is it's not unusual to see cases where, in

23

1 reviewing the records, the school has checked all the
2 boxes, everything seems to be fine; but the kid can't
3 read. No law is going to stop that kind of litigation.

4 The outcomes are important, they have to be
5 there. But I think they both have to be there, the
6 procedures have to be there and the outcomes have to be
7 there.

8 MS. ACOSTA: Thank you.

9 Commissioner Chambers?

10 DR. CHAMBERS: I'd like to thank both
11 presenters for their thoughtful and passionate
12 presentations. Unlike my colleague, Todd Jones, I'm an
13 economist and lawyers scare the hell out of me.

14 MR. DUSSAULT: You were taking a lot of
15 notes, though.

16 DR. CHAMBERS: Yes, trying to figure it all
17 out. It's much more complex than the numbers I deal with.
18 I have three questions.

19 One fairly straightforward question is
20 whether you are aware of any evidence -- I'm working on a
21 study on special education expenditures and it's really
22 tough to get a handle on how much is being spent on due

23

1 process litigation. And I'm just curious of whether you
2 have -- are aware of any literature on this topic.

3 MR. ROSENFELD: That's one of the reasons I
4 want to set this academy; we need to have this kind of
5 information. There is no information about that, to my
6 knowledge.

7 MR. DUSSAULT: I don't know that anyone has
8 collated it but the majority of attorneys' fees, petitions
9 for the parents litigation are brought in federal district
10 court. So the federal district court database would have
11 some information on what has been awarded to parents'
12 attorneys in litigation. It would have no information on
13 what the district attorneys were charging. And I will
14 tell you, from a litigation perspective, we have attempted
15 to ferret that information out of the districts. Often
16 the district will respond to a petition for attorneys'
17 fees saying, "Oh, those fees are outrageous."

18 We're now doing discovery, asking them to
19 disclose what they paid their attorneys' fees, and
20 discovering that it's two to three times what they're
21 paying the parents' fees. That's anecdotal. Beyond that,
22 I don't have anything.

23

1 DR. CHAMBERS: If you discover anything,
2 please, I would love to see it.

3 Second question, I'm trying to get some sense
4 of -- from the standpoint of the characteristics of the
5 children and the characteristics of the family, two
6 separate questions, of who are the folks who most often
7 take advantage or find themselves in a situation needing
8 due process or litigation. In other words, is there some
9 particular category of children with respect to severity
10 and with respect to parents? Is it high, low, SES?

11 You started to talk about it in one of your
12 answers.

13 MR. DUSSAULT: I would say that, in my client
14 base -- and I think this is pretty consistent through all
15 the parents' attorneys I talk about -- goes across the
16 whole perspective. I don't think you will find that
17 upper-income parents are more likely than not -- passion
18 for their children; absolute concern and commitment to
19 their children is the number one defining characteristic,
20 for me.

21 My clients come in to me, they have to
22 overcome their fear of attorneys -- that you just

23

1 expressed -- they don't like going to an attorney's
2 office; so there has to be this huge passion behind them.
3 And so, number one, would be passion.

4 If I was looking at probably the most
5 frequently litigated cases right now, I would tend to say
6 the low-incidence disabilities, most specifically, autism,
7 is getting a lot of attention right now. Historically, if
8 you went back 10 to 15 years, you'd see the deaf community
9 with a lot of focused litigation; we're kind of past that
10 now.

11 And I think you'll see severe behavior
12 problems, not necessarily in the context of discipline but
13 in the context of placement for those kids. And it's
14 somewhat related to autism because, typically, autism
15 blows up because of the behavior issues and the lack of
16 communication. So I would focus on low-incidence autism
17 and behavior as my primary groups; and the characteristic
18 of the parents would be passion, commitment.

19 MR. ROSENFELD: I would pretty much agree
20 with that, with this qualification. Obviously, as you go
21 down the income ladder, the ability of the parents to --
22 not just fund the litigation because most parents can't do

23

1 that anyway -- but to undergo the stresses, the additional
2 stresses that litigation puts on them, just get to be
3 overwhelming. Most parents with disabilities (sic) have
4 their plates pretty darn full; they don't want to get into
5 litigation.

6 DR. CHAMBERS: Last question; I'll get you
7 into my territory a little bit but I heard you starting to
8 talk about it so you opened up the subject.

9 MR. DUSSAULT: -- my trial.

10 DR. CHAMBERS: I watch TV, but that --

11 Anyway, in thinking about your comments
12 regarding the categories, I'd be curious as to your
13 perspectives on what the implications are for funding of
14 special education, the type of formulas that we -- that
15 are existent within the states and also how we think about
16 the federal funding. And that's my last question.

17 MR. DUSSAULT: I would -- I think I should
18 plead ignorance in terms of the knowledge of the funding
19 formulas out there. I've reviewed many of them and read
20 some of the case studies on the funding formulas but I'm
21 not competent to answer that question.

22 In terms of the programmatic implications,

23

1 once you take away funding by category, what you then do
2 is remove the incentive to place by category and to
3 identify by category, especially in funding systems where
4 categories are funded differentially. Because, what you
5 do is, you provide an incentive to place in the highest-
6 funded category.

7 And so I think, once you eliminate that and
8 look at a funding system -- and I've always sort of
9 naively suggested creating a funding system based on the
10 IEPs. We have the technology now to computerize IEPs and,
11 if they aren't, they ought to be. So why aren't we
12 looking at cost centers based upon the actual program
13 requirements of the children instead of categorical or
14 averaged or incidence-rated formulas? Why don't we look
15 at the real data and fund based on the real data?

16 MR. ROSENFELD: I agree with that.

17 I was listening to your question and
18 wondering -- it occurred to me that, basically, the
19 funding process is now set up on sort of a forward-looking
20 basis. We probably couldn't do a backward-looking one
21 but I think Bill's suggestion in using the IEPs as a
22 current thing is probably a good idea. It sounds very

23

1 interesting.

2 MS. ACOSTA: Thank you gentlemen for a fine
3 presentation and for helping us wade through this very,
4 very important area in special education.

5 We will adjourn for lunch and we will
6 reconvene at 2:00 o'clock.

7 Thank you.

8 (Whereupon, at 12:48 p.m., the hearing in the
9 above-entitled matter was recessed, to
10 reconvene at 2:00 p.m., the same day.)

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22 AFTERNOON SESSION

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2 2:12 p.m.

3 MS. ACOSTA: We are now in session. Good
4 afternoon, everyone.

5 This afternoon, we will be addressing
6 Interagency and Intersystem Interaction. The panel will
7 review problems that exist in the multiple agencies
8 serving students with disabilities with particular
9 emphasis on the relationships between LEAs and systems for
10 health, early childhood services, mental health, and
11 vocational rehabilitation.

12 And, before I announce the names -- I
13 introduce the witnesses, I need to make an announcement;
14 please take this in the spirit that is intended. These
15 proceedings are very important to, not only the
16 Commissioners, but to our community at large and we ask
17 you to please turn off your cell phones. We understand
18 that you may need your cell phones on for a particular
19 reason and we don't dispute that. However, in order to
20 assure the sanctity of these proceedings, we'll ask you to
21 turn it on to vibration.

22 However, if you choose to let it ring and you

23

1 answer it, to leave to answer it, you will not be allowed
2 back in the room afterwards. So we're asking you again,
3 in respect for the process, please turn off your cell
4 phones.

5 Now, if you have an emergency and, for some
6 particular reason you have to have it on and you would
7 like to leave it with Ms. Muoz -- Ms. Muoz works for the
8 Commission, she sits outside and she would be happy to
9 come in and get you in case of an emergency.

10 Thank you.

11 And now, for our panelists.

12 Ron Lally is a national expert on early
13 childhood development and has served as director of child-
14 and family-related programs at WestEd since 1978. He
15 currently serves as Co-Director of the Center for Child
16 and Family Studies with the Washington, D.C. based ZERO TO
17 THREE organization. His staff operates the Early Head
18 Start National Resource Center.

19 Prior to joining WestEd, Lally was professor
20 at Syracuse University and Chair of its Department of
21 Child and Family Studies.

22 Ms. Donnalee Ammons, formerly a local special
23

1 education director is currently CEO of Success Insite, a
2 community-based mental health agency that operates under
3 the psychiatric rehabilitation option within the Louisiana
4 Medical (sic) program -- Medicaid program, excuse me.

5 Dr. Laurie Powers is an Associate Professor
6 of Pediatrics, Public Health, and Psychiatry at the Oregon
7 Health and Science University. Prior to joining the
8 faculty of OHUS in 1995, she was an Assistant Professor of
9 Pediatrics at Dartmouth Medical School and Co-Director of
10 the Hood Center for Family Support.

11 Dr. Powers is the co-founder and Chair of the
12 Alliance for Self-Determination, a national network of
13 researchers and consumer leaders focused on self-
14 determination.

15 And finally, Dixie Jordan is the Director of
16 Families and Advocates for Education in Riverton, Wyoming.
17 The Families and Advocates Partnership for Education
18 project is a strong project that links families,
19 advocates, and self-advocates with the goal to improve the
20 educational outcomes for children with disabilities.

21 Thank you, panelists, and welcome.

22 We will begin the order of introduction. Mr.

23

1 Lally?

2 [Overhead projector presentation]

3 DR. LALLY: I'd like to start by explaining
4 who I am. My experience is with serving children and
5 families with children under five; I'm an educational
6 psychologist and have developed systems and strategies for
7 the provision of quality child care and have also
8 developed longitudinal interventions for poor families
9 exhibiting signs of dysfunction. I'm not a special
10 educator and I make my remarks as a collaborator with
11 special educators.

12 I'm going to talk about four problem areas
13 that I see in relation to interagency collaboration and,
14 with each of those problem areas, recommend some
15 solutions.

16 Before I get to those, I do want to comment
17 briefly about my age range, which is Zero to five, in
18 relation to IDEA Public Law 105.

19 It seems that, for children between the ages
20 of birth to five, the issues are not in the law but in the
21 implementation of the law, particularly in Part C. Part C
22 works. And what we're looking for are better ways to

23

1 allow the activities and structures -- I'm familiar with
2 the ones in California -- to -- that are in place -- to
3 continue the path of improvement. So much of what I'm
4 going to be commenting on will be of that implementation.

5 The one issue that we have is with Part B.
6 And that is because three- to five-year-olds seem to have
7 been lost in the emphasis on K to 12 and post-secondary
8 issues and there needs to be some -- more recognition for
9 the uniqueness of the age group and the special
10 developmental program needs of children from three to
11 five. That is not the problem with infancy because infancy
12 has its own special relationship.

13 The problems that I'm going to deal with are
14 general in nature and -- let me see, I'll start here,
15 which it seems like everybody is having trouble with
16 collaboration, these days, even little children.

17 And, what I'd like to talk about is, one of
18 the barriers that we have that is a large system issue and
19 that is that there are different requirements for service
20 responsibility for state educational agencies than there
21 are for the other systems that are part of the
22 collaboration.

23

1 The requirements for service delivery -- I
2 believe, the recommendation should be the same for all the
3 collaborators because one of the things that we see is
4 that, when people are asking who's paying and how do we
5 get it, they go to the State Education agency first and,
6 very often, what happens is that they are held to the law
7 as other agencies are not. But it seems like, in order to
8 motivate collaboration, it would be appropriate to have
9 more equity in the requirements for service.

10 The second area is the style with which
11 collaborations are approached and the resistance to
12 collaboration. One of the effective things that we have
13 found is that there needs to be, among agencies, the style
14 of using the child, the voice of the child, as the way of
15 organizing conversations about services.

16 Often what happens is that there are barriers
17 caused by the narrow focus of agencies as they are
18 planning to collaborate. And what happens, then, is that
19 their prime mission, or their fear of incompetence or
20 failure in special ed, makes them reluctant to engage in
21 the collaboration. There are two recommendations that I
22 have.

23

1 One was developed by the people working in
2 foster care in the City of Oakland and it's called "Using
3 the Voice of the Child" as a model for communication.
4 This was used in foster care systems and the family
5 courts, who seem to be not seeing eye to eye. What this
6 model does is it enters each conversation, first with a
7 discussion of the needs of the child, the wishes of the
8 child, and the voice of the child. And it's been found to
9 be very useful as a way of entering the conversations, as
10 opposed to the scope of work of the particular agency.

11 Second, one of the things that happens in
12 child care very often is that child care providers and
13 their managers are reluctant to engage in collaboration
14 because they believe that they need to be completely
15 competent in special education skills before they can
16 bring children in. There's a style that we have found
17 that the special education community has used that has
18 been very effective with these people and that is, as a
19 collaboration is initiated, to assure the people that what
20 has to happen is that they need to gradually develop
21 confidence based on their understanding of the particular
22 children they are serving, as opposed to having to be

23

1 specialists in all of the special needs before the child
2 shows up.

3 This approach has been the most effective in
4 getting child care administrators to bring children into
5 programs. That they're worried that they will not be
6 perfect or may damage a child very often inhibits them.
7 This approach seems to help.

8 The largest issue that I'd like to talk about
9 is the structural instability of the systems that we
10 interact with. We at WestEd just finished a piece of
11 research; over a five-year period, we looked at agencies
12 serving low-income communities and child care programs who
13 were in a survival mode, themselves. And so what was
14 happening is that the illusion of strong agencies
15 collaborating by just coming together around the table is,
16 in many communities, just that, an illusion.

17 What we have found was that many of the
18 people that we are calling to work with us in special ed
19 have:

20 Unpredictable and insufficient funding;

21 Inequitable ratios between the depth of
22 service needed and the services offered;

23

1 Racial and class tensions with other agencies
2 or partners that they're supposed to collaborate with;

3 Limited role in developing and implementing
4 and evaluating programs intended for their community,
5 they're told how that's going to happen;

6 Lack of organizational capacity for staff
7 training and support; and

8 Lack of organizational capacity to meet the
9 requirements expected of them by funders and
10 collaborators.

11 Therefore, one of the things that we are
12 recommending strongly is that there needs to be adequate
13 support so that basic services can be implemented. What
14 we found in child care, for example, is that 40 percent of
15 the infant-toddler care in the United States is actually
16 damaging children. These are the agencies that we're
17 going to collaborate with. One of the things that we need
18 to do is bolster those agencies.

19 We're finding, in agencies serving inner-city
20 communities, that many of the people providing the
21 services are experiencing stress, burnout, and depression;
22 and these are people that we're being expected to

23

1 collaborate with.

2 My recommendation here is to support
3 institutional health and collaborating agencies. We just
4 can't assume that they are going to be in any different
5 shape than many of the families that they're serving and,
6 in addition to that, we need to support the collaboration
7 process. In California, for example, there are things
8 called local planning areas that work with programs that
9 are supposed to collaborate, to hand-hold along the way.

10 The final recommendation in this area is that
11 we believe that, in order to collaborate with the services
12 that are out there, we have to bolster the services that
13 are out there. For children under five, the normal care
14 is bad. One way to make it better is moving towards
15 universal pre-school and the expanding of early Head
16 Start.

17 Another area that is giving programs trouble
18 is that, very often, what is happening is that the lead
19 agencies change so that the Department of Developmental
20 Services might have the children once they become four
21 years of age, and the Department of Education, when they
22 are zero to three. Often, what happens when there is this

23

1 lead agency change is that there are all kinds of other
2 changes that programs, parents, children, and care-givers
3 need assistance within the transitions; we need to focus
4 on the transitions.

5 Second, very often what happens in the
6 transition at age five is there is quite a dramatic
7 philosophical shift, moving towards issues of rigor and
8 readiness that were not as attended to, instead,
9 developmental appropriateness, et cetera, was the rule of
10 the day. What we're seeing is, again, at that period at
11 age five, very often there is a jolt to the system that
12 needs to be understood as children move from one system to
13 the other. The issues of accountability, I think, are a
14 key; and I'll stop with this.

15 One of the things that we found is that, for
16 children under five, one size doesn't fit all. It's true
17 for everyone but, for very young children, it's quite
18 true. There are rapid periods of growth and development
19 and the accountability efforts then need to be, that
20 results must be based on individual child and individual
21 services rather than on a one-size-fits-all outcome.

22 The younger the child, the more rapid the
23

1 growth. For example, an infant goes through three very
2 quick developmental periods before they even turn three.
3 There needs to be a sensitivity to this movement as we try
4 to have a seamless system from birth to 22.

5 Thank you.

6 MS. ACOSTA: Thank you, sir.

7 Donnalee?

8 MS. AMMONS: When I started working with the
9 mental health agency, of course, I did so as an educator.
10 I came from education, I had 35 years in the educational
11 field, and then I began working in the area of mental
12 health because that was the greatest need that I was
13 seeing as a special education administrator, was, what was
14 happening with our students with severe behavioral and
15 emotional problems.

16 We worked very hard in the area that I was in
17 to be collaborative, to have multi-agency services, and,
18 at one point, we probably had -- as the Regional Director
19 of Mental Health described it -- the pinnacle of what
20 multi-agency services should be.

21 As he and I have discussed how multi-agency
22 services were generally ebbs and flows with the enthusiasm
23

1 of the people that are involved in the process. That's
2 definitely a problem with making things systemic. Things
3 may work out effectively at the local level, due to the
4 commitment of people at the local level but, unless that
5 same enthusiasm exists at the state level, the prognosis
6 for long-term success is limited. And Mr. Lally
7 mentioned, it takes support at the state level in
8 understanding those things.

9 The first issue that would be a
10 recommendation is that there needs to be a very concise
11 process to develop and implement an outcome-based
12 provision of services. The mental health model, at least
13 in rehab as we're experiencing it in Louisiana, has moved
14 to an outcome-based service delivery. A major portion of
15 that service delivery is provided by para-professionals
16 under the supervision of licensed mental health
17 professionals.

18 A lot of the agencies, not just Education,
19 have failed to focus on the outcomes. They're still
20 looking at how many half-hours of therapy does this child
21 get, or something along those lines, instead of a certain
22 number of hours of therapy, the process works on the basis

23

1 that the para-professional will work with the client in
2 the situations and environments that have been assessed as
3 precipitating the most non-compliant behaviors.

4 The immediate outcomes desired by educators
5 are frequently unrealistic from a treatment standpoint.
6 And I found this a great deal. If the student qualifies
7 for multi-agency services, his needs and his family's
8 needs are extreme. A lot of times, the educator's
9 immediate goal is that the student who has demonstrated
10 non-compliant behaviors 100 percent of the time will "obey
11 school rules" 100 percent of the time.

12 Well, during the honeymoon phase of the
13 service plan, compliant behavior with close supervision
14 and intervention by a really good para-professional may
15 approach 100 percent. But the behaviors that precipitated
16 the multi-agency service are not eliminated in one month.
17 So it's usually only a matter of time until one or more of
18 the non-compliant behaviors erupts.

19 The mental health staff tries to handle the
20 situation therapeutically. Most of the time, the school
21 staff tries to handle it punitively. Realistic outcomes
22 must be developed in small, sequential segments so that

23

1 changes in behavior are measurable and the effectiveness
2 of the program being provided that student can be assessed
3 by both education and mental health.

4 I've found that many educators, myself
5 included, do not seem to feel adequately trained to deal
6 with the types of services that most students with severe
7 mental health problems require. We, in education, are
8 trained really more to deal with discipline but these
9 students' needs far exceed discipline. There is a big
10 difference between managing behavior and changing
11 behavior.

12 School administrators kind of find themselves
13 boxed in by zero-tolerance rules. And those zero-
14 tolerance rules are in areas other than, often, weapons
15 and drugs. There are some systems we have zero tolerance
16 for tardies or zero tolerance for not following the dress
17 code. Well, these kids are just set up to be in a
18 situation where they'll face failure.

19 The school staff are often so frustrated by
20 the time multi-agency services are initiated, that their
21 desired outcomes for the student are beyond what can
22 reasonably be accomplished.

23

1 Another issue that needs to be looked at is
2 early intervention programs and social skill programs and
3 those must be a part of the services provided. Services
4 provided at an earlier stage have a greater chance of
5 being effective. In very few school systems is a formal
6 social skills curriculum in place that is used with
7 students who are risk for more serious mental health
8 problems.

9 Teachers are already stretched with all the
10 things we ask them to teach to accomplish academic goals
11 and so social skills are never presented in a structured
12 manner. The thought of contracting the service with an
13 outside mental health provider seems to be rarely
14 considered, at least in Louisiana. The data is out there
15 to support the benefits of early intervention programs and
16 school-wide social skill programs.

17 Mental health providers can easily provide
18 different strands of services utilizing specialized staff,
19 targeted to the identified needs of the system.

20 There has to be a clear delineation of roles
21 and responsibilities. There seems to be a reluctance on
22 the part of educators to turn any component of service

23

1 over to another agency. Again, I'm speaking of Louisiana.

2 "We can do that ourselves" seems to be the prevailing
3 mindset, or the reverse happens, "That's not what we do."

4 Educators are frequently fearful that they
5 will be pushed into providing an expensive mental health
6 service because the outside mental health agency that they
7 were contracting with has not fulfilled their agreement.
8 In a lot of cases, the mental health provider does not
9 provide the type of progress notes to the LEA that will
10 help them know what progress is being made. I've asked,
11 sometimes, "Do you have progress notes?" "Well, no,
12 because that's part of the treatment plan and that can't
13 be shared. That's protected."

14 But the LEA does not need the treatment
15 notes, they do need regular reports to document that the
16 service is being provided and the extent to which the
17 goals and objectives are being accomplished.

18 Once again, the need for specific outcomes is
19 clear. If the provider does not accomplish pre-determined
20 outcomes, their future with the LEA should be in jeopardy.

21 Inner-agency agreements need to clearly state
22 roles, responsibilities, expectations, and protocols.

23

1 Unless one agency has a case management role with some
2 authority to hold other members of the group accountable,
3 lapses in service delivery can occur. Sometimes a lapse
4 goes undetected for several weeks because no one is
5 providing consistent oversight.

6 When problems arise, and they will, a clear
7 process for handling them without one agency pointing at
8 the other and saying, "It's your fault" needs to be in
9 place, even when a team -- and Mr. Lally mentioned that --
10 sits down and develops a service plan, frequently it is an
11 illusion of a collaborative plan. The plans, at best,
12 tend to offer parallel services and, too often, each
13 agency appears to feel that if they're not the primary
14 provider of a particular component, they have no secondary
15 responsibility.

16 I think that there needs to be funding
17 incentives that make intensive services financially
18 feasible. Plain and simple, students with mental health
19 needs are expensive. Easily accessed funding must be
20 available that encourages inner-agency collaboration.
21 Unfortunately, small agencies often lack the resources to
22 be competitive in the grant-writing process so that's not

23

1 a possibility.

2 In Louisiana, the psychiatric option of
3 Medicaid is for students who are severely emotionally
4 disturbed and who receive -- or are eligible for Medicaid.
5 The State Office of Mental Health offers some funding for
6 students who meet the severe emotionally disturbed
7 criteria but are not eligible for Medicaid and whose
8 families have no insurance. There are few, if any,
9 funding options for students from families who do have
10 insurance. My analogy is, that you don't qualify for
11 shoes until both feet are amputated.

12 I have an agency that is a not-for-profit
13 agency but my Board of Directors expects me to break even.
14 We cannot afford to give a school system 30 hours a week
15 of on-site staff without additional funding because
16 Medicaid funds us to give 15 hours a week of on-site
17 service.

18 Many educators feel that putting -- or seem
19 to feel that putting education money into treatment is not
20 a viable option. Very rarely, on an IEP, do I see family
21 counseling offered, even though the family situation
22 greatly impacts the student; and counseling, if it's there

23

1 at all, is usually one time a month for 30 minutes.

2 Some other issues that need to be looked at:

3 Mental health providers must develop
4 sensitivity to how schools operate and then make an effort
5 to fit into the education model. If services are provided
6 in the school environment, mental health staff must
7 conform to the rules and regulations.

8 Mental health staff need to learn to advocate
9 for their clients, but in a non-adversarial manner. Most
10 of all an atmosphere of trust and respect must be
11 established and maintained in order to foster long-term
12 collaboration. The commitment to work together must not
13 be dependent on individuals but must be an agency
14 commitment if systemic change is to occur.

15 Thank you.

16 MS. ACOSTA: Thank you.

17 Dr. Laurie Powers?

18 DR. POWERS: Thank you very much for inviting
19 me to speak with you today.

20 I'm here to speak specifically about
21 collaboration as it relates to the transition from high
22 school to adult life and I think it's probably fair to say

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1 that that's an area in which collaboration is key.

2 Before I begin with those specific comments,
3 though, I'd like to make a couple of general. The first
4 is that it's fair to say that my perspective is really
5 three-fold. First of all, I'm a researcher and have quite
6 a bit of research over the last 17 years related to
7 adolescent transition in particular.

8 Much of my work has been applied so I've
9 also, as I know you have, as well, sat in a number of
10 classrooms through IEP and ITP and instructional sessions
11 and sat with youth and families and teachers as they
12 struggled with some of these issues.

13 And, third, I come before you as a person
14 with disability, who grew up with disability from
15 childhood and it's likely influenced some of my
16 perspectives around this area.

17 Now, not to remind you of things that you
18 don't already know, but I -- for me, it's always important
19 to get grounded in the reality of where we are with
20 respect to transition and academic success for youth. So
21 I just want to remind all of us that, currently, we're
22 looking at somewhere around a 29 percent graduation rate

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1 for youth with disabilities versus about 87 percent for
2 youth without. We're looking at one in three youth
3 dropping out versus one in four youth, generally without
4 disabilities. We're looking at unemployment rates, three
5 to five years out of school, somewhere in the 60 percent
6 range for youth with disabilities.

7 We're looking at only 29 percent of youth who
8 are employed earning wages above the poverty level. So
9 most youth of the small percent who are employed are
10 making subsistence wages, much of them -- you've probably
11 heard the term, "food, filth, and flowers," that that's
12 what we focused on a lot in socializing people with
13 disabilities in terms of their career and job aspirations.
14 And, still, a lot of that continues.

15 And most importantly, I think that youth with
16 disabilities tend to attend post-secondary education at
17 about one-quarter the rate of youth without disabilities,
18 which, I think, is really of concern and deserves focus.

19 Youth with disabilities also face more
20 significant social isolation; those that do not have
21 severe disabilities tend to drop off the cliff after
22 school and that there really aren't a lot of supports and
23

1 services that they can draw upon, they and their families.

2 And there are poor outcomes for groups like
3 incarcerated youth, foster care youth, ethnic minority
4 youth; and, as a matter of fact, getting data on those
5 youth is also very problematic in terms of being able to
6 understand what their outcomes are.

7 Now all of this suggests that, although we
8 have had some modest gains in outcomes for youth with
9 disabilities, that still a lot isn't working for a high
10 percentage of those youth in terms of our transition
11 supports. It also suggests, for me, that dramatic early
12 action is needed with regard to the high school career in
13 terms of intervention to try to place students in better
14 stead for successful transition after high school.

15 And I think it's fair to say that, currently,
16 supporting youth with transition is considered
17 supplemental and, in some cases, an afterthought in lots
18 of school districts and, in part, that's not because
19 anybody means ill will towards youth but they're trying to
20 take care of academics, they're trying to handle a lot of
21 other competing priorities, and this just does not get the
22 attention that I believe it deserves.

23

1 And I believe, actually, the Commission has
2 an opportunity here to perhaps champion what could be, I
3 think, a really important issue that has promise.

4 We all agree, I think, increasingly, that
5 youth with disability should be as self-sufficient as they
6 can be when they leave school. We've never -- you know,
7 we used to think that youth would be in more dependent
8 roles and we're now expecting them to have jobs, to go to
9 college, to be as included in their communities and
10 participate at the highest level that they can.

11 In short, when we talk to youth and their
12 families, what they want to do is they want to get a life
13 and they want to get a life like everybody else has a
14 life. And, to accomplish this, first and foremost, youth
15 need to be able to access the typical education
16 experiences that are available to other youth without
17 disabilities. That certainly includes inclusive academic
18 training but it also includes things in the area of
19 transition-like vocational education, apprenticeships,
20 internships, service learning opportunities. Our national
21 community service holds great promise and there's some
22 opportunities there for increasing collaboration.

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1 Now, once you can access these opportunities,
2 the question becomes what other kinds of supports or
3 accommodations do they need to be successful? And I think
4 that's really where the heart of collaboration comes. And
5 there are four forms of collaboration I want to touch on:

6 The first of which is probably something we
7 don't often think about in terms of collaboration but it's
8 actually collaboration with the students, something that
9 we're in short supply of, oftentimes, with regard to the
10 transition process and the transition planning;

11 Everything from involvement in the transition
12 planning discussions and meetings and other activities
13 that occur, to providing youth with education so that they
14 can begin to identify what their accommodation issues are,
15 what kinds of supports they need, what strategies are
16 successful, what services they might be able to use; most
17 youth with disabilities receive no information about that
18 kind of stuff. And so we expect them to go out and be
19 able to negotiate those supports for themselves. And they
20 don't know where to begin;

21 Ongoing support for youth throughout, in
22 particular, middle school and high school, to learn how to

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1 be change agents in their lives, to learn that they are
2 responsible for what happens and to give them the tools
3 and the kind of coaching and support that they need to use
4 those tools to be more successful;

5 And then opportunities for things like
6 mentorship, peer support, leadership development that we
7 all know, for young people without disabilities, have a
8 substantial relationship to their subsequent success in
9 adult life, employment rates, and other kinds of
10 activities.

11 You know, I would point out that we spend,
12 now, about \$15 million in parent-training kinds of
13 activities nationwide to provide parents with information
14 and education and we really don't spend -- we really spend
15 very little directly on youth in providing them with those
16 kinds of services.

17 And one of the recommendations I might make
18 is if the Commission would consider the idea of youth
19 resource centers or supports for youth, to build their
20 capacities.

21 The second area of collaboration is certainly
22 that with respect to families. I mean, families are the
23

1 primary support and, as much as we all don't want to admit
2 it, when it comes right down to it, it's families and
3 youth who make a life. And we really need to increase our
4 capacities to be able to provide outreach to families; to
5 plan around what families and youth define as their
6 priorities for adult life; to train educators so that they
7 can talk to families because, as many comments were made
8 earlier this morning, we don't socialize our educators to
9 be supportive with families.

10 We did a study a couple of years ago in which
11 we looked at the involvement of ethnic minority parents in
12 transition support activities with their sons and
13 daughters and compared that to Anglo parents; and it was
14 self-report, but the ethnic minority parents were rating
15 higher levels of engagement in activities to support their
16 sons' and daughters' transition. We asked educators what
17 they thought were happening; of course, it was just the
18 opposite. They rated that the Anglo parents were far more
19 involved.

20 And so there's a lot of perception and
21 there's a lot of disconnect that needs to be taken care of
22 there.

23

1 The third area of collaboration is
2 collaboration with other service providers like VR
3 (phonetic) and like One Stop Career Centers, for instance.
4 Those collaborations need to be brought in -- need to be
5 activated much more earlier, earlier than they are now.
6 Typically, with vocational rehabilitation, it's not until
7 the last year that a student is in school that a local
8 rehab counselor might show up at a transition planning
9 meeting for discussion, and an IEP meeting. And there's
10 just a real need to engage earlier on.

11 There's also a need to be more creative in
12 terms of commingling resources and working at strengths.
13 I think this is -- there's a particular opportunity here
14 between schools and One Stops. And I think the school
15 culture is not one that's particularly conducive to
16 collaboration and to establishing those kinds of inter-
17 agency connections that need to happen. And that needs to
18 be encouraged.

19 I will say, as an aside, with respect to the
20 creativity issue, one of the things that we decided to do
21 at our center at the university -- and we're not doing it
22 as a program, we're just doing it because we feel like we

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1 should walk the walk as we're hiring part-time some
2 minority youth with disabilities who want to go to college
3 and who wouldn't be able to do that. And it just so
4 happens that, if you work half-time at our university, you
5 can go to any college -- state college -- and you have a
6 lower tuition.

7 And we have a young person who's done that,
8 going to a school, Portland State University, and was
9 denied vocational rehabilitation services because,
10 although she's going to college and needs some support to
11 help her go to college, she's working because we provided
12 that part-time opportunity to her. So we've just got to
13 deal with these kinds of dilemmas and challenges.

14 And, fourth, with respect to the final kind
15 of collaboration, it's really around activating natural
16 supports, and that's everything from employer networks to
17 involving neighbors, community agencies, churches,
18 whatever kind of support system is in that young person's
19 life. We need to be able to organize ourselves and our
20 systems flexibly enough so that we can identify who those
21 folks are and we can reach out and establish partnerships
22 and help youth and family be able to do that.

23

1 Now, in order to accomplish that, we're going
2 to need to really transform, I believe, the way we
3 approach transition to adulthood to one of focusing on
4 more brokering and capacity-building -- that's the label I
5 give it anyways. I'm really thinking about four major
6 components there, that every youth needs some kind of an
7 ally, somebody who cares and somebody who's got some
8 knowledge about connections that would be useful for that
9 youth in moving forward his or her goals.

10 That may be an educator, it may be somebody
11 out in the community. And the trick is to create a system
12 so that that person can be identified and activated and
13 supported to work with that youth.

14 There need to be flexible funds. I mean,
15 right now, most of our funding are tied into staff and
16 programs. And albeit we believe that some of these
17 programs are helpful, we really put ourselves in a very
18 tight situation here because there aren't access to
19 flexible resources.

20 Youth and families, as I already said, need
21 to have more information about their options and their
22 strategies. And they need, fundamentally, to have the

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1 ability to use all those resources that they have, that
2 the system provides, that are informally available in the
3 community, to use those creatively. And, along with that,
4 obviously, schools need to -- and LEAs need to be more
5 active in developing inter-agency collaborative agreements
6 with places like Independent Living Centers and One Stops
7 and community organizations.

8 Now, in order to make this happen, it's going
9 to take an investment approach. We really have to
10 understand that, as a society, we're looking at a lifetime
11 and we've got a window of opportunity with transition and,
12 if we don't invest in it, we risk to lose a youth for the
13 rest of their life.

14 We also have to push forward inter-agency
15 partnerships to provide both flexible supports and to
16 remove some of the disincentives. Two specific examples
17 there would be, looking at collaboration across agencies
18 around establishing transition accounts are flexible,
19 funding models that youth and families can draw on to
20 achieve particular transition goals.

21 Another example of that is, lifetime access
22 to medical coverage; that might be through home- and

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1 community-based waiver eligibility or a variety of other
2 strategies. But the idea is, rather than -- our current
3 system is constructed to gatekeep around access to these
4 benefits and, I believe, what we need to do -- and I think
5 there's research evidence that's now showing -- is we need
6 to switch to a buy-in approach. You give it for your
7 right and, as you make more money and you're successful,
8 which is what we want you to do, then you participate in
9 paying for it.

10 And then, finally, a willingness to -- you
11 know, fundamentally, we've got to be willing to try new
12 approaches. And it's my personal view that we're a bit
13 stuck in this area and we really do need a shot in the
14 arm. And I think that that shot in the arm could
15 successfully take the form of some systematic
16 demonstrations and evaluations of some of these different
17 kinds of models of flexible resources and funding and
18 brokering. We really can't afford to wait any longer;
19 we're talking about 15 to 20 percent of our adult
20 population. And --

21 MS. ACOSTA: We really need you to wrap up.

22 DR. POWERS: -- we need to make sure that we

23

1 don't leave them behind.

2 MS. ACOSTA: Thank you.

3 Dixie Jordan?

4 MS. JORDAN: Thank you very much for inviting
5 me here today.

6 I guess the first observation I have is that
7 this is an Anglo gathering in an Anglo hotel with an Anglo
8 audience and very high percentage of our youth who are
9 currently receiving special education services are
10 children of color in this nation.

11 So, when we use the term "minority" if we
12 were talking Minneapolis public schools, we wouldn't be
13 talking about Anglo children, as more than 85 percent of
14 the children who attend school in that large Midwestern
15 city happen to be kids of color.

16 Having said that, I'm delighted to be here
17 and to have a few comments. And it seems as though I'm
18 always tieding (sic) onto what someone else has said,
19 because, for the past 15 years, I've worked within two
20 domains, mental health and education. And I find that,
21 when I'm at largely mental health hearings and meetings,
22 all the blame is laid at the foot of education. And, when

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1 I'm at the door and engaged in a groups such as this, all
2 the blame is left at the feet of mental health.

3 And I think one of the major problems in
4 collaboration, if we are to address collaboration in a
5 meaningful way, way beyond the constraints of a special
6 education advisory committee, or the President's
7 Commission, we have to recognize that the federal
8 government is not doing a good job; they are not modeling
9 inter-agency collaboration, they are not putting out
10 combined pools of money, except in an extremely limited
11 way. And, to expect that you shall do what I say you
12 shall do instead of you shall do as I'm showing you how to
13 do, is an obscenity and is doomed to failure.

14 The families I work with are almost
15 exclusively poor. Most have no vehicles, most have no
16 telephones. I live on a reservation, I work with the
17 population that has 86 percent unemployment; and I will
18 tell you that, as I listen to Laurie speak about kids with
19 disabilities, you could throw those numbers out and then
20 insert the term "Native American children" with their
21 horrific dropout rate and you'd just about have it.

22 So one of the things I wanted to talk about a

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1 little bit today was the Bureau of Indian Affairs, in
2 particular, because I think that very large federal
3 agency, which is funded through the Department of the
4 Interior rather than the Department of Education, charged
5 with educating children with and without disabilities, has
6 not done so successfully and historically, and cannot be
7 permitted to continue as an agency without ensuring that
8 children have specific rights of access to the same kinds
9 of services everyone else has.

10 And I know that's not popular because I am an
11 enrolled member of a sovereign nation and I believe that
12 sovereignty is -- one of the big issues we talk about all
13 the time, how do tribes in our nation achieve self-
14 determination? It cannot come at a cost to its citizens.
15 It cannot be that sovereignty overrides the rights of
16 individual citizens, who are also residents of states, to
17 equal protection under the law. And, unfortunately, I
18 often see that happen. And, to me, that's an untenable
19 outcome.

20 But, before I spend any more time on that, I
21 need to talk about -- we've spent a lot of time talking
22 about what doesn't work; special education has had some

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1 monumental achievements. It is the most successful program
2 that I've seen to date for mandating that families will
3 have a voice in their own destiny and the destinies of
4 their children. That's a revolutionary stance to take and
5 one that I really hope will continue. And I believe that
6 parent involvement is the essence of special education.

7 The other part that really works is the IEP
8 process. People complain about its length and the amount
9 of trees that have to die in order to write down the
10 service continuum for children; and, indeed, I agree that
11 there are probably ways that the IEP document can be
12 shortened so that the requirements are clear to both state
13 agencies and local education agencies, that the federal
14 requirements for educating children through the IEP
15 process do not demand a 19- or 25-page IEP, they demand
16 that we write legitimate goals for that child's progress,
17 measurable objectives in order to evaluate whether
18 progress is being made, a fairly small group of people.

19 With my son, never did I have an IEP meeting
20 throughout his school career, from Kindergarten on, where
21 fewer than 20 people sat at the table. It was
22 overwhelming, it was daunting; I did not speak the
23

1 language of education, nor does anyone else outside the
2 confines of this august room and body of people. It's a
3 foreign language.

4 I would sit in the meetings and cried my way
5 through every single one of them, throughout my son's high
6 school career, because I didn't think I was being listened
7 to.

8 So, while we've learned many things about the
9 process of family involvement and developing IEPs at the
10 table together, the fact is that only at the point in time
11 when teachers are adequately prepared to understand that
12 families, even those they like to classify as
13 dysfunctional or dis-something, disabled, disinclined,
14 only when people are able to drop their egos and listen
15 truly to those voices in pain, are we going to have a
16 quality of planning at the table and will the process
17 improve.

18 And so I see a structural need for educators
19 to learn greatly more about how to hold back and withhold
20 judgment and how to participate in a win-win situation,
21 which is what an IEP should be. It shouldn't be about "I
22 got them." and I hear it from the provider side and I hear

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1 it from the family side, "I won."

2 There are no winners, only losers when we
3 wind up in a due process hearing. Money gets spent,
4 relationships are broken, and nothing gets resolved. And,
5 yes, sometimes hearings are necessary but my own take on
6 that is, in the vast majority of time, if we were to sit
7 down and genuinely, not just listen, but hear what someone
8 has to say about what they see as needs and, if that is
9 done in a way that brings a neutral third party in, I
10 truly believe that we would be able to offset a lot of the
11 litigation that currently is the case.

12 Because, unlike the attorneys who were
13 represented here, I don't believe attorneys should be
14 allowed at the first line of trying to negotiate a
15 settlement between families and schools. I believe they
16 break relationships, intentionally or unintentionally;
17 once you have an attorney on board -- and I've had them
18 for my child-- once they're on board, it's only about
19 winning and losing because somebody has to get paid.

20 And so I truly believe that Minnesota's model
21 system that requires, or allows I should say, a
22 conciliation conference, a sort of higher-level
23

1 conference, or even mediation, where our State Department
2 of Education had contracted with the parents to ensure
3 that families are represented in mediation, that those
4 kinds of strategies are more likely to result in positive
5 outcomes for those schools and for families.

6 Now, I need to move on to the BIA, and this
7 would take me three days, so I'll speak quickly. And I
8 don't mean this as a dissertation against Bureau of Indian
9 Affairs but I see some really huge issues that need to be
10 addressed.

11 First of all, there is no working
12 relationship that's formal between the Bureau of Indian
13 Affairs and the Department of Education at the federal
14 level. We used to have a liaison that ran back and forth
15 and tried explaining what services were provided and tried
16 to facilitate some discussion; and I believe that that
17 position of liaison needs to be reinstated and supported.
18 I, frankly, don't care who pays for it; I'm an advocate,
19 that's not my job.

20 There is a BIA special education advisory
21 board that was supposed to have been established in 1976
22 -- it was eventually configured in the last of the 1990s

23

1 -- meets erratically, when they find the time and I
2 believe that that board needs to be directed that they
3 have to convene with the regularity as the State education
4 agency is required to convene a State special education
5 advisory committee.

6 I think the BIA has been the beneficiary of
7 opinion rather than a concerted planning effort that can
8 be corrected quite easily. I believe that the Bureau of
9 Indian Affairs should be required to let families that
10 they work with know about the parent training and
11 information centers in the states in which each school is
12 located.

13 What I found is that Native parents residing
14 on reservations have no access to information about
15 special needs, no access to information about how to
16 participate effectively in developing programs that work
17 for their children.

18 When the University of Minnesota, for
19 instance, conducted a study looking at family involvement,
20 what they found was that more than 90 percent of the
21 families said that they knew enough about the law. When
22 they broke that down according to the status of persons of

23

1 color, they found that that was simply not even close to
2 the truth, that five or six percent were satisfied that
3 they knew enough about the law.

4 And so we have to be really careful when we
5 say that families know enough to make sure that we're
6 talking about all families. They also said -- found out
7 that, when a family of color found satisfaction with the
8 school program planning, 100 percent of them said they
9 were satisfied when they had another person who able to
10 attend the meeting with them at school. And I think that
11 really speaks to the need for emotional support, as well
12 as to provide some information about how the process
13 works.

14 I also have to say -- I'd be really remiss
15 not to talk about disenfranchised families, whether
16 they're Native American or anyone else. It's going to
17 take a lot more work than we've put to engaging these
18 families. It's going to take more time, it's going to
19 take more intensive strategies, it's going to take
20 connecting them, not just with resources but with people
21 they trust because many of them have been battered by the
22 systems over the years and feel that all systems are

23

1 against them and that education is one more system. This
2 is certainly something we can overcome.

3 It is certainly not a special education
4 issue, per se, but it is an issue of how do we take
5 singularly disenfranchised people in this nation and
6 empower them with the same voice and the same magnitude of
7 voice to be heard about the needs of their children and
8 the rights to their own self-determination about what
9 those families need. I think that gets to be a real
10 critical piece.

11 And I don't expect that you can do a whole
12 lot about it but I do think that you're embedded with
13 much larger systems issues than we are able to address
14 specifically when looking at special education. But it is
15 part of a global mindset about the value of families in
16 this country that has to do with what color you are and
17 how much money you have, that we have to overcome if we
18 are going to move beyond the boundaries that separate us
19 today and, in particular, to improve our school system.

20 It can happen. I will not listen any more
21 when people say to me, "Those parents don't care about
22 their children." I have not met the parent that does not

23

1 love and honor their child and want the best for them.

2 We have to find a different way of engaging
3 if we're going to make special education all it can be.

4 I think that legislation should be in place
5 that will allow the Bureau of Indian Affairs to be
6 considered an eligible state agency for the purpose of
7 applying for a Part B funding and state improvement
8 grants. Right now, they're outside that process and
9 cannot apply for that funding so they don't have an
10 opportunity to access those dollars; and that's a pretty
11 easily correctable thing.

12 I have one more thing. The Bureau schools,
13 even those that are on tribal land, must be subjected to
14 the laws of the United States of America. I filed an OCR
15 complaint of discrimination in a Bureau of Indian Affairs
16 school on the White Earth Reservation in Northern
17 Minnesota and received a letter back from the Office for
18 Civil Rights at the Chicago office claiming non-
19 jurisdiction. If not OCR, then who?

20 Tribal agencies do not have those continuum
21 of services in place to look at, nor are they particularly
22 vocal about, the rights of citizens because they are so

23

1 diligently working on fiscal and social infrastructure
2 development these days. And I believe that something
3 needs to happen between the Office for Civil Rights and
4 the Sovereign Nations across this land about who is
5 responsible for this group of children.

6 I also think a single process should be in
7 place where state agencies monitor BIA schools because,
8 after all, the BIA schools are required to follow state
9 protocols and state laws regarding the education of
10 children with special education; that was their agreement.
11 And what I find is that you will have a due process
12 hearing and you'll call a Bureau of Indian Affairs hearing
13 officer in who then has to know about the laws of the
14 state in order to appropriately intervene and make
15 determinations about a child. And I think, at the very
16 least, there has to be an inter-governmental agreement
17 between the Bureau and each State Department of Education
18 so that the Bureau schools have the same benefit from
19 targeted monitoring or whatever you choose to call the
20 monitoring system of the future, which they do not now
21 have access to.

22 And I need to say that I know that it's not

23

1 an easy thing to say. I also need to say that my
2 exclusive domain is working with children with severe
3 emotional disturbance and has been for almost 20 years.
4 They and their families often are removed from our public
5 education system because of their -- the very behaviors
6 that were used to call them disabled and the very
7 behaviors that we use to say that these children have
8 disabilities and are deserving of our additional supports
9 are the behaviors we use to remove them from school
10 saying, "You're not deserving of our supports." That
11 makes no sense to me.

12 I get very passionate about it because these
13 children sit home with nothing. "Leave no child behind"
14 are great words and we listen to them and they sound
15 wonderful. It's sort of like the thousand points of
16 light, but what does it mean if not all children?

17 My son went through school with that
18 pernicious label of emotional disturbance, quit school,
19 with my blessing, four credits short of graduation because
20 we could not make general education accountable for his
21 education. We can't fix special education outside the
22 context of regular education, nor should we try. We must

23

1 hold regular education accountable for instructional
2 methodologies that are scientifically validated to work
3 with all children so that all children have the
4 opportunity to go to school and to be productive, as
5 productive as they, in particular, can be.

6 Zero tolerance is inconsistent with "Leave no
7 child behind." Zero tolerance for behaviors should not
8 mean zero education, it should mean, simply, that, if we
9 have no tolerance for a set of behaviors, then we will
10 educate you regardless of the environment because not to
11 do so means that we will have to just give more money to
12 the penal institutions today. And, unfortunately, those
13 institutions are filled with children of color. And that
14 is not acceptable.

15 Thank you.

16 MS. ACOSTA: Thank you ladies and gentlemen.
17 I believe that, when you speak with such passion, it rings
18 through to the message and the mission of this Commission.
19 And I would, again, take the liberty of speaking on behalf
20 of my fellow Commissioners, that we feel your passion and
21 we are happy that you are on our side, on the side of our
22 children.

23

1 We will begin the questioning with
2 Commissioner Coulter.

3 DR. COULTER: Several of you mentioned that,
4 I think, the difficulties that are faced when you have
5 multiple agencies with overlapping, or in some instances,
6 separate responsibilities but all answerable to families.

7 I'd like for you -- in terms of the context
8 of this Commission, could you speak a little bit more, any
9 of you within my five minutes of time, about how can a
10 Commission on Special Education speak to -- constructively
11 speak to how agencies can work together when
12 traditionally, and I think you've been eloquent about the
13 fact that agencies tend to not want to cooperate or
14 collaborate with each other.

15 And I'm not calling names at mental health or
16 education, I'm talking about what's the interface and how
17 can we make that better.

18 DR. POWERS: On an optimistic note, I think,
19 in the area of adolescent transition to adulthood, that
20 there is increasing momentum in a variety of agencies,
21 like the Department of Labor, Social Security
22 Administration, Maternal and Child Health Bureau, to both

23

1 collaborate and to move forward some pretty innovative
2 approaches. And I think that there is an opportunity for
3 education to jump on board, actually, in a more definitive
4 and active way with, I think, some of those collaborations
5 at a federal level. And there's a good deal of that
6 that's also being mirrored at the state level and local
7 level, as well.

8 So I think there is some opportunities there
9 if Education could be encouraged to jump on board.

10 DR. LALLY: I would think that there needs to
11 be both a carrot and a stick approach. One of the things
12 that's happened in Head Start, for example, is that 10
13 percent of the children who are served by Head Start, have
14 to be children with special needs. And so there's no
15 negotiation. And they are searching for ways to do that;
16 it's very difficult. But they are seeing that they have
17 to do it.

18 Some of the comments that I made when I gave
19 testimony, is that what we are seeing, for example in
20 California, is that the education agencies who are held
21 accountable for the services wind up being the one,
22 whether they are the most capable or not, responsible to

1 give the services.

2 So I believe that there does need to be both
3 a sharing of some of the funding but also required of the
4 other agencies that there's a percentages of their
5 services that have to go to children with special needs.

6 DR. COULTER: So the carrot would be some
7 sort of collaborative use of funds? In other words, funds
8 from special education that actually would -- I guess I'm
9 trying to put words in your mouth so make certain I put
10 them in correctly -- so that you couldn't get the funds
11 unless you evidenced collaboration?

12 DR. LALLY: I think that's more the stick
13 than the carrot, but --

14 DR. COULTER: Well, what's the carrot?

15 DR. LALLY: I mean, the money is the carrot,
16 the forcing is the stick.

17 One of the things that's happening in England
18 now, which is an interesting experiment is something
19 called Sure Start where they are melding the money in
20 particular communities for all types of services with a
21 child-focused impact. And what they're finding is that
22 they're able to save, because of non-categorical funding,

23

1 duplications of case managers, all of these types of
2 things. And they've been experimenting with this now for
3 the last five years.

4 But it's a restructuring; actually, it was
5 economists that did it in England, who were saying, "What
6 we need to do is look at categorical funding and alter it
7 in ways where there's more of a blending by having people
8 develop plans for each of the individual children," and
9 then the funding comes to fit the plan as opposed to the
10 funding comes to --

11 DR. COULTER: Okay.

12 MS. JORDAN: May I also add that, in
13 Minnesota, when we wrote the children's mental health
14 legislation, it evolved to a point where, in order to
15 access collaborative funds, each county or grouping of
16 counties can establish a children's mental health
17 collaborative. In order to access any of that funding,
18 there must be an inter-agency agreement between mental
19 health and education.

20 And there is no stick, but the carrot's large
21 enough where that's something that becomes desirous. And
22 I guess I need to say one other thing about that.

23

1 We sometimes pretend that education is not
2 the largest social service agency in the world, but it is.
3 It has never been funded accordingly, although we're
4 responsible for ensuring that children have enough to eat
5 because that's contingent upon their being learners. And
6 health clinics are now in schools because we know that's
7 where children are, and mental health services will
8 someday be delivered through the schools.

9 I truly believe that, if there was a federal
10 system of granting that required -- and we do have that in
11 substance abuse and mental health now, at some level -- if
12 we had a federal grant process that let out funds so that
13 people could begin to evaluate, do and evaluate what
14 blended funding could look like at the Department of
15 Education level, at the local school. That would probably
16 be enormously helpful.

17 I've looked at substance abuse and mental
18 health, they are so inextricable from one another that
19 finally, at the federal level, people are beginning to
20 realize, you can't really treat substance abuse on a
21 reservation, or mental health on a reservation, you have
22 to look at the combination there. And I think those kind

23

1 of initiatives need to be much more broadly publicized by
2 the Department.

3 DR. COULTER: Thank you.

4 DR. LALLY: There's one other thing I wanted
5 to say about that. In looking at child care, when the
6 schools are out there's no problem because education has a
7 much softer role. What we see are, many of the practices
8 that we need for good special ed for infants and toddlers,
9 small groups of individualization ratios where people can
10 get to know the children, are the same types of strategies
11 for quality infant-toddler care.

12 And there are things that overlap
13 considerably with regard to best practice that need to be
14 thought about as being melded because you would do this
15 whether you were dealing with infant mental health,
16 quality child care, or children with other special needs.

17 MS. ACOSTA: Thank you.

18 Commissioner Hunt?

19 DR. HUNTT: Thank you, Madam Chair.

20 I want to thank all of you for your
21 commitment and the work you do on behalf of people with
22 disabilities; we all appreciate it.

23

1 Dr. Powers, I noticed, when you were
2 optimistic with your list of agencies that are working
3 collaboratively, that you left VR off the list.

4 Is that by commission or omission?

5 DR. POWERS: Well, actually, I was speaking
6 of education broadly and saying the Department of Ed,
7 including VR.

8 DR. HUNTT: Okay; thank you.

9 DR. POWERS: -- would have an opportunity --

10 DR. HUNTT: So next year we get VR in there.

11 And I wanted to ask you, specifically -- we are doing a
12 committee on transition from school to adult life and
13 we're looking for specific recommendations, then, on how
14 we can change IDEA through this reauthorization process to
15 ensure that groups like VR are in the school system and,
16 early on, working collaboratively.

17 Is there something specific that you would
18 recommend, as far as a change in the reauthorization of
19 IDEA, to better ensure transition from school to adult
20 life? And, if not -- we're going to meet in about a week,
21 I think, on April 30th so, if you want to get our email --
22 I'd really like to hear your perspective on it.

23

1 DR. POWERS: Yeah, we'd be glad to share
2 that. I think, off the cuff, there is just so much more
3 opportunity for there to be joint ventures across
4 agencies, that would allow funds to be shared, to work on
5 some common transition goals and would really provide an
6 opportunity, I think, consistent with some of the
7 reshaping that's already happening in VR around -- well,
8 around roles and relationships with other organizations to
9 move that forward.

10 DR. COULTER: Do you think that's the major
11 issue, is the funding issue, then? It seems, whenever we
12 bring it up, people say, "Well, it's about shared costs."
13 and who has to pay for what. Is that the extent of the
14 issue of transition?

15 DR. POWERS: Well, the issue of transition is
16 -- I mean, it's multi-faceted in terms of the issues that
17 have to be addressed. But, certainly, one cannot ignore
18 money and funding. But I think that there are other
19 issues, just in terms of, really, clarification of roles
20 and clarity in your agency relationships around this.

21 And, really, clarifying what the core purpose
22 of organizations and agencies, like VR, are with respect
23

1 to supporting transition.

2 I'd be pleased to talk more with you about
3 that.

4 DR. COULTER: Thank you; and feel free to
5 send us some specific recommendations. I would appreciate
6 that. Thank you, again.

7 MS. ACOSTA: Thank you.

8 Commissioner Gill?

9 DR. GILL: Thanks, Madam Chair.

10 I know we have yet another panel to go and I
11 also know we have people who have been here since early
12 this morning to do public comment and I'd like to
13 relinquish my time so that we can stay as close to
14 schedule as possible.

15 MS. ACOSTA: Thank you so much.

16 Mr. Jones?

17 MR. JONES: The same.

18 MS. ACOSTA: All right; thank you so much.

19 I'm just going to make a quick comment.

20 I had the privilege of working on a couple of
21 reservations in both Kansas and North and South Dakota and
22 I'm very intimately familiar with goings on and we thank

23

1 you for having your eye on that.

2 Just to ask -- to beg the question one more
3 time, should funding, then incentives, be tied to student
4 performance; is that what we're talking about?

5 MS. JORDAN: I need to say that I have a real
6 problem with that because sometimes the lowest performing
7 schools, if there's financial disincentives for them and
8 they are already overwhelmed, what we will do is take the
9 most vulnerable children and they will wind up being the
10 ones who are punished for that. So I think that's real --
11 it's a difficult area to talk about.

12 And I don't know what the answer is but I
13 know that's a real, real, tough area.

14 MS. ACOSTA: Thank you.

15 Commissioner Takemoto?

16 MS. TAKEMOTO: Thank you very much. And I
17 would like to thank the Commission staff for arranging for
18 this panel. I feel like, today, we're beginning to fill
19 in some of the missing pieces in our deliberations.

20 And one of my missing pieces, thus far -- and
21 this is for Laurie and Dixie -- is the issue of self-
22 determination. We've heard from families, that schools

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1 are telling students, "You don't really want to be here;
2 we'll give you this piece of paper. It doesn't mean
3 anything, you're the one that has a right to make this
4 decision. And so wouldn't you rather be somewhere else?"

5 And can you speak a little bit to -- self-
6 determination also means the ability to make choices that
7 may or may not be good for your own future.

8 DR. POWERS: Well, from the perspective of
9 working with adolescents, who we all know specialize in
10 making choices that we worry will conflict with their
11 futures -- boy, in the work that we've done, I've become
12 more and more convinced that if, indeed, we provide youth
13 with supportive alliances and we provide them with
14 information that they need so that they can really
15 consider their options, and not just consider, but learn
16 about it through real life experiences, working on goals,
17 for instance, that are important to them and learning more
18 about themselves, that they move towards being good
19 decision-makers.

20 And, oftentimes, they end up focusing on
21 those very same issues that other folks have wanted them
22 to focus on. We see this with kids with behavior labels

23

1 all the time, that, when they're allowed, free from
2 interference, to choose goals, they will often choose
3 those very same goals their parents and teachers have been
4 trying to get them to focus on for years.

5 MS. TAKEMOTO: So the issue of informed
6 consent comes into play, not just consent, but informed
7 consent.

8 DR. POWERS: That really is the key to self-
9 determination, from my perspective.

10 MS. TAKEMOTO: Dixie, very quickly, because
11 I need to --

12 MS. JORDAN: And I will make it very quick,
13 which is, by the way, not culturally appropriate.

14 When you're dealing with children with
15 biologically-based mental illnesses such as schizophrenia,
16 schizoaffective disorder, bipolar disorder, or another of
17 the hallmark characteristics of the DSM diagnoses, their
18 ability to make remarkably poor choices for themselves,
19 that should not override the parental involvement in the
20 decision-making process. I'm very concerned that some of
21 our young people make lifelong decisions, such as dropping
22 out of school when they've been counseled to do so by

23

1 people who don't want them there in the first place, that
2 families, then, feel defeated and disempowered.

3 So you can't -- you don't live your life in a
4 vacuum; children don't live on their own until they hit an
5 age where they can do that. Fourteen-year-olds shouldn't
6 be the ones making decisions, in my estimation, about
7 whether they should go to school or stay home.

8 And, unfortunately, despite the fact that we
9 have state laws to the contrary, I work with a lot of kids
10 who haven't been to school in a lot of years and they
11 haven't hit the age of 16 yet.

12 MS. TAKEMOTO: Just a yes or no; 18 to 22,
13 age of majority --

14 MS. JORDAN: Yes.

15 MS. TAKEMOTO: They make their -- are
16 families still a member of that IEP team or --

17 MS. JORDAN: I think families must always be
18 a member of the IEP team because the short and the long of
19 it is that some of the children -- the children that I
20 work directly with make terrible decisions that wind up
21 getting them expelled from school. And then the family's
22 option, because they love that child, their only option is

23

1 to keep that kid home and let him watch TV for the rest of
2 their career until they hit 30 and the family gets tired
3 of them.

4 So, yeah, families always have to be part of
5 that team; I believe it.

6 MS. TAKEMOTO: Thank you for adapting to our
7 culture and doing that very succinctly, but also very
8 clearly.

9 MS. ACOSTA: Thank you.

10 Commissioner Chambers?

11 DR. CHAMBERS: Perhaps we should extend the
12 IFSPs to a larger age group. I'll leave it at that.

13 Initially, the program, Part H -- now Part C
14 -- a lot of the funding was considered or, at least, the
15 way it was described to me in California when I was doing
16 work here on this issue, as glue money, to try to help
17 develop the structures to implement the program. And one
18 of those structures was the inter-agency coordinating
19 council.

20 I heard you, Mr. Lally, make some comments
21 about it; I was wondering if similar structures -- it
22 doesn't sound like you -- that they were working very well

23

1 in California, if I heard you correctly. Maybe you can
2 correct the record on that, but also tell me whether such
3 structures might have some place in Part B to help
4 stimulate some further collaboration.

5 DR. LALLY: Yes. If I gave that impression,
6 I didn't mean to give that impression. I think the inter-
7 agency work, plus the help in planning and collaboration,
8 actually is beginning to work and it's working better as
9 people get used to it. So I do think that is a useful
10 vehicle for moving into Part B, also.

11 One thing that I wanted to say that I did not
12 say in my presentation, and it had to do with something
13 Dixie said that triggered something.

14 This notion of flexibility versus red tape
15 and paperwork versus no paperwork I think is a serious
16 issue because I do believe that we need to be clear that
17 the documentation of rights and responsibilities on both
18 sides still has to be done so that people can't slip and
19 slide on the illusion that they are providing a service.

20 I absolutely recommend, as all of our
21 practitioners wish for, not having so much paperwork but I
22 do not think we can abandon keeping people accountable for

23

1 giving clear messages about whether they are or are not
2 providing a service that's been mandated.

3 MS. ACOSTA: Thank you ladies and gentlemen
4 for a very insightful and thoughtful presentation; thank
5 you.

6 We'll move on to our next panel, The
7 Practitioner Perspective, Case Studies in Administrating
8 (sic) Special Ed Services.

9 Ladies, are you ready?

10 The practitioner perspectives on this panel,
11 case studies in administrating special education services.

12 These presenters are field practitioners that
13 will discuss the challenges facing school administrators
14 in terms of the increasing numbers of children over-
15 identified as needing special education services, the
16 growing administrative burden of paperwork, and the
17 growing expense of litigation distracting from serving
18 students with disabilities.

19 Witnesses will include Ms. Carol Topinka; she
20 is the Director of Special Services for the Milwaukee
21 Public Schools. Prior to that, she served as an Assistant
22 Principal in Milwaukee schools as Special Education

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1 Program Supervisor, Director of Pupil Services, a Program
2 Director and Project Consultant.

3 Along with her administrative positions, Ms.
4 Topinka spent 14 years teaching children and adults in
5 public schools.

6 Our next witness is Dr. Judy Elliott; she's
7 the Assistant Superintendent for Special Education in the
8 Long Beach United (sic) School District, the third largest
9 urban school system in California.

10 Dr. Elliott has served in public schools for
11 14 years. As a former special education teacher of
12 students with learning and behavioral disabilities, she
13 collaborated with general education teachers and she
14 planned instructional interventions in both settings.

15 She has served as a school psychologist and
16 holds permanent certification in School District
17 Administration, School Psychology, and Elementary and
18 Special Education (sic).

19 Welcome.

20 DR. TOPINKA: Thank you.

21 [Overhead projector presentation]

22 My name is Carol Topinka and I want to thank

23

1 the Commission for inviting me here; it really is an
2 honor. I'm afraid that some of the things I'm going to
3 say might be repetitive, but that's okay because it will
4 underscore some of the important messages that we think
5 we're bringing to you.

6 When I was asked to be on the Commission, the
7 request was that I talk about paperwork and my response
8 was, "But I do not think paperwork is the problem, but a
9 symptom of a problem." so you will excuse me if I don't
10 dwell on what may already be obvious to you.

11 I also want to say at the outset that I know
12 I'm going to sound cynical and I guess I am to a certain
13 extent; but my criticism here is not ever of individuals.
14 I think that, over the last 25 years, we've done what
15 we've done with the very best of intentions; but we have
16 some significant systemic problems and those are the
17 problems that I'm critical of.

18 Also, I bring an urban perspective which
19 harkens back to the previous speaker so it might very well
20 be that some of the things I mention would not be so
21 typically found in a less urban -- areas that are less
22 urbanized than the one that I'm used to.

23

1 As I said, this may sound cynical but what I
2 really have is a passion for children and what my many
3 years in the field has shown me that we are doing to harm
4 them. First of all, we start truly, by violating what I
5 call the norms of belonging; the very law that was meant
6 to bring these kids into the mainstream really operates to
7 segregate and separate them through labels and labels that
8 stigmatize.

9 And I also feel like we've failed these
10 children twice. We failed them first in the general ed
11 system and then we moved them into special education and,
12 frankly, even though we wish it were a service rather than
13 a place, it remains a place for far too many children and
14 the outcomes aren't good. A number of the previous panels
15 spoke about that and I think you know of national reports
16 that support that.

17 In my worst moments, I say, "Throw IDEA out
18 and start over." But, realistically, I think the best
19 that can be done here, that you can do, is to try to make
20 it at least not a barrier. So, as you listen to people,
21 try to figure out what's the very best that can be kept
22 and used for all children, but how to keep it from being a

23

1 barrier for teachers, for children, for parents.

2 I also believe, very much, that special
3 education, to a large extent, is a social instruction of
4 reality. About 10 or 12 years ago, I was explaining to a
5 friend -- well he said, "What do you do?" And, at that
6 time, I was a Supervisor of Special Education in Milwaukee
7 public schools, implementing the previous law. And I
8 said, "Well, mainly what I do is decide if kids are
9 mentally retarded," and he was floored. But that is what
10 I did; hundreds and hundreds and hundreds of times a year,
11 I unilaterally, looking at data, which was less than
12 scientific, declared some child retarded or not.

13 How did we come to think that we had that
14 kind of knowledge or prescience about what that student
15 was going to end up being? So I can't underscore enough
16 that I believe that much of special education is something
17 we have constructed.

18 Let me go through my recommendations and Judy
19 has been very nice to help me here. I'm starting there
20 because that is the format of the paper.

21 I think we could use Section 504 or an
22 addition to ESEA to ensure universal student access to

23

1 education. If you don't start with a unified system,
2 you're not going to end up with a unified system.

3 Then I think we should take the best of IDEA,
4 individual learning plans, the transition procedures and
5 processes that were discussed, inclusion of parents in
6 planning their children's education, continued education
7 for all students following suspension and expulsion, and
8 apply that to everybody. If these are valid concepts,
9 they are really valid for everyone. Why can't we have an
10 "Education for All" act? What else it would do is that it
11 would allow all students to get services they need when
12 they need them.

13 Special education pretty much ensures that
14 certain services are reserved for certain kids, generally
15 after they are already in trouble. You cannot give a
16 five-year-old OT, who might need it, unless we go through
17 the entire process. So we really need to look at an array
18 of services that all children can access.

19 I think we have to merge university teacher
20 certification programs and require all teachers to be able
21 to teach reading. Only 20 percent of special educators
22 know how to teach reading and only 30 percent of general

23

1 educators. And we also know that most children who are
2 learning disabled are not able to read. We need to teach
3 the teachers to teach reading.

4 Mandate and fund research proven intervention
5 and prevention programs that are data-driven, literacy-
6 focused, proven effective;

7 Remove fiscal requirements and incentives for
8 qualifying and placing students in separate programs by
9 merging funds. I think ESEA is beginning to talk about
10 that movement of some amounts of dollars between Titles
11 but I don't believe that's adequate. You start out with
12 separate programs and separate funding streams, that's
13 what you end up with in the schools at the practitioner
14 level.

15 This has been said today, we need to be held
16 accountable for student outcomes, not procedural
17 compliance. Despite an effort to make a connection
18 between those two, I've yet to see it.

19 And then we need to develop fiscal policies
20 and funding mechanisms that adequately fund those children
21 with significant cognitive and sensory impairments. And I
22 think the special education expenditure project that Jay

23

1 is working on, has been working on, will shed some light
2 on what it actually costs to educate students like that.

3 I have a quote here from Vaclav Havel, who is
4 the President of the Czech Republic and I use this because
5 I believe in it. What he says is, "Optimism is not the
6 hope that things will turn out right, but the belief that
7 what you are doing makes sense."

8 And I'm here to tell you that I think IDEA
9 made sense in 1975, when students couldn't even cross the
10 threshold of the school to receive any kinds of services;
11 but I don't believe it makes sense now. I think we've
12 achieved access; I think the kids, the students, are in
13 the building and I think that we can guarantee that
14 access, as I mentioned in my recommendations, through a
15 less cumbersome procedure.

16 I want to mention, too, that I think that
17 most students who are considered disabled are victims of a
18 failing general education system -- and this is repetitive
19 -- but, if we do not change general education, we will not
20 change special education. I'm not sure what the problem
21 is, if we lack the commitment or we lack the skills, but
22 many children labeled as learning disabled and emotionally

23

1 disturbed are the result, in my opinion, of instructional
2 failure.

3 I think, for our own personal, ethical,
4 professional, and economic reasons, we have constructed
5 and perpetuated special education as an immutable reality.
6 Once you believe it exists, that it has a real life of its
7 own, lots of other things follow, and not necessarily good
8 things. My terms for this is "the special education
9 industry." And, again, this is not to fault any
10 individual but we've developed a system, generally of paid
11 service providers, including myself. We exist and thrive
12 on the social construct of special ed.

13 I'm working with attorneys now who are -- you
14 know, it's almost a second-generation of attorneys, who
15 are doing very well because of this piece of legislation.
16 And, given the outcomes for students, I'm wondering who
17 actually benefits; who is it that stands to benefit the
18 most from IDEA?

19 It's no longer about access, as far as I'm
20 concerned, it's not about students' success and
21 independence; to me, it's become a lot about entitlement
22 and a lot about a growth industry. So whose needs are

23

1 being met?

2 And we also have to look at -- or I, at
3 least, have to examine my fear of dropping the safety net
4 of IDEA. If we don't have IDEA -- and this is a very
5 slippery slope -- will these children, whose parents and
6 advocates fought so hard to get them into the front door
7 of the school, will we be taking away the only safety net
8 that they have?

9 But I have to tell you that we're a little
10 schizophrenic. The higher the stakes in public education,
11 graduation tests, standards, marketplace competition,
12 perhaps all good things but, from a day-to-day
13 practitioner's level, it's those kinds of expectations on
14 principals, on administrators and superintendents, that
15 drive up the referrals for special education.

16 So I'd like to say again that I believe only
17 a change of the entire education system will eliminate the
18 problems that we find within IDEA. We can't tinker with
19 this; it is a reality that exists on its own. So we
20 reconstruct that reality and we just end up with the same
21 results.

22 There are a few assumptions that I believe

23

1 underlie IDEA and I think they've led to some of our
2 challenges. And, again, some of this will be repetitive.

3 Special Education and the educational
4 disabilities are seen as an immutable reality and not a
5 social construct. We have located the pathology in the
6 student and keep it there. And we use the medical model
7 which we know as science. Criteria for becoming a
8 cognitively disabled, or learning disabled child has
9 changed over the years. It changes from district to
10 district, from state to state; it changes -- the label for
11 a child changes from year to year depending on the
12 assessment process.

13 Differential diagnosis is considered, under
14 the law, to be useful and objective; and it is not. Jim
15 Ysseldyke of the University of Minnesota has done a study,
16 and perhaps you've heard this, this was a number of years
17 ago, saying that 80 percent of all students in a district
18 would be labeled as learning disabled if we took all those
19 definitions that are used right now. And I saw this
20 constantly when I was a Supervisor in the Milwaukee public
21 schools. If a student coming from the suburbs was
22 mentally retarded, we would administer the exact same test

23

1 and the child would be a learning disabled. This is not a
2 science.

3 And, because the differential diagnosis is
4 not useful and objective, the individualized programming
5 that followed from that was not always individualized or
6 coordinated or well-suited to that child either because
7 that diagnostic process does not tell you how the child
8 learns.

9 The other assumption in IDEA is that children
10 fail -- and this goes back to where the pathology is
11 located -- and the system is okay. The system is not
12 okay. Until we assess the interaction between the child
13 and the instructional environment, we are not ever going
14 to come up with a better way to teach that child. And
15 there are a lot of problem-solving models in place, some
16 of them mandated in various states, that are actually
17 data-based and get to that perspective of viewing the
18 child's interaction with the environment and coming up
19 with methods -- proven methods to intervene before
20 children fail.

21 Due process protections and individualized
22 instruction is necessary for only some students. If

23

1 they're good, they're necessary for all students, and this
2 goes back to taking the best of IDEA and extending it to
3 all children.

4 And, finally, that difference is a
5 disability, not a norm. I don't know that difference is a
6 disability; that's convenient, not to ignore the fact that
7 there are people with enormous struggles, and there are
8 students with enormous struggles, but why can't we seek
9 differences existing along a continuum, especially in
10 public education? Because what we've ended up doing is
11 giving people a reason to fail children, to move them out,
12 by looking at disability as a difference -- or a
13 difference as a disability.

14 And then I just want to add that the few
15 beliefs that I think ought to be embedded in a new IDEA,
16 if you will. And we pay lip service to some of this but I
17 don't believe we do it:

18 Public education is all about differences.
19 On a daily basis, I have principals tell me, "We can't
20 deal with those children," -- the out-lier children, if
21 you will, not recognizing that the middle is shrinking.
22 Public education today looks different than it did 25

23

1 years ago; we have to get on with that, we have to face
2 that and we have to figure out a way to teach and accept
3 all these kids.

4 MS. ACOSTA: Ms. Topinka, we are going to ask
5 you to wrap it up; we're running out of time.

6 DR. TOPINKA: Okay, let me see if there's one
7 or two more things.

8 I think I've gotten the essence of it across,
9 the message.

10 MS. ACOSTA: Thank you so much.

11 Now our next witness is Dr. Judy Elliott; she
12 is Assistant Superintendent for Special Education in Long
13 Beach United School District.

14 DR. ELLIOTT: Good afternoon; thank you for
15 inviting me and for the opportunity to be here to speak
16 with you.

17 [Overhead projector presentation]

18 I'm going to focus on four fundamental
19 assumptions that I believe really are the foundation for
20 the current system of special education. And, as I speak
21 with you about my comments today, I'm speaking to you from
22 a practitioner's perspective as a former special education

23

1 teacher, school psychologist, adjunct professor. My most
2 recent life was as a Senior Research Associate at the
3 National Center on Education Outcomes at the University of
4 Minnesota where I worked there for several years, and now
5 as an Assistant Superintendent of Schools in the third
6 largest urban.

7 I'm going to speak to you as one case study,
8 one district's perspective, but I think I represent a lot
9 of my colleagues in some of these brief areas I'm going to
10 speak with you about.

11 And I want to be really sure you understand
12 that there are some wonderful things going on in special
13 education right now. We've got some great things going on
14 across the country, we're just not up to scale with it.

15 So, as you can see up -- the fundamental
16 assumptions, from which I'm premising this on, that there
17 is a need for special education, not as it currently
18 exists, and that you heard research and data presented
19 today that has shown that special education in the past
20 has not done well with our kids with disabilities.

21 I really believe that, fundamentally, we've
22 spent a lot of time admiring problems instead of doing

23

1 some proactive things about that and I'm going to share
2 some things that we're doing in our district. And I
3 really believe, as a curriculum person and a special
4 educator, that the best place to address diverse learning
5 needs is, indeed, in the classroom.

6 So one district's perspective -- I'm just
7 going to give you a real brief, as you can see in your
8 notes -- I'm going to give you the demographics of our
9 district, third largest urban; according to the 2000
10 census, the most diverse city in the United States.

11 You can see, our enrollment is approximately
12 97,000 kids, we have about 84 schools, we have about 20
13 year-around schools. In addition to that that's up there,
14 and you can see that we have quite a few employees.

15 So preliminary district data, as you look to
16 the next page of your handouts, you'll see that 45 percent
17 of our students are Hispanic, you can see that 20 percent
18 are African-American; and those are the largest
19 proportions of demographics in our district. As you look
20 at the poverty line of 28 percent, LEP students -- LEP and
21 FEP -- FEP is Fluent English Proficient, students that
22 have been redesignated. About 50 percent of our school

23

1 population fall into LEP and FEP. And then we have the 68
2 free and reduced lunch in that percentage.

3 Briefly, the demographics of our district, in
4 terms of special education, is we have eight percent of
5 our students with disabilities in the district. The
6 national average is 12 percent; we have eight percent.
7 Forty-eight percent of those students are students with
8 learning disabilities, 36 percent of those kids are LEP
9 and special ed students. Seventy percent of our students
10 truly receive their services in a least restrictive
11 environment and that is in the resource room setting; 38
12 percent of our teachers are uncredentialed in the Office
13 of Special Education.

14 My target, again, as a special education
15 teacher has always been on the general education side of
16 the house so, in the year 2000, a year after I started
17 this position, I reorganized the Office of Special
18 Education and I brought in -- 60 percent of my staff right
19 now are general educators that have areas of content
20 knowledge in the area of literacy and effective
21 instruction. And so, right now what we're dealing with is
22 exactly where I think we should be in special ed, and that
23

1 is, working with our general educators to do the best that
2 we can for all kids, including kids with disabilities.

3 Why do we have low numbers in our district?

4 People always say, "Why are you so below the national
5 norm?" I think it's true because -- I know it's because
6 we have some incredible things going on in the district.
7 We really believe that it really is about intervention and
8 services first and eligibility issues later. Our goal is
9 to work with kids, all kids at risk for behavior and
10 learning difficulties, right out of the chute, not wait
11 for the process of assessment to go through. In fact, we
12 do do assessments, of course. But it really is about
13 putting together a strong problem-solving approach similar
14 to the Iowa problem-solving approach, similar to the one
15 you've heard about in Minneapolis Public Schools; we have
16 that same model in our schools.

17 And we use that and it's coordinated by the
18 general education teachers in every building. Our focus
19 in our districts is on the curriculum and instruction and
20 standards for all students, it's not about a separate side
21 for kids with disabilities; we are at the table with all
22 of the things going on in terms of the curriculum and

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1 instruction and standards.

2 Our literacy focus has been absolutely
3 unbelievable in our district; we are focusing on reading,
4 writing, and mathematics, as we are in general education,
5 as well. So reading, as you know, is the number one
6 reason why students get referred; that's where we're
7 focusing all of our efforts at this point. And we know
8 that there's a high correlation with students with
9 behavior disorders who can't read.

10 So we're really working on that. We have K-8
11 norms for curriculum-based measures in the district so
12 that we cannot rely on standardized IQ and different
13 standardized tests but actually look at how our kids are
14 doing in the normative population via the curriculum-based
15 measures.

16 We use empirically-based instruction called
17 "direct instruction"; it's been around for a long time,
18 it's absolutely incredible with our kids. We use it on a
19 daily basis. Teachers have been trained on how to
20 progress monitor IEP goals and objectives and, better than
21 that, how they -- how do they know they're making a
22 difference for kids in their classroom assessments?

23

1 We don't use IQ testing in my district.

2 Larry P (phonetic) -- the district, 10 years ago, decided
3 if we're not going to assess African-American students
4 with IQs, we're not going to assess anybody with IQs.
5 And, as you can see, we use the three-step problem-solving
6 model.

7 I talked recently to a school psychologist
8 who works in a very high-poverty, high-LEP school and I
9 said, "Tell me how many..." -- if you're familiar with the
10 Iowa problem-solving model, there's three steps to it;
11 level one is, is where the parents and the teachers talk
12 to each other, see if they can do some problem-solving in
13 a classroom -- she said 75 of those consultations this
14 year; level two is where you have a formal student support
15 team meeting, student success team meeting, and everyone
16 gets around the table and you develop a full-blown
17 intervention plan. She's had 20 of those. And I said,
18 "Level three, all the weighted special ed assessment, how
19 many have you had thus far this year?" Five.

20 And it was a hundred percent hit rate, they
21 were right where they needed to be, these were kids that
22 absolutely had interventions, data-based progress

23

1 monitoring, they were a hit rate in terms of being
2 appropriate for special ed.

3 We really have our psychologist use what we
4 call the RIOT, and you see what that stands for, where you
5 are looking at record reviews, interviewing parents and
6 teachers, looking at observations in the milieu of the
7 environment, which is the instructional environment.

8 Our fallout, however, is when we go to due
9 process and we haven't given an IQ test, we lose; tragic.
10 We've got all the data that says what we're doing is good
11 for kids, we've got progress monitoring, and they will say
12 to us, "You're doing -- you have all the data, you show
13 good stuff, but you're not in compliance."

14 Some district initiatives we have in our
15 district that are really powerful for all kids, including
16 kids with disabilities, is really looking at instruction
17 over compliance. When I took this job over -- you know,
18 you can have paralysis by analysis. I started with the
19 instructional side of the house, looking at curriculum and
20 instruction, And, three years ago, we had 36 state
21 complaints against the district; this year, we've had six
22 and we've come clean on four of them with no complaints or
23

1 no compliance against the district. It's really looking
2 at instruction for kids, quality instruction in the
3 classroom.

4 Integration of general and special ed
5 teachers in everything that happens in this district --
6 any staff development, any adoption of anything, is for
7 both general education folks. Our mandatory staff
8 development for all new hires in the district, including
9 special ed, is a mandatory five-year content, standards-
10 based instructional staff development for all teachers.

11 On-site coaches, we have a promotion -- or a
12 social promotion and retention policy; we believe it's the
13 first in the country to be put together. Special ed kids
14 are a part of that, we have a check-list that looks at
15 access to curriculum, opportunity to learn. If you're
16 going to retain a student, you better make sure that
17 you've given that student access to learn what he or she
18 needs to know in order to make that progress.

19 Mandatory benchmark assessments for every
20 student, including students with disability; it hasn't
21 always been this way, but we've made great gains on that.
22 We believe that at-risk and kids with disabilities --

23

1 you've heard it before -- it's not a definitive science,
2 therefore, we do serve at-risk kids with kids with IEPs
3 being taught by special education teachers and general
4 education teachers. And I have to tell you, in one
5 situation, I had a bilingual teacher, a credentialed
6 teacher, bilingual and special education -- in California,
7 there's a mandatory curriculum called ELD, which is
8 English Language Development. We had a beautiful model
9 set up with special ed kids and LEP kids needing that
10 service.

11 I had a parent call the State Department and
12 lodge a complaint that we were discriminating against
13 special ed kids because we had LEP kids in that class.
14 That same parent called OCR and complained that we were
15 being discriminatory against minority students and
16 Hispanic kids because we had special ed kids in there. I
17 had both OCR and the State in my backyard. I went in with
18 five people from the State and I said, "Okay, tell me
19 which one of the kids are special ed." They couldn't. It
20 was a beautiful model.

21 Those are the things that are the travesties
22 of what we deal with in special education. You're doing

1 great things for kids but, guess what, you're not quite in
2 compliance.

3 So, we look at participation in district and
4 state assessments. It's been around -- an idea in '97, we
5 helped craft that language when we were -- when I worked
6 at the National Center on Educational Outcomes; we all
7 know that that's not happening a hundred percent across
8 the district. We've worked three years to get that and
9 I'm pleased with the data that is showing up there. I
10 think that we should, you know, be excited and thrilled
11 that ESEA has special ed as a subgroup but we all know
12 that there's huge loopholes in there.

13 In the State of California, on a SAT9, if a
14 student gets a non-standard accommodation, their score is
15 kicked out of the API, or the Accountability Performance
16 Indicator, just as if they never took the test. We call
17 that "nimble numerators and drifting denominators." There
18 are loopholes in the accountabilities -- "Yeah, we're
19 happy" but a non-standard accommodation means they get
20 kicked out.

21 So what we really have focused on, in my
22 tenure so far in this district, is really looking at

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1 legally-defensible programs which automatically brings us
2 into compliance with what we should be doing with kids.

3 Travesties, however -- we spend lots of time
4 and money admiring problems in due process and I won't go
5 into that; you've heard it. We've spent a lot of time and
6 money instead of working with kids and children. And
7 these comments on this overhead, I have to tell you, are
8 from my general education staff that say, "No..." " You're
9 general educators and you've been in this position, you
10 know, for two years, what do you think, what do you think
11 about special ed?" "Teachers aren't lawyers, teachers
12 want to teach, we're guilty until proven innocent, the
13 system has set up a very adversarial role between parents,
14 community, and teachers. We're not out to hurt kids; we
15 wouldn't be in this field."

16 But the technologies and the compliance
17 issues, and the logistics of doing this idea is really
18 burning teachers out and keeping them out of the field.
19 Somebody the other day said, "Oh, I would never encourage
20 anyone to go into special education, it's just too
21 litigious."

22 So, when we look at some recommendations --

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1 really quickly -- we have a 35 percent increase of due
2 process cases across the State of California and I really
3 believe what we heard this morning, that there absolutely
4 has to be ADR, or Alternative Dispute Resolution. In
5 anything having to do with due process, you should have to
6 do ADR before.

7 We had 51 cases of due process last year;
8 we're down to 19 this year. We have implemented full-
9 blown ADR in our district. It gives folks another avenue
10 to talk. We've looked at, you know, attorneys saying,
11 "Well, why should I mediate? If I go to hearing and you
12 lose, I get money out of it." It's really -- it gives no
13 incentive for people to negotiate and mediate with
14 districts if they know they can go to court and win.

15 When you look at the recommendations, limit
16 the initiative to litigate, really look at ADR, limit
17 attorneys' fees -- you know, somebody said to me, "We
18 should have a law that says 'Loser pays all.'" And I say
19 that with tongue in cheek but there is no reciprocity in
20 terms of that. We have taken parents to due process for
21 the right to do what's right for kids; it's not always
22 that way, it's usually parents taking districts to court.

23

1 We have done the opposite, in good faith for kids.

2 We've heard about the hearing and mediation;
3 again, it's about compliance, it's not about doing what's
4 right for kids. And then, finally, as we look at service
5 delivery, we're really about maintaining access and aiming
6 for excellence. We don't want to take the legal rights of
7 kids and parents away; absolutely, that needs to be there.
8 But we've got to aim for access, as well as excellence in
9 our programs.

10 You know, I've talked a little bit about our
11 problem-solving model; there has to be a data-based
12 intervention program going on that has -- that shows
13 robust implementation of interventions, not just a one-
14 shot, "Let's sit down and do this and then, please, test
15 my child."

16 Re-tooling the IEP process, it's not a happy
17 time for folks; people feel like they're preparing to go
18 to court when they should be getting together and
19 celebrating the learning and the instruction of students.

20 Discrepancy model of learning disabilities is
21 inherent and wrought with difficulty. You know, there is
22 no such thing as aptitude treatment when you're looking at

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1 cognitive, you know, types of standardized things for
2 kids. It just doesn't work.

3 I'm a professional advisory member of the
4 Professional Advisory Board for the National Council of
5 Learning Disabilities, and we met this weekend and we
6 talked about this. And there is support for repealing the
7 LD discrepancy model because it doesn't help teachers make
8 those decisions about what to teach and how to teach; and
9 that's what it's about for kids when you're looking at
10 that.

11 It also sets people up for false
12 expectations. Somebody with an 80 IQ, teachers will say,
13 "Well, they're below average, we can't expect that out of
14 them." I've worked with kids with 75 IQs in New York
15 State, where I'm from, that passed the Regents Exam.
16 But, if their teachers would have known they had a 75 IQ,
17 they would have never made it. There is inherent problems
18 with that.

19 When we look at the IEP and, again, it's a
20 compliance document, it's not an instructional blueprint.
21 I call it the "Write and Stuff Document." There are many
22 teachers, not in California, other states, that write an

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1 IEP and stuff it in their desk and they don't pull it out.
2 It's tragic. It's not an instructional blueprint.

3 We have a lot of malicious compliance going
4 -- yeah, they'll write their IEPs but are they really
5 standards-based instructional blueprints for kids? It's
6 what I call "malicious compliance."

7 And, you know, a good example of an idea gone
8 wrong is a quote from somebody I had a conversation with,
9 "We were so excited that we reduced our IEP forms down to
10 12 pages and then came the 55-page IEP," because you keep
11 adding goals and objectives and benchmarks and you will
12 get a 55-page IEP.

13 And do you know what our number one issue in
14 the State of California is for due process? Failure to
15 implement the IEP.

16 So my recommendations for looking at the IEP
17 process would be to address four basic questions:

18 Where is your child now -- where is the
19 student now?;

20 Where should the student be?;

21 How are we going to plan to get that student
22 there?; and

23

1 How are we going to evaluate and measure
2 whether, in fact, the student gets there?

3 Building on an instructional blueprint in a
4 context of a standards-based program or system is really
5 where we need to go.

6 And then, finally, looking at -- I call it,
7 "attending to the ends"; I think you've heard from inter-
8 agencies and transition programs. In pre-school, we
9 really need to look at -- in my opinion, we've got a silo
10 approach for zero to five; we've got Head Start; we've got
11 State-run programs; and then we've got special ed programs
12 with the Early Start in the three to five-year-olds. In
13 many districts, they do not have general ed pre-school
14 classes so, when a parent comes to due process or
15 mediation and wants typically developing peers for their
16 child, it automatically means they go to a private pre-
17 school.

18 In our district, we've started to develop and
19 have several co-enrolled programs; we have typically
20 developing pre-school kids with kids with disabilities.
21 There's a waiting list to get in those programs for those
22 kids. But, in many districts, that's not an option and so

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1 we have what I call "the 100K kids club," pre-schoolers
2 that cost districts well over \$100,000 apiece for programs
3 that have to be vendored out to other services because the
4 districts do not have the resources to provide them in-
5 house.

6 So we're looking at really taking another
7 look at the pre-school program and the funding; and then,
8 finally, looking at the transition programs -- and you
9 heard a bit about that. You know, the individual
10 transition plan, is that a really useful document or is
11 that just another document of compliance? Are we just
12 doing that for the 14-year-olds and up or does it really
13 mean anything for our kids?

14 We have community-based instruction, we've
15 got lots of great things going on; with the high-stakes
16 nature of what's going on across the country, we have to
17 provide vocational programs and opportunities for all
18 kids, including kids with disabilities -- learning
19 disabilities.

20 And so you can see the recommendation up
21 there is, to really look at -- and I think -- you know, in
22 my opinion, when you're looking at this, you're so

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1 concentrated on the pre-school kids and the K-12 kids,
2 when you get to the 18 to 22, you're -- you don't really
3 have enough money to do that program. And, you know, it's
4 not just about money, it's about really looking at, is
5 this really about for all kids? And this is not a special
6 ed issue; this is an all-kids issue. I really believe
7 that.

8 So, in summary, Long Beach is a pretty
9 incredible place to work; we've got just incredible people
10 who really believe in the all-kids agenda. But I have to
11 point out that my staff development, and a lot of the
12 things that happen, come out of the general education side
13 of the house.

14 My Assistant Superintendent that I work with
15 for curriculum and instruction said, "Hey, you know, we're
16 going to adopt this reading program; what do you think?
17 You guys want to do it, too? And, by the way, we'll buy
18 the books and we'll train all your teachers." That's
19 incredible; we've got incredible things going on.

20 District initiatives automatically include
21 kids with disabilities and our teachers. Three years ago,
22 it wasn't that way because, you know what, they were just
23

1 -- they wanted to know what to do with kids; special ed
2 has always been kind of scary to the general ed folks.
3 "Well, sure we want to be included." So now, nothing
4 happens without it being a part of the decisions or the
5 implementation. Instruction is absolutely imperative.

6 Evidence-based results is district-wide for
7 both general ed and special ed. We've disaggregated the
8 data for the first time for kids with disabilities in the
9 district where every principal in the district gets a
10 disaggregated report on special education kids who receive
11 special day class and resource room services. And, for
12 the first time, we can sit down with these principals and
13 say, "Here are how your special ed kids did on the SAT9
14 and on the district benchmarks, how do you think we're
15 doing with those kids?"

16 So we have disaggregated data and we've
17 started having those discussions with principals. And
18 accountability is reciprocal, if we're going to hold kids
19 accountable, we need to hold teachers accountable and we
20 need to hold administration accountable. And that truly
21 is happening in Long Beach.

22 And I have to tell you, at the bottom line,
23

1 we've got all these incredible programs going on in the
2 district, kids are learning, it's outcome-based, it's
3 evidence-based, it's standards-based, everything that you
4 would want. And we have a long way to go; this is not a
5 perfect district.

6 But I'd rather take the glass-is-half-full
7 approach. There are things that work for kids and there
8 are great programs and research-based programs that do
9 work for kids. We've got them. We've got to make sure
10 that we can sustain that and pull it up the scale.

11 But I have to tell you, with all this
12 wonderful stuff going on in the district, I'm \$19 million
13 over in my budget.

14 So I want to thank you for the opportunity to
15 speak with you this afternoon.

16 MS. ACOSTA: Thank you, ladies, for very
17 informative testimony. I'll take the privilege of the
18 chair and ask the first question.

19 What reading series, Dr. Elliott, do you use
20 in the district?

21 DR. ELLIOTT: Open Court.

22 MS. ACOSTA: Open Court. And the special ed
23

1 kids are out of the same curriculum --

2 DR. ELLIOTT: Yes.

3 MS. ACOSTA: -- is that correct?

4 And tell me a little bit about class size.

5 DR. ELLIOTT: In terms of special ed

6 classrooms?

7 MS. ACOSTA: Yes.

8 DR. ELLIOTT: We -- the maximum a class size
9 can be is a district average of 18; it can be 16. We try
10 to keep it 16 or below. For behavioral disorder
11 classrooms, or kids with emotional disabilities, we try to
12 keep it as close to 10 as possible.

13 MS. ACOSTA: Thank you; and just one last
14 question.

15 How many of your -- your teacher training,
16 you say you train general ed teachers in special ed
17 intervention practices? Did I understand that correctly?

18 DR. ELLIOTT: For the problem-solving
19 approach, we do train teams of general and special
20 education teachers together. Our literacy training comes
21 from the general ed literacy coaches but we train
22 everybody together. We don't have split-staff development

23

1 like other types of --

2 MS. ACOSTA: Do you have consistent follow-up
3 or monitoring of that staff development?

4 DR. ELLIOTT: Absolutely. We have check
5 lists that we -- when we do staff development, we give the
6 principals the list of objectives and performance
7 indicators that they should expect to see out of their
8 teachers -- or administrators that we have in our district
9 that go out, actually look at those check lists, and
10 follow up with the principals to make sure that they see
11 those indicators.

12 MS. ACOSTA: Thank you.

13 Commissioner Chambers, are you ready?

14 DR. CHAMBERS: All I've got to say is, Wow.
15 Both of you, wonderful presentations and very interesting
16 information.

17 I guess I would like to begin with a question
18 regarding blending of funding. You talked about your
19 problem-solving model and I was wondering to what extent
20 -- and I think I know the answer from what you said --
21 that any of the work in the problem-solving model is being
22 funded by either IDEA Title I or any other federal

23

1 program.

2 DR. ELLIOTT: The problem-solving model is a
3 general education model, it's run by general ed; it's not
4 out of special education.

5 DR. CHAMBERS: Should it be?

6 DR. ELLIOTT: No.

7 DR. CHAMBERS: So you wouldn't see blending
8 funding from IDEA, not with current levels of funding, but
9 if there were to be increases in federal funding, would
10 you see it as something that would involve a combination
11 of federal, state and local?

12 DR. ELLIOTT: I still see it as a general
13 education function. I mean, I look at what Reid says when
14 he says that there is general ed spillage. I think it
15 needs to be housed in the general ed side.

16 DR. CHAMBERS: Thank you.

17 In what ways -- we've heard folks talk about
18 the blending of IDEA and Title I moneys; in what ways
19 might that occur, or should it occur, and what kind of
20 language might you recommend to encourage that, if you
21 think it should.

22 DR. ELLIOTT: I think, you know, the blending

23

1 of -- we do blending of funds in some of the programs that
2 we have, you know, in our district. We're doing a pilot
3 program; if we have something that's really innovative, we
4 can do that because we can control it. I think it needs
5 to be very much linked to outcomes of what the program and
6 what the blending of funds is after.

7 I think I'm probably just a little nervous to
8 say that we would blend funds, because you don't have the
9 control over it. But I think that, if there's any
10 blending or -- of funds, it really needs to be based on
11 outcomes and indicators about what you're using it for so
12 that there is a valuation of the use of funds accordingly.

13 DR. CHAMBERS: Thank you.

14 DR. TOPINKA: We also have the problem-
15 solving in Milwaukee schools but it is a special education
16 initiative. And I think one thing that's important to
17 incorporate into the law, whatever the language may be, is
18 something that takes it out of a person's specific
19 implementation; not every district is staffed the same way
20 with the same people. So there might be the opportunity,
21 in Judy's district, to have that be of a general ed
22 initiative; it is not so in my district.

23

1 If fund blending is a good idea, it ought not
2 to be left up to individual discretion so much as found in
3 the law.

4 MS. ACOSTA: Commissioner Takemoto?

5 MS. TAKEMOTO: Thank you for the work that
6 you do. I wanted to hear a little bit more about
7 compare/contrast with the attorney panel that we had
8 earlier today and the issues of the rights of the
9 individual and the use of the legal process to promote
10 those rights, along with the monitoring from above.

11 I hear you say lawyers -- limit attorney
12 fees; are you also saying limit your own legal counsel? I
13 mean -- how do you have a level playing field if there is
14 not appropriate funding for the attorneys?

15 DR. TOPINKA: My impression from my district
16 is that attorneys don't level the playing field for
17 everyone; they level the playing field for those people
18 who are knowledgeable enough to access attorneys.

19 So I don't see that that's the place to level
20 the playing field. I think the place to level the playing
21 field is at the outset. Again, we're back to
22 accountability. We have to avoid these huge numbers of

23

1 kids in special education so that attorneys and attorneys'
2 fees do not become a major issue.

3 And we can talk about the reality as it
4 exists or we can talk about a reality that we could create
5 if we changed the law. So that is my impression, that it
6 is not an equal use of seeking out attorneys or using
7 attorneys. So the playing field is not, in my opinion,
8 level because we have that opportunity to use attorneys.

9 DR. ELLIOTT: I would just add -- I think you
10 heard at the panel earlier that -- I mean, it really --
11 alternative dispute resolution was talked about. I really
12 think that a lot of this -- I know that a lot of this is
13 communication but it is an opportunity for attorneys to --
14 I mean -- I can't -- let's see. So I think the onset is
15 where we need to start with that, there has to be
16 something in place for school districts to not go to the
17 table immediately.

18 And what you heard this morning is absolutely
19 true. Parents will be advised by their attorney not to go
20 to mediation, so they will go right to hearing. And so
21 there has to be some preliminary stuff in there to at
22 least give the district an opportunity to -- and I -- you

23

1 know, there are a lot of people that are doing great stuff
2 for kids and I think, when you get into the litigious
3 process, we lose the child and we lose the parents. And
4 it need not be that way, it really needs to maintain
5 focus. And we lose that.

6 So it really is about having communication
7 and dispute resolution up front, not having somebody
8 whisper in somebody's ear not to try to mediate, to make
9 it better for kids. So that's a long -- you know, I think
10 the practitioners perspective is there's a lot more up
11 front before we go to due process.

12 MS. ACOSTA: Thank you.

13 Commissioner Hunt?

14 DR. HUNTT: Thank you, Madam Chair.

15 Dr. Elliott, I just have a quick question for
16 you. You talked about 96 percent of your students were
17 tested in '01 but you didn't give us the results. What
18 kind of outcomes have you been experiencing?

19 DR. ELLIOTT: How much time do you have?

20 DR. HUNTT: Well, the reason I ask is, maybe
21 what we could do is, there's been a precedent set that we
22 can keep the record open from today --

23

1 DR. ELLIOTT: Great.

2 DR. HUNTT: -- if you want to be able to
3 submit some additional information for us.

4 DR. ELLIOTT: I'd be happy to.

5 DR. HUNTT: Because I think we have half the
6 story and it's a great story. I would just like to hear
7 what the results are to be able to put it with the actions
8 that you are taking.

9 DR. ELLIOTT: We've disaggregated the data
10 over four years and we have trend lines, both for
11 participation and accommodation use, but also for the
12 achievement, the academic achievement.

13 DR. HUNTT: How about graduation rate?

14 DR. ELLIOTT: Graduation rates, we've been
15 able to track just recently because of some data issues.
16 We have the graduation rates for all -- you know, kids
17 that are in resource room, kids that are in special day
18 class; I'd be happy to share that with you.

19 DR. HUNTT: Thank you.

20 Madam Chair, based on precedent, I'd like to
21 ask that the record be kept open for additional comments
22 from Dr. Elliott.

23

1 MS. ACOSTA: Absolutely; thank you,
2 Commissioner Hunt.

3 Commissioner Gill?

4 DR. GILL: I just need some clarification, I
5 guess. Would you say compliance and accountability are
6 mutually exclusive? Either one of you.

7 DR. TOPINKA: I think compliance is an
8 element of accountability but it's hardly the entire
9 picture.

10 DR. GILL: So they're not mutually exclusive?

11 DR. TOPINKA: They are not mutually
12 exclusive, no, in my opinion.

13 DR. GILL: Would you say that most issues in
14 due process hearings are without merit, or frivolous?

15 DR. TOPINKA: I guess I would rather choose a
16 different adjective. I would not say that they are
17 frivolous because, obviously, they are of good importance
18 to the people who are involved --

19 DR. GILL: That's what I'm trying to
20 understand.

21 DR. TOPINKA: Yeah, but they are of great
22 importance to the parents and to the children that are

23

1 involved. I think, and this has been said earlier, it's
2 generally a breakdown in communication. Generally, it's a
3 relationship issue that's gone somewhere awry and perhaps,
4 if the relationship could be patched through mediation or
5 alternative dispute resolution earlier, we would not end
6 up in due process.

7 But, as long -- in Wisconsin, mediation is
8 not mandatory, it's optional. Therefore, it does not
9 really always provide what we thought it would provide, as
10 mediation as a step to due process.

11 DR. GILL: I think you mentioned, Dr.
12 Elliott, you mentioned that failure to implement the IEP
13 was the number one -- is that due process consideration in
14 the state or --

15 DR. ELLIOTT: That's where those data come
16 from, is from the due process.

17 DR. GILL: Do you think that's different than
18 any other state?

19 DR. ELLIOTT: I don't think so.

20 DR. GILL: I don't either.

21 DR. ELLIOTT: I don't think so. But -- I
22 mean, it's kind of a no-brainer in terms of, you know, in

23

1 terms of having that kind of data.

2 DR. GILL: That's kind of what I thought,
3 that it was kind of a no-brainer that the implementation
4 of the IEP would be the number one concern that people
5 would have.

6 Thank you.

7 DR. ELLIOTT: If I could just add. I mean,
8 there are times -- and I know that there are parents that
9 really do need to take cases to due process. I think you
10 heard one this morning with that -- with the attorney
11 talking about the student, Abe. I just -- you know, I am
12 the first person to work with parents that say, "You know
13 what; you're right. We didn't do what we needed to do
14 here. Let's figure it out."

15 Unless we are given that opportunity, we will
16 just continue the due process scenario.

17 MS. ACOSTA: Thank you.

18 May we have Commissioner Coulter, please?

19 DR. COULTER: Thank you.

20 Let me shift gears with you a little bit and
21 see if we can blend what we heard in the previous panel
22 with what you were talking about. Because I appreciate

23

1 Dr. Elliott's focus on academic achievement but, you know,
2 we also -- I know she recognizes we have behavioral needs
3 for kids.

4 And so I listened to the two of you talk
5 about, you know, in some respects, contrasting. I think
6 the theme that I heard from both of you was, trying to
7 make the services much more flexible, much more oriented
8 towards trying to produce educational progress, much less
9 towards some sort of burdensome, individual identification
10 process, et cetera.

11 But tell me how, in each of your instances,
12 how you work with other agencies to meet more of the total
13 needs for kids.

14 DR. TOPINKA: We actually have a coordinator
15 at each one of our schools that is supposed to be a
16 liaison with community agencies; and that's for children
17 who are returning to us from some sort of institution or
18 day treatment, or even therapeutic after-school
19 environment. And then, likewise, they are supposed to be
20 the link between the school and the service provider.

21 But the truth is, and this was stated
22 earlier, there aren't very many service providers left.

23

1 And so there are fewer and fewer people to coordinate
2 with, even though we do have some existing inter-agency
3 agreements and we're particularly strong in that birth to
4 three area. But, as far as older children go, with mental
5 health needs, even medical needs, there's not a lot of
6 support in the community.

7 So, while we have the mechanisms in place, I
8 would say that maybe the mechanism exceeds, you know, the
9 people that are actually out there to provide the service.

10 DR. COULTER: Dr. Elliott?

11 DR. ELLIOTT: I would echo those same
12 sentiments. I also, you know, would underscore that some
13 of our best collaboration is done with agencies without
14 any inter-agency agreement or MOU written. It really is
15 about passion for kids and outcomes and where -- if we
16 have a clear idea of where we're going and what we want
17 for kids, and you get the players that need to be around
18 the table -- we really do have some wonderful inter-agency
19 without, kind of, that bind.

20 But it will always be a long-standing issue
21 that mental health agencies and educational agencies have
22 turf issues, both from money and for service delivery.

23

1 And, you know, I've sat in IEPs and worked
2 with parents where there is a direct conflict of interest
3 between what is best for -- you know, I heard this
4 morning, or the previous panel saying, it doesn't say one
5 time a month family therapy.

6 If we put it on the IEP, we're responsible
7 for paying for that, outside of the district. And so,
8 when you're looking at a small -- it all wraps around to
9 -- you know, we're all fighting for the same pool of
10 money. So -- I mean, I think if we get better and more
11 creative in working toward what kids really need, we can
12 move in that direction with a lot of less conflict.

13 DR. COULTER: Okay. Lastly I guess, we're
14 hearing from Wisconsin -- or one piece of Wisconsin and
15 one piece of California. We've heard this, I think,
16 repeatedly; if it's the one thing that's been consistent
17 for us it's that the IQ test does not seem to lend any
18 value to differential diagnosis or to identifying
19 instructional needs of the kids. And I think, Dr.
20 Elliott, you said you participated in a professional group
21 this weekend.

22 What is it that makes people hold on to
23

1 something so tightly that does not seem to work?

2 DR. ELLIOTT: You know, it's been around for
3 a long time and it's been -- we've been sold something
4 years back. Being a former school psychologist, it's not
5 a definitive science. You know, one of the frustrations
6 that we have in due process is when we don't do an IQ
7 test, folks go out and have somebody do an IQ test,
8 they're found eligible for learning disabilities, not only
9 do we pay for the outside evaluation, but compensatory
10 services for the years that they weren't diagnosed.

11 So it really is looking at just probably an
12 old group that people hold on to. And I really believe
13 that folks really think -- we also have to understand that
14 there are biological and environmental issues that
15 surround learning. There are learning disabled kids. I
16 think we have a lot of curriculum disabled kids in our
17 schools and I think that, you know, the eligibility and
18 all the rights that go along with folks when they have
19 that label is pretty big.

20 I don't know the answer. The research really
21 shows otherwise and we show that there are good things,
22 but I think that parents and communities and advocates

23

1 really believe that, if we put a label on a kid, or on a
2 student, we can fix them. And I think that's the premise
3 for it.

4 DR. COULTER: Thank you, Madam Chair.

5 MS. ACOSTA: Thank you so very much for the
6 insightful and thoughtful testimony; you've given us
7 certainly fertile ground for our deliberations. Thank
8 you.

9 And now we will go on with our public
10 element, our public comment, rather. And we welcome the
11 public to come before us and we are anxious to hear your
12 thinking on this very important topic.

13 Just a bit of housekeeping, Marissa Munoz,
14 who is just in the front; she's the lady with the chair,
15 dressed in black, and she's got some papers in her hand.
16 You will be limited to three minutes and you will be cued
17 by Ms. Munoz; and we ask you to please respect the time.
18 Again, not to diminish, at all, the matter at hand, but
19 the time is limited and we ask you to respect the
20 timekeeper.

21 We will begin with -- I will call the first
22 five of you, if you will line up and go in order:

23

1 M. Christian, Christine Kidwell, Steve Brown,
2 Pat Steinburg, and Caroline Kelner.

3 MS. MALAYA CHRISTIAN: I have some handouts,
4 how do I -- since I just got here, I'm not really sure how
5 you want to handle it.

6 The first two handouts are from the Learning
7 Disabilities Association; I think I -- you are aware that
8 I was going to bring those to pass out; -- Malaya
9 Christian -- the second set is things that I brought.

10 I want to make a really quick statement and
11 then, when I came this morning, I came with the intention
12 of signing my daughter up to speak. She is a junior at
13 Madison High School; she's fully included, and she's going
14 to speak to you. I was not allowed to sign her up so I'm
15 ceding my time to her because she was in school and I
16 wasn't going to pull her out of school to come and sign
17 up. But she's a minor and she can't sign for herself
18 anyway.

19 MS. ACOSTA: Ms. Christian, just for the sake
20 of time, we have been -- we've all done a good job of
21 staying on time so, just for the purpose of the Chair,
22 both of you may speak.

23

1 MS. MALAYA CHRISTIAN: Pardon me?

2 MS. ACOSTA: Both of you may speak.

3 MS. MALAYA CHRISTIAN: Okay. That's
4 important. It's very short.

5 MS. ACOSTA: Okay.

6 MS. MALAYA CHRISTIAN: And so my stuff is in
7 writing and I have a packet for you all and I've included
8 Megan's statement. I do just really need to address the
9 due process and mediation piece that that gal from Long
10 Beach was addressing. Obviously, they have some great
11 things going on in Long Beach and, being from San Diego,
12 we have close affiliation.

13 I think it's important to understand that, by
14 the time a parent gets to the point of filing for due
15 process, a significant amount of time has passed. There's
16 been ample time for the district to extend the olive
17 branch, to come together and talk. By the time a parent
18 files for due process, emotions are stretched to the
19 limit.

20 I think it's important that, when we look at
21 the numbers -- she addressed the numbers of filings of due
22 process in California last year -- I think it's important,

23

1 when we look at that, that we look at how many of those
2 numbers of filings, how many people prevail, how many
3 parents prevail actually in hearing and in the mediation
4 process. Also, the only time that I know of that
5 attorneys and advocates recommend that it's taken off
6 calendar is when the mediation cannot occur prior to the
7 hearing date.

8 The other issue she brought up and she shared
9 was that lack of implementation of IEP was the number one
10 reason that people filed for due process, but I would like
11 to state that lack of implementation of an IEP is a
12 compliance complaint issue. You would not be allowed to
13 go to due process in California for lack of
14 implementation, you would be directed to file a compliance
15 complaint with the State Investigators.

16 With that, I'm going to give my daughter her
17 time to speak.

18 MS. ACOSTA: Thank you.

19 MS. MEGAN CHRISTIAN: My name is Megan
20 Christian. Good afternoon, my name is Megan Christian;
21 I'm 17 years old, I'm a junior at James Madison High
22 School in San Diego City School District and I'm coming to
23

1 speak to you today because I want you to know how good
2 IDEA is and why it should be kept in place.

3 Although I look like, and mostly act like, a
4 typical teenager, I have a diagnosis of autism and non-
5 verbal learning disabilities. I have been fully included
6 since the third grade. When I was very little, people
7 used to tell my mom all the time that I would never be
8 able to learn how to read. The real problem was that
9 teachers did not know how to teach me in a way that I
10 could learn and they did not understand the sensory
11 overload that I would experience and so they became
12 impatient and said that I had behavior problems.

13 However, my parents believed I could learn.

14 My mom taught me how to read; learning to
15 read opened the world to me. Learning to read has been
16 the key to my success. We were told I would never be able
17 to get my high school diploma; little did they know they
18 wrong.

19 Kids, all kids, have the right to be
20 educated. All kids have the right to attend school and
21 have teachers treat them with respect -- that they will
22 learn. For most kids, that should include reading. For

23

1 some kids, it might be giving a signal of yes or no but,
2 for all kids, it means belonging and that they matter.

3 We need to keep the law, we need to teach
4 teachers how to teach kids in the way that everybody
5 learns. That way, everybody wins because everybody
6 learns.

7 Next year, I will be a senior at James
8 Madison High School and I will be able to walk with the
9 class -- with the high school class of 2003 and get my
10 high school diploma. For me, getting my high school
11 diploma at age 18 will be biggest transition for me from
12 being a high school student to being an adult. For me,
13 getting my high school diploma will be a wonderful rite of
14 passage into the adult world.

15 MS. ACOSTA: Thank you.

16 [Applause.]

17 Steve Brown?

18 MS. MEGAN CHRISTIAN: It's okay, you can ask
19 questions.

20 MS. ACOSTA: Oh, I'm so sorry.

21 MS. MEGAN CHRISTIAN: I don't mind, you can
22 ask questions.

23

1 MS. ACOSTA: We don't have any questions at
2 this time; thank you.

3 I'm sorry, the next one is --

4 MR. BROWN: Thanks for the opportunity to
5 speak to this Commission.

6 My son is a special ed student in San Diego
7 City School System; he's autistic, primarily non-verbal,
8 has primal seizures and has very aggressive behaviors.
9 His aggressiveness is related to the seizure cycles; and
10 meds are of some help but are not completely resolving the
11 problem.

12 Since my son represents some serious
13 challenges for a school district, I'll have to say that I
14 have become somewhat of a fan of compliance. I've also
15 thought -- I'm also following present -- you know, recent
16 actions in Congress in regards to the weakening discipline
17 provisions in IDEA with, you know, some concern.

18 My son is in a very good educational program
19 right now that meets his needs for safety and he is
20 actually making quite good progress on goals that are
21 centered around life skills so that he can be integrated
22 into his local community with a minimal amount of support.

23

1 He is no longer ostracized out of the classroom due to
2 health issues, he's no longer -- I no longer get calls to
3 pick him up because the teacher or the aide cannot handle
4 him on that particular day.

5 I no longer deal with suspension and manifest
6 hearings for expulsion. I feel that I -- I also feel that
7 I no longer have to worry about a phone call that my son
8 is being arrested on criminal assault charges by the
9 school police.

10 Getting my son into the right education
11 programs has been no easy task; my son has been with the
12 program for as long as seven months at a time. When your
13 child doesn't fit, I can tell you that it quickly becomes
14 a parent-driven process. Just getting people to respond
15 to your phone calls is a huge challenge. Compliance to
16 the process and timeline really becomes your major hope in
17 getting the school folks to address a very difficult
18 situation.

19 Accommodations and accountability are great,
20 that we've been talking about here, but -- and are sorely
21 needed -- but why is it often described as an alternate --
22 alternative to compliance? It should be hand-in-hand with
23

1 compliance; compliance and discipline provisions are a
2 safeguard so that children like mine are not effectively
3 tossed out of the system.

4 My son is not -- will likely not measure up
5 to a set of standardized outcomes on that kind of a driven
6 system. You know, he is not going to get a diploma. He
7 does, then -- my fear is that he'll become, at that point,
8 a write-off, really no chance to be successful in an
9 educational system.

10 You discussed today the issue of paperwork as
11 being independent to education. The paperwork that I see
12 for IEP goals has really been a useful guide and not
13 really a compliance chore. My unscientific observation,
14 based on my own experience as a parent, is that complaints
15 about paperwork and compliance issues are generally
16 symptoms of the underlying and more difficult problems
17 that really need to be addressed in special education.

18 MS. ACOSTA: Mr. Brown, I'm sorry; you're
19 time is up.

20 MR. BROWN: Okay.

21 MS. ACOSTA: Thank you.

22 MS. TAKEMOTO: Madam Chair, if he has written
23

1 comments he can submit the rest of his written comments
2 for the record; is that correct?

3 MS. ACOSTA: That's right.

4 MS. TAKEMOTO: Thank you.

5 MS. ACOSTA: That's what's great about
6 working with great colleagues, they always support and
7 remind you; thank you.

8 Christine Kidwell?

9 MS. KIDWELL: My youngest daughter, Wendy, is
10 13 and has mild autism and mild CP. She's been included in
11 regular school with supports since Kindergarten.

12 We've seen that, because of the supports and
13 inclusion she's received, the gap between her and the
14 other children has become more and more narrow each year.
15 She now performs average and above average in all of her
16 mainstream, regular education subjects. We have the
17 expectation, thanks to our district's implementation of
18 supports and inclusion for her, that she will reach her
19 fullest potential.

20 I'd also like to tell you about my oldest of
21 three daughters, Jessica, who has learning disabilities.
22 Although she received resource programming supports in
23

1 second grade, she was not taught the strategies necessary
2 for her to become a successful reader. She was
3 transferred to the next grade year after year. Reading
4 affects every subject and every subject affects self-
5 esteem, as parent Andrew Barling had shared with you in
6 Los Angeles about his daughter with learning disabilities.

7 Not to say that her growing lack of success
8 in school is the only reason but, in her senior year,
9 Jessica contributed to our nation's dropout statistics.
10 John Lucas, representing our state's staff of directors,
11 shared in Los Angeles that the word "appropriate" should
12 be defined by IDEA.

13 According to our home dictionary, the first
14 definition of "appropriate" are, "particularly suitable,
15 fitting, and compatible." I believe that the word
16 "appropriate" was specifically chosen for use by IDEA
17 because it underscores the importance of considering each
18 individual's need.

19 John Lucas further recommends that a standard
20 level of service should be established for special
21 education students.

22 I would like to caution you that I believe my
23

1 daughter, Jessica, received a kind of standard-level
2 service by being placed in resource programs for children
3 with learning disabilities. Throughout history, America
4 has been known as the land of opportunity. The
5 Individuals with Disabilities Education Act is the
6 cornerstone of that opportunity for our children with
7 disabilities. We all need to continue to strive toward
8 fulfilling the purpose and intent of IDEA to ensure that
9 no child will be left behind in this land of opportunity.

10 My utmost thanks to you; I've read about your
11 backgrounds and I appreciate your efforts and commitment
12 on behalf of children with disabilities.

13 Thank you.

14 MS. ACOSTA: Thank you, ma'am.

15 Pat Steinburg?

16 MS. STEINBURG: Good afternoon.

17 I'm Pat Steinburg from the Washington
18 Education Association and, prior to that, a proud special
19 ed teacher for 17 years.

20 I have distributed to you some data that we
21 are currently developing at the Washington Education
22 Association. We have a major concern about special
23

1 educators leaving their chosen profession, some of whom
2 stay in education but are out of special ed, and others
3 who leave education entirely.

4 I'm not going to go over those data points
5 with you. What I would like to say is for the audience.
6 We are showing that, in the next five years, only 27
7 percent of our special educators intend to stay with us.
8 We can't afford that.

9 We have a high investment in having highly-
10 skilled educators who are able to meet the needs of the
11 individual students whose parents have spoken so
12 eloquently before me.

13 I would appreciate being able to turn in the
14 analysis of our data at a later time; we've got 4,000
15 responses and we're anticipating more. And, prior to
16 June, we'll have the data analysis done. And, if I could
17 submit that to you at a later time.

18 MS. ACOSTA: Absolutely; thank you.

19 MS. STEINBURG: I would like to focus on the
20 kinds of things that data collection doesn't always
21 provide and that's the information from the heart.
22 Special education teachers, at this time, the paperwork is

23

1 incredible, the caseloads, at least in Washington, are
2 skyrocketing and I do not want them to hear about Long
3 Beach because, given the opportunity to have that few
4 students, we would lose our entire teaching staff.

5 And, while those are incredible barriers to
6 what they hope to accomplish with students, it's from the
7 heart that they tell us that the current situation, where
8 we have a set of standards that have been put in place for
9 all students and that those students are expected to
10 learn, all of their students in the same place, is
11 disheartening for them and disenfranchising for their
12 students.

13 In terms of how we might correct that, I
14 would suggest that we look at the paperwork. Yes, we can
15 limit the paperwork, but should we not also focus the
16 paperwork on the very important aspects of the IEP? And,
17 reaching back to Maggie McLaughlin this morning and her
18 suggestion of standards, would it not be very appropriate
19 for us to have standards that we could have special
20 education teachers focusing on in addition to the basic ed
21 standards with are appropriate for a large set of
22 students? Could we not also have standards that would

23

1 help us measure our programs and student progress in
2 another way for those students where the basic education
3 standards are not appropriate?

4 I would also like to suggest that, at the
5 federal level, you take a look at caseload class size. We
6 cannot, even with the best written IEP, provide the
7 appropriate education when we have teachers with 50 to 60
8 students. We'll move to Long Beach and do it.

9 Thank you.

10 MS. ACOSTA: Thank you.

11 Caroline and Nick Kelner, and
12 Laura Taylor.

13 MS. KELNER: Good afternoon, I'm Caroline
14 Kelner and actually, I signed up for my son Nick to speak;
15 he's at school.

16 We were speaking yesterday, my son and I, and
17 why I wasn't going to be able to pick him up from school
18 today and had to make other arrangements; and I told him
19 that I was going to be coming here. And he decided to
20 write President Bush a letter that I'm presenting to you
21 and I hope you will forward on to the President.

22 "Dear President Bush: My name is Nick
23

1 Kelner. I am 10 years old. I attend my neighborhood
2 school and the Learning Center for special help. When I
3 grow up, I am going to be a great scientist. Please don't
4 take money away from the special teachers and programs
5 that teach me so well. Please help my dream come true.
6 Thank you, Nick."

7 And then Nick also picked out some pictures
8 for you that I've included, since he wasn't going to be
9 able to be here. I also wrote a letter that I'll just go
10 through quickly and -- then over lunch, I zoomed home to
11 write an addendum to my letter in regards to the topics
12 that were discussed this morning.

13 It's been a personal and financial struggle
14 to support my son Nick with his special education needs.
15 But every ounce of blood, sweat, and tears has been well
16 worth it. I ask President Bush and you, the members of
17 the President's Commission on Special Education, to
18 continue to support our special needs children and all
19 children in the pursuit of a quality education.

20 If you choose not to invest in our schools
21 and special education programs, then you choose to invest
22 in our prisons instead. The choice is yours and I hope
23

1 and pray you choose and act to be proactive on behalf of
2 our nation's children, our most valuable resource.

3 An addendum to the topics discussed this
4 morning, on monitoring, it was stated that the ultimate
5 quote/unquote "punishment" for a district's failure to
6 correct non-compliance citations is financial sanctions
7 against the district, the school district. This is
8 ludicrous, as financial sanctions are only going to take
9 much-needed money away from the students in special
10 education. Furthermore, school districts know that
11 financial sanctions are all bark and no bite. What is
12 needed are sanctions against those who are accountable,
13 superintendents, school-site principals, and other
14 administrators who are directly accountable for quality
15 and delivery of special education services.

16 Therefore, job descriptions, performance
17 evaluations, monetary raises and bonuses not only need to
18 be based on quality outcomes for students receiving
19 special education services, but also on a decrease in
20 compliance complaints filed against the individual schools
21 and school districts. Maybe the money saved from
22 increased salaries and bonuses could be allocated for

23

1 direct services or compensatory services for special
2 education students.

3 Funding of IDEA. On the way to today's
4 hearing, I heard on the radio that the United States is
5 increasing its financial support to the far ends of the
6 earth. This is wonderful; however, I believe the United
7 States needs to financially support our own nation's
8 children first. As one of the speakers stated this
9 morning, we need to support these children until age 21.
10 My response is, "Then what?"

11 If we haven't taught our children to read,
12 write, guide them into a career or vocation, and build
13 their self-esteem, then statistics have proven that a
14 great majority of them will end up in jail. Persons with
15 special needs must not be treated as second-class
16 citizens. IDEA needs to be fully funded and expanded to
17 continually support --

18 MS. ACOSTA: Thank you, Ms. Kelner; your time
19 is up.

20 MS. KELNER: -- those with disabilities.

21 Thank you.

22 MS. ACOSTA: However, you may please give
23

1 that to us so we can get copies of it.

2 MS. KELNER: I did. I also commented on
3 eliminating paperwork.

4 MS. ACOSTA: Thank you so much.
5 Laura Taylor?

6 MS. TAYLOR: Thank you.

7 I'm the mother of a 13-year-old with autism,
8 a praxium (phonetic) processing disorder. He has a
9 variety of disabilities. IDEA had worked for my child but
10 it has been extremely hard work. I had an IEP within the
11 last 30 days that was child-centered, it was
12 collaborative, it was creative, it was everything I think
13 this law can and should be. But I can guarantee you that,
14 if I didn't have IDEA, he might be in the building -- I
15 expect and I think, as a nation, we're entitled to expect
16 a little more for our disabled child than their access to
17 the same school building.

18 I'm also an attorney; I'm the founder of the
19 San Diego Volunteer Lawyer Program which provides pro bono
20 legal services in special education disputes to the
21 poorest, the neediest children in this community. We also
22 do a tremendous amount of work with the juvenile court and

23

1 with dependents. In five years, we have had to do two due
2 process hearings. We've collected fees in those two cases
3 which the individual volunteer law firms largely donated
4 to charity.

5 I am offended by the notion that the
6 attorneys in this field are out there for profit; it's a
7 hard way to practice law and make a profit. I've got to
8 tell you, I don't -- I'm a bank lawyer by profession, I
9 couldn't make a living doing this. I also couldn't afford
10 myself.

11 The dispute resolution panel gave you
12 excellent ideas for improving the current situation; you
13 should implement them. You also, however, need to look at
14 that top, down system and you need to put in place
15 something that creates real sanctions for failure to
16 comply with the law. Monitoring is not going to do it.
17 San Diego Unified School District -- the panel members are
18 very familiar with what's happened here. It is an
19 excellent example of continuous compliance complaints,
20 continuously being told that they are not in compliance
21 and ordered to comply, and continued failure for anything
22 to occur that improves this situation. We have the same

23

1 problems year after year, notwithstanding continuing
2 compliance problems.

3 I would suggest that, among other things,
4 settlement should result in the ability to obtain a quick
5 court order so that we get -- there's nothing worse than
6 settling a dispute and then not having that settlement
7 implemented; that happens too often.

8 Also, recognize what you're doing if -- I
9 think one of the panel members asked about cutting
10 attorneys out of the process. My son will be fine; my son
11 will continue to get a quality program. Attorneys have
12 disabled kids, too. But there are groups of kids who will
13 not be in that same situation. And, principally, I'm
14 talking about poor children and, even more importantly,
15 foster children.

16 If you're going to cut attorneys out of the
17 process, then you are going to have to fund a surrogate
18 system because, otherwise, you have a whole group of
19 children who don't have parents and who have surrogates
20 who are not paid to provide them with any kind of
21 effective representation. And those kids are not going to
22 get the education they're entitled to under the law.

23

1 Thank you.

2 MS. ACOSTA: Thank you.

3 Raydene Wolf, followed by Bobbie Kohrt.

4 Allison Brenneise, Terri Baur, and Angela

5 Hawkins, and Lynn Aung -- is that correct? Am I saying it

6 correctly?

7 MS. AUNG: Yes, that's correct.

8 Thank you very much for letting us all here

9 today to speak with you. My name is Lynn Aung and I'm a

10 school psychologist. I am also the President-elect of the

11 California Association of School Psychologists.

12 I represent 3200 school psychologists in the

13 State of California. I'm also the grandmother of a young

14 lady who is orthopedically handicapped, who was born six

15 months gestation at a pound, 11 ounces. So I've been on

16 both sides of the table of the IEP process.

17 Recruitment and retention, as someone else

18 has said, of special education professionals has become

19 quite difficult in the State of California. There isn't

20 just one reason for the decrease of university-trained

21 programs across the country. One reason is, and I can

22 assure you, is a "we-against-them" process that we, as

23

1 school psychologists, deal with every day.

2 School psychologists often feel squeezed in
3 between school districts and the attorneys hired by
4 parents. It doesn't have to be this way. We should be
5 working together for what's best for the student. Parents
6 and school officials alike are reporting that special ed
7 has become focused on compliance and procedure, rather
8 than on students and accountability.

9 We need to fix it for the students, for the
10 parents, and for the special education professionals.

11 Thank you.

12 MS. ACOSTA: Thank you.

13 And I'm sorry, I skipped over and Raydene
14 Wolf should be next. Is she still here?

15 [No response.]

16 MS. ACOSTA: Okay. The next one is Allison
17 Brenneise.

18 UNIDENTIFIED AUDIENCE MEMBER: (inaudible).

19 MR. JONES: No. Actually, the Commission
20 adopted a rule that individuals who are with the same
21 organization, it's actually that they go to the end of the
22 list, to give others a chance to speak first.

23

1 UNIDENTIFIED AUDIENCE MEMBER: (inaudible).

2 MS. BRENNEISE: I'd like to thank the members
3 of the Commission for coming to San Diego. When we heard
4 that you weren't going to come to San Diego, many of us
5 panicked and we thought, "We'll just call them and pray
6 that they'll come back." So I want to thank you for
7 coming and hearing us.

8 You know, a lot of us can't get to L.A. and
9 we really appreciate your coming to us.

10 I also would like to say that I'm ashamed
11 that I don't see District Administrators from the San
12 Diego Unified School District here. I would think that
13 they would like us to believe that they're going to make
14 sweeping changes to special education; but how are we to
15 trust that they're going to do something when they won't
16 come and listen to the things our district is notoriously
17 famous for.

18 I put a letter together and I'd like to just
19 say that I echo Malaya Christian's statement that, before
20 you get to due process, it's a long road; it's years of
21 non-compliance and trying to get your children what they
22 deserve. And the district, in my experience, has never

23

1 come and tried to work with us so that my children can be
2 educated.

3 I have two boys receiving services in San
4 Diego Unified, one is definitely more involved than the
5 other. This same child has not been educated for three
6 years. Yes, he's gotten some improvements; there have
7 been many times where he has been out of school because
8 they can't deal with his behaviors, or they're not
9 appropriately trained to work with him.

10 Last year, my son was given 352 hours of
11 compensatory education for time that he was not served in
12 his classroom.

13 I would like to talk just a moment about
14 paperwork. Paperwork is not the problem. I understand
15 that we don't want to see 55-page IEPs, because we have
16 them, and we have complete problems with getting the IEPs
17 implemented.

18 But what I would like just to end with is
19 that we really need to focus on collecting data. If the
20 staff people who are working on the goals kept data when
21 they were working with the child, their reports would
22 write themselves, they would be able to have baselines

23

1 that we don't have today. My son doesn't have appropriate
2 baselines; no one knows where he is except for us; and
3 they don't want to hear from us.

4 And I just really implore you to keep
5 provisions in place so that parents have some kind of
6 place to stake their claim.

7 Thank you.

8 MS. ACOSTA: Thank you.

9 Terri Baur.

10 MS. BAUR: My name is Terri Baur; I'm the
11 Executive Director of Area Board 13 for Developmental
12 Disabilities. We advocate on behalf of people with
13 developmental disabilities. I'm also a special education
14 attorney.

15 Before I was a special education attorney, I
16 didn't know what encopresis was. For those of who
17 don't know, encopresis is the inability to control one's
18 bowels, which is often a symptom of sexual abuse.

19 We represented a young man who was told --
20 and whose care-giver was told by the school district that
21 he lived in -- that this was a high-class area and that
22 students were not -- their parents would not tolerate this

23

1 kind of child in the school. He was also told that it was
2 a new school and they didn't want it getting all dirty.

3 These are the kinds of cases that we are
4 representing as special education attorneys, they were not
5 over-identified children.

6 I would argue that litigation is not the
7 problem, that litigation is a symptom of the problem and
8 that problem is failure to implement a very, very good,
9 very strong, and very important law, the IDEA.

10 I'm also a sociologist so I can talk about
11 the social construction of reality. One of the realities
12 that I sometimes hear being constructed is a reality where
13 special education students and their families are seen as
14 trying to get private school education at public expense
15 for their children. And attorneys are pretty much
16 depicted as sharks.

17 Most of the attorneys that I have worked with
18 are people who represent other kinds of clients, who have
19 chosen to be trained in special education law, and who
20 represent special education students, children with
21 disabilities, on a pro bono basis.

22 What I would like you to do is to go back to
23

1 the administration and to encourage the administration to
2 create a different kind of social reality, and that is one
3 where children with disabilities need services to be the
4 kind of productive citizens that they can be and that
5 where that their parents are simply striving to help them
6 have an appropriate education that enables them to learn
7 and to be productive citizens.

8 Thank you so much for coming to San Diego and
9 hearing our testimony.

10 MS. ACOSTA: Thank you.

11 [Applause.]

12 MS. ACOSTA: Angela Hawkins.

13 DR. HAWKINS: Good afternoon.

14 My name is Angela Hawkins. I am the
15 Chairperson of the California Advisory Commission on
16 Special Education, Director of Special Ed for the
17 Sweetwater Union High School District, which has an ADA of
18 about 40,000, special ed students of 4,000 in grades 7
19 through 12. I'm also an Adjunct Professor of National
20 University and the custodial grandparent of two boys with
21 IEPs.

22 Lucky for you that I just found out about
23

1 this meeting a couple of hours ago so I haven't had time
2 to be wordy. I'll address two topics on foster youth. I
3 was told that this session was to reduce paperwork or talk
4 about the paperwork in special education.

5 Foster youth are placed in licensed care
6 institutions or homes by the courts. They usually have
7 been in and out of 12 to 20 placements. Records, both
8 education and health, are lost. The solution is a health
9 and education passport, web-based, no paper, with access
10 limited to those who need to know.

11 A current pilot in San Diego County, called
12 Foster Youth Services, have constructed such a passport.
13 The children's credits are saved, paperwork reduced.

14 My last item is on litigation. We are a
15 secondary district. I've been in the district 37 years;
16 we have never been to due process. You ask why.

17 We operate from an abundance model -- there
18 is enough for everyone. When there is a disagreement, we
19 operate from premise of win-win. All administrators have
20 been trained in this process, they have been trained in
21 what we call Seven Habits of Highly Effective People by
22 Steven Covey (phonetic). It's win-win and seek first to

23

1 understand.

2 As a result, we have very little paperwork;
3 we do not have attorneys' fees, we spend the money on the
4 kids.

5 I leave you with a statement that I heard
6 from Steven Covey; he was talking about equity. He said,
7 "Equity does not mean that everyone gets the same. Equity
8 means everyone gets what they need."

9 MS. ACOSTA: Thank you.

10 [Applause.]

11 MS. KOHRT: Angie, I want to work for you.

12 My name is Bobbie Kohrt and I'm a school
13 psychologist and I'm also -- I'm the California -- a
14 member of the California Association of School
15 Psychologists, and I'm an autism specialist for San Diego
16 Unified School District.

17 Thank you very much for the opportunity to
18 speak today -- excuse me while I put my glasses on.

19 There is a lot of issues that I could address
20 but I'd really like to focus on the issue of federal
21 mandatory funding. There's a common notion out there in
22 education, in special education, that parents supposedly

23

1 want a Cadillac education and FAPE supposedly guarantees a
2 Chevrolet. And I'm here to tell you that we get funding
3 for a go-cart.

4 As you may have heard, autism is the fastest-
5 growing disability in California; it certainly is in our
6 district. And it is -- the cost for treating children
7 with autism and other chronic disabilities is on the rise.
8 And, as we all know, early, intensive intervention for
9 autism is absolutely essential.

10 However, I have very inadequate funding to
11 train staff, to both professional teachers -- general ed
12 teachers need training, paraprofessionals need training,
13 and we have limited budget for materials and, especially
14 for helping support children in fully-included --
15 inclusive settings, which I am very supportive of. And
16 yet, last year, my district spent hundreds of thousands of
17 dollars on non-public agencies and non-public schools and
18 I just don't understand that.

19 And so I'm here to just say that I would
20 really like to see FAPE -- I would like to see FAPE better
21 defined and I would like to see federal funding at the
22 promised level of 40 percent, rather the reality, which is

23

1 15 percent.

2 And I truly believe that that would help us
3 better serve all the students who need it.

4 Thank you.

5 MS. ACOSTA: Thank you.

6 [Applause.]

7 MS. ACOSTA: Ladies and gentlemen, that
8 concludes our Commission hearing but, before we leave, I'd
9 like to take the privilege of the Chair and share this
10 thought with you; today, the word that I hear resounding
11 in my head, as we end our day, is "trust."

12 I want to publicly thank President Bush and
13 Secretary Paige for trusting us with this arduous task. I
14 want to thank Tracy Spencer and Linda Emery, and Marissa
15 Munoz who work with us and, last but not least, Todd
16 Jones, who work to make our efforts here as painless as
17 possible. And I want to publicly thank them.

18 And we trust you and we ask that you return
19 that. Thank you so much.

20 We want to thank, again, our expert witnesses
21 for coming, passionately speaking to us about this work.
22 And we trust that that information will become part of the

23

1 greater work.

2 And last but not least, we want to thank our
3 families, our children who, on a daily basis, trust this
4 country to not leave children behind. We are committed to
5 this work and we, on behalf the Commissioners, we want to
6 thank San Diego for making us welcome as we continue to
7 develop this document that we will be sharing with you.
8 And we trust that your input will be forthcoming.

9 Thank you.

10 (Whereupon, at 5:07 p.m., the hearing in the
11 above-entitled matter was closed.)

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